

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-80272; File No. SR-NYSEMKT-2017-13)

March 17, 2017

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Rule Change Amending Rule 968NY to Make Permanent A Program that Allows Transactions to Take Place at A Price that is Below \$1 Per Option Contract

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 March 2, 2017, 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 968NY to make permanent a program that allows transactions to take place at a price that is below \$1 per option contract. 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

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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.

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 Rule 968NY to make permanent a program that allows transactions to take place at a price that is below \$1 per option contract.<sup>4</sup> The program is currently subject to a pilot that is scheduled to expire on July 5, 2017.<sup>5</sup>

An “accommodation” or “cabinet” trade refers to trades in listed options on the Exchange that are worthless and typically not actively traded. Trading is generally conducted in accordance with Exchange Rules, except as provided in Exchange Rule 968NY, Accommodation Transactions (Cabinet Trades), which sets forth specific procedures for engaging in cabinet trades.

Rule 968NY currently provides that cabinet transactions at a price of \$1 per option contract to occur via open outcry in any options series open for trading on the Exchange, except option classes participating in the Penny Pilot Program.<sup>6</sup> Rule 968NY provides that bids and offers (whether opening or closing a position) at a price of \$1 per option contract may be represented in the trading crowd by a Floor Broker or by a Market Maker or be provided in response to a request by a Trading Official, a Floor Broker or a Market Maker, but must yield

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<sup>4</sup> See Commentary .01 to Rule 968NY.

<sup>5</sup> See Securities Exchange Act Release No. 79564 (December 15, 2016), 81 FR 93716 (December 21, 2016) (SR-NYSEMKT-2016-116). The Exchange initially adopted the program in 2010. See Securities Exchange Act Release No. 63475 (December 8, 2010), 75 FR 77932 (December 14, 2010) (SR-NYSE Amex-2010-114).

<sup>6</sup> The \$1 cabinet trading procedures are not available in Penny Pilot Program classes because in those classes an option series can trade in a standard increment as low as \$0.01 per share (or \$1.00 per option contract with a 100 share multiplier).

priority to all resting orders in the Cabinet (those orders held by the Trading Official, and which resting cabinet orders may be closing only). If the buyer and the seller yield to resting cabinet orders, opening cabinet bids can trade with opening cabinet offers at \$1 per option contract.

The Exchange has amended the cabinet procedures to allow transactions to take place in open outcry at a price of at least \$0 but less than \$1 per option contract. This amendment expires on July 5, 2017. These lower-priced transactions are permitted to be traded pursuant to the same procedures applicable to \$1 cabinet trades, except that (i) bids and offers for opening transactions are permitted only to accommodate closing transactions, and (ii) transactions in option classes participating in the Penny Pilot Program are permitted. The Exchange believes that allowing a price of at least \$0 but less than \$1 better accommodates the closing of options positions in series that are worthless or not actively traded, particularly when there has been a significant move in the price of the underlying security, resulting in a large number of series being out-of-the-money. For example, a market participant might have a long position in a put series with a strike price of \$30 and the underlying stock might be trading at \$100. In such an instance, there is likely no market to close-out the position, even at the \$1 cabinet price.

As with other accommodation liquidations under Rule 968NY, transactions at prices less than \$1 are not disseminated to the public on the consolidated tape. In addition, as with other accommodation liquidations under Rule 968NY, the transactions are exempt from the Consolidated Options Audit Trail (“COATS”) requirements of Exchange Rule 955NY, Order Format and System Entry Requirements. However, the Exchange maintains quotation, order and transaction information for such transactions in the same format as the COATS data is maintained. In this regard, all transactions for less than \$1 must be reported to the Exchange following the close of each business day.

The Exchange notes that while the level of liquidation trades are not meaningful, such trades serve an essential purpose in that they allow market participants to close out options positions that are worthless or not actively trading. To illustrate, in 2016, there were a total of 222 Cabinet trades. Of these, 148 trades comprising 112,257 contracts were executed at a price of \$0.01, while the remaining 74 trades comprising 165,868 contracts were executed for a premium of less than \$0.01. The Exchange believes this level of trading demonstrates the benefit of the current program to market participants.

In support of making the program permanent, the Exchange represents that there are no operational issues in processing and clearing Cabinet trades in penny and sub-penny increments. Each Cabinet trade is input manually into the clearing system, and is then submitted for settlement at the Options Clearing Corporation. Additionally, ATP Holders have not raised any concerns with the processing of Cabinet trades.

## 2. Statutory Basis

The Exchange believes that this proposed rule change is consistent with Section 6(b)<sup>7</sup> of the Securities Exchange Act of 1934 (the “Act”), in general, and furthers the objectives of Section 6(b)(5)<sup>8</sup> of the Act in particular, in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that liquidation trades promote competition and afford market participants the opportunity to close out their options positions. The Exchange believes that permanently approving the rules that allow for liquidations at a price less than \$1 per option contract would better facilitate the closing of

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<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

options positions that are worthless or not actively trading, especially in Penny Pilot issues where cabinet trades are not otherwise permitted.

The Exchange believes that approving the program on a permanent basis is also consistent with the Act. With respect to the level of liquidation trades transacted on the Exchange, the Exchange believes that the data gathered provides meaningful support to make the program permanent.

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 approving the program on a permanent basis will not impact competition, as it will continue to facilitate ATP Holders the ability to close positions in worthless or not actively traded series.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be 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-2017-13 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-2017-13. 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, D.C. 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-2017-13 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>9</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>9</sup> 17 CFR 200.30-3(a)(12).