

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-80616; File No. SR-NYSEMKT-2017-13)

May 5, 2017

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, Amending Rule 968NY to Make Permanent a Program that Allows Cabinet Trade Transactions to Take Place at a Price Below \$1 Per Option Contract

I. Introduction

On March 2, 2017, NYSE MKT LLC (the “Exchange” or “NYSE MKT”) 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 amending the Exchange’s rules to make permanent a program that allows transactions to take place in open outcry trading at prices of at least \$0 but less than \$1 per option contract (“sub-dollar cabinet trades”). The proposed rule change was published for comment in the Federal Register on March 23, 2017.³ On April 25, 2017, the Exchange filed Amendment No. 1 to the proposed rule change.⁴ The Commission received no comment letters on the proposed rule

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 80272 (March 17, 2017), 82 FR 14936 (March 23, 2017) (“Notice”).

⁴ In Amendment No. 1, the Exchange provided supplemental background detail on its proposal, including a summary of why it initially put the program on a pilot, a description of the systems enhancements it made to be able to process cabinet trades in the regular course, an example of how a cabinet trade is done on the trading floor, and a representation that, to its knowledge, neither the Options Clearing Corporation (“OCC”) nor the Exchange’s members have reported any operational issues in connection with cabinet trades. To promote transparency of its proposed amendment, when NYSE MKT filed Amendment No. 1 with the Commission, it also submitted Amendment No. 1 as a comment letter to the file, which the Commission posted on its website and placed in the public comment file for SR-NYSEMKT-2017-13 (available at <https://www.sec.gov/comments/sr-nysemkt-2017-13/nysemkt201713.htm>). The Exchange also posted a copy of its Amendment No. 1 on its website

change. This order provides notice of filing of Amendment No. 1 and approves the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Proposed Rule Change

Prior to 2010, Exchange Rule 968NY (Cabinet Trades (Accommodation Transactions)) allowed cabinet trade transactions at a price of \$1 per option contract to occur in open outcry trading for certain classes.⁵ In 2010, the Exchange amended Rule 968NY on a pilot basis to allow sub-dollar cabinet trades to take place at prices of at least \$0 but less than \$1 per option contract.⁶ The Exchange now proposes to amend Rule 968NY to make permanent its sub-dollar cabinet trade pilot program, which currently is scheduled to expire on July 5, 2017.⁷

The Exchange permits sub-dollar cabinet trade transactions to be traded pursuant to the same procedures applicable to \$1 cabinet trades, except that for sub-dollar cabinet trades (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.⁸ As it explained in the Notice, the Exchange believes that “allowing trading at 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

(<https://www.nyse.com/regulation/rule-filings>) when it filed it with the Commission.

⁵ See Rule 968NY. See also Notice, supra note 3, at 14936 (discussing Rule 968NY).

⁶ See Securities Exchange Act Release No. 63475 (December 8, 2010), 75 FR 77932 (December 14, 2010) (SR-NYSEAmex-2010-114).

⁷ See Commentary .01 to Rule 968NY. See also Securities Exchange Act Release No. 79564 (December 15, 2016), 81 FR 93716 (December 21, 2016) (SR-NYSEMKT-2016-116).

⁸ See Commentary .01 to Rule 968NY. See also Notice, supra note 3, at 14937 (discussing the pilot).

underlying security, resulting in a large number of series being out-of-the-money.”⁹

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act¹⁰ and the rules and regulations thereunder applicable to a national securities exchange.¹¹ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹² which requires, among other things, that the rules of a national securities exchange be 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 regulating, clearing, settling, processing information with respect to, and 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.

In the Notice, as amended, the Exchange explains that it initially put the sub-dollar cabinet trade rule on a pilot so that it could “evaluate the efficacy of the change and to address any operational issues that might arise in processing [c]abinet trades.”¹³ During the course of the pilot, the Exchange made enhancements to its system to accommodate cabinet trades at a price as small as \$0.00000001.¹⁴ With that systems change, and based on its experience with these types of trades, the Exchange notes that its systems now “allow it to process [c]abinet trades in a

⁹ Notice, supra note 3, at 14937.

¹⁰ 15 U.S.C. 78f.

¹¹ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹² 15 U.S.C. 78f(b)(5).

¹³ Amendment No. 1, supra note 4.

¹⁴ See id.

manner similar to how all other trades are processed by the Exchange.”¹⁵

In support of making the pilot program permanent, the Exchange represents that “there are no operational issues in processing and clearing [c]abinet trades in penny and sub-penny increments.”¹⁶ The Exchange also represents that “ATP Holders have not raised any concerns with the current method of processing of [c]abinet trades.”¹⁷ Finally, the Exchange represents that it is “not aware of the Options Clearing Corporation (“OCC”) having operational issues with processing [c]abinet trades submitted by the Exchange.”¹⁸

Based on the representations of the Exchange, the Commission believes that permanent approval of the sub-dollar cabinet trade pilot is consistent with the Act. In particular, the Commission notes that the Exchange has made the necessary systems changes to accommodate sub-dollar cabinet trades into its regular trading infrastructure, and thus is able to process such trades in the normal course. Further, the Exchange has not observed any issues or concerns with sub-dollar cabinet trades at the Exchange level or with and among its members or in processing the trades through OCC. Accordingly, the Exchange’s rule appears reasonably designed to remove impediments, prevent fraudulent and manipulative acts and practices, and foster cooperation and coordination with persons engaged in facilitating transactions in securities. Further, permanent approval will continue to provide investors with choice when considering a cabinet trade, including the ability to price such trades below \$1 per contract.

¹⁵ Id. See also Notice, supra note 3, at 14937 (noting that “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”).

¹⁶ Notice, supra note 3, at 14937.

¹⁷ Amendment No. 1, supra note 4.

¹⁸ Id.

IV. Solicitation of Comments on Amendment No. 1 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 to 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. 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, 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-2017-13, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of notice of the amended proposal in the Federal Register. In Amendment No. 1, NYSE MKT provided supplemental background detail on why the sub-dollar cabinet trade provision was put on a pilot initially, described the systems changes that the Exchange made to be able to process cabinet trades, and represented its understanding that neither OCC nor the Exchange's members have reported any operational issues in connection with cabinet trades.¹⁹ The additional information contained in Amendment No. 1 provides further support for the Exchange's proposal, is consistent with the proposal as initially filed, and does not introduce any new provisions or novel arguments in support of the proposal. Further, the Commission notes that it did not receive any comment letters on the Exchange's proposal. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,²⁰ to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

¹⁹ See Amendment No. 1, supra note 4. See also supra note 4 (noting that the Exchange submitted Amendment No. 1 as a comment letter to the file, which the Commission posted on its website and placed in the public comment file).

²⁰ 15 U.S.C. 78s(b)(2).

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²¹ that the proposed rule change (SR-NYSEMKT-2017-13), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

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Assistant Secretary

²¹ 15 U.S.C. 78s(b)(2).

²² 17 CFR 200.30-3(a)(12).