

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-77734; File No. SR-NYSEMKT-2016-49)

April 27, 2016

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Rule Change Amending the Definition of “Block” for Purposes of Rule 72(d) – Equities and the Size of a Proposed Cross Transaction Eligible for the Cross Function in Rule 76 - Equities

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on April 22, 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 amend the definition of “block” for purposes of Rule 72(d) – Equities and the size of a proposed cross transaction eligible for the Cross Function in Rule 76 - Equities. 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 15 U.S.C. 78a.

³ 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 proposes to amend the definition of “block” for purposes of Rule 72(d) - Equities and the size of a proposed cross transaction eligible for the Cross Function in Rule 76 - Equities. Under Rule 72(d) - Equities, when a member⁴ has an order to buy and an order to sell an equivalent amount of the same security, and both orders are “block” orders, the member may cross those orders at a price at or within the Exchange best bid or offer and does not have to break up the cross transaction to trade with any bids or offers previously displayed at the Exchange best bid or offer, including any interest with priority. For purposes of Rule 72(d) - Equities, a “block” is at least 10,000 shares or a quantity of stock having a market value of \$200,000 or more, whichever is less.

Further, 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 DMM, can break up the announced bid and offer by trading with

⁴ The reference to “member” in Rule 72(d) – Equities and this rule proposal means only Floor Broker members. Designated Market Makers (“DMMs”), while members of the Exchange, do not have any agency relationships, and are therefore not able to effect this type of transaction.

either side of the proposed cross transaction. Supplementary [sic] .10 to Rule 76 – Equities provides for a “Cross Function” that Floor brokers may use to monitor compliance with Rule 611 of Regulation NMS. To be eligible for this Cross Function, the proposed cross transaction must be for at least 10,000 shares or a quantity of stock having a market value of \$200,000 or more.

The Exchange proposes to amend the permissible size of a crossing transaction permitted under Rule 72(d) – Equities and Supplementary Material .10 to Rule 76 – Equities to be at least 5,000 shares or a quantity of stock having a market value of \$100,000 or more, whichever is less. The Exchange’s proposed definition of block size would more closely align with how a block-sized transaction is defined in other SEC rules and other exchanges’ rules.⁵ For example, SEC Rule 10b-18 (Purchases of certain equity securities by the issuer and others) includes in the definition of a block a quantity of stock that is at least 5,000 shares and has a purchase price of at least \$50,000.⁶ Additionally, Financial Industry Regulatory Authority, Inc. (“FINRA”) defines a block-sized order as being 10,000 shares or more, unless such orders are less than \$100,000 in value.⁷ The CBOE Stock Exchange (“CBSX”) Rule 52.11 also permits a cross of two orders so long as the crossing transaction is of at least 5,000 shares and is for a principal amount of at least

⁵ For purposes of Regulation NMS, a “block size” with respect to an order means it is: (i) of at least 10,000 shares or (ii) for a quantity of stock having a market value of at least \$200,000. See 17 CFR 242.600(a)(9). The term “block size” is used in Regulation NMS in the definition of an OTC Market Maker, 17 CFR 242.600(a)(52), and in an exception to specialists’ and OTC Market Makers’ obligation to display customer limit orders, 17 CFR 242.604(b)(4). The definition of “block size” in Regulation NMS is the same as the Exchange’s current definition of “block” for purposes of Rule 72(d) – Equities and the size of a proposed cross transaction eligible for the Cross Function in Rule 76 - Equities. The Exchange’s proposal to change its rules does not change the definition of “block size” as used in Regulation NMS.

⁶ See 17 C.F.R. 240.10b-18(a)(5)(ii).

⁷ See FINRA Rule 5320, Supplementary Material .01.

\$100,000.⁸ More recently, in approving the National Market System Plan to Implement a Tick Size Pilot Program (“Tick Size Pilot”),⁹ the SEC approved a modified definition of “block size” such that an order of at least 5,000 shares or with a market value of at least \$100,000 would be considered a block size for purposes the Tick Size Pilot. In approving the Tick Size Pilot, the Commission noted that among all NMS securities, trades with at least 10,000 shares or with a market value of at least \$200,000 constitute just 0.24 percent of all trades, 13.04 percent of traded share volume and 16.27 percent of traded dollar volume.¹⁰ The Exchange believes modifying the definition of a block order in its rules would likely result in a greater number of large size orders being executed on the Exchange.

The Exchange believes the proposed rule change would promote increased trading by institutions as they are most frequent participants of block-sized trading on the Exchange. If an institution is able to execute in larger sizes, the contra party to the execution is less likely to be a participant that reacts to short term changes in the stock price and as such the price impact to the

⁸ See CBSX Rule 52.11 Facilitation of Orders and Crossing Trades, Chapter LII – Trading Rules and Processing of Orders. In September 2006, the Commission approved rules governing the trading of non-option securities traded on the Chicago Board Options Exchange, Inc. (“CBOE”), including CBSX Rule 52.11. See Securities Exchange Act Release No. 54422 (September 11, 2006), 71 FR 54537 (September 15, 2006) (Approving SR-CBOE-2004-21). The Commission also approved modifications to CBOE’s non-option trading rules to conform those rules to aspects of Regulation NMS. See Securities Exchange Act Release No. 54526 (September 27, 2006), 71 FR 58646 (October 4, 2006) (Approving SR-CBOE-2006-70). Although CBSX has ceased trading operations, the CBSX rules are incorporated into the rules of the CBOE.

⁹ See Securities Exchange Act Release No. 34-74892 (May 6, 2015), 80 FR 27514 (May 13, 2015) File No. 4-657 (Order Approving the National Market System Plan To Implement a Tick Size Pilot Program by BATS Exchange, Inc. BATS-Y Exchange, Inc., Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc., as Modified by the Commission, for a Two-Year Period) (“Tick Size Approval Order”).

¹⁰ See Tick Size Approval Order at 27541.

stock could be less acute when larger individual executions are obtained by the institution.¹¹ As a consequence of this concern, large size orders are often executed away from the Exchange in dark pools or via broker-dealer internalization.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹² in general, and furthers the objectives of Section 6(b)(5) of the Act,¹³ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would attract more order flow to the Exchange that is currently trading on less transparent venues that contribute less to price discovery and price competition than executions and quotes that occur on lit markets. Such new order flow will further enhance the depth and liquidity on the Exchange, which supports just and equitable principles of trade. Specifically, as required under Rule 76 - Equities, any proposed crossing transaction, including a transaction using the Cross Function or a cross that meets the requirements of Rule 72(d) - Equities, must be announced in the Crowd before trading, thus providing an opportunity for other market participants, including other Floor

¹¹ The Commission has long recognized this concern: “Another type of implicit transaction cost reflected in the price of a security is short-term price volatility caused by temporary imbalances in trading interest. For example, a significant implicit cost for large investors [sic] is the price impact that their large trades can have on the market. Indeed, disclosure of these large orders can reduce the likelihood of their being filled.” See Securities Exchange Act Release No. 42450 (February 23, 2000), 65 FR 10577 (February 28, 2000) (SR-NYSE-99-48).

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

brokers or the designated market maker, to participate in the proposed crossing transaction. By reducing the size of a block transaction, the Exchange believes that additional order flow may be routed to Floor brokers and thus be subject to such exposure requirements on the Trading Floor.

The Exchange believes that modifying the definition of block orders to lower the thresholds would be consistent with the public interest and the protection of investors because the Exchange is proposing to align the definition of block orders to current SEC and other exchange rules which the Exchange expects will result in increased participation of large-sized orders on the Exchange.

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. Specifically, the proposed change will align the definition of a "block" with current SEC and other exchange rules, thereby promoting its competitiveness with dark pools where such large-sized orders currently trade in more frequency than on lit markets. As a consequence, the proposed change will promote competition among the many trading venues, which, in turn, will decrease the burden on competition.

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 such longer period up to 90 days (i) as the Commission may designate if it finds 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 the 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-2016-49 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.

All submissions should refer to File Number SR-NYSEMKT-2016-49. 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-2016-49 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.¹⁴

Robert W. Errett
Deputy Secretary

¹⁴ 17 CFR 200.30-3(a)(12).