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January 8, 2015

Kevin O'Neill
Deputy Secretary
U.S. Securities and Exchange Commission
100 F. Street N.E.
Washington, D.C. 205549-0609

RE: <u>File No. SR-NYSEMKT-2014-86</u>

Dear Mr. O'Neill,

NYSE MKT LLC, on behalf of NYSE Amex Options (the "Exchange"), is submitting this comment letter to provide further support of its statements made in the above-referenced filing, which amends the manner in which the Exchange proposes to mitigate outbound quote traffic to the Options Price Reporting Authority ("OPRA").

The Exchange believes its proposal is consistent with the Securities Exchange Act of 1934 ("Exchange Act") because, as it stated in its Filing:

> *[R]eliance on the OLPP, via Rule 903A, together with the refined Market Maker quoting obligations, pursuant to Commentary .01 to Rule 925.1NY, is sufficient as a quote mitigation strategy and obviates the need for Rule 970.1NY. The Exchange believes that limiting the number of series listed on the Exchange is preferable to suppressing quotes of inactive series, as required under current Rule 970.1NY, because all quotes sent by Market Makers are actionable even if not displayed.*[1]

The Exchange believes its approach of primarily relying on the Options Listings Procedures Plan ("OLPP") is consistent with the Act and would sufficiently limit the number of series listed on the Exchange. In this regard, the Exchange notes that at least one other exchange relies primarily on the OLPP as a quote mitigation strategy as they have effectively nullified, by issuance of an

[1] <u>See</u> Securities and Exchange Release No. 73367 (October 15, 2014), 79 FR 63009, 63010 (October 21, 2014) (SR-NYSEAmex-2014-86) (the "Filing"). The Exchange notes that this pin citation applies all text that is quoted from the Filing in this comment letter.

exchange notice, the quote mitigation mechanism on their exchange.[2] The same exchange, in response to comments on a filing relating to an increase in series associated with Short Term Options Series, affirmatively acknowledged that, while they were not utilizing their quote mitigation mechanism, they were using "a cautious new listings policy that mitigates the number of classes and series listed on the Exchange."[3] That same exchange further noted that it, "implements a mitigation strategy on listings by not listing illiquid options classes and products not already traded elsewhere minimizing the impact on capacity." [4]

In addition to relying on the OLPP, the Exchange, similar to MIAX, has a business plan with respect to listing new options that is designed to minimize the impact on capacity.[5]

In addition, as stated in its Filing:

> *The Exchange believes that both its own systems capacity and OPRA's systems capacity are more than sufficient to accommodate any additional increase in quote traffic that might be sent to OPRA as a result of the deletion of Rule 970.1NY. The Exchange has already successfully conducted testing to ensure that its internal systems are equipped to handle any increase in quote traffic as a result of the proposed rule change.*

The Exchange's current quote mitigation mechanism suppresses quotes in inactive series the Exchange would otherwise send to OPRA.[6] The Exchange, however, must still receive and process quotes in inactive series and then perform additional processing to suppress the submission of such quotes to OPRA. As the Exchange is already processing quotes in these inactive series, it is confident that its own systems capacity is more than sufficient to accommodate any increase in traffic that might be sent to OPRA. The Exchange is also confident in OPRA's systems, and its ability to accommodate any increase in traffic that might be sent to OPRA, based on the manner in which exchanges request capacity confidentially via the Independent Systems Capacity Advisor ("ISCA"). The capacity requests submitted to ISCA by the various exchanges are used by OPRA to ensure sufficient capacity exists in aggregate. In requesting capacity from ISCA, the Exchange always assumes that series that are currently inactive may become active in the future and, in turn, become part of the overall message traffic that is being sent to OPRA. For these reasons, the Exchange believes both its own and OPRA's systems capacity are more than sufficient to

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2 See Miami International Securities Exchange, LLC. ("MIAX" or "MIAX Options") Rule 506(b)(1). See also MIAX Regulatory Circular 2013-01, available here, http://www.miaxoptions.com/sites/default/files/circular-files/MIAX_RC_2013_001.pdf.

3 See Letter to Elizabeth Murphy, Secretary, U.S. Securities and Exchange Commission, from Brian O'Neill, VP and Senior Counsel, MIAX, dated July 3, 2013, available here, http://www.sec.gov/comments/sr-miax-2013-23/miax201323-2.pdf .

4 Id.

5 See Commentary .09 to Rule 915.

6 See Rule 970.1NY (describing "inactive" series).

accommodate any additional increase in quote traffic that might be sent to OPRA and that, therefore, its proposal is consistent with the Exchange Act.

Moreover, *"[b]ecause there are no Market Maker quoting obligations associated with adjusted options series, there is a reduction in quote traffic that is sent to OPRA."*[7] *Indeed, in approving Commentary .01 to Rule 925.1NY, the Commission noted, '…the Exchange's proposal would reduce the burden on market makers to submit continuous quotes that the Exchange may not submit to OPRA.'"*[8]

Market Makers have an obligation to provide continuous two-sided quotations in their appointed issues for 60% of the time the Exchange is open for trading in a given class and a subset of Market Makers, which includes Specialists, e-Specialists and Directed Order Market Makers, have a 90% quoting obligation.[9] However, the refined Market Maker quoting obligations, pursuant to Commentary .01 to Rule 925.1NY, were not applicable at the time the Exchange adopted its present quote mitigation plan. These refined Market Maker quoting obligations reduce the universe of series in which a Market Maker is obligated to quote because they exempt adjusted option series from Market Makers' continuous quoting obligations. Specifically, there are approximately 5,000 adjusted series listed on the Exchange for which Market Makers are not required to quote. The Exchange believes that the elimination of these 5,000 series from quoting obligations has resulted in a decrease in quote traffic, further supporting the Exchange's proposal as being consistent with the Exchange Act.

The Exchange notes that in submitting its capacity request to ISCA, it assumes that all series that it trades, including those without quoting obligations, such as Long Term Equity Option Series ("LEAPS")[10] and adjusted series, will generate quote traffic that must be sent to OPRA. Therefore, regardless of what, if any, impact the reduction in quoting obligations has on quote traffic, the Exchange believes both its own capacity and that of OPRA is sufficient to handle any increase in quote traffic.

The Exchange also believes its proposal is consistent with the Exchange Act because it "*actively monitors the quotation activity of its Market Makers. When the Exchange detects that a Market Maker is disseminating an unusual number of quotes, the Exchange contacts that Market Maker and alerts it to such activity. Such monitoring may reveal that the Market Maker may have internal system issues or has incorrectly set system parameters that were not immediately apparent. Alerting a Market Maker to the heightened levels of activity will usually result in a change that reduces the number of quotes sent to the Exchange by the Market Maker."*[11]

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7 See supra n. 1.

8 Id. (citing Securities and Exchange Act Release 65572 (October 14, 2011) 76 FR 65310 (October 20, 2011) (SR-NYSEAmex-2011-61).

9 See Rule 925.1NY (b)-(c) and Rule 927.5NY(a), and 964.1NY.

10 See Commentary .03 to Rule 903.

11 See supra n. 1.

The Exchange employs automated systems that generate alerts for unusual levels of activity. In turn, individuals at the Exchange review these alerts and proactively contact participants when, in their professional opinion, it is warranted to ascertain whether the heightened activity is erroneous in nature. As part of its evaluation of its capacity request to ISCA, the Exchange considers its historic message rates submitted to OPRA, which includes the aforementioned alerts and follow up inquiries conducted by Exchange staff. As such, the Exchange's capacity requests submitted to ISCA have already been adjusted to account for some level of heightened, potentially erroneous, activity. Therefore, the active monitoring performed by the Exchange is an additional level of protection – although the exact degree of which is not easily quantifiable.

Moreover, the Exchange "*has a business plan with respect to the listing of options on new underlying securities that is designed to help ensure that any new listings are sufficiently active to avoid listing options on underlying securities that generate quote volume without the offsetting benefit of trading volume.*" [12] As previously noted, this is part of the approach used by at least one other exchange in conjunction with reliance on the OLPP to mitigate quote traffic by mitigating series.[13] Thus, the Exchange believes this practice, together with its other practices, are sufficient to mitigate and manage quote traffic generated by the Exchange.

In addition, *"[t]he Exchange imposes Excessive Bandwidth Utilization Fees, which are designed to encourage efficient quoting."*[14] The Exchange imposes the Bandwidth Utilization Fees to ensure participants act with a degree of restraint with respect to the message traffic they generate. The Exchange notes that other exchanges employ similar so-called "pay to play" models. For example, the Chicago Board Options Exchange Inc. ("CBOE") charges "Bandwidth Packet Fees."[15] The Exchange believes that, absent "pay to play" fees, such as the Bandwidth Utilization Fees, message traffic on the Exchange would be higher.

Finally, the Exchange *"believes that the market structure initiatives adopted in recent years serve to reduce the potential for excessive quoting because the OLPP limits the number of series eligible to be listed, which reduces the number of series for which a Market Maker would be obligated to quote, and therefore reduces quote traffic."*[16]

The Exchange is a participant in the OLPP and was involved in discussions that resulted in revisions to the OLPP that limit the number of series by restricting the range of strike prices available based on a percentage above or below the underlying security's price. The Exchange notes that in approving the amendments to the OLPP, the Commission stated, "that adopting uniform objective standards to the range of options series exercise (or strike) prices available for trading on the Plan Sponsor exchanges should reduce the number of option series available for

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12 Id.

13 See supra nn. 2, 3.

14 See supra n. 1.

15 See CBOE fee schedule, available here, http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf

16 See supra n. 1.

trading, and thus should reduce increases in the options quote message traffic because market participants will not be submitting quotes in those series."[17]

For the above reasons and the reasons stated in its filing, the Exchange believes its proposal is consistent with the Act and respectfully requests that the Commission approve the above referenced filing without delay.

Sincerely,

Elizabeth K. King

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17 See Securities and Exchange Release No. 60531 (August 19, 2009), 74 FR 43173 (File No. 4-443).