

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-79374; File No. SR-NYSEMKT-2016-106)

November 22, 2016

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE MKT Rule 901NY

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 November 10, 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 NYSE MKT Rule 901NY to permit the Chief Executive Officer of the Exchange or his or her designee to take certain actions in connection with the trading of securities on the NYSE Amex Options marketplace. 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

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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.

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 Exchange proposes to amend NYSE Amex Options Rule 901NY (Trading Sessions) to permit the Chief Executive Officer ("CEO") of the Exchange or his or her designee to take certain actions in connection with the trading of securities on the Exchange.

The Exchange believes the proposed rule change would make Rule 901NY more reflective of the organizational structure of the Exchange. At the same time, the proposed rule changes would ensure that the Board of Directors of the Exchange continues to have the authority to take action it deems necessary or appropriate in particular situations.

The first paragraph of Rule 901NY provides that, unless otherwise ruled by the Board of the Exchange or its designee, the Exchange shall be open for the transaction of business daily except on Saturdays and Sundays, and that the hours at which trading sessions shall open and close shall be established by the Board or its designee. Commentary .01 to Rule 901NY notes that, except under unusual conditions as may be determined by the Board or its designee, hours during which transactions in options on individual securities may be made on the Exchange shall correspond to the normal hours for business set forth in the rules of the primary exchange listing the securities underlying the options.

The Exchange proposes to amend the first paragraph of Rule 901NY to provide that, except as may be otherwise determined by the Board as to particular days, the Exchange shall be open for the transaction of business on every business day. The Exchange proposes to remove the current exclusion of Saturdays and Sundays because Saturdays and Sundays are not business

days and therefore no exclusion is needed. Finally, the amended paragraph would provide that the hours at which trading sessions shall open and close may be specified by Exchange rule, as well as by the Board. The two paragraphs of the present rule would become paragraphs (a) and (b). These proposed rule changes are based in part Exchange Rule 51(a) – Equities as well as on New York Stock Exchange LLC (“NYSE LLC”) Rule 51(a).<sup>4</sup>

The Exchange proposes to add new paragraphs (c), (d), and (e) to Rule 901NY. These proposed changes are based on Rule 51(b)–(d) – Equities and NYSE Rule 51(b) and (c). New paragraph (c) would provide that, except as may be otherwise determined by the Board of Directors, the CEO of the Exchange or his or her designee may halt or suspend trading in some or all securities traded on the Exchange; extend the hours for the transaction of business on the Exchange; close some or all Exchange facilities; determine the duration of any such halt, suspension or closing undertaken; or determine to trade securities on the Exchange’s disaster recovery facility.<sup>5</sup>

New paragraph (d) would provide that the CEO or his or her designee shall take any of the actions described in new paragraph (c) only when he or she deems such action to be

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<sup>4</sup> See Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR–Amex–2008–63). NYSE LLC is an affiliate of the Exchange. See Securities Exchange Act Release No. 45433 (February 12, 2002), 67 FR 7441 (February 19, 2002) (SR–NYSE–2001–55). The Exchange notes that its affiliate NYSE Arca, Inc. is submitting substantially the same proposed rule change for NYSE Arca Rule 7.1 and NYSE Arca Equities Rule 7.1. See SR-NYSEArca-2016-148.

<sup>5</sup> As part of its business continuity and disaster recovery plans, the Exchange maintains a disaster recovery facility, which is a secondary data center located in a geographically diverse location, as required by Regulation SCI. See 14 CFR 242.1001(a)(2)(v) (requiring policies and procedures for business continuity [sic] and disaster recovery plans that include maintaining backup and recovery capabilities sufficiently resilient and geographically diverse and that are reasonably designed to achieve next business day resumption of trading and two-hour resumption of critical SCI systems following a wide-scale disruption).

necessary or appropriate for the maintenance of a fair and orderly market, or the protection of investors or otherwise in the public interest, due to extraordinary circumstances such as:

- actual or threatened physical danger, severe climatic conditions, civil unrest, terrorism, acts of war, or loss or interruption of facilities utilized by the Exchange,
- a request by a governmental agency or official, or
- a period of mourning or recognition for a person or event.

New paragraph (e) would require that the CEO or his or her designee notify the Board of Directors of actions taken pursuant to the rule, except for a period of mourning or recognition for a person or event, as soon thereafter as is feasible.<sup>6</sup>

The Exchange proposes that commentary .01 to Rule 901NY be amended by deleting “under unusual conditions” and a reference to the Board’s designee, and by adding a reference to the authority of the CEO or his or her designee under new subparagraph (c).

Finally, the Exchange proposes to change the name of Rule 901NY from “Trading Sessions” to “Hours of Business,” which would make it consistent with Rule 51–Equities.

Currently, Rule 901NY requires Board action if extraordinary circumstances arise. However, the Board of Directors may not be able to convene and act quickly, thereby delaying any potential response. Pursuant to the operating agreement of the Exchange, a majority of the members of the Board of Directors must be Independent Directors.<sup>7</sup> Therefore, as a practical matter, they are unlikely to be at or near the Exchange if extraordinary circumstances arise,

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<sup>6</sup> For example, the Exchange may close on a national day of mourning for a former president of the United States.

<sup>7</sup> See Tenth Amended and Restated Operating Agreement of NYSE MKT LLC, Article II, Sec. 2.03(a)(i). “Independent Directors” are directors that are U.S. persons that satisfy the independence requirements of the Exchange. Id.

making it harder to convene quickly. Further, if communication systems are severely compromised in an emergency, the Board of Directors may not be able to convene at all.<sup>8</sup>

Current Rule 901NY partially addresses this concern by allowing the Board of Directors to name designees. However, use of a designee requires that the Board make the delegation before any unusual conditions arise. Further, Rule 901NY does not set any limits on when designees may act under the rule, unlike proposed paragraphs (c) and (d). Accordingly, the Exchange proposes to delete the references to a Board designee in the first paragraph of Rule 901NY and commentary .01. Such proposed deletions would make Rule 901NY consistent with Rule 51(a) – Equities, NYSE Rule 51(a) and NYSE Arca Equities Rule 7.1, none of which contemplate the board of directors appointing a designee to set the hours for business.

The Exchange believes designating by rule that the CEO of the Exchange or his or her designee may take certain actions in extraordinary circumstances would make Rule 901NY more reflective of the organizational structure of the Exchange. As described above, the CEO or his or her designees would be able to take such action only when they deem it to be necessary or appropriate for the maintenance of a fair and orderly market, or the protection of investors or otherwise in the public interest, due to extraordinary circumstances.

The proposed amendments would ensure that the Board of Directors continues to have the authority to take action it deems necessary or appropriate in particular situations. In addition, as proposed, the amended rule would ensure that the Board of Directors would remain informed, by requiring the CEO to notify the relevant Board of actions taken pursuant to the authority

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<sup>8</sup> The presence of a majority of directors then in office is necessary to constitute a quorum. See Tenth Amended and Restated Operating Agreement of NYSE MKT LLC, Article II, Sec. 2.03(d).

granted under the rule, with the exception of a period of mourning or recognition for a person or event, as soon thereafter as is feasible.

The proposed changes would have the additional benefit of bringing Rule 901NY into greater conformity with Rule 51-Equities, as well as NYSE Rule 51.<sup>9</sup>

The Exchange notes that the trading rules of Bats BZX Exchange, Inc., Bats BYX Exchange, Inc., Bats EDGX Exchange, Inc., and Bats EDGA Exchange, Inc. also provide that the CEO of the relevant exchange may halt, suspend trading in any and all securities traded on the exchange, close some or all exchange facilities, and determine the duration of any such halt, suspension, or closing, when he deems such action necessary for the maintenance of fair and orderly markets, the protection of investors, or otherwise in the public interest. The lists of special circumstances set out in such trading rules are substantially similar to those in Rule 51-Equities and NYSE Rule 51.<sup>10</sup>

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>11</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>12</sup> in particular, because 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

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<sup>9</sup> Rule 51(a)-Equities and NYSE Rule 51(a) do not state that the CEO can name a designee. However, pursuant to Rule 1-Equities and NYSE Rule 1, the CEO of the relevant exchange may designate one or more qualified employees to act in his or her place in the event that the CEO is not available. See Rule 1-Equities and NYSE Rule 1. See also Securities Exchange Act Release No. 61810 (March 31, 2010), 75 FR 17816 (April 7, 2010) (SR-NYSE-2010-26).

<sup>10</sup> See Bats BZX Exchange, Inc. Rule 11.1(c); Bats BYX Exchange, Inc. Rule 11.1(c); Bats EDGX Exchange, Inc. Rule 11.1(c); and Bats EDGA Exchange, Inc. Rule 11.1(c).

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

<sup>12</sup> 15 U.S.C. 78f(b)(5).

regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to 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 and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(1) of the Act,<sup>13</sup> in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange.

The Exchange believes that the proposed rule change would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest, and enable the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act, because it would make Rule 901NY more reflective of the organizational structure of the Exchange. In this manner, it would strengthen the ability of the Exchange to respond appropriately and in a timely fashion to extraordinary circumstances, even if the Board of Directors is unable to convene. However, unlike present Rule 901NY, which puts no limits on when the Board's designees may act, the proposed amended Rule 901NY would ensure that the CEO or his or her designee would be able to take action only when he or she deems such action to be necessary or appropriate for the maintenance of a fair and orderly market, or the protection of investors or otherwise in the public interest, due to extraordinary circumstances.

In addition, the Exchange believes that the proposed rule change would remove

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<sup>13</sup> 15 U.S.C. 78f(b)(1).

impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest, and enable the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act, because they would ensure that the Board of Directors continues to have the authority to take action it deems necessary or appropriate in particular situations. In addition, as proposed, the amended rule would ensure that the Board of Directors would remain informed, by requiring the CEO to notify the relevant Board of actions taken pursuant to the authority granted under the rule, with the exception of a period of mourning or recognition for a person or event, as soon thereafter as is feasible.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

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 Exchange Act. The proposed rule change is not intended to address competitive issues but rather is concerned solely with the administration and functioning of the Exchange.

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>14</sup> and Rule 19b-4(f)(6) thereunder.<sup>15</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>16</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>17</sup> permits the Commission to 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 Exchange states that waiver of the operative delay would immediately strengthen the ability of the Exchange to respond appropriately and in a timely fashion to extraordinary circumstances. The Exchange further states that waiving the 30-day operative delay would not affect the authority of the Board of Directors to take action it deems necessary or appropriate in particular situations. Moreover, the Exchange states that waiver of the 30-day operative delay would allow the Exchange to align its Rule 901NY and its Rule 51(a)-Equities without delay. The Commission believes that the waiver of the operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.<sup>18</sup>

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<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</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 days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

<sup>16</sup> 17 CFR 240.19b-4(f)(6).

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

<sup>18</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).

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 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-2016-106 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-2016-106. 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-2016-106, 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>19</sup>

Robert W. Errett  
Deputy Secretary

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<sup>19</sup> 17 CFR 200.30-3(a)(12).