

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-68128; File No. SR-NYSEMKT-2012-55)

November 1, 2012

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 968NY to Allow for the Split-Price Priority Provisions to Apply to Open Outcry Trading of Cabinet Trades

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 October 19, 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 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 Rule 968NY to allow for the split-price priority provisions to apply to open outcry trading of cabinet trades. 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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 968NY to provide that the split-price priority provisions in Rule 963NY(f) apply to accommodation trades ("cabinet trades") in open outcry.⁴

⁴ See Rule 963NY(f). Rule 963NY(f) regarding priority on split-price transaction occurring in open outcry specifically provides the following: (1) If an ATP Holder purchases (sells) one or more option contracts of a particular series at a particular price or prices, the ATP Holder must, at the next lower (higher) price at which another ATP Holder bids (offers), have priority in purchasing (selling) up to the equivalent number of option contracts of the same series that the ATP Holder purchased (sold) at the higher (lower) price or prices, provided that the ATP Holder's bid (offer) is made promptly and continuously and that the purchase (sale) so effected represents the opposite side of a transaction with the same order or offer (bid) as the earlier purchase or purchases (sale or sales). This paragraph only applies to transactions effected in open outcry; (2) If an ATP Holder purchases (sells) fifty or more option contracts of a particular series at a particular price or prices, he/she shall, at the next lower (higher) price have priority in purchasing (selling) up to the equivalent number of option contracts of the same series that he/she purchased (sold) at the higher (lower) price or prices, but only if his/her bid (offer) is made promptly and the purchase (sale) so effected represents the opposite side of the transaction with the same order or offer (bid) as the earlier purchase or purchases (sale or sales). The Exchange may increase the "minimum qualifying order size" above 100 contracts for all products. Announcements regarding changes to the minimum qualifying order size shall be made via an Exchange Bulletin. This paragraph only applies to transactions effected in open outcry; (3) If the bids or offers of two or more ATP Holder are both entitled to priority in accordance with subsections (1) or (2), it shall be afforded them, insofar as practicable, on an equal basis.; (4) Except for the provisions set forth in Rule 963NY(f)(2), the priority afforded by this rule is effective only insofar as it does not conflict with Customer limit orders represented in the Consolidated Book. Such orders have precedence over ATP Holders' orders at a particular price; Customer limit orders in the Consolidated Book also have precedence over ATP Holders' orders that are not superior in price by at least the MPV.; and (5) Floor Brokers are able to achieve split price priority in accordance with paragraphs (1) and (2) above.

Example: Market quote is \$1.00 – 1.20, with customer interest in the book at the offer price. Floor Broker announces a market order to buy 100 contracts. Market Maker A ("MM-A") is alone in responding "Sell 50 at \$1.15 and 50 at \$1.20" (for an equivalent net price of \$1.175).

An “accommodation” or “cabinet” trade refers to trades in listed options on the Exchange that are worthless or not actively traded. Cabinet trading provides a way for market participants to effect transactions in such options at a minimal cost. Cabinet trading is conducted in accordance with Rule 968NY Accommodation Transactions (Cabinet Trades),⁵ which provides that cabinet trading shall be conducted in accordance with other Exchange rules, except as otherwise provided in Rule 968NY, and sets forth specific procedures for engaging in cabinet trading. Pursuant to Rule 968NY(a), the Exchange designates options issues as eligible for cabinet trading pursuant to Rule 968NY. Such designations are made pursuant to requests from market participants.

In March 2009, NYSE Amex adopted a new rule set governing the trading of options.⁶ Much of the new rule set was based on the rules of NYSE Arca Inc. (“NYSE Arca”). In conjunction with the filing of the new rule set, the Exchange filed a separate proposal deleting

Because MM-A is willing to sell contracts at the lower price of \$1.15, MM-A then has priority over all orders in the Book and trading crowd at the next higher price, in this case 1.20, for an equal number of contracts. The priority afforded by this provision allows MM-A to trade ahead of any like priced Customer orders in the Book.

⁵ Rule 968NY currently provides for cabinet transactions to occur via open outcry at a cabinet price of a \$1 per option contract in any options series open for trading in the Exchange, except that the Rule is not applicable to trading in option classes participating in the Penny Pilot Program. Under the procedures, bids and offers (whether opening or closing a position) at a price of \$1 per option contract may be represented in the trading crowd by a Floor Broker or by a Market Maker or provided in response to a request by a Trading Official, a Floor Broker or a Market Maker, but must yield priority to all resting orders in the Cabinet (those orders held by the Trading Official, and which resting cabinet orders may be closing only). So long as both the buyer and the seller yield to orders resting in the cabinet book, opening cabinet bids can trade with opening cabinet offers at \$1 per option contract.

⁶ See Securities Exchange Act Release No. 59472 (February 27, 2009), 74 FR 9843 (March 6, 2009) (order approving NYSEALTR-2008-14, as amended).

many out-of-date and/or obsolete rules.⁷ Included as part of this filing was the deletion of former American Stock Exchange Rule 959-Accommodation Transactions, which contained provisions governing both cabinet trading and position transfers. However, when filing the new rule set the Exchange inadvertently failed to include new rules governing cabinet trading. In July, 2009, the Exchange added a new rule governing trading of cabinet orders.⁸ Instead of copying the cabinet trading rules of Chicago Board Options Exchange, Incorporated (“CBOE”) or NASDAQ OMX PHLX LLC (“PHLX”), the Exchange chose to copy-cat the language of the existing NYSE Arca cabinet trade rule, which included a restriction that prevented the application of the split-price priority provisions to manual cabinet trading. In contrast, neither CBOE nor PHLX have a similar restriction on cabinet trades, and allow for split-price priority for cabinet trades on the trading floor.⁹ The Exchange did not understand the implication of not choosing to copy the cabinet trading rules of CBOE or PHLX at that time.

Prior to the adoption of the present NYSE Amex trading system, all cabinet trading on the NYSE Amex was done on a manual basis. Therefore, previous Amex Stock Exchange Rule 959(a) dealt only with cabinet trading in open outcry. However, current Rule 968NY provides for both manual and electronic cabinet trading - with manual cabinet trading pursuant to Rule 968NY(b) and electronic cabinet trading pursuant to Rule 968NY(c). Rule 968NY(b)(3) expressly provides that the split-price priority provisions otherwise applicable to open outcry

⁷ See Securities Exchange Act Release No. 59454 (February 25, 2009), 74 FR 9461 (March 4, 2009) (notice of filing and immediate effectiveness of NYSEALTR-2009-17).

⁸ See Securities Exchange Act Release No. 60296 (July 13, 2009), 74 FR 35217 (July 20, 2009) (SR-NYSE-Amex-2009-37).

⁹ See CBOE Rules 6.54 and 6.47; NASDAQ OMX PHLX Rule 1059.

trading pursuant to Rule 963NY(f) do not apply to open outcry trading in cabinet trades.¹⁰

Because split-price priority provisions are only applicable to open outcry trading, Rule 968NY(c), which governs electronic trading of cabinet trading, does not include this provision.

The Exchange believes that split-price priority provisions should apply to open outcry cabinet trading, and that the existing restriction unnecessarily limits the ability of market participants to manually trade cabinet orders on the floor. The current restriction unnecessarily restricts business by not making available certain prices which are available on other exchanges. Split-price priority in open outcry trading of cabinet trades provides an extra incentive for market participants to both price improve and facilitate the efficient trading of options contracts that are worthless or not actively trading. The Exchange notes that neither CBOE nor PHLX have a similar restriction on cabinet trades, and allow for split-price priority for cabinet trades on the trading floor.¹¹

Accordingly, the Exchange therefore proposes to delete the language from Rule 968NY(b)(3) that states that the split-price priority provisions of Rule 963NY shall not apply. The Exchange believes that providing market participants the ability to have split-price priority when trading cabinet orders in open outcry will help facilitate the trading of options positions that are worthless or not actively traded. The Exchange believes that the proposal should lead to

¹⁰ This limitation did not exist in the previous American Stock Exchange Rule Amex 959(a) that dealt only with cabinet trading in open outcry. See Securities Exchange Act Release No. 59454 (February 25, 2009), 74 FR 9461 (March 4, 2009) (SR-NYSEALTR-2009-17).

¹¹ See CBOE Rules 6.54 and 6.47; PHLX Rule 1059. CBOE and PHLX both conduct their cabinet trading via open out-cry. Split-price priority is available for open out-cry trading on both CBOE and PHLX, with no restriction for cabinet trades. In addition, until March 2009, when the Exchange deleted former American Stock Exchange (“Amex”) rules that were deemed obsolete, the Exchange permitted split-price priority for open outcry cabinet trades. See Securities Exchange Act Release No. 59454 (February 25, 2009), 74 FR 9461 (March 4, 2009) (notice of filing and immediate effectiveness of NYSEALTR-2009-17) (deleting, in part, Amex Rule 959 – Accommodation Transactions).

more aggressive quoting by trading crowd participants on the floor, which in turn could lead to better executions. A trading crowd participant might be willing to trade at a better price for a portion of an order if they were assured of trading with the balance of the order at the next price increment. As a result, Floor Brokers representing orders in the trading crowd might receive better-priced executions. The Exchange notes that cabinet trades are infrequent in nature and that, even though the Exchange Rules provide that cabinet trades may be traded electronically, the Exchange has not designated any options issues to trade electronically pursuant to Rule 968NY, because market participants have never requested to do so. Thus, the fact that split-price priority is available for manual and not electronic, will have no impact on ongoing electronic cabinet trading.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (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 promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that allowing for the split-pricing priority provisions to apply to open outcry trading of cabinet trades will better facilitate the trading of options contracts that are worthless or not actively traded. The proposed change is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system, by aligning the Exchange’s Rules with the rules on other options exchanges that conduct manual cabinet trading.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁴ and Rule 19b-4(f)(6) thereunder.¹⁵ 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.

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.

¹⁴ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁵ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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-2012-55 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-2012-55. 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 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of NYSE MKT. 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-2012-55, 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.¹⁶

Kevin M. O'Neill
Deputy Secretary

¹⁶ 17 CFR 200.30-3(a)(12).