

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-71966; File No. SR-NYSEMKT-2014-35)

April 17, 2014

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 900.3NY (Orders Defined) to Remove the Size Restriction on Contra-Party Participation on a Qualified Contingent Cross Order

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that on April 14, 2014, NYSE MKT LLC (“Exchange” or “NYSE MKT”) filed with the Securities and Exchange Commission (“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 Rule 900.3NY (Orders Defined) to remove the size restriction on contra-party participation on a Qualified Contingent Cross Order (“QCC Order”). 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 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 purpose of this rule filing is to amend Rule 900.3NY to remove the size restriction on contra-party participation on a QCC Order. The proposed rule change, which mirrors a recently adopted rule by the International Securities Exchange (“ISE”)⁴, would expand the availability of QCC Orders by permitting multiple contra-parties on a QCC Order, each of which may consist of an order for less than 1,000 contracts; provided however, that the originating QCC Order is a single order that meets the 1,000 contract minimum (as well as the other requirements of a QCC Order), as discussed below.⁵ The proposed change is intended to allow the Exchange to compete fairly and equally with other options exchanges, including the ISE, that have recently adopted similar rule changes.⁶

Rule 900.3NY(y) provides that a QCC Order must be comprised of an order to buy or sell at least 1,000 contracts⁷ that is identified as being part of a qualified contingent trade,⁸ coupled

⁴ See Securities Exchange Act Release No. 71863 (April, 3, 2014) (SR-ISE-2014-72).

⁵ In the case of mini options, the minimum size is 10,000 contracts.

⁶ See *supra* n. 4.

⁷ In the case of mini options, the minimum size is 10,000 contracts.

⁸ A “qualified contingent trade” must meet the following conditions: (i) at least one component must be an NMS Stock; (ii) all the components must be effected with a product price contingency that either has been agreed to by all the respective counterparties or arranged for by a broker-dealer as principal or agent; (iii) the execution of one component must be contingent upon the execution of all other components at or near the same time; (iv) the specific relationship between the component orders (e.g., the spread between the prices of the component orders) must be determined by the time the contingent order is placed; (v) the component orders must bear a derivative relationship

with a contra-side order to buy or sell an equal number of contracts. As Qualified Contingent Cross Trades, QCC Orders are automatically executed upon entry provided that the execution (i) is not at the same price as a Customer Order in the Consolidated Book and (ii) is at or between the NBBO.⁹ In addition, QCC Orders that cannot be executed when entered will automatically cancel.¹⁰ Finally, QCC Orders may only be entered in the regular trading increments applicable to the options class under Rule 960NY (Trading Differentials).

The Exchange adopted the QCC Order type on March 17, 2011.¹¹ On March 19, 2014, the Exchange submitted for immediate effectiveness a filing, which amended Rule 900.3(y) to specify that a QCC Order could have multiple contra-parties, so long as each contra-side order met the minimum size requirements of 1,000 contracts, or 10,000 contracts for mini-options.¹²

As discussed above, the Exchange now proposes to amend Rule 900.3(y) to remove the size limitation placed on each contra-party to a QCC Order.¹³ The Exchange is proposing this

to one another, represent different classes of shares of the same issuer, or involve the securities of participants in mergers or with intentions to merge that have been announced or cancelled; and (vi) the transaction must be fully hedged (without regard to any prior existing position) as a result of other components of the contingent trade. In addition, ATP Holders must demonstrate that the transaction is fully hedged using reasonable risk-valuation methodologies. See supra n.4 (citing Securities Exchange Act Release No. 57620 (April 4, 2008), 73 FR 19271 (April 9, 2008)).

⁹ See Rule 985NY (Qualified Contingent Cross Trade).

¹⁰ Id.

¹¹ See Securities Exchange Act Release No. 64085 (March 17, 2011), 76 FR 16024 (March 22, 2011) (SR-NYSEAmex-2011-14).

¹² See Securities and Exchange Act Release No. 71817 (March 27, 2014) (SR-NYSEMKT-2014-23), 79 FR 18601 (April 2, 2014). The Exchange notes that the operative date for this rule change is April 21, 2014. To ensure that the instant proposal may be implemented without delay, Exhibit 5 to the instant proposal reflects not only the instant proposal but also the rule text changes that would not have otherwise been operative until April 21, 2014.

¹³ Per proposed Rule 900.3(y): “A Qualified Contingent Cross Order is comprised of an originating order to buy or sell at least 1,000 contracts, or 10,000 mini-options contracts,

change for competitive reasons, as it will allow the Exchange to compete fairly and equally with other option exchanges that have similarly amended their rules, including ISE.¹⁴ The Exchange does not propose to remove the size requirement on the originating order of a QCC Order.

In connection with this proposal, the Exchange represents that it will track and monitor QCC Orders to determine which is the originating side of the order and which is the contra-side(s) of the order to ensure that ATP Holders are complying with the minimum 1,000 contract size requirement on the originating side of the QCC Order. In this regard, the Exchange will monitor whether ATP Holders are aggregating multiple orders to meet the 1,000 contract minimum on the originating side of the trade in violation of the requirements of the rule. The rule requires that the originating side of the trade consist of one party who is submitting a QCC Order for at least 1,000 contracts. The Exchange represents that it will enforce compliance with this portion of the rule by checking to see if an ATP Holder breaks up the originating side of the order in a post trade allocation to different Clearing Members, allocating less than 1,000 contracts to a party or multiple parties. For example, an ATP Holder enters a QCC Order into the system for 1,500 contracts and receives an execution. Subsequent to the execution, the ATP Holder allocates the originating side of the order to two different clearing firms on a post trade allocation basis, thereby allocating 500 contracts to one Clearing Member and 1,000 contracts to another Clearing Member. The Exchange states that this type of transaction would not meet the requirements of a QCC Order under the current rule. With regard to order entry, the Exchange notes that ATP Holders must designate orders entered in the system as either the originating side

that is identified as being part of a qualified contingent trade, as that term is defined in Commentary .01 below, coupled with a contra-side order or orders totaling an equal number of contracts.”

¹⁴ See supra n. 4.

or the contra-side(s). The Exchange will monitor order entries to ensure that ATP Holders are properly entering QCC Orders into the system.

2. Statutory Basis

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

Specifically, because the proposal removes the size restriction placed on each contra-party to a QCC Order, but leaves unchanged the minimum size requirement for the originating order, the Exchange believes that the proposal should provide more opportunity to participate in QCC trades, consistent with the key principles behind the QCC Order.

The Exchange believes the proposed rule change is consistent with Section 6(b)(8) of the Act, as it will enable the Exchange to compete with other options exchanges, including the ISE,¹⁵ for QCC Orders. In addition, the proposed rule change will be beneficial to market participants because allowing multiple parties of any size on the contra-side of a QCC Order should foster competition for filling QCC Orders and thereby result in potentially better prices.

Furthermore, the Exchange believes that the proposed rule change should improve the utility of the QCC Order without raising novel regulatory issues, because the proposal does not impact the fundamental aspects of the QCC Order type. Rather, the proposal merely permits multiple contra-parties, regardless of size, on one side, while preserving the 1,000 contract minimum on the originating QCC Order.

¹⁵ Id.

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. In fact, the proposal is intended to relieve a burden on competition, which results from different exchanges interpreting their rules differently. Among the options exchanges, the Exchange believes that the proposal to remove the size requirement of at least 1,000 contracts (or, in the case of mini-options, 10,000 contracts), as described above, should foster competition for filling the contra-side of a QCC Order and thereby result in potentially better prices for such orders. In addition, the proposal will enable the Exchange to more effectively compete with other option exchanges like the ISE that have already implement similar rule changes.¹⁶

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁷ and Rule 19b-4(f)(6) thereunder.¹⁸ 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

¹⁶ Id.

¹⁷ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁸ 17 CFR 240.19b-4(f)(6).

Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.¹⁹

A proposed rule change filed under Rule 19b-4(f)(6)²⁰ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),²¹ 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. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will help eliminate investor confusion and promote competition among the option exchanges.²² Therefore, the Commission designates the proposed rule change to be operative upon filing.

The Commission notes that, given the differing requirements as between the originating side and contra-side for QCC Orders, it is essential that the Exchange be able to clearly identify and monitor—throughout the life of a QCC Order, beginning at time of order entry on the Exchange through the post-trade allocation process—each side of the QCC Order and ensure that the requirements of the order type are being satisfied including, importantly, those relating to the originating side. The Commission believes this to be critical so that the Exchange can ensure that market participants are not able to circumvent the requirements of the QCC Order (as

¹⁹ 17 CFR 240.19b-4(f)(6)(iii). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the 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.

²⁰ 17 CFR 240.19b-4(f)(6).

²¹ 17 CFR 240.19b-4(f)(6)(iii).

²² 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).

amended by this proposed rule change), each of which the Commission continues to believe are critical to ensuring that the QCC Order is narrowly drawn.²³ Further, the Commission notes that the Exchange has made certain representations regarding its enforcement and surveillance of its ATP Holders' use of QCC Orders, including, for example, not only at the time of order entry, but through the post-trade allocation process as well.

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)²⁴ 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

²³ The Commission expects the Exchange to have the capability to enable it to surveil that such requirements are being met. Though the Exchange has stated its ability to do so, if the Exchange is not able to have such monitoring at any point in time, the Commission would expect the Exchange to take other steps to ensure that the QCC Order cannot be improperly used. For example, if the Exchange were not able to identify and monitor which side of a QCC Order is the originating order, the Commission would expect that it would require that both sides of the QCC Order meet the more stringent requirements of the originating side, *i.e.*, that it be for a single order for at least 1,000 contracts.

²⁴ 15 U.S.C. 78s(b)(2)(B).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEMKT-2014-35 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-2014-35. 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-2014-35, 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.²⁵

Kevin M. O'Neill
Deputy Secretary

²⁵ 17 CFR 200.30-3(a)(12).