

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-77435; File No. SR-NYSEMKT-2016-41)

March 23, 2016

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Rule 964.2NY Regarding the Participation Entitlement Formula for Specialists and e-Specialists

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on March 21, 2016, 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 Rule 964.2NY regarding the participation entitlement formula for Specialists and e-Specialists. 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 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

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 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 is proposing changes to Rule 964.2NY regarding the participation entitlement formula for Specialists and e-Specialists as described below.<sup>4</sup>

Rule 964NY sets forth the priority for the allocation of incoming orders to resting interest at a particular price in the System,<sup>5</sup> which includes the allocation to the Specialist Pool.<sup>6</sup> Rule 964.2NY sets forth the participant entitlement formula applicable to the Specialist Pool and provides that, on a quarterly basis, the Exchange will determine a Primary Specialist in each option class.

To select the Primary Specialist, the Exchange objectively evaluates the relative quote performance of each Specialist and e-Specialist focusing on one or more of the following optional factors: time and size at the NBBO, average quote width, average quote size, and the

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<sup>4</sup> A Specialist is “an individual or entity that has been deemed qualified by the Exchange for the purpose of making transactions on the Exchange in accordance with the provisions of Rule 920NY [Market Makers], and who meets the qualification requirements of Rule 927NY(b) [Specialists]. Each Specialist must be registered with the Exchange as a Market Maker. Any ATP Holder registered as a Market Maker with the Exchange is eligible to be qualified as a Specialist. See Rule 900.2NY(76). Rule 923NY(b) also provides that “[t]he Exchange may designate e-Specialists in an option class in accordance with Rule 927.4NY[e-Specialists].” Id.

<sup>5</sup> The term “System” refers to the Exchange’s electronic order delivery, execution and reporting system through which orders and quotes for listed options are consolidated for execution and/or display. See Rule 900.2NY(48) (defining “Exchange System” or “System”).

<sup>6</sup> The Specialist Pool refers to the aggregated size of the best bid and best offer, in a given series, amongst the Specialist and e-Specialists that match in price. See Rule 900.2NY(75).

relative share of electronic volume in a given class of options (the Primary Specialist Criteria”).<sup>7</sup> Per current Rule 964.2NY(a), the Exchange will publish the Primary Specialist Criteria, including the relative weighting of each factor, by Regulatory Bulletin at least 5 business days prior to an evaluation period. The Exchange adopted the quarterly contest for Primary Specialist in 2012 to enhance quote competition among the Specialist Pool participants.<sup>8</sup>

The Exchange proposes to modify the Primary Specialist Criteria to include the electronic volumes from resting quotes and orders in the Consolidated Book<sup>9</sup> for each Specialist and e-Specialist. While the current Primary Specialist Criteria includes “electronic volume,” this can be composed of liquidity-taking volume. The Exchange believes the new criterion would enable the Exchange to better account for the liquidity-making volume of each Specialist and e-Specialist. The Exchange believes this proposal also provides the Exchange the ability to reward Specialists and e-Specialists that contribute significant volumes through market making activity. The Exchange believes that having the ability to reward such participants would incentivize Specialist Pool Participants to increase their posted volume on the Exchange, which benefits other market participants through the improvement of the price and size of the displayed market.

The Exchange also proposes at this time to make a procedural change for announcements regarding the Primary Specialist Criteria and any additional weighting to the Primary Specialist

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<sup>7</sup> See Rule 964.2NY(a). The Primary Specialist’s size pro-rata participation in the Specialist Pool also receives additional weighting amongst Specialist Pool participants, which is determined by the Exchange and announced via Regulatory Bulletin. See Rule 964.2NY(b)(3)(A).

<sup>8</sup> See Securities Exchange Release No. 34-67421 (July 12, 2012), 77 FR 42349 (July 18, 2012) (SR-NYSEAmex-2012-31) (approval order).

<sup>9</sup> The Consolidated Book is “the Exchange’s electronic book of limit orders for the accounts of Customers and broker-dealers, and Quotes with Size. All orders and Quotes with Size that are entered into the Book will be ranked and maintained in accordance with the rules of priority as provided in Rule 964NY.” See Rule 900.2NY(14).

amongst the Specialist Pool. Presently the Exchange issues Regulatory Bulletins when making such announcements. Going forward, the Exchange proposes to issue a Trader Update in lieu of a Regulatory Bulletin. Regulatory Bulletins generally contain information regarding legal and regulatory matters while Trader Updates deal with issues such as trading, systems changes and real-time market announcements. The Exchange believes that it is more appropriate to make announcements regarding the Primary Specialist via Trader Update. Trader Updates, like Regulatory Bulletins, are electronically distributed to ATP Holders and posted on the Exchange’s website. Accordingly, the Exchange proposes to amend current Rule 964.2NY(a) and (b)(3)(A) by replacing reference to “Regulatory Bulletin” with “Trader Update.” Thus, for example, the Exchange will publish the Primary Specialist Criteria, including the relative weighting of each factor, by Trader Update at least 5 business days prior to an evaluation period.<sup>10</sup>

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)<sup>11</sup> of the Securities Exchange Act of 1934 (the “Act”), in general, and furthers the objectives of Section 6(b)(5),<sup>12</sup> in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

As noted by the Exchange, the proposed rule change would promote just and equitable principles of trade as it is intended to enhance quote competition among the Specialist Pool

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<sup>10</sup> See proposed Rule 964.2NY(a).

<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

participants by enabling the Exchange to include liquidity-making electronic volume among the objective factors considered in the Primary Specialist Criteria. The Exchange believes this proposal also provides the Exchange the ability to reward Specialists and e-Specialists who contribute significant volumes through market making activity. The Exchange believes that having the ability to reward such participants would incentivize Specialist Pool Participants to increase their posted volume on the Exchange, which benefits other market participants through the improvement of the price and size of the displayed market. The proposal would remove impediments to and perfect the mechanism of a free and open market and a national market system because enhanced quote competition should lead to narrower spreads and more liquid markets, which should attract more order flow to the Exchange, thereby benefiting investors.

Finally, the replacement of references to Regulatory Bulletin with references to Trader Updates , would foster cooperation and coordination with persons engaged in facilitating transactions in securities as Trader Updates deal with issues such as trading, systems changes and real-time market announcements and are electronically distributed to ATP Holders and posted on the Exchange's website.

**B. Self-Regulatory Organization's Statement on Burden on Competition**

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is designed to enhance quote competition among Specialist Pool participants and would not have any adverse impact on quote competition within the Exchange. In addition, the proposal permits the Exchange to consider an additional objective factor in determining the Primary Specialist. Should the Exchange decide to use such a factor, it would announce the modified Primary Specialist Criteria in advance of the evaluation period. As is the case today,

Specialists Pool participants would have ample notice of the modified Primary Specialist Criteria and could opt to modify their market making activities to better compete for the Primary Specialist designation.

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 Act<sup>13</sup> and Rule 19b-4(f)(6) thereunder.<sup>14</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>15</sup> normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>16</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The

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<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and 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. The Exchange has satisfied this requirement.

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

<sup>16</sup> 17 CFR 240.19b-4(f)(6)(iii).

Exchange states that this waiver would enable the Exchange to apply the proposed modified Primary Specialist Criteria for the second quarter starting April 1, 2016. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. As stated in the filing, the Exchange believes that the proposed rule change would promote quote competition among the Specialist Pool participants by enabling the Exchange to consider liquidity-making electronic volume among the objective factors considered in the Primary Specialist Criteria. The waiver of the operative delay will enable the Exchange to apply the proposed modified Primary Specialist Criteria for the second quarter starting April 1, 2016, and to announce the modified Primary Specialist Criteria by Trader Update at least five days before the start of the April 1<sup>st</sup> evaluation period, to help ensure that Specialists and e-Specialists are given ample notice of the proposed change. The Exchange notes that while the modified Primary Specialist Criteria would be announced for the second quarter, starting April 1<sup>st</sup>, the actual evaluation would not be conducted until the start of the third quarter (i.e., July 1, 2016). Accordingly, the Commission designates the proposed rule change to be operative upon filing.<sup>17</sup>

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.

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<sup>17</sup> 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEMKT-2016-41 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-2016-41. 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-2016-41, 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.<sup>18</sup>

Brent J. Fields  
Secretary

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<sup>18</sup> 17 CFR 200.30-3(a)(12).