

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-78685; File No. SR-NYSEMKT-2016-77)

August 25, 2016

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 900.2NY(18A)

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 August 12, 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 Rule 900.2NY(18A). 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 C below, of the most significant parts of such statements.

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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.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the filing is to amend Rule 900.2NY(18A), regarding the definition of a “Professional Customer,” to align the Exchange’s definition with that of competing options exchanges, as discussed below.

The Exchange adopted the definition of a Professional Customer in 2010, after several other options exchanges added this definition.<sup>4</sup> In doing so, the Exchange provided that a Professional Customer would “be treated in the same manner as a Broker/Dealer (or non-Customer) in securities for the purposes” of various Exchange rules “and the Exchange’s schedule of fees.”<sup>5</sup> Recently, the Exchange amended its Professional Customer definition to align with rules of other markets.<sup>6</sup> However, as part of the harmonization effort for a uniform definition of Professional Customer, the Exchange has determined that other options exchanges do not similarly include reference to their fee schedules in the definition of Professional Customer.<sup>7</sup> Thus, to conform with the rules of other options exchanges, the Exchange proposes to modify Rule 900.2NY(18A) to delete the reference to the Exchange’s fee schedule. This

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<sup>4</sup> See Securities Exchange Act Release No. 61818 (March 31, 2010), 75 FR 17457 (April 6, 2010) (SR-NYSEAmex-2010-18). See also id., at note 14 (citing the approval orders of other options exchanges).

<sup>5</sup> See Rule 900.2NY(18A).

<sup>6</sup> See Securities Exchange Act Release No. 77836 (May 16, 2016), 81 FR 31994 (May 20, 2016) (SR-NYSEMKT-2016-53).

<sup>7</sup> See, e.g., NYSE Arca Rule 6.1A.(4A) (no reference to fee schedule in definition of Professional Customer); Nasdaq OMX PHLX (“PHLX”) Rule 1000 (b)(14) (same); Nasdaq Options Market (“NOM”) Chapter 1, Sec. 1(a)(48) (same); Bats BZX Exchange, Inc.’s (“BZX”) Rule 16.1(a)(46) (same); BOX Options Exchange LLC (“BOX”) Rule 100 (a)(50) (same); International Securities Exchange (“ISE”) Rule 100(a)(37A) (same); MIAX Options Exchange (“MIAX”) Rule 100 (same).

change would allow the Exchange, like its competitors, to attract Professional Customer order flow with fees that differentiate Professional Customers from Broker/Dealers.

The Exchange also proposes to make a non-substantive change to clarify the list of rules to which the Professional Customer definition applies, which would add clarity and transparency to Exchange rules.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b)<sup>8</sup> of the Securities Exchange Act of 1934 (the “Act”), in general, and furthers the objectives of Section 6(b)(5),<sup>9</sup> 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, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system.

The proposed change would foster cooperation and coordination with persons engaged in facilitating transactions in securities as it would align Exchange rules with that of its competitors, which benefits investors and the public interest. By removing reference to the Exchange’s fee schedule from the definition of Professional Customer, the Exchange would, like its competitors, have the ability to attract Professional Customer order flow with fees that differentiate Professional Customers from Broker/Dealers. The proposed rule change would therefore remove impediments to and perfect the mechanism of a free and open market and a national market system by enabling the Exchange to structure its fees for Professional Customers competitively with the fees of other options exchanges.

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

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

Further, the proposed changes are not unfairly discriminatory as the modified definition would apply to all similarly-situated ATP Holders that submit orders on behalf of Professional Customers.

Finally, the non-substantive change to the Professional Customer definition would remove impediments to and perfect the mechanisms of a free and open market and a national market system, as it would add clarity and transparency to Exchange rules.

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. The Exchange believes that the proposed changes are pro-competitive as the changes align Exchange rules with that of competing markets and would allow the Exchange to better compete for Professional Customer order flow. The Exchange does not believe that the proposed rule change would impose any burden on intramarket competition because, to the extent the Exchange chooses to adopt fees specific to Professional Customers, such fees would be equal to or less than those charged to broker/dealers and would not be more favorable than fees charged to public customers.

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

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 for 30 days from the date on which it was filed, or such shorter time as the

Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>12</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>13</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 Exchange would be able to propose fees changes related to Professional Customers on September 1, 2016.

The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposal does not raise any new or novel issues. The Exchange's proposal removes the current provision that requires the Exchange to treat Professional Customers and Broker-Dealers in the "same manner" with respect to fees, which will allow the Exchange to separately propose, if it so chooses, to set its fees competitively in order to attract Professional Customer order flow, provided that such competitive fees are consistent with the requirements of the Act and the rules and regulations thereunder. The Commission notes that the Exchange has represented that, to the extent it chooses to adopt fees specific to Professional Customers, such fees would be equal to or less than those charged to broker-dealers and would not be more favorable than fees charged to

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and 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. The Exchange has satisfied this requirement.

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

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

public customers. Because this proposal does not raise any new or novel issues with respect to the treatment of Professional Customers, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.<sup>14</sup>

At any time within 60 days of the filing of the 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)<sup>15</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-2016-77 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.

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<sup>14</sup> 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).

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

All submissions should refer to File Number SR-NYSEMKT-2016-77. 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-2016-77 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>16</sup>

Robert W. Errett  
Deputy Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).