

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-70899; File No. SR-NYSEMKT-2013-94)

November 19, 2013

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Revising Rule 61(a)(iii) – Equities to Harmonize the Existing Rule Text With the Recent Amendment to the CTA Plan, and Concordant Change to The Nasdaq UTP Plan, Which Provides That Odd-Lot Transactions Are To Be Reported On The Consolidated Tape

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 November 12, 2013, 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 revise Rule 61(a)(iii) – Equities to harmonize the existing rule text with the recent amendment to the CTA Plan (and concordant change to the Nasdaq UTP Plan) which provides that odd-lot transactions are to be reported on the Consolidated Tape. 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, on the Commission’s website at <http://www.sec.gov>, 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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 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 purpose of the proposed change to Rule 61(a)(iii) – Equities is to harmonize the existing rule text with the recent amendment to the CTA Plan (and concordant change to the Nasdaq UTP Plan) which provides that odd-lot transactions are to be reported on the Consolidated Tape.

On September 9, 2013, the various exchanges that comprise the Consolidated Tape Association (“CTA”), including the Exchange, filed with the Commission a proposal to amend the Second Restatement of the CTA Plan (“CTA Plan”) to remove odd-lot transactions from the list of transactions that are not to be reported for inclusion on the Consolidated Tape (the “Amendment”).⁴ The rationale for the Amendment is that odd-lot transactions account for a not insignificant percentage of trading volume, and that including odd-lot transactions on the Consolidated Tape would add post-trade transparency to the marketplace. The Amendment,

⁴ See Securities Exchange Release No. 34-70428 (Sept. 17, 2013), 78 F.R. 184 (Sept. 28, 2013) (Notice of the Amendment). In 1974, the Commission declared the original CTA Plan effective. See Securities Exchange Release No. 10787 (May 10, 1974), 39 FR 17799. The CTA Plan, pursuant to which markets collect and disseminate last sale price information for non-NASDAQ listed securities, is a “transactional plan” under Rule 601 of the Securities and Exchange Act (the “Act”), 17 CFR 242.601, and a “national market system plan” under Rule 608 under the Act, 17 CFR 242.608.

however, would not include odd-lot transactions in the calculation of last sale prices, given that many of these transactions do lack economic significance.⁵

Consistent with the Amendment to the CTA Plan, the Nasdaq Unlisted Trading Privileges Plan (“Nasdaq UTP Plan”) is likewise being modified to similarly remove odd-lot transactions from the list of transactions that are not to be reported for inclusion on the Consolidated Tape.⁶ Pursuant to the NYSE MKT Rule 500 - Equities Series, the Exchange trades Nasdaq-listed securities, which are subject to the Nasdaq UTP Plan, on an unlisted trading privileges basis.

In early October 2013, both the CTA and Nasdaq announced that, subject to approval by the Commission, the release date for the proposed Amendment and modified Nasdaq UTP Plan would be December 9, 2013.⁷ On October 31, 2013, the Commission approved the Amendment.⁸

The Exchange, therefore, proposes to amend Rule 61(a)(iii) – Equities to conform this rule with both the Amendment and the modified Nasdaq UTP Plan. Current Rule 61(a)(iii) – Equities states that “[a] transaction of an amount less than one round lot shall not be published to the Consolidated Tape and does not qualify as a last sale.” To harmonize the rule with the

⁵ Thus, per the Amendment, odd-lot transactions would not be included in calculations of high and low prices and would not be subject to the Regulation NMS Plan to Address Extraordinary Market Volatility rules, nor would including odd-lot transactions on the Consolidated Tape trigger any short sale restrictions or trading halts. Odd-lot transactions, however, would be included in calculations of daily volume.

⁶ See Nasdaq Announcement at <http://www.nasdaqtrader.com/TraderNews.aspx?id=uva2013-6>.

⁷ See CTA Announcement at <https://cta.nyxdata.com/cta/popup/news/2385> (“Pursuant to the latest notice on this subject . . . , pending regulatory approval we are postponing the October testing dates and the implementation which include Odd Lot trade reports to the Consolidated Tape. The new release dat[e] will be December 9, 2013”). See also Nasdaq Announcement at <http://www.nasdaqtrader.com/TraderNews.aspx?id=uva2013-11> (same).

⁸ See Securities Exchange Release No. 34-70794 (Oct. 31, 2013) (“Approval Order”).

Amendment and the revised Nasdaq UTP Plan, the Exchange proposes to modify paragraph (a)(iii) of the current rule to provide that odd-lot sized transactions would be published to the Consolidated Tape, or to the Securities Information Processor accepting trade reports in that security, but would still not qualify as last sale transactions.⁹

The Exchange proposes to implement the proposed changes to Rule 61(a)(iii) – Equities on the same day that the changes to the CTA Plan and Nasdaq UTP Plan are effective, which is currently scheduled for December 9, 2013.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act,¹⁰ in general, and Section 6(b)(5) of the Act,¹¹ in particular, in that it is designed to foster cooperation and coordination with persons 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 and not to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed rule change will foster cooperation and coordination with persons facilitating transactions in securities because the proposed rule change would harmonize Exchange rules with the Amendment to the CTA Plan, and with the concordant change to the Nasdaq UTP Plan. In addition, the Exchange believes that the proposed change would remove impediments to and perfect the mechanism of a free and open market and a

⁹ The proposed revision to paragraph (a)(iii) to Rule 61 – Equities would thus read: “A transaction of an amount less than one round lot shall be published to the Consolidated Tape, or to the Securities Information Processor accepting trade reports in that security, but does not qualify as a last sale.”

¹⁰ 15 U.S.C. § 78f(b).

¹¹ 15 U.S.C. § 78f(b)(5).

national market system by providing consistency and additional transparency into securities transactions, thus encouraging the proper functioning of the market. Increased post-trade transparency would, in turn, protect investors and the public interest. Indeed, the Commission's Approval Order concluded that "including odd-lot transactions on the consolidated tape will enhance post-trade transparency, as well as price discovery, and consequently would further the goals of the Act."¹² The Approval Order likewise concludes, and the Exchange agrees, that "information about odd lot transactions would provide important information to investors and other market participants and therefore represents a positive development in the provision of market data."¹³

Finally, the Exchange believes that the proposed rule change does not unfairly discriminate among the Exchange's member organizations because all members would equally benefit from the additional transparency provided by the proposed change.

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed change adds to the integrity of trading on the securities markets by increasing post-trade transparency as well as price discovery and, if anything, the level of competition could increase as public confidence in the markets is solidified.

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

¹² Approval Order at 5.

¹³ Id.

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁴ and Rule 19b-4(f)(6) thereunder.¹⁵ 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 prior to 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 and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)¹⁶ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁷ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. According to the Exchange, waiving the 30-day operative delay will enable market participants to benefit from the proposed rule change on the same day that both plans go into effect. The Exchange believes it would be appropriate that the Exchange rules be in conformance with the Amendment to the CTA Plan (and the concordant change to the Nasdaq UTP Plan) on the date that both changes are to become effective (i.e., on December 9, 2013).¹⁸ Based on the Exchange's statements and the non-controversial nature of the proposed rule change, the Commission believes that waiving the operative delay is consistent with the

¹⁴ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁵ 17 CFR 240.19b-4(f)(6).

¹⁶ 17 CFR 240.19b-4(f)(6).

¹⁷ 17 CFR 240.19b-4(f)(6)(iii).

¹⁸ The Exchange stated that on the event that this rule proposal is operative prior to December 9, 2013, the Exchange would not implement the proposed rule change until December 9, 2013.

protection of investors and the public interest. Accordingly, the Commission hereby grants the Exchange's request and waives the 30-day operative delay.¹⁹

At any time within 60 days of the filing of such 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 under Section 19(b)(2)(B)²⁰ of the Act to determine whether the proposed rule change should be approved or 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-2013-94 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-2013-94. This file number

¹⁹ For purposes only of waiving the operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²⁰ 15 U.S.C. 78s(b)(2)(B).

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 will also 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-2013-94 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.²¹

Kevin M. O'Neill
Deputy Secretary

²¹ 17 CFR 200.30-3(a)(12).