

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-74298; File No. SR-NYSEMKT-2014-95)

February 18, 2015

Self-Regulatory Organizations; NYSE MKT LLC; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change, as Modified by Partial Amendment No. 1 and Partial Amendment No. 2, Amending Rule 13 – Equities and Related Rules Governing Order Types and Modifiers

I. Introduction

On October 31, 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 Exchange Rule 13 – Equities and other related Exchange rules governing order types and order modifiers. The proposed rule change was published in the Federal Register on November 20, 2014.³ On November 14, 2014, the Exchange submitted Partial Amendment No. 1 to the Commission.⁴ On December 22, 2014, the Exchange submitted Partial Amendment No. 2 to the Commission. On December 22, 2014, pursuant to Section 19(b)(2) of the Act,⁵ the 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 73593 (Nov. 14, 2014), 79 FR 69153 (“Notice”).

⁴ The Exchange also submitted a copy of the amendment to the public comment file. See Letter from Sudhir Bhattacharyya, Vice President, New York Stock Exchange, to Kevin M. O’Neill, Deputy Secretary, Commission (Nov. 14, 2014).

⁵ 15 U.S.C. 78s(b)(2).

the proposed rule change.⁶ The Commission has received no other comment on the proposal.

This order institutes proceedings under Section 19(b)(2)(B) of the Act⁷ to determine whether to approve or disapprove the proposal.

II. Description of the Proposal

The Exchange proposes to amend Exchange Rule 13 – Equities by re-grouping and re-numbering existing order types and order modifiers. The Exchange also proposes to make changes to certain order types and order modifiers. In addition, the Exchange proposes to amend certain rules to remove references to functionality that is no longer operative. Under the proposal, Rule 13 – Equities would be reorganized into six categories: (a) primary order types; (b) time in force modifiers; (c) auction-only orders; (d) orders with instructions not to display all or a portion of the order; (e) orders with instructions not to route; and (f) additional orders and modifiers.

A. Primary Order Types

Proposed section (a) of Rule 13 – Equities would set forth two primary order types—Market Orders and Limit Orders—and specify which orders are eligible for automatic executions. The Exchange proposes to delete the current definition of “Auto Ex Order” and proposes that all orders entered electronically will be eligible for automatic executions. Interest represented manually by a floor broker, however, would not be eligible for automatic execution.

The Exchange is not changing the definition of “Market Order” and would replace the current term “Display Book” with the proposed term “Exchange systems.”⁸ For Limit Orders,

⁶ See Securities Exchange Act Release No. 73913, 79 FR 78531 (Dec. 30, 2014). The Commission designated February 18, 2015, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

⁷ 15 U.S.C. 78s(b)(2)(B).

the Exchange’s rules currently define marketable Limit Order. The Exchange proposes to add a definition for Limit Order as an order to buy or sell a stated amount of a security at a specified price or better. The marketable Limit Order definition would remain unchanged.

B. Time in Force Modifiers

Proposed section (b) of Rule 13 – Equities would set forth the Time in Force modifiers for orders: (1) Day; (2) Good til Cancelled (“GTC”) or Open; and (3) Immediate or Cancel (“IOC”). For Day modifiers, the Exchange proposes to allow only Limit Orders to be designated as Day orders. Currently, any order could be designated as a Day order. For the GTC or Open modifier, the Exchange is proposing to allow only Limit Orders to be designated with the GTC or Open modifier. Currently, any order could be a GTC or Open order. Further, the Exchange currently allows a GTC order that is designated “Off Hours eligible” to be executed through the Off-Hours Trading Facility. The Exchange is proposing that GTC orders be ineligible to be executed in any Off-Hours Trading Facility.

With respect to IOC modifiers, the Exchange currently has three different modifiers: Regulation NMS-compliant IOC; Exchange IOC; and IOC-MTS (minimum trade size). The Exchange is making non-substantive changes to the Regulation NMS-compliant IOC order modifier.⁹ The Exchange is also proposing to rename the Exchange IOC order modifier as the NYSE IOC order and to make other non-substantive changes. For the IOC-MTS order modifier, the Exchange is proposing to make non-substantive changes.

⁸ The Exchange proposes to replace the term “Display Book” with “Exchange systems” when the term refers to Exchange systems that receive and execute orders and with “Exchange book” when the term refers to the interest that has been entered and ranked in Exchange systems, as applicable throughout the proposed rule text. See Partial Amendment No. 1.

⁹ Throughout the proposed rule text, the Exchange proposes to capitalize terms, including, but not limited to, Limit Order and Market Order.

C. Auction-Only Orders

Proposed section (c) of Rule 13 – Equities would set forth five Auction-Only Orders: (1) Closing Offset (“CO”) Orders; (2) Limit-on-Close (“LOC”) Orders; (3) Limit-on-Open (“LOO”) Orders; (4) Market-on Close (“MOC”) Orders; and (5) Market-on-Open (“MOO”) Orders.¹⁰ The Exchange is proposing to make non-substantive changes to these definitions.

D. Non-Displayable Orders (All or a Portion)

Proposed section (d) of Rule 13 – Equities contains orders that are partially or fully undisplayed. There are two types of non-displayable orders: Mid-Point Passive Liquidity (“MPL”) Orders and Reserve Orders. The Exchange proposes to amend the MPL order modifier with a minimum triggering volume (“MTV”) and to make other, non-substantive changes. Specifically, Exchange systems would reject an MPL Order on entry if the MTV is larger than the size of the MPL Order, and Exchange systems would reject a request to partially cancel a resting MPL Order if it would result in the MTV being larger than the remaining size of the order. The Exchange believes that this proposed change would prevent an entering firm from causing an MPL Order to have an MTV that is larger than the order, thereby bypassing contra-side interest that is larger than the size of the MPL Order.

With respect to Reserve Orders, the Exchange proposes to make non-substantive changes to the definition. The Exchange proposes to add new rule text to state that a Minimum Display Reserve Order, which is an order that has a portion of the interest displayed when the order is or becomes the Exchange best bid or offer (“BBO”) and a portion not displayed, would participate in both automatic and manual executions. The Exchange also proposes to add new rule text to

¹⁰ The Exchange also proposes to make non-substantive changes to Rule 501 – Equities to use the term MOO/LOO Orders and MOC/LOC Orders. Further, the Exchange proposes to delete the reference to Good ‘til Cross (“GTX”) order in Rule 501 – Equities, which the Exchange no longer uses.

state that a Non-Displayed Reserve Order, which is an order that is not displayed, would not participate in manual executions. The Exchange believes that these changes would reflect how the orders currently operate on the Exchange. Moreover, the Exchange proposes to change the circumstances in which the reserve interest of a Reserve Order would be available for execution. Currently, the Exchange's rule text specifies that reserve interest of a Non-Displayed Reserve Order is available for execution only after all displayed interest at the price has been executed. The Exchange proposes to amend the rule text to specify that reserve interest of all Reserve Orders is available for execution only after all displayed interest at the price has been executed.

E. Do Not Route Orders

Proposed section (e) of Rule 13 – Equities would set forth order modifiers and order types that would not be routed: (1) the Add Liquidity Only (“ALO”) modifier; (2) Do Not Ship (“DNS”) orders; and (3) Intermarket Sweep orders (“ISO”). For the ALO modifier, the Exchange proposes to make non-substantive changes and to update a cross-reference. The Exchange also proposes to add new rule text to specify that limit orders with the ALO modifier may participate in re-openings. Current Exchange rule text states that a Limit Order with the ALO modifier may participate in the Exchange's open or close. The Exchange is also proposing to make non-substantive changes to the DNS order and ISO definitions.¹¹

F. Other Modifiers

Proposed section (f) of Rule 13 – Equities would include the Exchange's other order instructions and modifiers: (1) Do Not Reduce (“DNR”) modifier; (2) Do Not Increase (“DNI”) modifier; (3) pegging interest; (4) Retail modifier; (5) Self-Trade Prevention (“STP”) modifier;

¹¹ See Partial Amendment No. 2 (deleting inadvertent text referring to high-priced securities).

(6) Sell “Plus” – Buy “Minus” instruction; and (7) Stop order. The Exchange proposes to make non-substantive changes to the DNR and DNI modifiers.

With respect to pegging interest, the Exchange proposes to specify that pegging interest must be an e-Quote or d-Quote¹² and proposes to add new rule text to define “next available best-priced interest.”¹³ Currently, if the protected best bid or offer (“PBBO”) is not within the specified price range of the pegging interest, the pegging interest will instead peg to the next available best-priced interest that is within the specified priced. For example, if the pegging interest to buy has a limit price of \$10.25, but the Exchange PBB is at \$10.30, the pegging interest would not peg to the Exchange PBB because that price is higher than what the limit price of the pegging interest. Instead, under the current Exchange rule, the pegging interest would peg to the “next available best-priced interest,” but the term “next available best-priced interest” is not defined. The Exchange now proposes to define “next available best-priced interest” as (1) in the case of buy orders, the highest priced buy interest within the specified price range of pegging interest to buy, including displayable bids, Non-Display Reserve Orders, Non-Display Reserve e-Quotes, odd-lot sized interest, and protected bids on away markets, but not including non-displayed interest that is priced based on the PBBO, and (2) in the case of sell orders, the lowest priced sell interest within the specified price range of pegging interest to sell, including displayable offers, Non-Display Reserve Orders, Non-Display Reserve e-Quotes, odd-lot sized

¹² See Partial Amendment No. 1 (changing rule text to clarify that only d-Quotes or e-Quotes may use pegging interest).

¹³ See Partial Amendment No. 2 (adding ALO modifier text in current rule text that the Exchange states that it inadvertently omitted).

interest, and protected offers on away markets, but including non-displayed interest that is priced based on the PBBO.¹⁴

According to the Exchange, this proposed addition to the definition of pegging interest is necessary since pegging interest would not peg to either MPL Orders or Retail Price Improvement (“RPI”) Orders.¹⁵ The Exchange notes that this would be applicable regardless of whether an MPL Order or RPI Order is marketable and provided the following example in the filing.

For example, assume the best protected bid (“PBB”) is \$10.00, the Exchange has pegging interest to buy at \$9.99, an MPL Order priced at \$9.98 and a Non-Displayed Reserve Order to buy priced at \$9.97. Because the PBB is outside the specified price range of the pegging interest to buy, it would peg to the next available best-priced interest, which in this scenario would be the Non-Displayed Reserve Order to buy priced at \$9.97. The pegging interest to buy would not peg to the MPL Order to buy priced at \$9.98.¹⁶

The Exchange proposes to update cross-references to the Retail modifier and make non-substantive changes to the STP modifier and the Sell “Plus” – Buy “Minus” instruction. With respect to Stop orders, the Exchange proposes to make non-substantive changes and to replace the term “Exchange’s automated order routing system” with “Exchange systems.”

¹⁴ The Commission notes that this proposed new definition is based on current Supplemental Material .10 to Exchange Rule 13 – Equities, which defines “best-priced sell interest” and “best-priced buy interest.” These two definitions were adopted in connection with the ALO order and Day ISO order, both displayable orders, to allow for the Exchange to re-price such orders in the event of a locked or crossed market. See Securities Exchange Act Release No. 73333 (Oct. 9, 2014), 79 FR 62223 (Oct. 16, 2014).

¹⁵ See Exchange Rule 107C(a)(4) – Equities. The Exchange has not stated whether this change to the rule reflects a new order-type functionality or whether it reflects an existing functionality that was not previously explicit in the Exchange’s rules.

¹⁶ See Notice, supra note 3, at n.18, 79 FR at 69156, n.18.

G. Other Proposed Changes

The Exchange proposes to move the definition of “Routing Broker” to Rule 17(c) – Equities. The Exchange also proposes to amend the definition of Not Held orders and relocate that definition to Supplementary Material .20 to Rule 13 – Equities. The Exchange proposes that a Not Held order would refer to an unpriced, discretionary order that has been voluntarily categorized as such by the customer and as to which the customer has granted the member or member organization price and time discretion.

The Exchange also proposes to amend Rule 70.25 – Equities governing d-Quotes to clarify that certain functionality set forth in the Rule is no longer available. Specifically, Rule 70.25(c)(ii) – Equities currently provides that a Floor broker may designate a maximum size of contra-side volume with which it is willing to trade using discretionary pricing instructions. Because this functionality is not available, the Exchange proposes to delete references to the maximum discretionary size parameter from Rules 70.25(c)(ii) – Equities and (c)(v) – Equities.

In addition, the Exchange proposes to amend Rule 70.25(c)(iv) – Equities to clarify that the circumstances under which the Exchange would consider interest displayed by other market centers at the price at which a d-Quote may trade are not limited to determining when a d-Quote’s minimum or maximum size range is met. Accordingly, the Exchange proposes to delete the clause “when determining if the d-Quote’s minimum and/or maximum size range is met.”

III. Proceedings to Determine Whether to Approve or Disapprove SR-NYSEMKT-2014-95 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act¹⁷ to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the

¹⁷ 15 U.S.C. 78s(b)(2)(B).

proposed rule change, as discussed below. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described in greater detail below, the Commission encourages interested persons to provide additional comment on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,¹⁸ the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of, and input from commenters with respect to, the consistency of the proposed rule change with Section 6(b)(5) of the Act, which require that the rules of a national securities exchange be designed, among other things, 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 that those rules not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.¹⁹

In particular, the Commission seeks comment on, and will consider, whether the Exchange's proposal is consistent with Section 6(b)(5) of the Act to the extent that the proposed amendments to Rule 13 – Equities would permit a sophisticated market participant to enter a pegging order with a limit price that is set outside the PBBO in an attempt to reveal hidden interest on the book and then adjust its trading strategies to the detriment of the hidden order. The Commission notes that market participants may submit hidden orders for a variety of

¹⁸ Id. Section 19(b)(2)(B) of the Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. See id. The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding. See id.

¹⁹ 15 U.S.C. 78f(b)(5).

reasons, including to avoid disclosing to the overall market that they have interest in trading a particular security. When pegging interest was approved by the Commission, the Exchange explained that this order type was intended to permit floor brokers to be represented at the Exchange's BBO in a rapidly changing market.²⁰ The Exchange has not offered any explanation as to why permitting its pegging orders to peg to hidden interest is, on balance, good for its members or the quality of its market or why it is otherwise consistent with Section 6(b)(5) of the Act. Similarly, the Exchange's filing does not explain why this use of an order type would be available to floor brokers or to those who submit orders through a floor broker, but would not otherwise be available to other exchange members.

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the concerns identified above, as well as any other concerns they may have with the proposed rule change. Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request

²⁰ See Securities Exchange Act Release No. 54577 (Oct. 6, 2006), 71 FR 60208 (Oct. 12, 2006) (approving the New York Stock Exchange Inc.'s proposal to allow pegging instructions for Floor Broker Agency Interest Files (e-quotes)). In the notice to that filing, the Exchange stated, "In the Hybrid Market, a Floor broker needs to be represented in the BBO in order to participate in automatic executions. The e-Quotes provide Floor brokers with the mechanism to be part of the quote. However, in a more automated environment, the BBO may change rapidly and the e-Quoting process, as it currently exists, may not be sufficient to enable Floor brokers to stay with a quickly changing quote." See Securities Exchange Act Release No. 61081 (Dec. 1, 2009), 74 FR 64105 (Dec. 7, 2009) (approving the predecessor Exchange's proposal to update d-Quote functionality and provide for e-Quotes to peg to the National Best Bid or Offer)). The Commission further notes that the Exchange's rules are based on the rules of the New York Stock Exchange, Inc.

for an opportunity to make an oral presentation.²¹ Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by [insert date 21 days from publication in the Federal Register]. Any person who wishes to file a rebuttal to any other person’s submission must file that rebuttal by [insert date 35 days from publication in the Federal Register].

The Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) of the Act,²² any other provision of the Act, or the rules and regulations thereunder. The Commission asks that commenters address the sufficiency and merit of the Exchange’s statements in support of the proposed rule change, in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on the following:

1. As described above, the Exchange proposes to add a new definition for “next available best-priced interest” in connection with pegging interest. As shown in the Exchange’s example, discussed above,²³ the proposal would, when pegging interest is entered with a limit price outside the PBBO, allow pegging interest to peg to a Non-Display Reserve Order or Non-Display Reserve e-Quote that is not at the top of the Exchange’s book. Therefore, the functionality would allow the member entering pegging interest with a limit price to potentially detect the presence of a hidden order outside the PBBO, if there are no other displayable orders

²¹ Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Pub. L. 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding – either oral or notice and opportunity for written comments – is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

²² Id.

²³ See text accompanying note 16, supra.

at that price point. Given that, as noted above,²⁴ pegging interest was instituted originally to facilitate the ability of manual Floor brokers to maintain orders at the best displayed prices, do commenters believe that allowing pegging interest to potentially operate in this manner is beneficial, or detrimental, to Exchange members or the quality of the Exchange's market?²⁵

2. Do commenters believe that the Exchange's proposal sufficiently describes the characteristics, functionality, priority, and execution pricing of each of its order types and modifiers? If not, which aspects of the Exchange's order types and modifiers remain ambiguous or undescribed? Please be specific.

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-2014-95 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.

²⁴ See, supra, note 20 and accompanying text.

²⁵ The Commission notes that, while ALO orders or Day ISO orders on the Exchange can be re-priced in a manner that reveals the existence of hidden orders, ALO orders or Day ISO orders are displayed and would tighten the quoted spread. The Commission approved the ALO order and the Day ISO order re-pricing mechanism on the basis that their re-pricing mechanism would contribute to public price discovery, an objective consistent with the requirements of the Act. See Securities Exchange Act Release No. 73333 (Oct. 9, 2014), 79 FR 62223 (Oct. 16, 2014) (approving the Exchange's proposal to make the Add Liquidity Only modifier available for Limit Orders and to make the Day Time-In-Force condition and Add Liquidity Only modifier available for Intermarket Sweep Orders).

All submissions should refer to File Number SR-NYSEMKT-2014-95. 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 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-2014-95 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.²⁶

Brent J. Fields
Secretary

²⁶ 17 CFR 200.30-3(a)(57).