



8011-01p  
SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-75167; File No. SR-NYSEMKT-2015-40)

June 12, 2015

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Sections 401, 402 and 404 of the NYSEMKT Company Guide to (i) Provide that Companies Can Comply With the Exchange's Immediate Release Policy by Disseminating the Information Required to be Disseminated Pursuant to this Policy by Any Regulation Fair Disclosure Compliant Method or Combination of Methods, (ii) Clarify the Procedures Taken by the Exchange in the Event of Unusual Market Activity and (iii) Update References to Exchange Departments and Personnel and Make Other Non-Substantive Conforming Updates

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on June 3, 2015, 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 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 Sections 401, 402 and 404 of the Company Guide to provide that companies can comply with the Exchange's immediate release policy by disseminating the information required to be disseminated pursuant to this policy by any Regulation Fair Disclosure ("Regulation FD") compliant method or combination of methods, (ii) clarify the procedures taken by the Exchange in the event of unusual market activity and (iii)

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<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.

update references to Exchange departments and personnel and make other non-substantive conforming updates. The text of the proposed rule change is available on the Exchange's website 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

Immediate Release Policy Changes

Section 401(a) of the Company Guide requires a listed company to make immediate public disclosure of all material information concerning its affairs (the "immediate release policy"). Section 401(b) provides that companies should comply with the immediate release policy by releasing material information to the public in a manner designed to obtain the widest possible public dissemination. Section 402(b)(ii) specifies that any public disclosure of material information should be made by an announcement released to the national business and financial news-wire services. Section 404 specifies the Exchange's surveillances procedures when unusual market activity occurs.

The Exchange proposes to (i) amend Sections 401, 402 and 404 of the Company Guide to provide that companies can comply with the Exchange’s immediate release policy by disseminating the material information by any Regulation FD compliant method or combination of methods, (ii) clarify the procedures taken by the Exchange in the event of unusual market activity and (iii) update references to Exchange departments and personnel and make other non-substantive conforming updates.

Regulation FD was adopted by the Commission in 2000 in order to curb the selective disclosure of material non-public information by issuers to analysts and institutional investors.<sup>4</sup> Generally, Regulation FD requires that when an issuer discloses material information, it do so publicly. Public disclosure under Regulation FD can be accomplished by filing a Form 8-K with the Commission or through another method of disclosure that is reasonably designed to provide broad, non-exclusionary distribution of the information to the public (e.g. press releases, conference calls, press conferences and webcasts, so long as the public is provided adequate notice and granted access).<sup>5</sup>

The Exchange now proposes to amend Sections 401 and 402 of the Company Guide to provide that companies may comply with the immediate release policy by disseminating the information using any method (or combination of methods) that constitutes compliance with Regulation FD, thus companies will no longer be required to announce material news via a simultaneous release to the national business and financial news-wire services. Foreign private issuers are subject to the immediate release policy but they are not required to comply with Regulation FD. Notwithstanding their exemption from Regulation FD, Section 402(b)(ii) will

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<sup>4</sup> See Securities Exchange Act Release No. 43154 (August 15, 2000), 65 FR 51716 (August 24, 2000) (“Regulation FD Adopting Release”).

<sup>5</sup> See Regulation FD Adopting Release at pages 51723-51724.

allow foreign private issuers to comply with the Exchange's immediate release policy by any method (or combination of methods) that would constitute compliance with Regulation FD for a domestic U.S. issuer. While the Exchange continues to believe that there are benefits to the market and investors generally if companies issue press releases when disclosing material information, the Exchange nonetheless believes that it is appropriate to harmonize its requirements in this regard with Regulation FD, as well as with Section 202.06 of the Listed Company Manual of New York Stock Exchange LLC ("NYSE") and Nasdaq Stock Market LLC ("Nasdaq") Rule 5250(b)(1), thereby eliminating the confusion inherent in having different regimes applied by different listing exchanges and the Commission. The Exchange believes that many companies will continue to issue press releases in relation to material news events, and Section 402(b)(ii) of the proposed amendment includes language that encourages companies to disclose material news via a press release. However, the Exchange also believes that it is appropriate to enable companies to utilize the flexibility and discretion with respect to the method of disclosure provided by Regulation FD.

Section 401(a) of the Company Guide currently provides that, when the announcement of news of a material event which calls for immediate release is made during trading hours it is essential that the company notify the Stock Watch Department prior to the announcement. This timely notification enables the Exchange to consider whether, in the opinion of the Exchange, trading in the security should be temporarily halted. The Exchange proposes to amend Section 401(a) to codify its long-standing interpretation of the rule that listed companies must notify the Exchange if they intend to release material information shortly before the opening as well as during trading hours which is consistent with the approach that the New York Stock Exchange

takes as well. The Exchange also proposes to amend Section 401(a) to specify that notification to the Exchange must be made at least ten minutes prior to the announcement.

The Exchange also proposes to amend Section 401(b) to permit companies to comply with the Exchange's immediate release policy by any Regulation FD-compliant method. The Exchange proposes to make a corresponding change in Section 402(b) and to require the listed company when contacting the Exchange to (i) inform the Exchange of the substance of the announcement and (ii) identify to the Exchange the Regulation FD-compliant method it intends to use to disseminate the news and provide the Exchange with the information necessary to locate the information upon publication. Further, the Exchange proposes to amend Section 402(b) to state that, when the announcement is in written form, the company must provide the text of the announcement to the Exchange at least ten minutes prior to its release via e-mail or web-based system as specified on the Exchange's website.<sup>6</sup> Because companies will be required to submit the text of their announcement to the Exchange via e-mail or web-based system<sup>7</sup>, the Exchange proposes to delete an obsolete reference in Section 402(b) requiring companies to send the Exchange three copies of their announcement.

Section 401(a) of the Company Guide states that a company must notify the Exchange's Stock Watch Department prior to the announcement of material information. It has been the Exchange's long-standing practice to require that companies call the Exchange when such situations occur. The Exchange, therefore, proposes to codify this practice in Section 402(b)(i),

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<sup>6</sup> The proposed amendment will specify that in emergency situations—for instance, lack of computer or internet access, technical problems at the Exchange or company or incompatibility between Exchange and company systems—Section 402(b) will specify that companies may provide required notifications by telephone and confirmed by facsimile, as specified by the Exchange on its website.

<sup>7</sup> The proposed amendment will specify that the Exchange will promptly update and prominently display that posting if the applicable web portal or email address changes at any time.

clarifying that a company must call, rather than simply notify, the Exchange prior to the announcement. If a listed company intends to comply with the immediate release policy by issuing a press release, the proposed amendment to Section 402(b)(ii) will specify that in order to ensure adequate coverage the press release should be given to Dow Jones & Company, Inc., Reuters Economic Services and Bloomberg Business News. The proposed amendment to Section 402(b)(ii) will also specify that foreign private issuers can comply with the Exchange's immediate release policy by any Regulation FD method (or combination of methods). The Exchange also proposes to amend Section 402(b)(ii) to specify that listed companies may disseminate information via their website, as opposed to the Internet generally, and social media as permitted by Regulation FD. However, the proposed amendment will state that if a company utilizes its website or social media to disseminate information it must comply with the Commission's guidelines applicable thereto.<sup>8</sup> Because listed companies will be required to comply with the Commission's guidelines in this regard, the Exchange proposes to delete a sentence requiring companies to transmit information to traditional news vendor services prior [sic] making it available on the Internet as this requirement is no longer necessary. The Exchange proposes to amend Section 402(b)(ii) to delete references to private networks such as PR Newswire as they are obsolete and to change a reference from "newspapers" to "media" to encompass the multiple forms of media in which material news can be disseminated.

The Exchange will continue to evaluate the materiality of these disclosures and implement temporary trading halts, where appropriate, to facilitate the orderly dissemination of

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<sup>8</sup> See Securities Exchange Act Release No. 58288 (August 7, 2008) and Securities Exchange Act Release No. 69279 (April 2, 2013). The Exchange will remind listed companies of the Commission's guidelines with respect to the use of websites and social media to disseminate material information.

certain issuer announcements having a potentially material impact on the price of securities or trading activity to ensure fair and orderly markets.

Clarification of Procedures Taken by the Exchange in the Event of Unusual Market Activity

Consistent with Section 202.06 of the NYSE Listed Company Manual and Rule 5250(b)(1) of the Nasdaq Stock Market Rules, the Exchange proposes to include a statement in Section 402(d) of the Company Guide to indicate that, in the event of unusual market activity or rumors, the Exchange may contact the listed company to inquire about any company developments that have not been publicly announced but that could be responsible for the activity. If it is determined that the market appears to reflect undisclosed information, the Exchange will normally request that such information be publicly disclosed immediately.

Because the procedures for contacting the Exchange will be set forth on the Exchange's website, the Exchange proposes to delete a paragraph in Section 402(g) that now includes outdated contact information.

Lastly, the Exchange proposes to delete a reference to its Market Surveillance Department in Section 404 of the Company Guide. The Exchange notes that certain of its market oversight responsibilities are currently performed by the Financial Industry Regulatory Authority ("FINRA") pursuant to a regulatory services agreement, including responsibility relating to the surveillance, investigation and enforcement of insider trading rules.<sup>9</sup> Accordingly,

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<sup>9</sup> See Securities Exchange Act Release No. 58536 (September 12, 2008), 73 FR 54646 (September 22, 2008). See also Securities Exchange Act Release Nos. 58806 (October 17, 2008), 73 FR 63216 (October 23, 2008); 61919 (April 15, 2010), 75 FR 21051 (April 22, 2010); 63103 (October 14, 2010), 75 FR 64755 (October 20, 2010); 63750 (January 21, 2011), 76 FR 4948 (January 27, 2011); and 65991 (December 16, 2011), 76 FR 79714 (December 22, 2011).

the Exchange does not currently maintain a Market Surveillance Department that checks with brokerage firms as to the reasons behind unusual trading activity, as this function is performed by FINRA. The Exchange remains responsible for FINRA's performance under the regulatory services agreement.

Changes in References to Exchange Departments and Personnel and other conforming updates

Since the acquisition of the American Stock Exchange (the "Amex") by NYSE Euronext and its renaming as NYSE MKT, the references to the Listing Qualifications Department, Listing Qualifications Analysts and the Exchange's Stock Watch Department are no longer accurate. It is proposed that these legacy Amex-related references in Sections 401 and 402, including phone numbers, should be replaced. Companies will be directed to contact the Exchange and a statement that will include the relevant contact information to be used when contacting Exchange staff can be found on the Exchange's website at nyse.com. References to "specialists" are changed throughout Section 402 to refer to Designated Market Makers ("DMMs"). Lastly, Sections 402 and 404 of the Company Guide previously referred to market action and market activity inconsistently. The Exchange proposes to change all references to "market action" to "market activity."

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Exchange Act,<sup>10</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>11</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and

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

<sup>11</sup> 15 U.S.C. 78f(b)(5).

equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes the proposed amendment is consistent with the investor protection objectives of the Exchange Act in that it harmonizes the Exchange's immediate release policy with the Commission's requirements in Regulation FD. The Exchange further believes that specifying that public disclosures which may significantly affect trading should be submitted to the Exchange via e-mail or web-based system enables the Exchange to promptly determine whether a trading halt is appropriate to allow for dissemination of such material news to the marketplace thereby protecting investors and the public interest. Lastly, the Exchange believes that the remaining proposed amendments are consistent with Section 6(b)(5) of the Act, as none of them make substantive changes to the Exchange's listing requirements.

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 amendment simply harmonizes the Exchange's immediate release policy with the Commission's requirements in Regulation FD and the immediate release policies of the NYSE and Nasdaq, harmonizes the method of compliance with the Exchange's immediate release policy with the methods of compliance for the NYSE and Nasdaq immediate release policies and makes other non-substantive changes to the Company Guide. Accordingly, there will be no burden on competition as a result of the amendment.

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 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 and Rule 19b-4(f)(6) thereunder.

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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEMKT-2015-40 on the subject line.

#### Paper Comments:

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

All submissions should refer to File Number SR-NYSEMKT-2015-40. 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 website 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 the filing also will be available for inspection and copying at the principal office 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-NYSEMKT-2015-40 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.<sup>12</sup>

Robert W. Errett  
Deputy Secretary

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

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