

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-67489; File No. SR-NYSEMKT-2012-26)

July 23, 2012

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Rule Change Amending Rule 76 - Equities to Add Supplementary Material Relating to a Cross Function that Provides a Regulation NMS Rule 611-Compliant Tool for Floor Brokers

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 13, 2012, 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, II, and III below, which Items have been prepared by the Exchange. 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 76 - Equities to add supplementary material relating to a cross function that provides a Regulation NMS Rule 611-compliant tool for Floor Brokers. 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 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 76 - Equities to describe an enhancement to the current processes used by Floor Brokers to manually cross orders in compliance with Regulation NMS Rule 611 (“Rule 611”). Specifically, the Exchange proposes to allow Floor Brokers to use new functionality for the wireless hand held devices (“HHD”) that will assist them in meeting their Rule 611 compliance requirements by providing for a “look-back” period in effecting crosses under Exchange rules. The Exchange believes that use of the HHD by Floor Brokers to assist in the execution of manual cross trades, combined with a brief and reasonable amount of time to accommodate the manual manner by which Floor Brokers must comply with Exchange crossing rules, will enhance the efficiency of such crosses and provide a better audit trail for purposes of Rule 611. The new functionality (“Cross Function”) and the proposed procedures are described below.

Background

Rule 76 - Equities governs the execution of “cross” or “crossing” orders by Floor Brokers. Rule 76 - Equities applies only to manual transactions executed at the point of sale on the trading Floor and provides that when a member has an order to buy and an order to sell the same security that can be crossed at the same price, the member is required to announce to the trading crowd the proposed cross by offering the security at a price that is higher than his or her bid by a minimum variation permitted in the security before crossing the orders. Any other member, including the Designated Market Maker (“DMM”), can break up the announced bid and

offer by trading with either side of the proposed cross transaction.³ If no one in the trading crowd breaks up the proposed cross, the DMM on behalf of the Floor Broker enters the cross transaction into the Exchange's Display Book system as a completed transaction. The completed transaction is printed to the Consolidated Tape at that price.

Currently, after announcing a proposed cross transaction, the Floor Broker and DMM manually monitor the protected best bid or offer to ensure that the proposed cross can be executed in accordance with the customer's instructions and in compliance with Rule 611. In today's fast-moving, electronic markets, where prices can change in millisecond time frames, this manual monitoring process may not be the optimal manner by which to facilitate and evidence such compliance.

The Commission and its staff have recognized the difficulty that broker-dealers face when manually handling orders in light of Rule 611. Specifically, the SEC staff has issued guidance pertaining to the manual execution of orders under staff FAQ 3.23 of Rule 611.⁴ Under the FAQ, a broker-dealer that acts as agent in arranging block transactions between two or more parties at prices that are individually negotiated,⁵ and at a price that is at or within the

³ An agency "cross" of 10,000 shares or more at or between the Exchange best bid or offer has priority and can only be broken up to provide price improvement that is better than the cross price as to all or part of such bid or offer. A buy and sell order to be crossed pursuant to Rule 72(d) - Equities is subject to Rule 76 - Equities, including the requirement that such a proposed cross be announced to the crowd. See Rule 72(d) - Equities. In addition, cross transactions to be executed at a clean-up price outside the current quotation on the Exchange are subject to Rule 127. See Rule 127 - Equities.

⁴ See "Responses to Frequently Asked Questions Concerning Rule 611 and Rule 610 of Regulation NMS," FAQ 3.23 "Agency Block Transactions with Non-Trade-Through Prices that are Individually Negotiated" ("FAQ 3.23"). FAQ 3.23 is available at: <http://www.sec.gov/divisions/marketreg/nmsfaq610-11.htm>.

⁵ The negotiations can occur either through communications with personnel of the broker-dealer or through direct communications between the parties of the transaction, and the negotiations may occur through a telephone conversation or through automated messages (e.g., e-mail).

protected quotations must capture the negotiated price in its automated system within a reasonable time period.⁶ Due to the manual nature of these transactions, the individually negotiated price may not be at or within the protected bid and offer at the time the transaction terms ultimately are captured in the automated system. FAQ 3.23 addresses this issue by permitting the broker-dealer to utilize a 20-second “look-back” period for purposes of demonstrating compliance with Rule 611.

As discussed below, the Exchange is proposing a similar means for assisting Floor Brokers with compliance with Rule 611 that is consistent with existing Exchange crossing rules. Exchange Floor Brokers cross large orders pursuant to Rule 76 - Equities. In many cases, these orders are sent to a Floor Broker by customers seeking a primary market print, as well as orders from customers who do not wish to have their orders handled by broker-dealers that also trade as principal. While the crossing of orders by Floor Brokers using the proposed Cross Function would differ in degree from the crossing guidance in FAQ 3.23,⁴ as discussed below, the fundamental issue of facilitating compliance with Rule 611 when handling large manual trades is the same. Moreover, the proposed Cross Function is narrowly tailored to address the manual handling of cross orders by Floor Brokers, who face unique issues by virtue of their status as Floor-based participants.

Floor Broker activities are subject to various regulatory restrictions that are not imposed upon broker-dealers executing orders off the Floor of the Exchange. Floor Broker activities on the Floor of the Exchange are subject to Section 11(a) of the Exchange Act and the rules

⁶ Under the FAQ, the transaction must be individually negotiated, and at least one of the parties individually negotiating the price of the transaction must be a “customer,” as defined in Rule 600(b)(16) of Regulation NMS. Similarly, crosses under the FAQ must be in block size, as defined in Rule 600(b)(9).

thereunder.⁷ As such, Floor Brokers are limited in their ability to trade for their own account or for the account of an associated person or an account over which they exercise discretion. In addition, pursuant to Rule 112 - Equities, Floor Brokers are also prohibited from initiating orders on the Trading Floor. Consequently, Floor Brokers act only as agents on the Floor, even in circumstances where they are representing principal order flow from an associated person or upstairs desk. Moreover, because Floor Brokers may not access away markets directly while at the point of sale⁸, Floor Brokers cannot rely on the exception set forth in Rule 611(b)(6), which permits market participants to send intermarket sweep orders while simultaneously effecting a crossing transaction that may trade through protected quotations.

Furthermore, broker-dealers executing cross transactions off the floor of the Exchange are not subject to Rule 76 - Equities requirements. Rule 76 - Equities requires that Floor-based crossing transactions be exposed to the DMM and the crowd prior to being executed, which provides other Exchange members and public customers the ability to participate in such transactions. Because of this requirement, Floor Broker proposed cross transactions are required to be exposed publicly in a manner not required of off-Floor participants.

As explained in greater detail below and given the regulatory restrictions applicable to the operation of Floor Brokers, the Exchange believes the proposal is consistent with the purposes underlying FAQ 3.23, notwithstanding certain factual differences in the scenarios. As previously noted, Floor Brokers currently monitor protected bids and offers manually to ensure that the proposed cross can be executed in accordance with Rule 611, which is not optimal in today's

⁷ 15 U.S.C. 78k(a). The Exchange notes that, although Section 11(a) provides for certain limited exceptions for Floor Broker activities (e.g., transactions to offset a transaction made in error), it generally imposes limitations on Floor Brokers that are not applicable to broker-dealers engaged in trading off the Floor of the Exchange.

⁸ See Rules 76 - Equities and 70.40 - Equities. Floor Brokers must be at the point of sale to execute crossing transactions pursuant to Rule 76 - Equities.

electronic markets. The relief provided in FAQ 3.23 is designed to facilitate compliance with Rule 611 for manual transactions. Likewise, the Exchange is proposing to amend Rule 76 - Equities to enable Floor Brokers to effectively and efficiently cross customer orders in compliance with Exchange Rules and Regulation NMS.

Proposed Amendment to Rule 76 – Equities

To assist Floor Brokers in monitoring the price of protected quotations and ensuring compliance with Rule 611, the Exchange proposes the Cross Function as set forth in the proposed supplementary material to Rule 76 - Equities. As proposed, Floor Brokers would be able to submit not held orders to be crossed (purchase and sale of the same security) into the HHD at a limit price consistent with customer instructions and as determined by the Floor Broker. The Floor Broker, however, may not use the Cross Function with regard to a cross involving a principal order to buy and a principal order to sell submitted by the same broker-dealer. After the orders are entered into the HHD, a quote minder function within Exchange systems will monitor protected quotations to determine when the limit prices assigned to the buy and sell orders are such that the orders may be executed consistent with Rule 611. When the protected quotation permits a Rule 611-compliant print (i.e., the desired crossing price is at or between the protected bid and offer), the quote minder will:

- (i) deliver an Alert message to the Floor Broker’s HHD indicating that the orders may be crossed;
- (ii) capture within Exchange systems a time-stamped quote that includes the time the Alert is sent to the HHD and the protected bid and offer at that time;
- (iii) start a 20-second timer (as discussed below), and
- (iv) enable a “print” key function in the HHD allowing the Floor Broker to execute the orders and send the trade report through Exchange systems to the Tape.

As proposed, the Cross Function includes a 20-second timer that commences from the moment the cross trade at its proposed price could be executed at or between the protected bid and offer. As detailed below, the Floor Broker will use this brief period to comply with the Rule 76 - Equities requirement to announce the proposed cross transaction to the crowd. If Exchange systems do not receive the “print” message from the HHD within the allotted time period, the ability to execute the orders and print to the tape will expire and the cross instructions will be canceled.

As required by Rule 76 - Equities, when using the proposed Cross Function, the Floor Broker must first “clear” the crowd before executing a cross transaction. Therefore, the Floor Broker is required to be physically present at the post/panel of the DMM for the subject security and must verbally announce the cross trade. If there is crowd and/or DMM interest in response to the Floor Broker’s verbal announcement of the cross trade, the Floor Broker must trade with such interest on behalf of the applicable customer order(s), as required by Exchange Rules. Under the proposed functionality, if the original terms of the proposed cross transaction cannot be met for any reason, for example, if the crowd trades with a portion of either the proposed bid or offer and the Floor Broker cannot otherwise complete the proposed cross transaction in the size or price that was entered into the Crossing Function, the originally-entered proposed cross transaction will be cancelled.⁹

If the crowd or DMM does not break up the proposed cross trade, the Floor Broker may execute the trade by selecting the “print” key in the HHD prior to the expiration of the 20-second

⁹ Currently, due to limitations in the functionality of the system, the Exchange cancels a proposed cross transaction when the originally-entered size of the cross changes. However, the Exchange is exploring the possibility of making system changes to allow a proposed cross transaction to proceed if the only change in the proposed cross is a change in the size.

timer, which also will transmit a message to Exchange systems to print the transaction to the Tape. Thus, the 20-second timer permits a reasonable time for Floor Brokers to comply with Exchange crossing rules and establishes a brief “look-back” period that permits the crossing of the orders at the designated limit price even if the market for the security subsequently moves while the Floor Broker is meeting its obligation under Rule 76 - Equities. The Exchange believes that providing the 20-second timer is consistent with FAQ 3.23 because, similar to how off-Floor transactions require sufficient time for negotiation and entry into execution systems, Floor Broker proposed transactions need a similar time period to be exposed to the public and then, once executed, to be transmitted through broker systems to the Display Book and then to the Tape.¹⁰ To confirm compliance with Rule 76 - Equities, the DMM will be required to enter the Floor Broker’s badge number into Exchange systems.

A Floor Broker may cancel the orders associated with the proposed Cross Function at any time up to the point that the trade is executed (that is, at the time the “print” key is activated).¹¹

In addition, consistent with FAQ 3.23, the proposed Cross Function would be available only for proposed cross transactions that are for at least 10,000 shares or a quantity of stock having a market value of \$200,000 or more, which is the definition of a block transaction under Regulation NMS Rule 600(b)(9).

¹⁰ As with off-Floor crossing transactions that are executed consistent with FAQ 3.23, the time that the proposed Floor Broker cross transaction “prints” via the HHD key may be at a time when either the protected bid or offer or Exchange best bid or offer has moved. Accordingly, by using the Cross Function, Floor Brokers will ensure compliance with not only Rule 611, but also NYSE Rule 127 - Equities in that the proposed cross transaction will not trade through the Exchange’s best bid or offer at the time of Rule 611 validation.

¹¹ The Exchange notes that Floor Brokers are required to have policies and procedures designed to ensure compliance with, among other things, Rule 76 - Equities. Therefore, Floor Brokers will be required to update their policies and procedures to reflect any amendments to Rule 76 - Equities.

Moreover, the Exchange proposes that the proposed cross transaction may not be for orders for the account of the member or member organization, an account of an associated person, or an account with respect to which the member, member organization or associated person thereof exercises investment discretion. The Exchange believes that requiring orders to be on behalf of unaffiliated entities provides the Floor broker analog to the FAQ 3.23 requirement that at least one side of the transaction be for a “customer.” As recognized in Rule 72(d) - Equities, which permits a Floor broker to assert priority on behalf of block-sized order flow from an unaffiliated member organization, Floor broker customers are not limited to non-broker dealers. The Exchange believes that the proposed limitation to use the proposed Cross Function on behalf of unaffiliated broker dealers meets the spirit of FAQ 3.23 by assuring that the Cross Function will not be used for affiliated principal order flow.

Accordingly, as proposed, a Floor broker may use the proposed Cross Function for any order flow he or she may receive from an unaffiliated member organization, even if one side of the proposed cross transaction is for the account of the unaffiliated member organization. Likewise, a Floor broker could use the proposed Cross Function for proposed crossed transactions that represent principal orders of two different unaffiliated broker-dealer customers.

The Exchange believes that Floor Brokers provide a useful service to the market and their customers in their ability to source liquidity and provide price discovery for transactions. Therefore, the Cross Function is designed to assist Floor Brokers in providing such services in a more efficient and effective manner in light of the requirements of Rule 611. Specifically, the Cross Function, with its “look-back” feature, would provide a more effective mechanism by which a Floor Broker can manually execute a cross in accordance with the customer’s instructions and in compliance with Rule 611, particularly when there is significant quote traffic

with flickering prices. Moreover, the proposed changes to Rule 76 - Equities are narrowly drafted to address the practical issues and concerns related to the interaction between a manual process and electronic quotes as well as the unique limitations applicable only to Floor Brokers. It would not otherwise change the current operation of Rule 76 - Equities; in particular, the requirement to expose crosses to the crowd for possible price improvement prior to finalizing the cross would remain intact.¹²

The Cross Function would not be available with regard to crosses involving buy and sell principal orders represented by the same broker-dealer, and all crosses, including crosses involving principal and agency orders, will be subject to being broken up upon exposure to the crowd and the DMM. The Exchange recognizes that a proposed Floor broker crossed transaction that represents principal orders of two separate broker-dealer customers differs from the scenario in FAQ 3.23. However, given the unique limitations on Floor Broker trading, including that Floor Brokers cannot initiate orders on the Floor and in such situations, are acting as agents for their broker-dealer customers, the Exchange believes that the intent is consistent with FAQ 3.23. In addition, the Cross Function will timely capture the transaction terms in an automated system, thereby providing a better audit trail for manually crossed orders. Such an audit trail will facilitate the review of the Floor Brokers' manual crosses to ensure their compliance with Rule 611.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements

¹² The Exchange notes that Rule 76 -Equities currently governs the manual execution of cross orders by Floor Brokers without consideration of the order size. The Exchange is not proposing to amend Rule 76 - Equities to limit Floor Brokers' ability to manually execute cross orders that are block size.

of Section 6(b) of the Act,¹³ in general, and Section 6(b)(5) of the Act,¹⁴ in particular, in that it is designed 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 for 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 proposed Cross Function and proposed amendment to Rule 76 - Equities remove impediments to and perfect the mechanism for a free and open market because the Cross Function will assist Floor brokers' ability to meet both their Rule 611 obligations and existing Rule 76 - Equities requirements with respect to crossed orders. Additionally, the Exchange believes the proposal removes impediments to and perfects the mechanism for a free and open market because Floor Brokers will have automated tools to enable their compliance with Rule 611 of Regulation NMS and efficiently execute the cross transactions. Furthermore, the Exchange believes the proposal will generate a better audit trail for purposes of Rule 611 of the crossed transactions.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- A. by order approve or disapprove such proposed rule change; or
- B. institute proceedings to determine whether the proposed rule change should be 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. Please include File Number SR-NYSEMKT-2012-26 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-2012-26. 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-2012-26 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.¹⁵

Kevin M. O'Neill
Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).