

## OMB APPROVAL

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Required fields are shown with yellow backgrounds and asterisks.

Page 1 of \* 19

SECURITIES AND EXCHANGE COMMISSION  
 WASHINGTON, D.C. 20549  
 Form 19b-4

File No. \* SR - 2017 - \* 44  
 Amendment No. (req. for Amendments \*)

Filing by NYSE MKT LLC

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
			Rule		
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input checked="" type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Security-Based Swap Submission pursuant  
 to the Securities Exchange Act of 1934

Section 806(e)(1) \*  
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Section 806(e)(2) \*  
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Section 3C(b)(2) \*  
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Exhibit 2 Sent As Paper Document  
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Exhibit 3 Sent As Paper Document  
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### Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

Proposed Rule Change to Amend Rule 7.38E to Specify the Ranking of an Odd Lot Order that has a Display Price that is Better than its Working Price

### Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name \* Clare Last Name \* Saperstein  
 Title \* Associate General Counsel  
 E-mail \* clare.saperstein@theice.com  
 Telephone \* (212) 656-2355 Fax (212) 656-8101

### Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title \*)

Date 07/13/2017

By David De Gregorio

(Name \*)

Senior Counsel

David DeGregorio,

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

**Form 19b-4 Information \***

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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 \***

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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 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies \***

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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, security-based swap submission, or advance notice 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**

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Exhibit Sent As Paper Document

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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**

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Exhibit Sent As Paper Document

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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**

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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**

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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**

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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) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> NYSE MKT LLC (“NYSE MKT” or the “Exchange”), proposes to amend Rule 7.38E (Odd and Mixed Lots) to specify the ranking of an odd lot order that has a display price that is better than its working price.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1, and the text of the proposed rule change is attached as Exhibit 5.

- (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 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  
Associate General Counsel  
NYSE Group, 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 amend Rule 7.38E (Odd and Mixed Lots) to specify the ranking of an odd lot order that has a display price that is better than its working price.

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

<sup>2</sup> 17 CFR 240.19b-4.

Rule 7.38E provides that the working price of an odd lot order will be adjusted both on arrival and when resting on the Exchange Book based on the limit price of the order as follows:

- If the limit price of an odd lot order is equal to or worse than the contra-side PBBO, it will have a working price equal to the limit price.
- If the limit price of an odd lot order is better than the contra-side PBBO, it will have a working price equal to the contra-side PBBO.
- If the PBBO is crossed, the odd lot order will have a working price equal to the same-side PBB or PBO.

By moving the working price, an odd lot order to buy (sell) will not trade at a price above (below) the PBO (PBB), or if the PBBO is crossed, above (below) the PBB (PBO). In either case, if the odd lot order is ranked Priority 2 – Display Orders,<sup>3</sup> its display price would not change when its working price is adjusted.

Exchange rules are currently silent regarding how a resting odd lot order that has a display price that is better than its working price would be ranked for trading at that working price.<sup>4</sup> This scenario would only occur if a resting odd lot order is displayed at a price, and then an Away Market PBBO crosses that display price. In that limited scenario, pursuant to Rule 7.38E(b)(1) described above, the working price of the odd-lot order would be adjusted to a price inferior to the display price, but it would remain displayed at the now crossed price.

The Exchange proposes to specify that in such case, the ranking and priority category applicable to such an order at its display, i.e., the price it is displayed and Priority Category 2 – Display Orders, would govern its ranking for purposes of a trade at its different, inferior working price.<sup>5</sup> This ranking would differ from the Exchange's general rule that an order is ranked based on its working price.<sup>6</sup> However, the Exchange believes that if the display price of an order is better than

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<sup>3</sup> As described in Rule 7.36E(e)(2), Priority 2 – Display Orders are non-marketable Limit Orders with a displayed working price.

<sup>4</sup> Pursuant to Rule 7.38E(b)(1), on arrival, an odd lot order's working price may be adjusted consistent with the terms of the order. However, an arriving odd-lot order would not be assigned a working price that would be inferior to the price at which the arriving odd lot order would be displayed.

<sup>5</sup> As described in Rule 7.36E(c), an order is ranked based on price, priority category, and time. Such ranking is only applicable once an order is resting on the Exchange Book.

<sup>6</sup> Rule 7.36E(d) provides that all orders are ranked based on the working price of the order. Rule 7.36E(e)(3) generally provides that non-marketable orders for which the working price is not displayed have third priority behind Market Orders and non-marketable Limit Orders that are displayed at their working price. This proposed rule change would be an exception to these rules.

its working price, such order has already demonstrated a public willingness to trade at a more aggressive price because it continues to be published in a market data feed at the more aggressive display price.<sup>7</sup> In such case, the order should receive the benefit of the ranking (both price and priority category) associated with its better display price when determining how that order would be traded at its working price. In other words, an odd-lot order with a better display price than its working price would not be ranked based on its working price, including that it would not be assigned Priority Category 3 – Non-Display Orders at its working price.

The Exchange further believes that if an odd-lot order is assigned a new working price that is worse than its display price, such order should not be assigned a new working time. In other words, when trading at its working price, its time ranking would be based on the working time associated with its display price.<sup>8</sup> Maintaining the original working time of such order would ensure that it maintains its original ranking, even if it trades at a different price.

To effect this change, the Exchange proposes to amend Rule 7.38E(b)(1) to provide that an odd-lot order ranked Priority Category 2 – Display Orders would not be assigned a new working time if its working price is adjusted under Rule 7.38E(b)(1). In addition, if the display price of an odd lot order to buy (sell) is above (below) its working price, it would be ranked based on its display price.<sup>9</sup>

Because once on Pillar, the Exchange would trade an odd lot order with a display price better than its working price trades in this manner, these changes will be in effect when the Exchange implements Pillar.

(b) Statutory Basis

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<sup>7</sup> See Rule 7.36E(b)(1) (odd-lot sized orders are considered displayed for ranking purposes).

<sup>8</sup> Rule 7.36E(f)(2) provides that an order is assigned a new working time any time the working price of the order changes. This proposed rule change would be an exception to this general rule.

<sup>9</sup> For example, assume the PBBO is 10.07 x 10.10 and the Exchange receives orders ranked Priority 2 – Display Orders in the following sequence: T1 to buy 25 shares displayed at 10.08, T2 to buy 25 shares displayed at 10.09, T3 to buy 25 shares displayed at 10.08, and T4 to buy 100 shares displayed at 10.07. Assume next that the PBO changes to 10.07. The working price of T1, T2, and T3 will be adjusted to 10.07, but they would keep their original working time. Next, the Exchange receives an incoming order to sell 100 shares at 10.07. The Exchange would trade the incoming order with the resting orders in the following sequence: T2, T1, T3, and then T4 would be allocated the remaining 25 shares. T2 would trade before T1 because it has a better price ranking based on its display price. If the incoming order to sell were for 50 shares, only T2 and T1 would trade.

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),<sup>10</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>11</sup> in particular, because 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, 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.

Specifically, the Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system because the Exchange believes that an order that has been displayed should receive the benefit of the ranking of that displayed price if it trades at a less aggressive working price. This scenario would only occur if a resting odd-lot order has been displayed at a price, and then an Away Market PBBO crosses that price and then the working price of that order is adjusted to a price inferior to its display price. In such case, while the odd lot order would be executed at its working price, because it was both willing to trade at a better price and is still displayed at that better price, the Exchange proposes that it would be ranked based on its display price for purposes of its execution at the working price. If the PBBO had not crossed the odd-lot order, such order would have had the benefit of the ranking based on its display price and the Exchange believes it would be consistent with the protection of investors and the public for the odd-lot order to retain such ranking when its working price is moved to an inferior price. The Exchange further believes that the proposed rule change would promote fair and orderly markets that would protect investors and the public interest because it would to promote the display of liquidity by ensuring that a displayed odd lot order maintains its ranking even if it trades at a less aggressive price.

The Exchange further believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would promote transparency in Exchange rules and reduce potential confusion regarding how an odd-lot order would be ranked and execute in the limited scenario when the display price of a resting odd lot has been crossed, and it has been assigned a working price inferior to its display price.

#### 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. The Exchange believes that the proposed rule change is not

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

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

designed to address any competitive issues but rather to provide an incentive for market participants to enter aggressively-priced displayed liquidity.

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

Not applicable.

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

The Exchange believes that the proposal qualifies for immediate effectiveness upon filing as a "non-controversial" rule change in accordance with Section 19(b)(3)(A) of the Act<sup>12</sup> and Rule 19b-4(f)(6), thereunder.<sup>13</sup>

The Exchange asserts that the proposed rule change (i) will not significantly affect the protection of investors or the public interest, (ii) will not impose any significant burden on competition, and (iii) by its terms, will not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest. In addition, the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing, or such shorter time as the Commission may designate.

The Exchange believes that the proposed rule change would not significantly affect the protection of investors or the public interest or impose any significant burden on competition because the Exchange believes that an order that has been displayed should receive the benefit of the ranking of that displayed price if it trades at a less aggressive price. In such case, while the odd lot order would be executed at its working price, because it was both willing to trade at a better price and was displayed at that better price, it would be ranked based on its display price for purposes of its execution at the working price. If the PBBO had not crossed the odd lot order, it would have had the benefit of the ranking based on its display price and the Exchange believes it would be consistent with the protection of investors and the public for the odd-lot order to retain such ranking when its working price is moved to an inferior price. As such, the proposed rule change is

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<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

designed to promote the display of liquidity by ensuring that a displayed odd lot order maintains its ranking even if it trades at a less aggressive price. The Exchange further believes that the proposed rule change would not significantly affect the protection of investors or the public interest or impose any significant burden on competition because it is limited in scope: it would only be applicable to a resting displayed odd lot order that has a working price inferior to the displayed price, and this would only occur if an Away Market publishes a quote that crosses the display price of such odd lot order.

The Exchange further believes that the proposed rule change would not significantly affect the protection of investors or the public interest or impose any significant burden on competition because it would promote transparency in Exchange rules and reduce potential confusion regarding how an odd-lot order would be ranked and execute in the limited scenario when the display price of a resting odd lot has been crossed, and it has been assigned a working price inferior to its display price.

The Exchange respectfully requests that the Commission waive the 30-day operative delay for this filing so that it may become operative immediately on filing. The Exchange believes that waiving the operative delay would be consistent with the protection of investors and the public interest because the Exchange anticipates beginning the migration of symbols to Pillar on July 24, 2017. Accordingly, by waiving the operative delay, when the Exchange transitions to Pillar, this proposed rule change would be operative. The Exchange believes that such waiver would be consistent with the protection of investors and the public interest because it would reduce any potential for confusion of how odd-lot orders would be processed when the Exchange transitions to Pillar.

For the foregoing reasons, the Exchange believes that this rule filing qualifies for immediate effectiveness as a “non-controversial” rule change. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule changes 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.

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

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act



Not applicable.

11. Exhibits

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

Exhibit 5 – Text of Proposed Rule Change

## EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-NYSEMKT-2017-44)

[Date]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 7.38E to Specify the Ranking of an Odd Lot Order that has a Display Price that is Better than its Working Price

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 30, 2017, 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 amend Rule 7.38E (Odd and Mixed Lots) to specify the ranking of an odd lot order that has a display price that is better than its working price. 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

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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.

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

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

1. Purpose

The Exchange proposes to amend Rule 7.38E (Odd and Mixed Lots) to specify the ranking of an odd lot order that has a display price that is better than its working price.

Rule 7.38E provides that the working price of an odd lot order will be adjusted both on arrival and when resting on the Exchange Book based on the limit price of the order as follows:

- If the limit price of an odd lot order is equal to or worse than the contra-side PBBO, it will have a working price equal to the limit price.
- If the limit price of an odd lot order is better than the contra-side PBBO, it will have a working price equal to the contra-side PBBO.
- If the PBBO is crossed, the odd lot order will have a working price equal to the same-side PBB or PBO.

By moving the working price, an odd lot order to buy (sell) will not trade at a price above (below) the PBO (PBB), or if the PBBO is crossed, above (below) the PBB

(PBO). In either case, if the odd lot order is ranked Priority 2 – Display Orders,<sup>4</sup> its display price would not change when its working price is adjusted.

Exchange rules are currently silent regarding how a resting odd lot order that has a display price that is better than its working price would be ranked for trading at that working price.<sup>5</sup> This scenario would only occur if a resting odd lot order is displayed at a price, and then an Away Market PBBO crosses that display price. In that limited scenario, pursuant to Rule 7.38E(b)(1) described above, the working price of the odd-lot order would be adjusted to a price inferior to the display price, but it would remain displayed at the now crossed price.

The Exchange proposes to specify that in such case, the ranking and priority category applicable to such an order at its display, i.e., the price it is displayed and Priority 2 – Display Orders, would govern its ranking for purposes of a trade at its different, inferior working price.<sup>6</sup> This ranking would differ from the Exchange’s general rule that an order is ranked based on its working price.<sup>7</sup> However, the Exchange believes that if the display price of an order is better than its working price, such order has already

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<sup>4</sup> As described in Rule 7.36E(e)(2), Priority 2 – Display Orders are non-marketable Limit Orders with a displayed working price.

<sup>5</sup> Pursuant to Rule 7.38E(b)(1), on arrival, an odd lot order’s working price may be adjusted consistent with the terms of the order. However, an arriving odd-lot order would not be assigned a working price that would be inferior to the price at which the arriving odd lot order would be displayed.

<sup>6</sup> As described in Rule 7.36E(c), an order is ranked based on price, priority category, and time. Such ranking is only applicable once an order is resting on the Exchange Book.

<sup>7</sup> Rule 7.36E(d) provides that all orders are ranked based on the working price of the order. Rule 7.36E(e)(3) generally provides that non-marketable orders for which the working price is not displayed have third priority behind Market Orders and non-marketable Limit Orders that are displayed at their working price. This proposed rule change would be an exception to these rules.

demonstrated a public willingness to trade at a more aggressive price because it continues to be published in a market data feed at the more aggressive display price.<sup>8</sup> In such case, the order should receive the benefit of the ranking (both price and priority category) associated with its better display price when determining how that order would be traded at its working price. In other words, an odd-lot order with a better display price than its working price would not be ranked based on its working price, including that it would not be assigned Priority 3 – Non-Display Orders at its working price.

The Exchange further believes that if an odd-lot order is assigned a new working price that is worse than its display price, such order should not be assigned a new working time. In other words, when trading at its working price, its time ranking would be based on the working time associated with its display price.<sup>9</sup> Maintaining the original working time of such order would ensure that it maintains its original ranking, even if it trades at a different price.

To effect this change, the Exchange proposes to amend Rule 7.38E(b)(1) to provide that an odd-lot order ranked Priority 2 – Display Orders would not be assigned a new working time if its working price is adjusted under Rule 7.38E(b)(1). In addition, if the display price of an odd lot order to buy (sell) is above (below) its working price, it would be ranked based on its display price.<sup>10</sup>

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<sup>8</sup> See Rule 7.36E(b)(1) (odd-lot sized orders are considered displayed for ranking purposes).

<sup>9</sup> Rule 7.36E(f)(2) provides that an order is assigned a new working time any time the working price of the order changes. This proposed rule change would be an exception to this general rule.

<sup>10</sup> For example, assume the PBBO is 10.07 x 10.10 and the Exchange receives orders ranked Priority 2 – Display Orders in the following sequence: T1 to buy 25 shares displayed at 10.08, T2 to buy 25 shares displayed at 10.09, T3 to buy 25

Because once on Pillar, the Exchange would trade an odd lot order with a display price better than its working price trades in this manner, these changes will be in effect when the Exchange implements Pillar.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),<sup>11</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>12</sup> in particular, because 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, 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.

Specifically, the Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system because the Exchange believes that an order that has been displayed should receive the benefit of the ranking of that displayed price if it trades at a less aggressive working price. This scenario would only occur if a resting odd-lot order has

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shares displayed at 10.08, and T4 to buy 100 shares displayed at 10.07. Assume next that the PBO changes to 10.07. The working price of T1, T2, and T3 will be adjusted to 10.07, but they would keep their original working time. Next, the Exchange receives an incoming order to sell 100 shares at 10.07. The Exchange would trade the incoming order with the resting orders in the following sequence: T2, T1, T3, and then T4 would be allocated the remaining 25 shares. T2 would trade before T1 because it has a better price ranking based on its display price. If the incoming order to sell were for 50 shares, only T2 and T1 would trade.

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

<sup>12</sup> 15 U.S.C. 78f(b)(5).

been displayed at a price, and then an Away Market PBBO crosses that price and then the working price of that order is adjusted to a price inferior to its display price. In such case, while the odd lot order would be executed at its working price, because it was both willing to trade at a better price and is still displayed at that better price, the Exchange proposes that it would be ranked based on its display price for purposes of its execution at the working price. If the PBBO had not crossed the odd-lot order, such order would have had the benefit of the ranking based on its display price and the Exchange believes it would be consistent with the protection of investors and the public for the odd-lot order to retain such ranking when its working price is moved to an inferior price. The Exchange further believes that the proposed rule change would promote fair and orderly markets that would protect investors and the public interest because it would to promote the display of liquidity by ensuring that a displayed odd lot order maintains its ranking even if it trades at a less aggressive price.

The Exchange further believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would promote transparency in Exchange rules and reduce potential confusion regarding how an odd-lot order would be ranked and execute in the limited scenario when the display price of a resting odd lot has been crossed, and it has been assigned a working price inferior to its display price.

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 Exchange believes that the proposed rule change is not designed to

address any competitive issues but rather to provide an incentive for market participants to enter aggressively-priced displayed liquidity.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>13</sup> and Rule 19b-4(f)(6) thereunder.<sup>14</sup> 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>15</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>16</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the

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<sup>13</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

<sup>16</sup> 17 CFR 240.19b-4(f)(6)(iii).



Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>17</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and 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-2017-44 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-2017-44. This file

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<sup>17</sup> 15 U.S.C. 78s(b)(2)(B).

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-2017-44 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>18</sup>

Robert W. Errett  
Deputy Secretary

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<sup>18</sup> 17 CFR 200.30-3(a)(12).

**Exhibit 5**

Additions: Underlined

Deletions: [Bracketed]

NYSE MKT LLC Rules

**Rule 7E - EQUITIES TRADING**

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**Section 3. Exchange Trading**

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**Rule 7.38E. Odd and Mixed Lots**

(a) *Order Types.* Rule 7.31E specifies whether an order may not be entered as an odd lot or mixed lot.

(b) *Ranking and Execution.* Round lot, mixed lot and odd lot orders are treated in the same manner in the Exchange, provided that:

- (1) The working price of an odd lot order will be adjusted both on arrival and when resting on the Exchange Book based on the limit price of the order. If the limit price of an odd lot order to buy (sell) is at or below (above) the PBO (PBB), it will have a working price equal to the limit price. If the limit price of an odd lot order to buy (sell) is above (below) the PBO (PBB), it will have a working price equal to the PBO (PBB). If the limit price of an odd lot order to buy (sell) is above (below) the PBO (PBB) and the PBBO is crossed, it will have a working price equal to the PBB (PBO). An odd-lot order ranked Priority Category 2 – Display Orders will not be assigned a new working time if its working price is adjusted under this Rule. If the display price of an odd lot order to buy (sell) is above (below) its working price, it will be ranked based on its display price.

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