

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-73910; File No. SR-NYSEMKT-2014-102)

December 22, 2014

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Exchange Rules Regarding Trade Nullification and Price Adjustment

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 10, 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend exchange rules regarding trade nullification and price adjustment. 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

¹ 15 U.S.C. 78s(b)(1).

² 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to add Rule 966NY, “Trade Nullification and Price Adjustment Procedure.”³ As proposed, Rule 966NY would allow for transactions to be nullified if both parties to the transaction agree to the nullification and allow the price of executions to be adjusted if the price adjustment is agreed to by both parties to the transaction and authorized by the Exchange.⁴ The Exchange is also proposing to make other conforming administrative changes to streamline the rules governing this subject with the Exchange’s rules.

Background

Currently, pursuant to Commentary .02 of Rule 965NY, the Exchange allows for parties to agree to nullify an execution. Commentary .02 of Rule 965NY also states that once both parties agree to the trade nullification, one party must “promptly notify the Exchange for dissemination of cancellation information to the Options Price Reporting Authority.” In addition, the Exchange currently allows for a mutual price adjustment for trades that meet the obvious error (or catastrophic error) requirements pursuant to Exchange Rule 975NY if those mutual agreements are done within specific timeframes.⁵ The Exchange is now proposing to

³ The Exchange notes that there are efforts by the exchanges to create a uniform trade nullification and adjustment rule. Should the uniform rule be approved and effective, the Exchange will amend its rules appropriately.

⁴ The Exchange notes that, as proposed, Rule 966NY would only apply to trades that were executed on the Exchange and, as such, any orders that were either fully or partially routed to, or executed, on another exchange would not be subject to the proposed Rule 966NY.

⁵ See Rule 975NY(a)(3) and (7) and 975NY(d)(3).

relocate the aforementioned trade nullification language and add a provision to allow parties to mutually adjust prices of executions outside of those done in obvious error. The Exchange's proposal is based upon similar rules of the Chicago Board Options Exchange ("CBOE") and Miami International Securities Exchange, LLC ("MIAX").⁶

Proposed Rule 966NY

The Exchange is proposing to add Rule 966NY, "Trade Nullification and Price Adjustment Procedure," which would: (a) allow for any trades on the Exchange to be nullified if both parties to the trade agree to such nullification, and (b) allow for prices of executions to be adjusted if the price adjustment is agreed upon by both parties to the trade and authorized by the Exchange.⁷

As stated above, the Exchange currently allows for trades to be nullified based upon mutual agreement.⁸ With the proposed addition of Rule 966NY, the Exchange is only renumbering and relocating this provision and is not proposing a substantive change to the rule itself. The Exchange believes that having the provision as a standalone rule would make it easier for ATP Holders to locate. In addition, the Exchange believes this administrative change would streamline the provisions surrounding this notion to put in one place.

The Exchange is also proposing to add a provision allowing ATP Holders to mutually agree to adjust a price of an execution. The Exchange believes this provision is necessary given the benefits of adjusting a trade price rather than nullifying the trade completely. Because

⁶ See CBOE Rule 6.19 and Securities Exchange Act Release No. 72970 (September 3, 2014), 79 FR 53498 (September 9, 2014) (SR-CBOE-2014-066) and MIAX Rule 531 and Release No. 73463 (October 29, 2014), 79 FR 65445 (November 4, 2014) (SR-MIAX-2014-54).

⁷ See note 5 *supra*.

⁸ See Commentary .02 of Rule 965NY.

options trades are used to hedge transactions in other markets, including securities and futures, many ATP Holders, and their customers, would rather adjust prices of executions rather than nullify the transactions and, thus, lose a hedge altogether. As such, the Exchange believes it is in the best interest of investors to allow for price adjustments as well as nullifications. In addition, the Exchange believes it is in the nature of a fair and orderly market to allow for price adjustments rather than only cancellations because an adjustment would result in the least amount of disruption to the overall market. The Exchange also notes that current Exchange rules allow for prices of trades to be adjusted at the consent of both parties if such transactions are within the current obvious error and catastrophic error provisions.⁹ The Exchange is now proposing to merely allow this practice for any trade.

As proposed, Rule 966NY expressly states that trades may be subject to nullification or price adjustment only if such trades are authorized by the Exchange. The Exchange notes that this process is very similar to the process ATP Holders follow today for trade nullification based upon mutual consent. As described in more detail above, Commentary .02 of current Rule 965NY allows two parties to agree to a trade nullification and “notify the Exchange for dissemination of cancellation information to the Options Price Reporting Authority.” The Exchange is only slightly changing this procedure by expressly requiring Exchange authorization prior to the effectuation of such nullification or mutual price adjustment. The Exchange would

⁹ The Exchange notes that no changes are being proposed to the procedures for nullification or adjustment of a trade by mutual agreement in the Exchanges’ obvious error and catastrophic error rules. See note 5 supra. With the effectiveness of proposed Rule 966NY, ATP Holders would have two options to choose from in order to have their trades nullified or adjusted by mutual agreement: (i) request under the procedures of Rule 975NY (including the timeframes); or (ii) request under the procedures of Proposed Rule 966NY which requires the authorization of the Exchange prior to the nullification or adjustment. The Exchange believes both provisions are complimentary [sic] in that they provide protections in different situations under procedures that are correspondingly appropriate based on the situation in which a nullification or an adjustment is requested.

only authorize a proposed nullification or adjustment if the Exchange received verification from both parties to the trade that a mutual agreement has been made.¹⁰ In addition, prior to an authorization for a mutual price adjustment, the Exchange would ensure the agreed upon price would have been permissible and in compliance with any applicable rules of the Exchange and Securities and Exchange Commission, as amended, at the time the original transaction was executed.¹¹ Finally, the proposed rule would state that the format and information required by the Exchange for this submission would be released by the Exchange via Trader Update. As such, prior to Rule 966NY becoming operative, the Exchange would provide ATP Holders with specific requirements via an Exchange-issued Trader Update. The Trader Update would, among other things, state specific timeframes required for requests and the format in which the requests would be accepted by the Exchange.

Administrative Changes

Finally, the Exchange is proposing to make administrative conforming changes to ensure Exchange rules on the subject are consistent. More specifically, the Exchange is proposing to delete Commentary .02 of Rule 965NY. The Exchange believes that deleting current Commentary .02 to Exchange Rule 965NY would avoid any confusion with the proposed Rule 966NY.

Conclusion

To conclude, the Exchange believes that the proposed changes are in furtherance of the Act because the proposed Rule 966NY will allow ATP Holders to agree to nullify transactions or

¹⁰ Upon authorization, the Exchange will continue to report any price adjustment or trade nullification to the Options Price Reporting Authority.

¹¹ Specifically, the Exchange would ensure that the mutually-agreed upon price would not have traded through resting interest on the Exchange or would have been in violation of Rule 991NY at the time of the initial execution.

adjust prices of transactions to maintain a fair and orderly market. As stated above, the Exchange intends to release a Trade [sic] Update to announce the implementation of the Rule and other specifics surrounding the procedures of the implementation. In addition, prior to implementation, the Exchange will ensure it has proper policies and procedures in place to correctly administer the Rule.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)¹² of the Act, in general, and furthers the objectives of Section 6(b)(5),¹³ in particular, in that 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 regulating, clearing, settling, processing information with respect to, and 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

More specifically, the Exchange believes that the proposed changes are consistent with the Act as they are designed to promote just and equitable principles and protect investors and the public interest. In particular, the Exchange believes the proposed change to move the provision authorizing parties to mutually agree to nullify a trade to a separate, stand-alone rule protects investors by eliminating confusion and making the provision more clear. Because options trades are used to hedge transactions in other markets, including securities and futures,

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

many market participants would rather adjust prices of executions rather than nullify the transactions and, thus, lose a hedge altogether. As such, the Exchange believes it is in the best interest of investors to allow for price adjustments as well as nullifications. In addition, the Exchange believes it is in the nature of a fair and orderly market to allow for price adjustments rather than only cancellations because an adjustment would result in the least amount of disruption to the overall market. Further, the Exchange believes that, harmonizing its nullification and adjustment rules with other options markets would promote just and equitable principles of trade by better allowing the market participants to be treated similarly across exchanges. The Exchange also believes that the other administrative changes would remove impediments to and perfect the mechanism of a fair and orderly market as they are merely trying to create more transparency in the Exchange's rules. Finally, the Exchange does not believe that the proposed changes are unfairly discriminatory because they will be applied to all ATP Holders equally.

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 not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any aspect of competition, whether between the Exchange and its competitors, or among market participants. Instead, the proposed rule change is designed to adopt the nullification and adjustment of trades on similar terms to that of other options exchanges.¹⁴

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.

¹⁴ See note 7 supra.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing 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, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁵ and Rule 19b-4(f)(6) thereunder.¹⁶

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.

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-2014-102 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.

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f)(6).

All submissions should refer to File Number SR-NYSEMKT-2014-102. 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, D.C. 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 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-2014-102, 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.¹⁷

Brent J. Fields
Secretary

¹⁷ 17 CFR 200.30-3(a)(12).