

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-72389; File No. SR-NYSEMKT-2014-51)

June 13, 2014

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 971.1NY(c)(4)(D) to Add Specificity Regarding When a Customer Best Execution Auction Would Conclude Early

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 4, 2014, NYSE MKT LLC (the “Exchange” or “NYSE MKT”) filed with the Securities and Exchange Commission (“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 971.1NY(c)(4)(D) to add specificity regarding when a Customer Best Execution (“CUBE”) Auction would conclude early. The text of the proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and the 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

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

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

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 971.1NY(c)(4)(D) to add specificity regarding when a CUBE Auction would conclude early. The Exchange recently received approval for new Rule 971.1NY, which sets forth an electronic crossing mechanism with a price improvement auction on the Exchange to be referred to as the Auction or CUBE Auction, which stands for Customer Best Execution.<sup>3</sup> The Exchange has not yet implemented the CUBE Auction mechanism.

Background

Rule 971.1NY provides for an electronic price improvement auction for single-leg options orders. The CUBE Auction is designed to work seamlessly with the Exchange’s Consolidated Book, which is the Exchange’s single electronic order book where all quotes and limit orders sent to the Exchange are placed and reside as a file on the NYSE Amex System (“System”). As specified in Rule 971.1NY(a), using the CUBE Auction, an ATP Holder can guarantee the execution of a limit order it represents as agent on behalf of a public customer, broker-dealer, or any other entity (“CUBE Order”). The ATP Holder that submits the CUBE Order (“Initiating Participant”) agrees to guarantee the execution of the CUBE Order at a specified price by submitting a contra-side order (“Contra Order”) that represents principal interest or interest it has solicited to trade with the CUBE Order. An Auction begins with an

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<sup>3</sup> See Securities Exchange Act Release No. 34-72025 (April 25, 2014), 79 FR 24779 (May 1, 2014) (SR-NYSEMKT-2014-17) (Approval Order).

“initiating price,” which for a CUBE Order to buy (sell) is the lower (higher) of the CUBE Order’s limit price or the National Best Offer (“NBO”) (National Best Bid (“NBB”)).<sup>4</sup> Although there is a specified period for the Auction, the time at which the Auction is initiated is considered the time of execution for the CUBE Order and the execution of orders in the Auction qualify as exceptions to Trade-Through Liability, pursuant to Rule 991NY(b)(5) and (9).<sup>5</sup>

Rule 971.1NY(b)(1) sets forth the ranges of permissible execution for a CUBE Auction. Unless otherwise specified, the references to National Best Bid or Offer (“NBBO”) and Exchange Best Bid or Offer (“BBO”) in the rule refer to the NBBO and BBO at the time the Auction was initiated.<sup>6</sup> Specifically, Rule 971.1NY(b)(1) provides that a CUBE Order to buy (sell) would generally have a range of permissible executions with an upper (lower) bound equal to the initiating price and the lower (upper) bound equal to the NBB (NBO). However, pursuant to paragraphs (b)(1)(A) and (b)(1)(B) of Rule 971.1NY, there is a tighter range of permissible executions for when there is Customer interest in the BBO on the same-side as the CUBE Order of 50 contracts or more or for when the CUBE Order is for fewer than 50 contracts. In addition, Rule 971.1NY(b)(1)(C) separately provides that if the BBO on the same side as the CUBE Order updates during the Auction, the range of permissible executions will adjust in accordance with the updated BBO, unless the Auction concludes early pursuant to paragraph (c)(4)(D) of the Rule.

Rule 971.1NY(c)(4) specifies scenarios when a CUBE Auction would conclude early. The purpose of these provisions is to enable the CUBE Auction to integrate seamlessly within

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<sup>4</sup> See Rule 971.1NY(a). Pursuant to Rule 971.1NY(b)(1)(B), the initiating price for a CUBE Order to buy (sell) must be lower (higher) than the NBO (NBB) by at least one penny if the CUBE Order is for less than 50 contracts.

<sup>5</sup> See Rule 971.1NY(b).

<sup>6</sup> See Rule 971.1NY(b).

the Exchange's Consolidated Book. Accordingly, a CUBE Auction will conclude early as a result of certain events that would otherwise disrupt the priority of the Auction within the Consolidated Book. Early conclusion allows the System to appropriately handle unrelated orders without the CUBE Auction impacting that handling, and further allows the CUBE Order, which has been guaranteed an execution, to execute against the Contra Order and any RFR Responses that may have been entered up to that point.

Rule 971.1NY(c)(4)(D) specifies that the CUBE Auction will conclude early if same-side incoming interest improves the initiating price. For example, if both the NBBO and BBO (with no customer interest) at the time a CUBE Auction initiates is \$1.00 – \$1.10, and the initiating price for a CUBE Order to buy 60 contracts is \$1.04, the permissible range of executions for that Auction is \$1.00 - \$1.04. If the Exchange receives an unrelated order to buy priced at \$1.05, because that order would set a new BB that is priced higher than the initiating price of \$1.04, pursuant to Rule 971.1NY(b)(1)(C), the new lower bound of the range of permissible executions would be adjusted to \$1.05, which does not allow for any execution opportunity because an execution of the CUBE Order to buy would trade through the new BB. Because this would prevent proper conclusion of the auction and price improvement for the CUBE Order, pursuant to Rule 971.1NY(c)(4)(D), the Auction is instead subject to an early conclusion event, in order both to allow the CUBE order to receive its guaranteed execution and to allow the Book to update its BB. The rationale for this early conclusion scenario therefore ties back to Rule 971.1NY(b)(1)(C), which provides that the permissible range of executions of a CUBE Auction adjusts if the BBO on the same side of the CUBE Order updates during the Auction.

### Proposed Amendment

The Exchange proposes to amend Rule 971.1NY(c)(4)(D) to add additional specificity regarding when a CUBE Auction would conclude early. The proposed revisions are intended to add transparency regarding when the arrival of interest on the same side as the CUBE Order that would require an updated BBO during an Auction would require the Auction to conclude early. Specifically, the arrival of same-side interest that is priced the same as the initiating price may, in certain circumstances, similarly require an early conclusion to a CUBE Auction.

Assuming the same facts as above, if there is new same-side interest priced at \$1.04 entered during the Auction on behalf of a Customer, pursuant to Rule 971.1NY(b)(1)(C), such interest would need to update the BB and would adjust the lower bound of the range of permissible executions for the Auction to \$1.05.<sup>7</sup> This adjusted lower bound for the range of permissible executions would also not allow for any execution opportunity because it would be higher than the initiating price, and therefore the CUBE Order would not be able to execute. Therefore, just as in the case described above, the Exchange proposes that the CUBE Auction instead conclude early, before the BBO is updated. An early conclusion would allow the CUBE Order to receive its guaranteed execution and to allow the Book to update its BB.

Similarly, assuming the same facts as above, but the CUBE Order to buy is for 40 contracts, if there is new same-side interest priced at \$1.04 entered during the Auction, pursuant to Rule 971.1NY(b)(1)(C), such interest would need to update the BB and would again adjust the

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<sup>7</sup> See Rule 971.1NY(b)(1)(A) (lower (upper) bound of the range of permissible executions for a CUBE Order to buy (sell) when there is customer interest on the BB (BO) is the BB (BO) plus (minus) one cent).

lower bound of the range of permissible executions to \$1.05.<sup>8</sup> As above, this adjusted lower bound for the range of permissible executions would not allow for any execution opportunity because it would similarly be higher than the initiating price, and therefore the CUBE Order would not be able to execute. Therefore, again for the same reasons as above, the Exchange proposes that the CUBE Auction conclude early, before the BBO is updated. An early conclusion would similarly allow the CUBE Order to receive its guaranteed execution and allow the Book to update its BB.

The Exchange proposes to amend Rule 971.1NY(c)(4)(D) to provide for these early conclusion events. First, the Exchange proposes to amend the subsection title, which currently states “Same Side New BBO Improves initiating price,” to instead provide “Same Side Incoming Interest Would Create an Adjusted Range of Permissible Executions that Improves initiating price.” The Exchange believes that the additional text makes clear that this provision concerns any circumstance when the range of permissible executions would need to be adjusted, consistent with Rule 971.1NY(b)(1)(C), because of incoming same-side interest such that the CUBE Auction must conclude early to allow for the CUBE Order to receive is [sic] guaranteed execution before the Book updates its BBO.

Next, the Exchange proposes to amend the body of the subsection. The rule text currently specifies a single event that would result in an early conclusion, i.e., when the Exchange receives during the Response Time Interval an unrelated, non-marketable quote or limit order that is on the same side of the market as the CUBE Order to buy (sell) and that is priced higher (lower) than the initiating price and therefore creates a new BB (BO). As noted above, an early

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<sup>8</sup> See Rule 971.1NY(b)(1)(B) (lower (upper) bound of the range of permissible executions for a CUBE Order to buy (sell) for fewer than 50 contracts is the BB (BO) plus (minus) one cent).

conclusion must occur any time the Exchange receives during an Auction same-side interest that is priced such that it would require the lower (upper) bound of the range of permissible executions to be adjusted to be higher (lower) than the initiating price, which includes both the scenario currently specified in Rule 971.1NY(c)(4)(D) as well as the additional scenarios described above.

Accordingly, the Exchange proposes to amend Rule 971.1NY(c)(4)(D) to provide more generally that a CUBE Auction will conclude early any time same-side interest arrives during an Auction that would adjust the lower (upper) bound of the range of permissible executions higher (lower) than the initiating price. The Exchange believes that the proposed amended text captures both the existing specified scenario in Rule 971.1NY(c)(4)(D), as well as the additional scenarios described above. The proposed new text would read as follows (new text italicized, deletions bracketed):

(D) Same Side [New BBO] Incoming Interest Would Create an Adjusted Range of Permissible Executions that Improves initiating price. A CUBE Auction will conclude early if the Exchange receives during the Response Time Interval an unrelated, non-marketable quote or limit order that is on the same side of the market as the CUBE Order to buy (sell) and that would adjust the lower (upper) bound of the range of permissible executions to be higher (lower) than the initiating price. [is priced higher (lower) than the initiating price and therefore creates a new BB (BO) that is higher (lower) than the initiating price.] When the Auction concludes, the CUBE Order will execute pursuant to paragraph (c)(5) of this Rule. Unfilled GTX Orders are eligible to execute against the unrelated interest that caused the CUBE Auction to conclude early and then will cancel.

Contracts remaining, if any, from such unrelated quote or order at the time the Auction ends will be processed in accordance with Rule 964NY Order Display and Priority.

The Exchange further proposes to amend Rule 971.1NY(b)(1)(C) to clarify that the early conclusion events identified in Rule 971.1NY(c)(4)(D) would occur before the same-side BBO is updated. Currently, Rule 971.1NY(b)(1)(C) provides that if the BBO on the same side as the CUBE Order updates during the Auction, the range of permissible executions adjusts in accordance with the updated BBO, unless the Auction concludes early pursuant to Rule 971.1NY(c)(4)(D). The Exchange proposes to revise the second clause of the sentence to instead provide: “unless the incoming same-side interest that would update the BBO would cause the Auction to conclude early pursuant to paragraph (c)(4)(D) of this Rule.” The Exchange believes that the revised text, read together with amended Rule 971.1NY(c)(4)(D), makes clear that the arrival of certain same-side interest may cause an Auction to end early, before the BBO is updated.

The Exchange believes that the proposed rule change is consistent with the manner that the Auction operates, as specified in Rule 971.1NY(b)(1)(C), and will provide transparency in the rule regarding the circumstances when the CUBE Auction should conclude early in order to allow the CUBE Order to receive its guaranteed execution without interfering with the priority of orders on the Book when the same-side BBO is updated.

The Exchange further notes that it intends to issue guidance advising ATP Holders that Contra Orders for the account of a Customer may not be entered into a CUBE Auction. This guidance is consistent with how other markets operate electronic auction mechanisms.<sup>9</sup>

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<sup>9</sup> See NASDAQ OMX PHLX Frequently Asked Questions regarding PIXL, which provides that its auction mechanism will not accept customer orders as the guaranteeing



## Implementation

When the Exchange filed to adopt Rule 971.1NY, it stated that it would announce the implementation date of the proposed rule change in a Trader Update to be published no later than 60 days following Commission approval. The Exchange further provided that the implementation date would be no later than 60 days following publication of the Trader Update announcing Commission approval.

Because the Exchange will not implement Rule 971.1NY until this rule change is effective, the Exchange proposes to revise this implementation schedule to provide that it will announce the implementation date of Rule 971.1NY, as amended by this rule proposal, in a Trader Update to be published no later than 30 days following the effective date of this rule change. The Exchange further proposes that the implementation date will be no later than 30 days following publication of the Trader Update announcing Commission approval. The Exchange believes that this implementation schedule would provide ATP Holders with adequate notice of the Auction and would allow ample time for ATP Holders to prepare their systems for participation in the Auction process, if such participation is desired. The Exchange notes that this proposed rule change would not require ATP Holders to make any changes to their systems.

## 2. Statutory Basis

For the reasons set forth above, the Exchange believes the proposed rule change is consistent with Section 6(b) of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act, in that it is designed to promote just and equitable principles of trade, remove

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order, available at: <http://www.nasdaqtrader.com/content/phlx/PIXLfaqs.pdf>; and Chicago Board Options Exchange, Inc. guidance on its Automated Improvement Mechanism (“AIM”), which provides that customer crosses do not participate in the AIM auction mechanism, available at: <https://www.cboe.org/hybrid/aim.aspx>.

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.

In particular, the Exchange believes that the proposal would remove impediments to and perfect the mechanisms of a free and open market and a national market system because it would provide transparency in Exchange rules of when a CUBE Auction would conclude early. As noted above, the rationale for an early conclusion to an Auction is to allow the System to appropriately handle unrelated orders without the CUBE Auction impacting that handling, and further allow a CUBE Order, which has been guaranteed an execution, to execute against the Contra Order and any RFR Responses that may have been entered up to that point. The Exchange believes that concluding the Auction early as proposed is consistent with current Rule 971.1NY(b)(1)(C), which requires the Exchange to adjust the range of permissible executions if the same-side BBO as the CUBE Order updates during an Auction. As already provided for in Rule 971.1NY(c)(4)(D), an Auction concludes early if the same-side interest would update the BBO to a price better than the initiating price, which would have required adjusting the lower (upper) bound of the range of permissible executions to be higher (lower) than the initiating price to buy (sell). The Exchange believes the same rationale applies in any circumstance when the Exchange receives during the Auction same-side interest that would update the BBO in such a manner as to require the lower (upper) bound of the range of permissible executions to be adjusted to be higher (lower) than the initiating price to buy (sell). The Exchange believes that the proposed change is therefore consistent with the protection of investors and the public interest because it will provide specificity in Exchange rules when an Auction concludes early, thereby allowing both the CUBE Order to receive its guaranteed execution and the Book to update the BBO.

The Exchange further believes that the proposed revised implementation schedule would remove impediments to and perfect the mechanism of a free and open market and a national market system because it will enable the Exchange to delay implementation of the CUBE Auction until after this proposed rule change is effective, while also providing time to give notice to ATP Holders of the implementation date.

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 rule proposal is not intended to address any competitive issues. Rather, the Exchange is proposing to add more specificity of circumstances when an Auction would conclude early, in a manner consistent with existing rule text. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues who offer similar functionality. The Exchange believes the proposed rule change is pro-competitive because it would enable the Exchange to provide market participants with functionality that is similar to that of other options exchanges. The Exchange notes that not having the CUBE Auction at the Exchange places the Exchange at a competitive disadvantage vis-à-vis other exchanges that offer similar price improvement mechanisms.

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>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup> Because the proposed rule change does not: (i)

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

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. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>12</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 No. SR-NYSEMKT-2014-51 on the subject line.

##### Paper comments:

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<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> 15 U.S.C. 78s(b)(2)(B).

- 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-2014-51. 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 such filing also will be available for inspection and copying at the principal offices 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-2014-51, and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).