

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-67314; File No. SR-NYSEAmex-2012-23)

June 29, 2012

Self-Regulatory Organizations; NYSE Amex 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 NYSE Amex Options Rule 928NY Specifying that the Potential Range for the Settings Applicable to the Market Maker Risk Limitation Mechanism will be Between One and 100 Executions Per Second, to Eliminate the Current Reference to the Default Setting and, in the Future, to Specify the Applicable Minimum, Maximum and Default Settings via Regulatory Bulletin

I. Introduction

On April 12, 2012, NYSE Amex LLC (the “Exchange” or “NYSE Amex”) 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 to: (i) specify the potential range for the settings applicable to the Market Maker Risk Limitation Mechanism (“Mechanism”) will be between one and 100 executions per second; (ii) eliminate the current reference to the default setting; and (iii) specify that the Exchange may set the applicable minimum, maximum, and default settings via Regulatory Bulletin. The proposed rule change was published for comment in the Federal Register on May 1, 2012.³ The Commission received no comment letters on the proposal. On June 26, 2012, the Exchange filed Amendment No. 1 to the proposed rule change.

The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 66857 (April 25, 2012), 77 FR 25770 (“Notice”).

II. Description of the Proposal

The Exchange adopted the Mechanism as a way to protect Market Makers from the risk associated with an excessive number of nearly simultaneous executions in a single option class.⁴ It functions as follows: if “n” executions occur within one second against the Market Maker’s quotes in an appointed class, the NYSE Amex System automatically cancels all quotes posted by the Market Maker in that class. The Mechanism currently defaults the “n” number of executions to 50 executions per second.⁵ However, a Market Maker may instead set the “n” number of executions between five and 100 executions per second.⁶

The Exchange now proposes to decrease the low end of this range from five to one, while the high end of the range would remain unchanged at 100 executions per second. The Exchange also proposes to eliminate the reference to the default setting that is applicable to the Mechanism. In addition, the Exchange proposes that, in the future, it will specify the applicable minimum, maximum and default settings for the Mechanism via Regulatory Bulletin, all of which would be within the proposed range of one to 100 executions per second.⁷

The Exchange has noted that it anticipates announcing via Regulatory Bulletin that the applicable minimum, maximum and default settings for the Mechanism will be decreased to 2, 50, and 5 executions per second, respectively.⁸

⁴ See Securities Exchange Act Release No. 59472 (February 27, 2009), 74 FR 9843 (March 6, 2009) (SR-NYSEALTR-2008-14).

⁵ See NYSE Amex Options Rule 928NY(b)(1).

⁶ See NYSE Amex Options Rule 928NY(b)(2).

⁷ See proposed NYSE Amex Options Rule 928NY(b)(1). The Exchange proposes to designate NYSE Amex Options Rule 928NY(b)(2) as “reserved.”

⁸ See Notice, supra note 3, at 25771.

In addition, on June 26, 2012, the Exchange submitted Amendment No. 1 to the proposed rule change, which added additional information about the Regulatory Bulletin that the Exchange would provide to Market Makers in the event the Exchange makes any changes to the Mechanism's minimum, maximum, or default settings. The Exchange specified that, when announcing changes to the Mechanism via Regulatory Bulletin, the Exchange will issue the bulletin at least one trading day in advance of the effective date of the change. The Exchange also specified that such bulletins will include: (1) information regarding the changes to the risk settings in the Mechanism; (2) the effective date of the changes; and (3) contact information of Exchange staff who can provide additional information.

III. Discussion

The Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁹ Specifically, the Commission finds that the proposal, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act,¹⁰ in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transaction in securities, to remove impediments and perfect the mechanisms of a free and open market, and, in general, to protect investors and the public interest.

The Exchange noted its belief that decreasing the minimum settings in the Mechanism would provide Market Makers with greater control and flexibility with respect to managing their risk and the manner in which they enter quotes on the Exchange. The Exchange also notes that

⁹ 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).

¹⁰ 15 U.S.C. 78f(b)(5).

the proposed rule change allowing the Exchange to modify Mechanism settings by Regulatory Bulletin is consistent with the Act because it would permit the Exchange to increase or decrease the Mechanism settings to accommodate system capacity concerns. The Exchange has also represented that it believes providing at least one day of advance notice via Regulatory Bulletin prior to making adjustments to the Mechanism would afford Market Makers sufficient time to review their settings and make any necessary operational or technological changes to accommodate such adjustments. Finally, the Commission notes that the proposal would not relieve Market Makers of their quoting obligations on the Exchange under the Exchange's rules.¹¹ For these reasons, the Commission believes that the proposed rule change, as modified by Amendment No. 1, is consistent with the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 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-NYSEAmex-2012-23 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

¹¹ See NYSE Amex Options Rule 925NY.

All submissions should refer to File Number SR-NYSEAmex-2012-23. 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 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 publicly available. All submissions should refer to File Number SR-NYSEAmex-2012-23 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

As discussed above, Amendment No. 1 revised the proposed rule change to specify that, when announcing changes to the Mechanism via Regulatory Bulletin, the Exchange will issue the bulletin at least one trading day in advance of the effective date of the change. The Exchange also specified that such bulletins will include: (1) information regarding the changes to the risk settings in the Mechanism; (2) the effective date of the changes; and (3) contact information of Exchange staff who can provide additional information. The Exchange also stated its belief that

providing at least one day of advance notice prior to making adjustments would afford Market Makers sufficient time to review their settings and make any necessary operational or technological changes to accommodate such adjustments to their own settings in the Mechanism or to their own proprietary systems. The Commission believes that the amendment addresses potential concerns about when the Exchange would provide notice of changes to the Mechanism settings, the form of such notice, and whether such notice would afford Market Makers sufficient time to adjust their settings in the Mechanism or their proprietary systems. Accordingly, the Commission also finds good cause, pursuant to Section 19(b)(2) of the Act,¹² for approving the proposed rule change, as modified by Amendment No. 1, prior to the 30th day after the date of publication of notice in the Federal Register.

¹² 15 U.S.C. 78s(b)(2).

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹³ that the proposed rule change (SR-NYSEAmex-2012-23), 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.¹⁴

Kevin M. O'Neill
Deputy Secretary

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ 17 CFR 200.30-3(a)(12).