

rebates to liquidity providers designed to encourage beneficial market activity, with greater incentives for market participants to provide liquidity and the proposed rule changes are not unfairly discriminatory because they apply uniformly across all markets. Finally, the changes are not unfairly discriminatory because they increase the availability of higher rebates without eliminating any of the other means by which a member may earn a higher rebate under Rule 7018(a).

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

NASDAQ does not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.<sup>6</sup> NASDAQ notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, NASDAQ must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, NASDAQ believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. In this instance, the changes to routing fees and credits do not impose a burden on competition because NASDAQ's routing services are optional and are the subject of competition from other exchanges and broker-dealers that offer routing services, as well as [sic] the ability of members to develop their own routing capabilities. In sum, if the changes proposed herein are unattractive to market participants, it is likely that NASDAQ will lose market share as a result.

Accordingly, NASDAQ does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

#### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>7</sup> At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2014-089 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.
- All submissions should refer to File Number SR-NASDAQ-2014-089. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and

printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2014-089, and should be submitted on or before October 6, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Kevin M. O'Neill,**  
*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-73028; File No. SR-NYSE-2014-48]

### **Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Rule 49, Which Addresses the Exchange's Emergency Powers Revising How Certain Messages Are Disseminated**

September 9, 2014.

Pursuant to Section 19(b)(1) <sup>1</sup> of the Securities Exchange Act of 1934 ("Act") <sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on August 27, 2014, New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend NYSE Rule 49, which addresses the Exchange's emergency powers, to revise how certain messages are disseminated.

<sup>8</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>6</sup> 15 U.S.C. 78f(b)(8).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

The text of the proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

### A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

The Exchange proposes to amend Rule 49, which addresses the Exchange's emergency powers, to revise how certain messages are disseminated.

#### Background

In 2009, the Exchange adopted Rule 49 to provide the Exchange with the authority to declare an Emergency Condition with respect to trading on or through the systems and facilities of the Exchange and to act as necessary in the public interest and for the protection of investors.<sup>4</sup> The authority in Rule 49 may be exercised when, due to an Emergency Condition, the Exchange's systems and facilities located at 11 Wall Street, New York, New York, including the NYSE Trading Floor, cannot be utilized. If such an Emergency Condition is declared, a qualified Exchange officer may designate NYSE Arca, Inc. ("NYSE Arca") the Exchange's affiliate, to serve as a backup facility so that the

Exchange, as a self-regulatory organization ("SRO"), can remain operational.<sup>5</sup> NYSE Arca also would continue to operate simultaneously. In November 2013, the Securities and Exchange Commission ("Commission") approved amendments to Rule 49 that were designed to more effectively delineate the SRO functions of the Exchange and NYSE Arca during an Emergency Condition, reflect the operational preferences of the industry, and reflect the structure of member organization connectivity to and system coding for exchange systems.<sup>6</sup> To date, the Exchange has not invoked Rule 49.

Under current Rule 49(b)(2)(A), beginning on the next trading day following the declaration of an Emergency Condition, NYSE Arca would, on behalf of and at the direction of the Exchange, disseminate (i) the official opening, re-opening, and closing trades of Exchange-listed securities to the Consolidated Tape as messages of the Exchange, and (ii) any notification for Exchange-listed securities to the Consolidated Quotation System ("CQS") of a regulatory halt and resumption of trading thereafter, trading pause and resumption of trading thereafter, and Short Sale Price Test trigger and lifting thereafter, as messages of both the Exchange and NYSE Arca.

Under current Rule 49(b)(2)(B), bids and offers for Exchange-listed securities entered on or through the systems and facilities of NYSE Arca during the Emergency Condition would be reported to the CQS as bids and offers of NYSE Arca, except that the opening quote and any re-opening quote would be reported to the CQS as a bid and/or offer of both the Exchange and NYSE Arca. Bids and offers for Exchange-listed securities executed on or through the systems and facilities of NYSE Arca during the Emergency Condition would be reported to the Consolidated Tape as executions of NYSE Arca, except for executions in the opening, re-opening, or closing auctions, which would be reported as Exchange executions and Exchange volume only.

<sup>5</sup> NYSE Arca trades equity securities on the systems and facilities of its wholly owned subsidiary, NYSE Arca Equities, Inc., referred to as the "NYSE Arca Marketplace." For the purposes of this filing and in the text of Rule 49, these shall be referred to collectively as the systems and facilities of NYSE Arca, or simply NYSE Arca.

<sup>6</sup> See Securities Exchange Act Release No. 70822 (November 6, 2013), 78 FR 68128 (November 13, 2013) (SR-NYSE-2013-54; SR-NYSEMKT-2013-66; SR-NYSEArca-2013-77). This release approved the amendment to Rule 49 as well as amendments to NYSE Arca Rule 2.100 and adoption of NYSE MKT LLC ("NYSE MKT") Rule 49—Equities.

#### Proposed Rule Change

After further review, the Exchange has determined that it is not feasible for certain notifications that are disseminated via CQS to be disseminated as messages of both the Exchange and NYSE Arca. Specifically, CQS can only process notifications of a regulatory halt and resumption of trading thereafter, trading pause and resumption of trading thereafter, and Short Sale Price Test trigger and lifting from a single market. Because the Exchange is the primary market for NYSE-listed securities, the Exchange believes that it is more appropriate to continue to disseminate these notifications as NYSE market messages during an Emergency Condition. As such, the Exchange proposes to amend Rule 49(b)(2)(A)(ii)—Equities [sic] so that the messages would only be disseminated as NYSE messages.

For similar reasons, CQS supports dissemination of re-opening quote messages from only a single market. Specifically, in order to support a re-opening quote, a single market must disseminate a "resume" trading message, which then signals CQS to accept and display quotes from all other markets. Because the Exchange is the primary market for NYSE-listed securities, the Exchange believes it is appropriate to disseminate notifications of re-opening quotes and related "resume" messages as NYSE market messages during an Emergency Condition.<sup>7</sup> As such, the Exchange proposes to amend Rule 49(b)(2)(B) so that any re-opening quote would only be reported to the CQS as a bid and/or offer of the Exchange.

The Exchange notes that it has conducted two tests with customers to disseminate messages as proposed.<sup>8</sup>

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>10</sup> in particular, because it is designed to promote just and equitable principles of trade and to remove

<sup>7</sup> By contrast, CQS supports the receipt of opening quotes of both the Exchange and NYSE Arca. The Exchange believes it is appropriate to disseminate the opening quote as messages of both the Exchange and NYSE Arca in order to signal to those market participants that are looking for a primary market message as a cue that NYSE-listed securities are open for trading.

<sup>8</sup> The Exchange conducted customer tests on September 21, 2013 and March 22, 2014. See <http://markets.nyx.com/nyse/trader-updates/view/12682> and <http://markets.nyx.com/nyse/trader-updates/view/13092>, respectively.

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>4</sup> See Securities Exchange Act Release No. 61177 (December 16, 2009), 74 FR 68643 (December 28, 2009) (SR-NYSE-2009-105). Under current Rule 49, an "Emergency Condition" means an emergency as defined in Section 12(k)(7) of the Act, which is "(A) a major market disturbance characterized by or constituting—(i) sudden and excessive fluctuations of securities prices generally, or a substantial threat thereof, that threaten fair and orderly markets; or (ii) a substantial disruption of the safe or efficient operation of the national system for clearance and settlement of transactions in securities, or a substantial threat thereof; or (B) a major disturbance that substantially disrupts, or threatens to substantially disrupt—(i) the functioning of securities markets, investment companies, or any other significant portion or segment of the securities markets; or (ii) the transmission or processing of securities transactions." 15 U.S.C. 78l(k)(7).

impediments to and perfect the mechanism of a free and open market and a national market system. Specifically, the Exchange believes that the proposed rule change will assist in facilitating trading in Exchange-listed securities in the event of an Emergency Condition and would help to avoid a future market-wide closure. The proposed change will take into account CQS system limitations while still providing for the appropriate dissemination of primary market messages. The Exchange believes that the proposed rule change would strengthen business continuity planning for itself and its member organizations, thereby benefiting market participants and investors generally.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is designed to facilitate trading in Exchange-listed securities on NYSE Arca during an Emergency Condition and remove a duplicative notification that cannot, upon further review, be feasibly achieved. As such, the Exchange believes that the proposed rule change would promote competition for the benefit of market participants and investors generally because it provides transparency in Exchange rules of how NYSE Arca would disseminate messages on behalf of the Exchange during an Emergency Condition.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and

subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>12</sup>

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that such waiver is consistent with the protection of investors and the public interest because it would permit the Exchange and its member organizations to more quickly adopt effective business continuity plans that will help avoid market closures in the event of an emergency, thereby maintaining liquidity for the benefit of market participants and investors generally. In support of the requested waiver, the Exchange notes that it has already successfully conducted two tests with customers to disseminate messages in the proposed manner, each time without negative results or feedback.<sup>13</sup> Additionally, the Exchange's affiliates, NYSE MKT and NYSE Arca, have filed similar proposals to account for these same proposed changes.<sup>14</sup> For these reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposed rule change to be operative upon filing.<sup>15</sup>

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>16</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and

<sup>12</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>13</sup> See *supra* note 8.

<sup>14</sup> See SR-NYSEMKT-2014-75 and SR-NYSEArca-2014-96.

<sup>15</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>16</sup> 15 U.S.C. 78s(b)(2)(B).

arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2014-48 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2014-48. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549-1090. Copies of the filing will also be available for Web site viewing and printing at the NYSE's principal office and on its Internet Web site at [www.nyse.com](http://www.nyse.com). All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2014-48 and should be submitted on or before October 6, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>17</sup> 17 CFR 200.30-3(a)(12).