

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-77110; File No. SR-NYSEMKT-2016-23)

February 11, 2016

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Modifying the Amex Options Deep Market Data Product

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on February 4, 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 modify the Amex Options Deep market data product. The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://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 specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and

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<sup>1</sup> 15 U.S.C.78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

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 modify the Amex Options Deep market data product.

The Exchange currently offers the following real-time options market data feeds: “Amex Options Top,” “Amex Options Deep,” and “Amex Options Complex” (the “Amex Options Products”). “Amex Options Top” is a single market data product that combines last sale data, best bids and offers (“BBO”), order imbalance information and series status and underlying status messages (collectively called security status messages). “Amex Options Deep” is also a single market data product that provides subscribers NYSE Amex Options quotes and orders at the first three price levels in each series on a real-time basis. “Amex Options Complex,” also a single market data product, provides subscribers NYSE Amex Options quote and trade information (including orders/quotes, requests for responses, and trades) for the complex order book on a real-time basis.<sup>4</sup>

The Exchange charges a single fee for Amex Options Top and subscribers of Amex Options Top receive all three data feeds described above. The Exchange charges a separate fee for Amex Options Complex for subscribers that seek to obtain this data feed on a standalone basis.<sup>5</sup>

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<sup>4</sup> See Rule 900.3NY(e), which defines complex orders.

<sup>5</sup> See Securities Exchange Act Release No. 68004 (Oct. 9, 2012), 77 FR 62582 (Oct. 15, 2012) (SR-NYSEMKT-2012-49) (establishing fees for certain proprietary options market data products). See also Securities Exchange Act Release Nos. 69524 (May 6, 2013), 78 FR 27459 (May 10, 2013) (SR-NYSEMKT-2013-35) (establishing a schedule of NYSE Amex Options proprietary market data fees); 69553 (May 10, 2013), 78 FR 28926 (May 16, 2013) (SR-NYSEMKT-2013-40) (establishing non-display usage fees and amending the professional end-user fees); 71934 (April 11, 2014), 79 FR 21818 (April 17, 2014)

The Exchange proposes to modify the Amex Options Deep data feed. As proposed, Amex Options Deep will also include security status messages, the same data that is currently provided as part of Amex Options Top. The proposed modification to the Amex Options Deep data feed will allow subscribers who currently obtain depth of market data to also receive security status messages in a single data feed. Currently, these subscribers are required to process two data feeds to get the depth of market data and security status information. Offering a data product that combines, in one market data product, depth of market data and security status messages would provide greater efficiencies and better sequencing for vendors and subscribers that currently choose to integrate the data after receiving it from the Exchange. As with Amex Options Top, Amex Options Deep would provide depth of market and series status information on a real-time basis as reported to the Options Price Reporting Authority (“OPRA”) and disseminated on a consolidated basis under the OPRA Plan.<sup>6</sup>

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(SR-NYSEMKT-2014-30) (amending the professional user fees); 73008 (Sept. 5, 2014), 79 FR 65325 (Sept. 11, 2014) (SR-NYSEMKT-2014-73) (amending fees for non-display use); and 73589 (Nov. 13, 2014), 79 FR 68933 (Nov. 19, 2014) (SR-NYSEMKT-2014-94) (establishing fees for the complex order book feed); and 76022 (September 29, 2015), 80 FR 60201 (October 5, 2015) (modifying certain proprietary options data products).

<sup>6</sup> The OPRA Plan is a national market system plan approved by the Securities and Exchange Commission (“Commission”) pursuant to Section 11A of the Securities Exchange Act of 1934 (the “Act”) and Rule 608 thereunder (formerly Rule 11Aa3-2). See Securities Exchange Act Release No. 17638 (March 18, 1981), 22 S.E.C. Docket 484 (March 31, 1981). The full text of the OPRA Plan is available at <http://www.opradata.com>. The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the participant exchanges. Section 5.2(c) of the OPRA Plan also permits OPRA Plan participants to disseminate unconsolidated market information to certain of their members under certain circumstances. The manner in which the Exchange proposes to disseminate the products would comply with Section 5.2(c) of the OPRA Plan, pursuant to which the Exchange may not disseminate the products “on any more timely basis than the same information is furnished to the OPRA System for inclusion in OPRA’s consolidated dissemination of Options Information.”

The Amex Options Products would continue to be distributed in their current format, to maintain the format of the Amex Options Products with that of other market data products offered by the Exchange.

The Exchange does not propose to make any changes to the fees. The single fee charged for the Amex Options Product that comprise [sic] the Amex Options Top, Amex Options Deep and Amex Options Complex would continue to apply. The separate fee that now applies to Amex Options Complex, would likewise continue to apply to the Amex Options Complex market data product.<sup>7</sup>

Each of the Amex Options Products would continue to be offered through the Exchange's Liquidity Center Network ("LCN"), a local area network in the Exchange's Mahwah, New Jersey data center that is available to users of the Exchange's co-location services. The Exchange would also continue to offer the products through the Exchange's Secure Financial Transaction Infrastructure ("SFTI") network, through which all other users and member organizations access the Exchange's trading and execution systems and other proprietary market data products.

The Exchange will announce the date that the Amex Options Deep market data product will begin to include security status messages through a NYSE Market Data Notice.

The proposed change is not intended to address any issues other than those described herein, and the Exchange is not aware of any problems that vendors or subscribers would have in complying with the proposed change.

## 2. Statutory Basis

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<sup>7</sup> The Exchange has not attached an Exhibit 5 with this proposed rule change because the Exchange is not proposing to make any fee changes associated with the proposed modification to the Amex Options Deep market data product.

The proposed rule change is consistent with Section 6(b)<sup>8</sup> of the Act, in general, and furthers the objectives of Section 6(b)(5)<sup>9</sup> of the Act, in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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 it is not designed to permit unfair discrimination among customers, brokers, or dealers.

The Exchange also believes this proposal is consistent with Section 6(b)(5) of the Act because it protects investors and the public interest and promotes just and equitable principles of trade by providing investors with improved options for receiving market data. The proposed rule changes would benefit investors by facilitating their prompt access to the additional real-time information contained in a modified Amex Options Deep market data product.

In particular, the Exchange believes that combining depth of market data with security status messages in the Amex Options Deep product is reasonable because it would provide greater efficiencies for vendors and subscribers that currently choose to integrate the data after receiving it from the Exchange. In addition, the change to the Amex Options Deep product reflects the interests and needs of subscribers and vendors who will no longer have to subscribe to multiple data feeds to obtain the information they want. The Exchange believes the proposed changes are reasonable because they would provide vendors and subscribers with higher quality market data products.

In adopting Regulation NMS, the Commission granted self-regulatory organizations and

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<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

broker-dealers increased authority and flexibility to offer new and unique market data to consumers of such data. It was believed that this authority would expand the amount of data available to users and consumers of such data and also spur innovation and competition for the provision of market data. The Exchange believes that the options data product changes proposed herein are precisely the sort of market data product evolutions that the Commission envisioned when it adopted Regulation NMS. The Commission concluded that Regulation NMS – by lessening regulation of the market in proprietary data – would itself further the Act’s goals of facilitating efficiency and competition:

[E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.<sup>10</sup>

By removing “unnecessary regulatory restrictions” on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history.

The Exchange further notes that the existence of alternatives to the Exchange’s products, including real-time consolidated data, free delayed consolidated data, and proprietary data from other sources, ensures that the Exchange is not unreasonably discriminatory because vendors and subscribers can elect these alternatives.

The proposed options data products will help to protect a free and open market by providing additional data to the marketplace and give investors greater choices. In addition, the proposal would not permit unfair discrimination because the products will be available to all of

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<sup>10</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

the Exchange's customers and broker-dealers through both the LCN and SFTI.

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

In accordance with Section 6(b)(8) of the Act,<sup>11</sup> 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. The market for proprietary data products is currently competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data. Numerous exchanges compete with each other for listings, trades, and market data itself, providing virtually limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. This proprietary data is produced by each individual exchange, as well as other entities (such as internalizing broker-dealers and various forms of alternative trading systems, including dark pools and electronic communication networks), in a vigorously competitive market. It is common for market participants to further and exploit this competition by sending their order flow and transaction reports to multiple markets, rather than providing them all to a single market.

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 Act<sup>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</sup> Because the proposed rule change does not: (i)

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<sup>11</sup> 15 U.S.C. 78f(b)(8).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>13</sup> 17 CFR 240.19b-4(f)(6). 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

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)<sup>14</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>15</sup> 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 waiver of the operative delay is consistent with investor protection and the public interest because the proposal would allow the Exchange to offer currently available market data in a streamlined format that would enhance the quality of market data available to investors and would enable investors to better monitor trading activity on the Exchange. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.<sup>16</sup>

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

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days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

<sup>15</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>16</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).



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)<sup>17</sup> 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEMKT-2016-23 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-2016-23. 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

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<sup>17</sup> 15 U.S.C. 78s(b)(2)(B).

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-2016-23 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.<sup>18</sup>

Robert W. Errett  
Deputy Secretary

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<sup>18</sup> 17 CFR 200.30-3(a)(12).