

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information (required)

Add Remove View

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change (required)

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

Add Remove View

Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

Add Remove View

Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

Add Remove View

The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

Add Remove View

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

- (a) NYSE MKT LLC (“NYSE MKT” or the “Exchange”) proposes to (1) amend Rule 13 - Equities to establish new order types, (2) amend Rule 115A - Equities to delete obsolete text and to clarify and update the description of the allocation of market and limit interest in opening and reopening transactions, (3) amend Rule 123C - Equities to include better-priced G orders in the allocation of orders in closing transactions, and (4) make other technical and conforming changes. The text of the proposed rule change is attached as Exhibit 5 and is available on the Exchange’s website at www.nyse.com, at the Exchange’s principal office, and in the Public Reference Room of the Securities and Exchange Commission (the “Commission”).
- (b) The Exchange does not believe that the proposed rule change will have any direct effect, or any significant indirect effect, on any other Exchange rule in effect at the time of this filing.
- (c) Not applicable.

2. Procedures of the Self-Regulatory Organization

Senior management has approved the proposed rule change pursuant to authority delegated to it by the Board of the Exchange. No further action by the Board of Directors or the membership of the Exchange is required. Therefore, the Exchange’s internal procedures with respect to the proposed rule change are complete.

The person on the Exchange staff prepared to respond to questions and comments on the proposed rule change is:

Clare F. Saperstein
Vice President
NYSE Regulation Inc.
(212) 656-2355

3. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

The Exchange proposes to (1) amend Rule 13 - Equities to establish new order types, (2) amend Rule 115A - Equities to delete obsolete text and to clarify and update the description of the allocation of market and limit interest in opening and reopening transactions, (3) amend Rule 123C - Equities to include better-priced G

orders¹ in the allocation of orders in closing transactions, and (4) make other technical and conforming changes.

Rule 13 - Equities Order Type Amendments

The Exchange proposes to amend Rule 13 - Equities to delete the At the Opening and At the Opening Only order types² and replace them with Market “On-the-Open” (“MOO”) and Limit “On-the-Open” (“LOO”) order types, terminologies commonly used by other exchanges³ and variations of the Market “At-The-Close” (“MOC”) and Limit “At-The-Close” (“LOC”) order types already offered by the Exchange.⁴ Under current Rule 13 - Equities, At the Opening and At the Opening Only orders can execute after the security opens on a quote, which is why the current definition includes provisions relating to routing such interest to an away market. The Exchange wishes to preclude such interest from executing after opening on a quote, or routing to an away market, and as such, the new MOO and LOO order definitions would specifically provide that such order types automatically cancel if the security opens either on a quote or a trade.

¹ A G order is a proprietary order represented pursuant to Section 11(a)(1)(G) of the Securities Exchange Act of 1934 (the “Act”). Section 11(a)(1) of the Act generally prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or any account over which it or an associated person exercises discretion. *See* 15 U.S.C. 78k(a)(1). Subsection (G) of Section 11(a)(1) provides an exemption allowing an exchange member to have its own floor broker execute a proprietary transaction (“G order”). A g-Quote is an electronic method for Floor brokers to represent G orders. The Exchange proposes to amend Rule 13 - Equities to define a “G order” as the term is currently used in Rule 123C(7) - Equities, and the Exchange proposes to add it to Rule 115A - Equities.

² Under current Rule 13 - Equities, these orders are market or limited price orders that are to be executed on the opening trade of the stock on the Exchange or, if the Exchange opens the stock on a quote, the opening trade in the stock on another market center to which such order or part thereof has been routed in compliance with Regulation NMS; any such order or portion thereof not so executed is treated as cancelled. An At the Opening or At the Opening Only order that seeks the possibility of an Exchange-only opening execution must be marked as a Regulation NMS-compliant Immediate or Cancel (“IOC”) order. An order so marked, or part thereof, is immediately and automatically cancelled if it is not executed on the opening trade of the stock on the Exchange or compliance with Regulation NMS requires all or part of such order to be routed to another market center.

³ *See, e.g.*, NYSE Arca Equities Rule 7.31(t)(1) and (2); NASDAQ Rule 4752(a)(3) and (4); and BATS Exchange Rule 11.23(a)(14) and (16).

⁴ *See* Rule 13 - Equities.

A MOO would be defined as a market order in a security that is to be executed in its entirety on the opening or reopening trade of the security on the Exchange; it would be immediately and automatically cancelled if the security opened on a quote or if it were not executed due to tick restrictions. A LOO order would be defined as a limit order in a security that is to be executed on the opening or reopening trade of the security on the Exchange. A LOO order, or a part thereof, would immediately and automatically cancel if by its terms it were not marketable at the opening price, if it were not executed on the opening trade of the security on the Exchange, or if the security opened on a quote. Both MOO and LOO orders could be entered before the open to participate on the opening trade or during a trading halt or pause to participate on a reopening trade.

The Exchange also proposes to add a new paragraph (c) in the definition of IOC orders to provide for a new order type, an IOC-Minimum Trade Size (“MTS”) order (“IOC-MTS order”), which would be defined as any IOC order, including an intermarket sweep order, that includes an MTS instruction.⁵ For each incoming IOC-MTS order, Exchange systems would evaluate whether contra-side displayable and non-displayable interest on Exchange systems could meet the MTS and reject such incoming IOC-MTS order if Exchange contra-side volume could not do so. An Exchange IOC order with an MTS could result in an execution in an away market. For example, assume that the Exchange best bid or offer is \$10.05 - \$10.07 with 500 shares offered. A buy Exchange IOC-MTS market order for 500 shares arrives, and because the Exchange can fill it, the incoming Exchange IOC-MTS order would be accepted. However, if the current best protected offer is \$10.06 on another market for 200 shares, the Exchange would route 200 shares of the incoming Exchange IOC-MTS to Nasdaq and execute the balance of 300 shares at \$10.07. The Exchange would reject any IOC-MTS orders if the security were not open for trading, if it were halted or paused, or if auto-execution were suspended.

The Exchange proposes non-substantive amendments to its Immediate or Cancel definition as well, including adding the short-form term “IOC” to the rule, redesignating existing paragraphs (c) and (d) as (d) and (e) respectively, and conforming existing rule text to provide that only an IOC order without an MTS could be entered before the Exchange opening for participation in the opening trade or when auto execution is suspended, which includes during a trading pause or halt.

The Exchange proposes, as a technical and conforming amendments to Rule 13 – Equities, to delete the definition of Time Order because this relates to a Floor broker order that historically would have been held by the specialist on behalf of

⁵ A minimum trade size instruction is currently available to Floor brokers for d-quotes under NYSE Rule 70.25(d) - Equities. Nasdaq also offers a Minimum Quantity Order, which is a non-displayed order that will not execute unless a specified minimum quantity of shares can be obtained.

the Floor broker and converted to a market or limit order at a specified time. In connection with both the Hybrid Market initiative and the Exchange's New Market Model, this order type is now obsolete and can no longer be used by Floor brokers.

Rule 115A - Equities Opening Allocation

The Exchange proposes to amend Rule 115A - Equities, which addresses orders at the opening or in unusual situations. Currently, the Rule contains no text but has Supplementary Material .10, which addresses queries to the Display Book before an opening; Supplementary Material .20, which addresses the arranging of an opening or price by a Designated Market Maker ("DMM"); and Supplementary Material .30, which addresses certain functions of Exchange systems with respect to orders at the opening.

The Exchange proposes to redesignate Supplementary Material .10 as Rule 115A(a) - Equities but does not propose any change to the text of this provision.

The Exchange proposes to add new Rule 115A(b) - Equities, which would address the allocation of orders on opening and reopening trades and delete in its entirety the text of Supplementary Material .20 and .30. Most of the current text of Supplementary Material .20 and .30 is obsolete in that it describes DMM functions that have not been performed since the second phase of the New Market Model was launched in 2008.⁶ DMMs no longer hold orders. As such, the Exchange proposes to delete all of the text relating to those functions. Supplementary Material .30 also contains text describing Exchange systems that is either outdated or covered by Rule 15 - Equities, and as such, also would be deleted.

A few of the current provisions of Supplementary Material .20 continue to be applicable following adoption of the New Market Model. Current paragraphs 2(a), (b), and (c) of Supplementary Material .20 address the allocation and precedence of certain orders in openings and reopenings. Paragraph 2(a) provides that a limited price order to buy (sell) that is at a higher (lower) price than the security is to be opened or reopened is treated as a market order, and market orders have precedence over limited orders. Paragraph 2(b) provides that when the price on a limited price order is the same as the price at which the stock is to be opened or reopened, it may not be possible to execute a limited price order at such price. Paragraph 2(c) requires a DMM to see that each market order the DMM holds participates in the opening transaction, and if the order is for an amount larger than one round lot, the size of the bid that is accepted or the offer that is taken establishing the opening or reopening price is the amount that a market order is entitled to participate in at the opening or reopening.

⁶ See Securities Exchange Act Release No. 59022 (Nov. 26, 2008), 73 FR 73683 (Dec. 3, 2008) (SR-NYSEALTR-2008-10).

The Exchange proposes to move these concepts concerning the allocation and precedence of orders in openings and reopenings to proposed Rule 115A(b) - Equities; further clarify and update the text to better reflect the Exchange's current practices; and expressly address the treatment of MOOs, LOOs, tick-sensitive market orders, Floor broker interest manually entered by DMMs, and G orders. Proposed Rule 115A(b) – Equities would provide that when arranging an opening or reopening price, except as provided for in proposed Rule 115A(b)(2) - Equities, which is described below, market interest would be guaranteed to participate in the opening or reopening transaction and have precedence over (i) limit interest that is priced equal to the opening or reopening price of a security and (ii) DMM interest. For purposes of the opening or reopening transaction, market interest would include (i) market and MOO orders, (ii) tick-sensitive market and MOO orders to buy (sell) that are priced higher (lower) than the opening or reopening price, (iii) limit interest to buy (sell) that is priced higher (lower) than the opening or reopening price, and (iv) Floor broker interest entered manually by the DMM.

For purposes of the opening or reopening transaction, limit interest would include (i) limited-priced interest, including e-Quotes, LOO orders, and G orders; and (ii) tick-sensitive market and MOO orders that are priced equal to the opening or reopening price of a security. Limit interest that is priced equal to the opening or reopening price of a security and DMM interest would not be guaranteed to participate in the opening or reopening transaction. In addition, G orders that are priced equal to the opening or reopening price of a security would yield to all other limit interest priced equal to the opening or reopening price of a security except DMM interest.

The Exchange also proposes to include in the rule more specificity of the circumstances of when a security may open on a quote, and what would happen to odd-lot sized orders in such scenario. Proposed Rule 115A(b)(2) – Equities would provide that if the aggregate quantity of MOO and market orders on at least one side of the market equals one round lot or more, the security must open on a trade. If the aggregate quantity of MOO and market orders on each side of the market equals less than one round lot or is zero, the security could open on a quote. If a security opens on a quote, odd-lot market orders would automatically execute in a trade immediately following the open on a quote and odd-lot MOOs would immediately and automatically cancel. MOO and market orders subject to tick restrictions that either cannot participate at an opening or reopening price or are priced equal to the opening or reopening price would not be included in the aggregate quantity of MOO and market orders.

Rule 123C – Equities Closing Allocation

The Exchange proposes to amend Rule 123C – Equities to include better-priced G orders in the list of orders that must be allocated in whole or part in closing

transactions. G orders on NYSE yield priority and parity to all other non-G orders.⁷ However, Section 11(a)(1)(G) of the Act does not require better-priced G orders to yield.

Currently, Rule 123C(7)(a) - Equities sets forth six order types that must be included in the closing transaction in the following order: (1) MOC orders that do not have tick restrictions, (2) MOC orders that have tick restrictions that limit the execution of the MOC to a price better than the price of the closing transaction, (3) Floor broker interest entered manually by the DMM, (4) limit orders better priced than the closing price, (5) LOC orders that do not have tick restrictions better priced than the closing transaction, and (6) LOC orders better priced than the closing transaction that have tick restrictions that are capable of being executed based on the closing price. Rule 123C(7)(b) - Equities provides that the following interest may be used to offset a closing imbalance in the following order: (1) limit orders represented in the Display Book with a price equal to the closing price, (2) LOC orders with a price equal to the closing price, (3) MOC orders that have tick restrictions that limit the execution of the MOC to the price of the closing transaction, (4) LOC orders that have tick restrictions that are capable of being executed based on the closing price and the price of such limit order is equal to the price of the closing transaction, (5) G orders, and (6) Closing Only orders.

The Exchange proposes to amend Rule 123C(7)(a) - Equities to add G orders that are better priced than the closing price as the last type of order that must be included in the closing transaction and to make a conforming change to Rule 123C(7)(b) - Equities to reference G orders priced equal to the closing price as being eligible to be used to offset a closing imbalance with the same priority as the current Rule reflects. Rule 123C(7)(b)(i) - Equities also would be clarified by adding that DMM interest, as well as limit orders represented in the Display Book with a price equal to the closing price, are the first types of interest that may be used to offset a closing imbalance.⁸

The Exchange notes that in amending Rules 115A - Equities and 123C - Equities to include better-priced G orders in the allocation of orders in opening, reopening,

⁷ See *supra* note 1.

⁸ The New York Stock Exchange LLC, upon which rules the Exchange equities rules are based, has noted in prior rule filings that DMM interest would be treated in such a manner. See, e.g., Securities Exchange Act Release No. 60974 (Nov. 9, 2009) 74 FR 59299 (Nov. 17, 2009) (SR-NYSE-2009-111) (“After the ‘must execute interest’ is satisfied, then any limit orders represented in Display Book at the closing price may be used to offset the remaining imbalance. It should be noted that DMM interest, including better-priced DMM interest entered into the Display Book prior to the closing transaction, eligible to participate in the closing transaction is always included in the hierarchy of execution as if it were interest equal to the price of the closing transaction.”).

and closing transactions, G orders priced at the opening, reopening, or closing price will still yield priority and parity to all other non-G orders, as required by Section 11(a) of the Act. The Exchange further notes that there is no requirement under the Act that better-priced G orders yield. The Exchange believes that including better-priced G orders in the required allocation for opening, reopening, and closing transactions will encourage member organizations to provide price improvement and liquidity on the Exchange. Moreover, for opening and reopening transactions, if better-priced G orders are not included in the “has to go” interest, immediately following the opening, such better-priced G orders will automatically be quoted, which, assuming it is sell G order interest, could result in an opening transaction, and then a sell quote that is below the opening price.

Because these are technology-based changes, the Exchange will announce the implementation schedule via Trader Update.

(b) Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁰ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that deleting the At the Opening and At the Opening Only order types and creating new MOO and LOO order types provide more clarity about how opening orders are processed, and in particular that automatically canceling such orders when the Exchange opens on quote will create efficiencies and also remove impediments to a free and open market. The Exchange further believes that offering a new order type, an IOC-MTS, will offer investors new trading opportunities on the Exchange. The LOO, MOO, and IOC-MTS orders are similar to orders that have already been approved by the Commission.¹¹

The Exchange believes that amending Rule 115A - Equities to delete obsolete text and to clarify and update the description of the allocation of market and limit interest in openings and reopenings and address the treatment of additional order types will add transparency and clarity to the Exchange’s rules, thereby promoting just and equitable principles of trade and removing impediments to and perfecting the mechanism of a free and open market and a national market system.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ See *supra* notes 3 and 5.

The Exchange believes that the proposed changes to Rule 123C – Equities and related proposed change concerning the treatment of better-priced G orders in Rule 115A- Equities will promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system, and that the proposed changes also are consistent with Section 11(a)(1)(G) of the Act. As discussed above, G Orders priced at the opening, reopening, or closing price will continue to yield, as required by Section 11(a). Moreover, the Exchange believes that for the opening and reopening transactions, including better-priced G interest as “has-to-go” interest will encourage member organizations to provide price improvement and liquidity at the Exchange. The Exchange further believes that amending Rule 123C(7)(b)(i) - Equities to expressly provide for the treatment of DMM interest in offsetting a closing imbalance will add transparency and clarity to the Exchange’s rules, thereby promoting just and equitable principles of trade and removing impediments to and perfecting the mechanism of a free and open market and a national market system.

Finally, the technical changes to remove obsolete references in Rule 13 - Equities also will add transparency and clarity to the Exchange’s rules, thereby promoting just and equitable principles of trade and removing impediments to and perfecting the mechanism of a free and open market and a national market system.

4. 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.

5. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

6. Extension of Time Period for Commission Action

The Exchange does not consent at this time to an extension of the time period specified in Section 19(b)(2) of the Act.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Exhibits

Exhibit 1 – Form of Notice of Proposed Rule Change for Federal Register

Exhibit 5 – Text of Proposed Rule Change

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-NYSEMKT-2012-13)

[Date]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Rule Change (1) Amending Rule 13 - Equities to Establish New Order types, (2) Amending Rule 115A - Equities to Delete Obsolete Text and to Clarify and Update the Description of The Allocation of Market and Limit Interest in Opening and Reopening Transactions, (3) Amending Rule 123C - Equities to Include Better-Priced G Orders in The Allocation of Orders in Closing Transactions, and (4) Making Other Technical and Conforming Changes

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on June 15, 2012, NYSE MKT LLC (the “Exchange” or “NYSE MKT”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III 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 (1) amend Rule 13 - Equities to establish new order types, (2) amend Rule 115A - Equities to delete obsolete text and to clarify and update the description of the allocation of market and limit interest in opening and reopening transactions, (3) amend Rule 123C - Equities to include better-priced G orders in the allocation of orders in closing transactions, and (4) make other technical and conforming

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

changes. The text of the proposed rule change is available on the Exchange's website at 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 (1) amend Rule 13 - Equities to establish new order types, (2) amend Rule 115A - Equities to delete obsolete text and to clarify and update the description of the allocation of market and limit interest in opening and reopening transactions, (3) amend Rule 123C - Equities to include better-priced G orders⁴ in the

⁴ A G order is a proprietary order represented pursuant to Section 11(a)(1)(G) of the Securities Exchange Act of 1934 (the "Act"). Section 11(a)(1) of the Act generally prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or any account over which it or an associated person exercises discretion. See 15 U.S.C. 78k(a)(1). Subsection (G) of Section 11(a)(1) provides an exemption allowing an exchange member to have its own floor broker execute a proprietary transaction ("G order"). A g-Quote is an electronic method for Floor brokers to represent G orders. The Exchange proposes to amend Rule 13 - Equities to define a "G order" as the term is currently used in Rule 123C(7) - Equities, and the Exchange proposes to add it to Rule 115A - Equities.

allocation of orders in closing transactions, and (4) make other technical and conforming changes.

Rule 13 - Equities Order Type Amendments

The Exchange proposes to amend Rule 13 - Equities to delete the At the Opening and At the Opening Only order types⁵ and replace them with Market “On-the-Open” (“MOO”) and Limit “On-the-Open” (“LOO”) order types, terminologies commonly used by other exchanges⁶ and variations of the Market “At-The-Close” (“MOC”) and Limit “At-The-Close” (“LOC”) order types already offered by the Exchange.⁷ Under current Rule 13 - Equities, At the Opening and At the Opening Only orders can execute after the security opens on a quote, which is why the current definition includes provisions relating to routing such interest to an away market. The Exchange wishes to preclude such interest from executing after opening on a quote, or routing to an away market, and as such, the new MOO and LOO order definitions would specifically provide that such order types automatically cancel if the security opens either on a quote or a trade.

⁵ Under current Rule 13 - Equities, these orders are market or limited price orders that are to be executed on the opening trade of the stock on the Exchange or, if the Exchange opens the stock on a quote, the opening trade in the stock on another market center to which such order or part thereof has been routed in compliance with Regulation NMS; any such order or portion thereof not so executed is treated as cancelled. An At the Opening or At the Opening Only order that seeks the possibility of an Exchange-only opening execution must be marked as a Regulation NMS-compliant Immediate or Cancel (“IOC”) order. An order so marked, or part thereof, is immediately and automatically cancelled if it is not executed on the opening trade of the stock on the Exchange or compliance with Regulation NMS requires all or part of such order to be routed to another market center.

⁶ *See, e.g.*, NYSE Arca Equities Rule 7.31(t)(1) and (2); NASDAQ Rule 4752(a)(3) and (4); and BATS Exchange Rule 11.23(a)(14) and (16).

⁷ *See* Rule 13 - Equities.

A MOO would be defined as a market order in a security that is to be executed in its entirety on the opening or reopening trade of the security on the Exchange; it would be immediately and automatically cancelled if the security opened on a quote or if it were not executed due to tick restrictions. A LOO order would be defined as a limit order in a security that is to be executed on the opening or reopening trade of the security on the Exchange. A LOO order, or a part thereof, would immediately and automatically cancel if by its terms it were not marketable at the opening price, if it were not executed on the opening trade of the security on the Exchange, or if the security opened on a quote. Both MOO and LOO orders could be entered before the open to participate on the opening trade or during a trading halt or pause to participate on a reopening trade.

The Exchange also proposes to add a new paragraph (c) in the definition of IOC orders to provide for a new order type, an IOC-Minimum Trade Size (“MTS”) order (“IOC-MTS order”), which would be defined as any IOC order, including an intermarket sweep order, that includes an MTS instruction.⁸ For each incoming IOC-MTS order, Exchange systems would evaluate whether contra-side displayable and non-displayable interest on Exchange systems could meet the MTS and reject such incoming IOC-MTS order if Exchange contra-side volume could not do so. An Exchange IOC order with an MTS could result in an execution in an away market. For example, assume that the Exchange best bid or offer is \$10.05 - \$10.07 with 500 shares offered. A buy Exchange IOC-MTS market order for 500 shares arrives, and because the Exchange can fill it, the incoming Exchange IOC-MTS order would be accepted. However, if the current best

⁸ A minimum trade size instruction is currently available to Floor brokers for d-quotes under NYSE Rule 70.25(d) - Equities. Nasdaq also offers a Minimum Quantity Order, which is a non-displayed order that will not execute unless a specified minimum quantity of shares can be obtained.

protected offer is \$10.06 on another market for 200 shares, the Exchange would route 200 shares of the incoming Exchange IOC-MTS to Nasdaq and execute the balance of 300 shares at \$10.07. The Exchange would reject any IOC-MTS orders if the security were not open for trading, if it were halted or paused, or if auto-execution were suspended.

The Exchange proposes non-substantive amendments to its Immediate or Cancel definition as well, including adding the short-form term “IOC” to the rule, redesignating existing paragraphs (c) and (d) as (d) and (e) respectively, and conforming existing rule text to provide that only an IOC order without an MTS could be entered before the Exchange opening for participation in the opening trade or when auto execution is suspended, which includes during a trading pause or halt.

The Exchange proposes, as a technical and conforming amendments to Rule 13 – Equities, to delete the definition of Time Order because this relates to a Floor broker order that historically would have been held by the specialist on behalf of the Floor broker and converted to a market or limit order at a specified time. In connection with both the Hybrid Market initiative and the Exchange’s New Market Model, this order type is now obsolete and can no longer be used by Floor brokers.

Rule 115A - Equities Opening Allocation

The Exchange proposes to amend Rule 115A - Equities, which addresses orders at the opening or in unusual situations. Currently, the Rule contains no text but has Supplementary Material .10, which addresses queries to the Display Book before an opening; Supplementary Material .20, which addresses the arranging of an opening or price by a Designated Market Maker (“DMM”); and Supplementary Material .30, which addresses certain functions of Exchange systems with respect to orders at the opening.

The Exchange proposes to redesignate Supplementary Material .10 as Rule 115A(a) - Equities but does not propose any change to the text of this provision.

The Exchange proposes to add new Rule 115A(b) - Equities, which would address the allocation of orders on opening and reopening trades and delete in its entirety the text of Supplementary Material .20 and .30. Most of the current text of Supplementary Material .20 and .30 is obsolete in that it describes DMM functions that have not been performed since the second phase of the New Market Model was launched in 2008.⁹ DMMs no longer hold orders. As such, the Exchange proposes to delete all of the text relating to those functions. Supplementary Material .30 also contains text describing Exchange systems that is either outdated or covered by Rule 15 - Equities, and as such, also would be deleted.

A few of the current provisions of Supplementary Material .20 continue to be applicable following adoption of the New Market Model. Current paragraphs 2(a), (b), and (c) of Supplementary Material .20 address the allocation and precedence of certain orders in openings and reopenings. Paragraph 2(a) provides that a limited price order to buy (sell) that is at a higher (lower) price than the security is to be opened or reopened is treated as a market order, and market orders have precedence over limited orders. Paragraph 2(b) provides that when the price on a limited price order is the same as the price at which the stock is to be opened or reopened, it may not be possible to execute a limited price order at such price. Paragraph 2(c) requires a DMM to see that each market order the DMM holds participates in the opening transaction, and if the order is for an amount larger than one round lot, the size of the bid that is accepted or the offer that is

⁹ See Securities Exchange Act Release No. 59022 (Nov. 26, 2008), 73 FR 73683 (Dec. 3, 2008) (SR-NYSEALTR-2008-10).

taken establishing the opening or reopening price is the amount that a market order is entitled to participate in at the opening or reopening.

The Exchange proposes to move these concepts concerning the allocation and precedence of orders in openings and reopenings to proposed Rule 115A(b) - Equities; further clarify and update the text to better reflect the Exchange's current practices; and expressly address the treatment of MOOs, LOOs, tick-sensitive market orders, Floor broker interest manually entered by DMMs, and G orders. Proposed Rule 115A(b) – Equities would provide that when arranging an opening or reopening price, except as provided for in proposed Rule 115A(b)(2) - Equities, which is described below, market interest would be guaranteed to participate in the opening or reopening transaction and have precedence over (i) limit interest that is priced equal to the opening or reopening price of a security and (ii) DMM interest. For purposes of the opening or reopening transaction, market interest would include (i) market and MOO orders, (ii) tick-sensitive market and MOO orders to buy (sell) that are priced higher (lower) than the opening or reopening price, (iii) limit interest to buy (sell) that is priced higher (lower) than the opening or reopening price, and (iv) Floor broker interest entered manually by the DMM.

For purposes of the opening or reopening transaction, limit interest would include (i) limited-priced interest, including e-Quotes, LOO orders, and G orders; and (ii) tick-sensitive market and MOO orders that are priced equal to the opening or reopening price of a security. Limit interest that is priced equal to the opening or reopening price of a security and DMM interest would not be guaranteed to participate in the opening or reopening transaction. In addition, G orders that are priced equal to the opening or reopening price of a security would yield to all other limit interest priced equal to the

opening or reopening price of a security except DMM interest.

The Exchange also proposes to include in the rule more specificity of the circumstances of when a security may open on a quote, and what would happen to odd-lot sized orders in such scenario. Proposed Rule 115A(b)(2) – Equities would provide that if the aggregate quantity of MOO and market orders on at least one side of the market equals one round lot or more, the security must open on a trade. If the aggregate quantity of MOO and market orders on each side of the market equals less than one round lot or is zero, the security could open on a quote. If a security opens on a quote, odd-lot market orders would automatically execute in a trade immediately following the open on a quote and odd-lot MOOs would immediately and automatically cancel. MOO and market orders subject to tick restrictions that either cannot participate at an opening or reopening price or are priced equal to the opening or reopening price would not be included in the aggregate quantity of MOO and market orders.

Rule 123C – Equities Closing Allocation

The Exchange proposes to amend Rule 123C – Equities to include better-priced G orders in the list of orders that must be allocated in whole or part in closing transactions. G orders on NYSE yield priority and parity to all other non-G orders.¹⁰ However, Section 11(a)(1)(G) of the Act does not require better-priced G orders to yield.

Currently, Rule 123C(7)(a) - Equities sets forth six order types that must be included in the closing transaction in the following order: (1) MOC orders that do not have tick restrictions, (2) MOC orders that have tick restrictions that limit the execution of the MOC to a price better than the price of the closing transaction, (3) Floor broker

¹⁰ See *supra* note 4.

interest entered manually by the DMM, (4) limit orders better priced than the closing price, (5) LOC orders that do not have tick restrictions better priced than the closing transaction, and (6) LOC orders better priced than the closing transaction that have tick restrictions that are capable of being executed based on the closing price. Rule 123C(7)(b) - Equities provides that the following interest may be used to offset a closing imbalance in the following order: (1) limit orders represented in the Display Book with a price equal to the closing price, (2) LOC orders with a price equal to the closing price, (3) MOC orders that have tick restrictions that limit the execution of the MOC to the price of the closing transaction, (4) LOC orders that have tick restrictions that are capable of being executed based on the closing price and the price of such limit order is equal to the price of the closing transaction, (5) G orders, and (6) Closing Only orders.

The Exchange proposes to amend Rule 123C(7)(a) - Equities to add G orders that are better priced than the closing price as the last type of order that must be included in the closing transaction and to make a conforming change to Rule 123C(7)(b) - Equities to reference G orders priced equal to the closing price as being eligible to be used to offset a closing imbalance with the same priority as the current Rule reflects. Rule 123C(7)(b)(i) – Equities also would be clarified by adding that DMM interest, as well as limit orders represented in the Display Book with a price equal to the closing price, are the first types of interest that may be used to offset a closing imbalance.¹¹

¹¹ The New York Stock Exchange LLC, upon which rules the Exchange equities rules are based, has noted in prior rule filings that DMM interest would be treated in such a manner. *See, e.g.*, Securities Exchange Act Release No. 60974 (Nov. 9, 2009) 74 FR 59299 (Nov. 17, 2009) (SR-NYSE-2009-111) (“After the ‘must execute interest’ is satisfied, then any limit orders represented in Display Book at the closing price may be used to offset the remaining imbalance. It should be noted that DMM interest, including better-priced DMM interest entered into the

The Exchange notes that in amending Rules 115A - Equities and 123C - Equities to include better-priced G orders in the allocation of orders in opening, reopening, and closing transactions, G orders priced at the opening, reopening, or closing price will still yield priority and parity to all other non-G orders, as required by Section 11(a) of the Act. The Exchange further notes that there is no requirement under the Act that better-priced G orders yield. The Exchange believes that including better-priced G orders in the required allocation for opening, reopening, and closing transactions will encourage member organizations to provide price improvement and liquidity on the Exchange. Moreover, for opening and reopening transactions, if better-priced G orders are not included in the “has to go” interest, immediately following the opening, such better-priced G orders will automatically be quoted, which, assuming it is sell G order interest, could result in an opening transaction, and then a sell quote that is below the opening price.

Because these are technology-based changes, the Exchange will announce the implementation schedule via Trader Update.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹² in general, and furthers the objectives of Section 6(b)(5) of the Act,¹³ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination

Display Book prior to the closing transaction, eligible to participate in the closing transaction is always included in the hierarchy of execution as if it were interest equal to the price of the closing transaction.”).

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that deleting the At the Opening and At the Opening Only order types and creating new MOO and LOO order types provide more clarity about how opening orders are processed, and in particular that automatically canceling such orders when the Exchange opens on quote will create efficiencies and also remove impediments to a free and open market. The Exchange further believes that offering a new order type, an IOC-MTS, will offer investors new trading opportunities on the Exchange. The LOO, MOO, and IOC-MTS orders are similar to orders that have already been approved by the Commission.¹⁴

The Exchange believes that amending Rule 115A - Equities to delete obsolete text and to clarify and update the description of the allocation of market and limit interest in openings and reopenings and address the treatment of additional order types will add transparency and clarity to the Exchange's rules, thereby promoting just and equitable principles of trade and removing impediments to and perfecting the mechanism of a free and open market and a national market system.

The Exchange believes that the proposed changes to Rule 123C – Equities and related proposed change concerning the treatment of better-priced G orders in Rule 115A- Equities will promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system, and that the proposed changes also are consistent with Section 11(a)(1)(G) of the Act. As discussed above, G Orders priced at the opening, reopening,

¹⁴ See *supra* notes 6 and 8.

or closing price will continue to yield, as required by Section 11(a). Moreover, the Exchange believes that for the opening and reopening transactions, including better-priced G interest as “has-to-go” interest will encourage member organizations to provide price improvement and liquidity at the Exchange. The Exchange further believes that amending Rule 123C(7)(b)(i) - Equities to expressly provide for the treatment of DMM interest in offsetting a closing imbalance will add transparency and clarity to the Exchange’s rules, thereby promoting just and equitable principles of trade and removing impediments to and perfecting the mechanism of a free and open market and a national market system.

Finally, the technical changes to remove obsolete references in Rule 13 - Equities also will add transparency and clarity to the Exchange’s rules, thereby promoting just and equitable principles of trade and removing impediments to and perfecting the mechanism of a free and open market and a national market system.

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.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date

if it finds such longer period to be appropriate and publishes its reasons for so finding or

(ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

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 e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEMKT-2012-13 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NYSEMKT-2012-13. This file number should be included on the subject line if e-mail 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 website (<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 inspection and copying in the Commission's Public Reference Section, 100 F Street, NE, Washington, DC 20549-1090. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet website at 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-NYSEMKT-2012-13 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Kevin M. O'Neill
Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).

Additions underlined.

Deletions [bracketed].

NYSE MKT LLC Rules

Rule 13 - Equities. Definitions of Orders

[At the Opening or At the Opening Only Order

A market or limited price order which is to be executed on the opening trade of the stock on the Exchange or, if the Exchange opens the stock on a quote, the opening trade in the stock on another market center to which such order or part thereof has been routed in compliance with Regulation NMS, and any such order or portion thereof not so executed is to be treated as cancelled.

An “at the opening” or “at the opening only” order that seeks the possibility of a NYSE-only opening execution is to be marked as a Regulation NMS-compliant immediate or cancel order in the manner designated by the Exchange. An order so marked, or part thereof, will be immediately and automatically cancelled if it is not executed on the opening trade of the stock on the Exchange or compliance with Regulation NMS requires all or part of such order to be routed to another market center.]

Auto Ex Order

(i) An auto ex order is an order in a security, other than a bond traded in the NYSE MKT bond trading platform, that initiates an automatic execution in accordance with, and to the extent provided by, Exchange Rules 1000 – Equities – 1004 - Equities, immediately upon entry into Exchange systems. The following are auto ex orders:

(a) a market order;

(b) a limit order to buy (sell) priced at or above (below) the Exchange best offer (bid) at the time such order is routed to the Display Book® (“a marketable limit order”);

(c) an immediate or cancel order designated for automatic execution;

(d) a market or marketable limit sell “plus”- buy “minus,” or short sale order systemically delivered to the Display Book®;

(e) an auto ex order that has been cancelled and replaced with an auto ex order; or

(f) an intermarket sweep order, as defined in this rule; or

(g) an order entered pursuant to Subsection (G) of Section 11(a)(1) of the Securities Exchange Act of 1934 (a “G order”).

(ii) Non-auto ex orders participate in automatic executions in accordance with, and to the extent provided by, Exchange Rules.

Immediate or Cancel or “IOC” Order

(a) Regulation NMS-compliant [Immediate or Cancel] IOC Order: A market or limited price order designated immediate or cancel that will be automatically executed against the displayed quotation up to its full size and sweep the Display Book® system, as provided in Rule 1000 - Equities, to the extent possible without being routed elsewhere for execution, and the portion not so executed will be immediately and automatically cancelled. A Regulation NMS-compliant [immediate or cancel] IOC order must be designated in the manner provided by the Exchange. If not so designated, the order will be treated as a NYSE [immediate or cancel] IOC order.

(b) Exchange [Immediate or Cancel] IOC Order: A market or limited price order designated immediate or cancel that will be automatically executed against the displayed quotation up to its full size and sweep the Display Book® system, as provided in Rule 1000 - Equities to the extent possible, with portions of the order routed to other markets if necessary in compliance with Regulation NMS and the portion not so executed will be immediately and automatically cancelled.

(c) IOC-MTS Order: Any IOC order, including an intermarket sweep order, may include a minimum trade size (“MTS”) instruction. For each incoming IOC-MTS order, Exchange systems will evaluate whether contra-side displayable and non-displayable interest on Exchange systems can meet the MTS and will reject such incoming IOC-MTS order if Exchange contra-side volume cannot meet the MTS. An Exchange IOC order with an MTS may result in an execution in an away market. The Exchange will reject any IOC-MTS orders if the security is not open for trading or if auto-execution is suspended.

[(c)] (d) Any [immediate or cancel] IOC order without an MTS may be entered before the Exchange opening for participation in the opening trade. If not executed as part of the opening trade, the order, or part thereof, will be immediately and automatically cancelled.

[(d)] (e) An Exchange [immediate or cancel] IOC order without an MTS received during a trading halt will be held for participation in the re[-]opening trade. If not executed as part of the re[-]opening trade, the order, or part thereof, will be immediately and automatically cancelled.

Limit “At-The-Close” (LOC) Orders.

An LOC order is a limit order in a security that is entered for execution at the closing price of the security on the Exchange provided that the closing price is at or within the specified limit. If not executed due to a trading halt or because, by its terms it is not marketable at the closing price, the order will be cancelled.

Limit “On-the-Open” (LOO) Orders

A LOO order is a limit order in a security that is to be executed on the opening or reopening trade of the security on the Exchange. A LOO order, or part thereof, will be immediately and automatically cancelled if by its terms it is not marketable at the opening price, it is not executed on the opening trade of the security on the Exchange, or if the security opens on a quote. LOO orders can be entered before the open to participate on the opening trade or during a trading halt or pause to participate on a reopening trade.

Market Order

An order to buy or sell a stated amount of a security at the most advantageous price obtainable after the order is represented in the Trading Crowd or routed to the Display Book®.

Market “At-The-Close” (MOC) Orders.

An MOC order is a market order in a security that, by its terms, is to be executed in its entirety at the closing price. If not executed due to tick restrictions or a trading halt the order will be cancelled.

Market “On-the-Open” (MOO) Orders

A MOO order is a market order in a security that is to be executed in its entirety on the opening or reopening trade of the security on the Exchange. A MOO order will be immediately and automatically cancelled if the security opens on a quote or if it is not executed due to tick restrictions. MOO orders can be entered before the open to participate on the opening trade or during a trading halt or pause to participate on a reopening trade.

“Not Held” Order

A “not held” order is a market or limited price order marked “not held”, “disregard tape”, “take time”, “buy or sell on print”, or which bears any such qualifying notation.

An order marked “or better” is not a “not held” order.

Stop Order

A stop order to buy becomes a market order when a transaction in the security occurs at or above the stop price after the order is received into the Exchange’s automated order routing system or is manually represented by a Floor broker in the Crowd. A stop order to sell becomes a market order when a transaction in the security occurs at or below the stop price after the order is received into the Exchange’s automated order routing system or is manually represented by a Floor broker in the Crowd. Elected stop orders become market orders and will be eligible to be automatically executed in accordance with, and to the extent provided by, Rules 116.40 - Equities, 123C - equities and 1000 – Equities -1004- Equities.

Stop orders that would be elected by the price of the opening transaction on the Exchange will be included in the opening transaction as market orders.

Odd-lot size transactions shall not be considered transactions eligible to elect stop orders for execution.

••• *Supplementary Material* -----

.10 - .30 No change

[Time Order

An order which becomes a market or limited price order at a specified time.]

Rule 115A - Equities. Orders at Opening[or in Unusual Situations]

[••• *Supplementary Material:* -----]

[.10](a) Queries to the Display Book® system prior to an opening.[—]DMMs, trading assistants and anyone acting on their behalf are prohibited from using the Display Book® system in a manner designed to discover inappropriately information about unelected stop orders when arranging the open or to otherwise attempt to obtain information regarding unelected stop orders.

[.20](b) Arranging an opening or price. When arranging an opening or reopening price:

(1) Except as provided for in Rule 115A(b)(2) - Equities, market interest is guaranteed to participate in the opening or reopening transaction and shall have

precedence over (i) limit interest that is priced equal to the opening or reopening price of a security and (ii) DMM interest.

(A) For purposes of the opening or reopening transaction, market interest includes (i) market and MOO orders, (ii) tick-sensitive market and MOO orders to buy (sell) that are priced higher (lower) than the opening or reopening price, (iii) limit interest to buy (sell) that is priced higher (lower) than the opening or reopening price, and (iv) Floor broker interest entered manually by the DMM.

(B) For purposes of the opening or reopening transaction, limit interest includes (i) limited-priced interest, including e-Quotes, LOO orders, and G orders; and (ii) tick-sensitive market and MOO orders that are priced equal to the opening or reopening price of a security.

(C) Limit interest that is priced equal to the opening or reopening price of a security and DMM interest are not guaranteed to participate in the opening or reopening transaction.

(D) G orders that are priced equal to the opening or reopening price of a security yield to all other limit interest priced equal to the opening or reopening price of a security except DMM interest.

(2) If the aggregate quantity of MOO and market orders on at least one side of the market equals one round lot or more, the security shall open on a trade. If the aggregate quantity of MOO and market orders on each side of the market equals less than one round lot or is zero, the security may open on a quote. If a security opens on a quote, odd-lot market orders shall automatically execute in a trade immediately following the open on a quote and odd-lot MOOs shall immediately and automatically cancel. MOO and market orders subject to tick restrictions that either cannot participate at an opening or reopening price or are priced equal to the opening or reopening price shall not be included in the aggregate quantity of MOO and market orders.

[—DMMs, and other members are not permitted to hold or represent orders of members merely for the purpose of arranging an opening or price except:

(1) In order to facilitate business and establish a fair opening price, a DMM may hold a market order of another member, provided such order is delivered to the DMM before the opening of the Exchange; or, when unusual circumstances prevail, instead of holding such an order of another member, the DMM may give up the DMM's own name with the intention of changing the name after the opening, provided such procedure is limited to one side of the market; or

(2) when a Floor Official has determined that unusual circumstances are present or apparent, and, in the interest of an orderly market, requests DMMs or other members to hold market and limited orders of members in order to assist in establishing a fair price.

a. In arranging an opening or reopening, a limited price order to buy which is at a higher price than the security is to be opened or reopened is to be treated as a market order. Similarly, a limited price order to sell which is at a lower price than the security is to be opened or reopened is to be treated as a market order.

b. Market orders shall have precedence over limited orders at the opening or reopening of the market in a security. When the price on a limited price order is the same as the price at which the stock is to be opened or reopened, it may not be possible to execute a limited price order at such price.

c. In arranging an opening or reopening, a DMM is required to see that each market order the DMM holds participates in the opening transaction. If the order is for an amount larger than one round lot, the size of the bid which is accepted or the offer which is taken establishing the opening or reopening price shall be the amount that a market order is entitled to participate in at the opening or reopening.

"Pair-offs." —A DMM who, as provided in (1) above, holds a market order of another member or gives up the DMM's own name instead of holding the order, may, in arranging the opening, "pair-off" such an order against any order held by the DMM or by another member.

The member who leaves such an order with the DMM should, as promptly as possible after the opening of the stock, return to the Post. The DMM must retain the order slip and must advise the member as to the broker and the name given up on the opposite side of the transaction. The member should proceed as promptly as possible to confirm the transaction with the broker on the opposite side.

Failure to comply with the time periods specified in the paragraph "Responsibility for Losses" below shall relieve the DMM from responsibility for any loss that may result.

In the event that the DMM has given up his own name instead of holding a member's order, and, based upon such order, the DMM has effected a "pair-off" against an order of another member, the DMM should notify the member to whom he originally gave the DMM's own name of the broker and the name given up on the opposite side of the transaction. Such member should proceed as promptly as possible to confirm the transaction with the broker on the opposite side. If the DMM has effected the "pair-off" against an order which the DMM handled as a broker, the DMM should send a give-up notice to the member to whom the DMM originally gave his or her own name.

"Stopping." —When a DMM has been unable to "pair-off" a market order which has been left with the DMM, as provided in (1) above, he or she may, after opening of the

Exchange but before the opening of the stock, "stop" at the offer price any such market order to buy, or at the bid price any such market order to sell. In such cases, the DMM should notify the broker who left the order with the DMM that the order is "stopped" and inform the broker of the price at which it is "stopped." In the event that the DMM is unable to execute the order at a better price, the DMM should send for the broker who left such order with the DMM, and allow the broker to consummate the transaction.

Establishing a fair price. —A DMM or other member who holds orders in order to assist in establishing a fair price, as provided in (2) above, should, after the establishment of such price, send for the members whose orders were held for that purpose. Such members should proceed as promptly as possible to confirm the transactions with the brokers on the opposite side.

Responsibility for losses. —A DMM or other member who makes an error in arranging an opening or establishing a fair price shall not be responsible for any loss involved if the member whose order has been held or represented neglects to endeavor to confirm the transaction.

In the event that a member endeavors to confirm a transaction resulting from an order left with the DMM as provided in (1) above, but is unable to do so because of an error made by the DMM in arranging an opening, the DMM shall be responsible for any loss which may be involved, except when:

(1) the broker who left such order fails to return to the Post within 30 minutes after the opening sale; or

(2) The broker who left such order returns to the Post within 30 minutes after the opening sale, but neglects to endeavor to confirm the transaction with the broker on the opposite side within 30 minutes after returning to the Post.

Precautions to avoid errors. —The possibility of confusion and errors will be substantially reduced if members who leave orders with DMMs, as prescribed above, would make notations thereon of their names or badge numbers, and if DMMs would make notations on orders which they return to members as to the brokers and the names given up on the opposite side.

.30 Orders at the Opening.— Exchange systems are designed to facilitate the efficient and accurate processing of eligible orders received by the Exchange prior to the opening or reopening of trading in securities on the Exchange. For each security traded on the Exchange, Exchange systems will perform the following functions:

store (but not deliver to the trading post) eligible pre-opening orders; receive the opening price from the DMM and assign such price to each stored order; and

transmit execution reports to member firms which submitted the orders containing information regarding the transaction.

The Exchange, in its discretion, will designate the securities and the size and type of orders eligible for inclusion in Exchange systems as well as other operational characteristics and may change such designation or characteristics from time to time.

Orders in Exchange Systems at the Opening —Orders stored in Exchange systems at the opening shall be deemed market orders of a member held by the DMM to facilitate business and establish a fair opening or re-opening price as provided for in Rule 115A.20 - Equities above. The paragraphs in Rule 115A.20 - Equities above pertaining to "pair-offs", "stopping", establishing a fair price, responsibility for losses and precautions to avoid errors shall not apply to the execution of orders stored in Exchange systems. Furthermore, other rules of the Exchange, to the extent inconsistent with the provisions of this Section or the operation of Exchange systems with respect to openings and re-openings, shall not apply to orders stored in Exchange systems.

Execution of Orders —In opening each stock in which the DMM has orders stored in Exchange systems, the DMM shall proceed in the following manner.

To the extent practicable such orders shall be executed as follows:

1. by pairing-off orders on opposite sides stored in Exchange systems against each other; and
2. by pairing-off any imbalance of orders stored in Exchange systems against any orders on the opposite side of the market held by the DMM or by another member on the Floor or by the DMM taking or supplying stock for his or her own account.

Reporting and Comparison —With respect to any order submitted by a member organization and stored in Exchange systems, such member organization shall receive such universal contra as the Exchange may designate as the contra party on the report of execution.

Each member whose order or bid or offer was paired-off against an imbalance in Exchange systems pursuant to subparagraph (2) of "Execution of Orders" above, shall report the transaction as provided for in Rule 131 - Equities with such universal contra as the Exchange may designate as the contra party. The clearing member or member organization who receives such report shall submit the trade to a Qualified Clearing Agency as part of its normal comparison data with such universal contra as designated by the Exchange as the contra party.

Differences and Omissions

(a)

(1) When a DMM is notified by the Exchange that a member or member organization failed to submit comparison data or submitted incorrect data with respect to a transaction

for which such universal contra as designated by the Exchange was given by the DMM as the contra party, such DMM shall research such item pursuant to the procedures set forth in Rule 134 - Equities.

(2) Items not yet resolved by 4:00 p.m. of the second business day following the day of the transaction shall be accepted by the DMM for his or her own account. Such acceptance of the transaction for his or her own account shall not prejudice the DMM's right to subsequently resolve the transaction with the member he or she knows as the contra-party to the trade.

Records of Orders

Orders stored in Exchange systems shall be deemed to comply with the provisions of Rules 117 – Equities and 123.20- Equities that orders be in writing.

Records provided to the DMM by Exchange systems shall be preserved pursuant to Rule 121 - Equities. Records which are maintained as part of Exchange systems' log but not printed at the Post or otherwise provided to the DMM shall satisfy the recordkeeping responsibility of the DMM required by Rule 121 - Equities.

The use of universal contras designated by the Exchange in transactions involving orders stored in Exchange systems and the processing of such transactions as provided above shall not be deemed inconsistent with provisions of Rules 121.10 – Equities and 138 - Equities.]

Rule 123C - Equities. The Closing Procedures

(1)-(6) No change

(7) Order of Execution on the Close

(a) The following orders must be executed in whole or in part in the closing transaction in the order delineated below:

- (i) MOC orders that do not have tick restrictions;
- (ii) MOC orders that have tick restrictions that limit the execution of the MOC to a price better than the price of the closing transaction;
- (iii) Floor broker interest entered manually by the DMM;
- (iv) Limit orders better priced than the closing price;

(v) LOC orders that do not have tick restrictions better priced than the closing transaction; [and]

(vi) LOC orders better priced than the closing transaction that have tick restrictions that are capable of being executed based on the closing price[.]; and

(vii) G orders better priced than the closing price.

(b) The following interest may be used to offset a closing imbalance in order delineated below:

(i) Limit orders represented in the Display Book with a price equal to the closing price and DMM interest;

(ii) LOC orders with a price equal to the closing price;

(iii) MOC orders that have tick restrictions that limit the execution of the MOC to the price of the closing transaction;

(iv) LOC orders that have tick restrictions that are capable of being executed based on the closing price and the price of such limit order is equal to the price of the closing transaction;

(v) [“]G[“] orders with a price equal to the closing price; and

(vi) CO orders.

(8)-(9) No change
