

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-71870; File No. SR-NYSEMKT-2014-31)

April 4, 2014

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Pilot Period Applicable to Rule 953.1NY(c), Which Addresses How the Exchange Treats Obvious and Catastrophic Errors During Periods of Extreme Market Volatility, until February 20, 2015

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 April 1, 2014 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 extend the pilot period applicable to Rule 953.1NY(c), which addresses how the Exchange treats Obvious and Catastrophic Errors during periods of extreme market volatility, until February 20, 2015. The pilot period for subsection (c) is currently set to expire on April 8, 2014. 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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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

The Exchange proposes to extend the pilot period applicable to Rule 953.1NY(c), which addresses how the Exchange treats Obvious and Catastrophic Errors during periods of extreme market volatility, until February 20, 2015. The pilot period for subsection (c) is currently set to expire on April 8, 2014.

Background

Rule 953.1NY (described below) was adopted in connection with the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS, as it may be amended from time to time (the “Plan”).⁴ The Plan was developed in response to events that occurred on May 6, 2010.⁵ On May 6, 2010, the U.S. equity markets experienced excessive volatility in an abbreviated time period resulting in, among other things, the prices of a large number of individual securities declining by significant amounts in a very short time period before abruptly returning to prices consistent with their pre-decline levels.⁶ This extreme volatility resulted in a

⁴ See Securities and Exchange Act Release No. 69339 (April 8, 2013), 78 FR 22011 (April 12, 2013) (SR-NYSEMKT-2013-10) (“Approval Order”).

⁵ See Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (File No. 4-631) (Order Approving, on a Pilot Basis, the Plan).

⁶ See Approval Order, 78 FR, at 22011, n.7 (citing Report of the Staffs of the CFTC and SEC to the Joint Advisory Committee on Emerging Regulatory Issues, “Findings Regarding the Market Events of May 6, 2010,” dated September 30, 2010, available at, <http://www.sec.gov/news/studies/2010/marketevents-report.pdf>).

large number of trades being executed at temporarily depressed prices, including many that were more than 60% away from the pre-decline prices. As part of the effort to address the events of May 6, 2010 and to restore investor confidence in the markets, the equity exchanges filed the Plan.

The Plan is designed to prevent trades in individual NMS Stocks from occurring outside of specified Price Bands, which are described in more detail in the Plan.⁷ In sum, the Price Bands consist of a Lower Price Band and an Upper Price Band for each NMS Stock and are calculated by the Processors.⁸ When the National Best Bid (Offer) is below (above) the Lower (Upper) Price Band, the Processors shall disseminate such National Best Bid (Offer) with an appropriate flag identifying it as unexecutable. When the National Best Bid (Offer) is equal to the Upper (Lower) Price Band, the Processors shall distribute such National Best Bid (Offer) with an appropriate flag identifying it as a Limit State Quotation.⁹

Trading in an NMS Stock immediately enters a Limit State if the National Best Offer (Bid) equals but does not cross the Lower (Upper) Price Band.¹⁰ Trading for an NMS Stock exits a Limit State if, within 15 seconds of entering the Limit State, all Limit State Quotations were executed or canceled in their entirety. If the market does not exit a Limit State within 15 seconds, then the Primary Listing Exchange would declare a five-minute trading pause pursuant to Section VII of the LULD Plan, which would be applicable to all markets trading the security. In addition, the Plan defines a Straddle State as when the National Best Bid (Offer) is below

⁷ Unless otherwise specified, capitalized terms used in this rule filing are based on the defined terms of the Plan.

⁸ See Section V(A) of the Plan.

⁹ See Section VI(A) of the Plan.

¹⁰ See Section VI(B)(1) of the Plan.

(above) the Lower (Upper) Price Band and the NMS Stock is not in a Limit State.¹¹ If an NMS Stock is in a Straddle State and trading in that stock deviates from normal trading characteristics, the Primary Listing Exchange may declare a trading pause for that NMS Stock if such Trading Pause would support the Plan's goal to address extraordinary market volatility.

The Plan was initially approved for a one-year pilot, which began on April 8, 2013, and would, if not amended, end on April 8, 2014.¹² As initially contemplated, the Plan would have been fully implemented across all NMS Stocks within six months of initial Plan operations, which meant there would have been full implementation of the Plan for six months before the end of the pilot period.¹³ The Plan, however, was amended several times since inception and, ultimately, was not implemented across all NMS Stocks until February 24, 2014.¹⁴ As a result, if the pilot period were to end in April 2014, there would be less than two months of full operation of the Plan. Because the goal of the pilot was to provide an opportunity to assess whether the Plan should be modified prior to approval on a permanent basis, the Participants recently filed the Seventh Amendment to the Plan to extend the pilot period of the Plan until February 20, 2015 (the "Seventh Amendment").¹⁵

Rule 953.1NY

Coincident with the Plan, the Exchange adopted Rule 953.1NY, which provided for how the Exchange would treat orders, market-making quoting obligations, and errors in options

¹¹ See Section VII(A)(2) of the Plan.

¹² See supra n.5. See also Section VIII of the Plan.

¹³ See Securities and Exchange Act Release No. 71649 (March 8, 2014), 79 FR 13696 (March 11, 2014) (File No. 4-631) (notice) (the "Seventh Amendment").

¹⁴ Id.

¹⁵ Id. The Seventh Amendment to the Plan also seeks to move the time by which Participants would be required to submit assessments of Plan operations, pursuant to Appendix B of the Plan, until September 30, 2014.

overlying NMS Stocks when the Plan is in effect.¹⁶ Subsections (a) to (b) Rule 953.1NY, which address the treatment of orders when the underlying NMS Stock is in a Limit State or Straddle State, and Market Maker quoting obligations, respectively, “shall be in effect during a pilot period to coincide with the pilot period for the Plan.”¹⁷ These provisions need not be amended and will align with the Plan upon approval of the Seventh Amendment to the Plan.

Subsection (c) to Rule 953.1NY, which addresses how the Exchange treats Obvious and Catastrophic Errors during periods of extreme market volatility, “shall be in effect for a one-year pilot period,” which began on April 8, 2013.¹⁸ The pilot period will expire on April 8, 2014. In order to align the pilot period for Rule 953.1NY(c) with the proposed Seventh Amendment to the Plan, the Exchange proposes to extend the pilot period for subsection (c) to Rule 953.1NY until February 20, 2015. The Exchange believes that extending the pilot period for Rule 953.1NY(c) would allow the Exchange additional time to collect and evaluate data related to this provision now that the Plan has been fully implemented.

When the Exchange initially adopted subsection (c), the Exchange committed to review the operation of this provision and to analyze the impact of Limit and Straddle States

¹⁶ See Approval Order.

¹⁷ Subsection (a) to Rule 953.1NY provides that if the underlying NMS Stock is in a Limit State or Straddle State, the Exchange shall reject all incoming Market Orders and will not elect Stop Orders. Subsection (b) to Rule 953.1NY provides that when evaluating whether a Specialist has met its market-making quoting requirement pursuant to Rule 925.1NY(b) or a Market Maker has met its market-making quoting requirement pursuant to Rule 925.1NY(c) in options overlying NMS Stocks, the Exchange shall consider as a mitigating circumstance the frequency and duration of occurrences when an underlying NMS Stock is in a Limit State or a Straddle State.

¹⁸ Subsection (c) to Rule 953.1NY provides that electronic transactions in options that overlay an NMS Stock that occur during a Limit State or a Straddle State are not subject to review under Rule 975MY(a) for Obvious Errors or Rule 975NY(d) for Catastrophic Errors. Nothing in Rule 953.1NY(c) prevents electronic transactions in options that overlay an NMS Stock that occur during a Limit State or a Straddle State from being reviewed on Exchange motion pursuant to 975NY(b)(3).

accordingly.¹⁹ In addition, at least two months prior to the end of the pilot – i.e., prior to February 2014 – the Exchange agreed to provide the Commission with certain data requested to evaluate the impact of the elimination of the Obvious Error rule under these circumstances.²⁰ As noted above, however, the Plan was not fully implemented until February 24, 2014.

Thus, in connection with the proposed amendment, the Exchange proposes to revise the data that the Exchange will gather in order to address the Commission’s concern about whether market quality and liquidity for options is maintained despite these changes to the Obvious Error rules. In addition, the Exchange proposes to revise the date by which certain assessments will be provided to the Commission.

First, in lieu of the dataset described in the Exchange’s Comment Letter,²¹ the Exchange shall provide to the Commission and the public a revised dataset containing the data for each Straddle State and Limit State in NMS Stocks underlying options traded on the Exchange beginning in April 2013, limited to those option classes that have at least one (1) trade on the Exchange during a Straddle State or Limit State. For each of those option classes affected, each data record will contain the following information:

- Stock symbol, option symbol, time at the start of the Straddle or Limit State, an indicator for whether it is a Straddle or Limit State.
- For activity on the Exchange:

¹⁹ Specifically, the Exchange committed to: “(1) Evaluate the options market quality during Limit States and Straddle States; (2) assess the character of incoming order flow and transactions during Limit States and Straddle States; and (3) review any complaints from members and their customers concerning executions during Limit States and Straddle States.” See Approval Order, 78 FR at 22015.

²⁰ See Letter to Elizabeth M. Murphy, Secretary, Commission, from Janet L. McGinness, Executive Vice President and Corporate Secretary, General Counsel, NYSE Markets, dated April 5, 2013 (“Comment Letter”).

²¹ Id.

- executed volume, time-weighted quoted bid-ask spread, time-weighted average quoted depth at the bid, time-weighted average quoted depth at the offer;
- high execution price, low execution price;
- number of trades for which a request for review for error was received during Straddle and Limit States;
- an indicator variable for whether those options outlined above have a price change exceeding 30% during the underlying stock's Limit or Straddle state compared to the last available option price as reported by OPRA before the start of the Limit or Straddle State (1 if observe 30% and 0 otherwise). Another indicator variable for whether the option price within five minutes of the underlying stock leaving the Limit or Straddle state (or halt if applicable) is 30% away from the price before the start of the Limit or Straddle state.

The Exchange notes that it will update the data available on the Exchange's website for the period April 2013 through January 2014 with the revised dataset once the Exchange has completed its analysis and review of such data. Prospectively, the data made available to the public will be based on the proposed revised dataset described above.

In addition, by September 30, 2014, the Exchange shall provide to the Commission assessments relating to the impact of the operation of the Obvious Error rules during Limit and Straddle States as follows: (1) Evaluate the statistical and economic impact of Limit and Straddle States on liquidity and market quality in the options markets; and (2) Assess whether the lack of Obvious Error rules in effect during the Straddle and Limit States are problematic. The timing of

this submission would coordinate with Participants' proposed time frame to submit to the Commission assessments as required under Appendix B of the Plan, per the Seventh Amendment to the Plan.²²

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act²³ in general, and furthers the objectives of Section 6(b)(5),²⁴ 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.

Specifically, the proposal to extend the pilot program of Rule 953.1NY(c) until February 20, 2015, which will align that pilot program with the Pilot Period for the Plan, as proposed in the Seventh Amendment to the Plan, will ensure that trading in options that overlay NMS Stocks continues to be appropriately modified to reflect market conditions that occur during a Limit State or a Straddle State in a manner that promotes just and equitable principles of trade and removes impediments to, and perfects the mechanism of, a free and open market and a national market system. The Exchange believes that the extension of Rule 953.1NY(c) will help encourage market participants to continue to provide liquidity during extraordinary market volatility.

Moreover, the Exchange believes that revising the dataset that it provides to the Commission and the public would remove impediments to, and perfect the mechanisms of, a free and open market because the revised dataset will provide more information from which to assess

²² See supra n. 15.

²³ 15 U.S.C. 78f(b).

²⁴ 15 U.S.C. 78f(b)(5).

the impact of Rule 953.1NY(c). In addition, the Exchange believes that extending the time for the Exchange to provide its overall assessment of the Rule 953.1NY(c) pilot to September 30, 2014 is appropriate and in the public interest, for the protection of investors, and the maintenance of a fair and orderly market because it will align the timing of such assessments with the time that the Participants have proposed to provide the Commission with assessments pursuant to Appendix B of the Plan.

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 changes will not impose any burden on competition and will instead provide certainty regarding the treatment and execution of options orders, specifically the treatment of Obvious and Catastrophic Errors during periods of extraordinary volatility in the underlying NMS Stock, and will facilitate appropriate liquidity during a Limit State or Straddle State.

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 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 Act²⁵ and Rule 19b-4(f)(6)(iii) thereunder.²⁶

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange stated that waiver of this requirement will allow the Exchange to extend the pilot program prior to its expiration on April 8, 2014. The Exchange also stated that waiver of this requirement would ensure the pilot program would align with the pilot period for the Plan and would ensure that trading in options that overlay NMS Stocks continues to be appropriately modified to reflect market conditions that occur during a Limit State or a Straddle State. For these reasons, the Commission believes that the proposed rule change presents no novel issues and that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposed rule change to be operative upon filing.²⁷

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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

²⁵ 15 U.S.C. 78s(b)(3)(A).

²⁶ 17 CFR 240.19b-4(f)(6)(iii). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of 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.

²⁷ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2014-31 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-NYSEMKT-2014-31. 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-2014-31 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.²⁸

Kevin M. O'Neill
Deputy Secretary

²⁸ 17 CFR 200.30-3(a)(12).