

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-73817; File No. SR-NYSEMKT-2014-81)

December 11, 2014

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Amending Rule 902.1NY to Authorize the Exchange to Share Any User-Designated Risk Settings in Exchange Systems with the Clearing Member that Clears Transactions on Behalf of the User

I. Introduction

On September 19, 2014, NYSE MKT LLC, (“NYSE MKT” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Rule 902.1NY to authorize the Exchange to share any User-designated risk settings in Exchange systems with the Clearing Member³ that clears transactions on behalf of the User.⁴ The proposed rule change was published for comment in the Federal Register on October 7, 2014.⁵ On November 19, 2014, the Exchange submitted Amendment No. 1 to the proposed rule change.⁶ On November 21, 2014, pursuant to Section 19(b)(2) of the Exchange Act,⁷ the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Exchange Rule 900.2NY (11) defining “Clearing Member” as “an Exchange ATP Holder which has been admitted to membership in the Options Clearing Corporation pursuant to the provisions of the Rules of the Options Clearing Corporation.”

⁴ See Exchange Rule 900.2NY (87) defining “User” as “any ATP Holder that is authorized to obtain access to the System pursuant to Rule 902.1NY.”

⁵ See Securities Exchange Act Release No. 73280 (October 1, 2014), 79 FR 60553 (“Notice”).

⁶ In Amendment No. 1, the Exchange provided additional justification for why the Exchange believes the proposed rule change is consistent with the Act. In Amendment No. 1, the Exchange states, among other things, that the Exchange believes that sharing a User’s risk settings directly with its Clearing Member could reduce the administrative burden on Users to provide that information to their Clearing Members themselves and

Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁸ The Commission received one comment on the proposal.⁹ The Commission is publishing this notice to solicit comments from interested persons on Amendment No. 1 to the proposed rule change and is approving the proposed rule change, as modified by Amendment No. 1 thereto, on an accelerated basis.

II. Description of the Proposal

The Exchange proposes to amend Exchange Rule 902.1NY (Admission to the System) to state that the Exchange may share any User-designated risk settings in the Exchange's System¹⁰ with the Clearing Member that clears transactions on behalf of the User.¹¹

The Exchange states that while not all Users are Clearing Members, all Users require a Clearing Member's consent to clear transactions on their behalf in order to conduct business on

notes that any User could become a Clearing Member, which would allow the User to avoid sharing its risk settings with any third party. Amendment No. 1 has been placed in the public comment file for SR-NYSEMKT-2014-81 at <http://www.sec.gov/comments/sr-nysemkt-2014-81/nysemkt201481-2.pdf> (See letter to Kevin M. O'Neill, Deputy Secretary, Commission, from Martha Redding, Chief Counsel and Assistant Corporate Secretary, New York Stock Exchange, dated November 20, 2014) and is also available on the Exchange's website.

⁷ 15 U.S.C. 78s(b)(2).

⁸ See Securities Exchange Act Release No. 34-73669, 79 FR 70903 (November 28, 2014). The Commission designated January 5, 2014 as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

⁹ See Letter from Dr. Lee Jackson, Esq., dated October 1, 2014. This commenter's letter was incoherent and irrelevant to the proposed rule change.

¹⁰ According to the Exchange, "System" refers to the Exchange System facility. See Notice, supra note 5, at 60554. See also Exchange Rule 900.1NY.

¹¹ See proposed Exchange Rule 902.1NY.

the Exchange.¹² The Exchange states that each User that transacts through a Clearing Member on the Exchange executes a Clearing Letter of Consent, which codifies the relationship between each User and Clearing Member and provides the Exchange with notice of which Clearing Members have relationships with which Users.¹³ The Exchange states that the Clearing Member that guarantees the User's transactions on the Exchange has a financial interest in understanding the risk tolerance of the User, and that the proposal would provide the Exchange with authority to directly provide Clearing Members with information that may otherwise be available to such Clearing Members by virtue of their relationship with the respective Users.¹⁴

The Exchange states that the User-designated risk settings that the Exchange may share with a User's Clearing Member under the proposal are set forth in Exchange Rule 928NY (Risk Limitation Mechanism).¹⁵ The Exchange states that it may adopt additional rules providing for User-enabled risk settings other than those provided in Exchange Rule 928NY that could be shared with a User's Clearing Member under the proposal, and the Exchange would announce these additional risk settings via Trader Update.¹⁶

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national

¹² See Amendment No. 1.

¹³ See Notice, supra note 5, at 60554. See also NYSE Amex Options ATP Application, Section 8 (Clearing Letter of Consent), available at: https://www.nyse.com/publicdocs/nyse/markets/amex-options/ATP_Application.pdf.

¹⁴ See Notice, supra note 5, at 60554.

¹⁵ Id. According to the Exchange, pursuant to Rule 928NY(b)-(d), Users may set certain risk control thresholds in the Risk Limitation Mechanism, which are designed to mitigate the potential risks of multiple executions against a User's trading interest. Id.

¹⁶ See id. at n.9.

securities exchange.¹⁷ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁸ which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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, and Section 6(b)(8) of the Act,¹⁹ which requires that the rules of the exchange do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The proposed rule change will allow the Exchange to directly provide a User's designated risk settings to the Clearing Member that clears trades on behalf of the User. The Exchange states that because a Clearing Member that executes a Clearing Letter of Consent on behalf of a User guarantees all transactions of that User, and therefore bears the risk associated with those transactions, it is appropriate for the Clearing Member to have knowledge of what risk settings the User may utilize within the Exchange's systems.²⁰ The Exchange states that the proposal will permit Clearing Members, who have a financial interest in the risk settings of Users with whom the Clearing Member has entered into a Clearing Letter of Consent, to better monitor and manage the potential risks assumed by Users, thereby providing Clearing Members with greater control and flexibility over setting their own risk tolerance and exposure and aiding Clearing Members in complying with the Act.²¹ The Exchange further states that, to the extent a

¹⁷ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁸ 15 U.S.C. 78f(b)(5).

¹⁹ 15 U.S.C. 78f(b)(8).

²⁰ See Notice, supra note 5, at 60554.

²¹ Id. See also Amendment No. 1.

Clearing Member might reasonably require a User to provide access to its risk settings as a prerequisite to continuing to clear trades on the User's behalf, the Exchange's proposal to share those risk settings directly reduces the administrative burden on Users and ensures that Clearing Members are receiving information that is up-to-date and conforms to the settings active in Exchange systems.²²

The Exchange also states that it 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.²³ According to the Exchange, the proposed rule change is not designed to address any competitive issues and does not pose an undue burden on non-Clearing Members because, unlike Clearing Members, non-Clearing Members do not guarantee the execution of the User transactions on the Exchange.²⁴ The Exchange notes further that the proposal is structured to offer the same enhancement to all Clearing Members, regardless of size, and would not impose a competitive burden on any participant.²⁵ In addition, the Exchange states that any User that does not wish to share its designated risk settings with its Clearing Member could avoid sharing such settings by becoming a clearing member of the Options Clearing Corporation.²⁶

Accordingly, the Commission finds that the proposal to allow the Exchange to directly provide a User's designated risk settings to the Clearing Member that clears trades on behalf of the User, guarantees all transactions of that User, and therefore bears the risk associated with those transactions, is consistent with the Act.

²² See Amendment No. 1.

²³ See Notice, supra note 5, at 60554.

²⁴ Id.

²⁵ Id.

²⁶ See Amendment No. 1.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 to 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-2014-81 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-2014-81. 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 20549-1090, 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-2014-81, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

V. Accelerated Approval of Proposed Rule Change, As Modified by Amendment No. 1

As discussed above, the Exchange submitted Amendment No. 1 to provide further justification as to why the Exchange believes the proposed rule change is consistent with the Act. The Exchange states in Amendment No. 1, among other things, that to the extent a Clearing Member might reasonably require a User to provide access to its risk settings as a prerequisite to continuing to clear trades on the User's behalf, the Exchange's proposal to share those risk settings directly reduces the administrative burden on Users and ensures that Clearing Members are receiving information that is up-to-date and conforms to the settings active in Exchange systems. The Exchange further notes in Amendment No. 1 that any User may become a Clearing Member, which would enable that User to avoid sharing risk settings with any third party. The Commission believes that Amendment No. 1 does not materially affect the substance of the proposed rule change or raise any novel or unique regulatory issues. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,²⁷ for approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

²⁷ 15 U.S.C. 78s(b)(2).

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²⁸ that the proposed rule change (SR-NYSEMKT-2014-81), as modified by Amendment No. 1 thereto, be and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁹

Kevin M. O'Neill
Deputy Secretary

²⁸ Id.

²⁹ 17 CFR 200.30-3(a)(12).