

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-69608; File No. SR-NYSEMKT-2013-12)

May 20, 2013

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1, Amending Rule 975NY In Part and Adding a New Section to Address Errors that Involve Complex Orders

I. Introduction

On February 1, 2013, NYSE MKT LLC (“NYSE MKT” or the “Exchange”) 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 amend the Exchange’s Obvious Error Rule in part and add a new section to address errors that involve Complex Orders. The proposed rule change was published for comment in the Federal Register on February 21, 2013.³ The Commission received no comment letters on the proposal. On April 23, 2013, the Exchange filed Amendment No. 1 to the proposed rule change.⁴

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. 68926 (February 14, 2013), 78 FR 12123 (“Notice”).

⁴ In Amendment No. 1, the Exchange proposed to modify Rule 975NY to provide that the proposed changes to Rule 975NY(b)(1) extending to thirty minutes the time for which a Customer must notify the Exchange that it participated in a transaction that may be subject to adjustment or nullification pursuant to provisions of the Obvious Error Rule shall not apply to Professional Customers, as defined by Rule 900.2NY(18A), and to add a corresponding internal reference to Rule 900.2NY(18A) that specifies that Professional Customers will be treated in the same manner as a Broker/Dealer (or non-Customer) for purposes of the Obvious Error Rule.

II. Description of Proposal

The Exchange proposes several changes to its Obvious Error Rule, Rule 975NY. First, the Exchange is proposing to change the portion of the rule that addresses errors in series with zero or no bid. Specifically, the Exchange proposes replacing reference to “series quoted no bid on the Exchange” with “series where the NBBO bid is zero.” The Exchange believes that this change ensures consistency with other relevant parts of the rule.

Second, the Exchange proposes to increase the amount of time in which Market Makers are required to notify the Exchange in order to have transactions reviewed under Rule 975NY. Under the proposal, the time would increase from five minutes to ten minutes. The Exchange represents that this additional time accommodates the potential need for Market Makers to potentially call multiple exchanges to have transactions reviewed.

Third, the Exchange proposes to extend the time ATP Holders acting as agent for a Customer⁵ have to notify the Exchange of a potential error from twenty minutes to thirty minutes. Under the proposed rule, however, the time extension would not apply to ATP Holders acting as agent for Professional Customers.⁶ The Exchange states that because Customers are far removed from the execution of the trade, it believes that it is appropriate to give Customers more time for their requests for review to pass from their broker-dealer to the Exchange. In contrast, the Exchange notes that other market participants, such as firms, non-member Market Makers,

⁵ Under NYSEMKT Rule 900.2NY(18) "Customer" means an individual or organization that is not a Broker/Dealer; when not capitalized, "customer" refers to any individual or organization whose order is being represented, including a Broker/Dealer.

⁶ See Amendment No. 1, *supra* note 4. Under NYSEMKT Rule 900.2NY(18A) "Professional Customer" means individual or organization that (i) is not a Broker/Dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

and Professional Customers, tend to route their own order flow directly to the Exchange and are not as far removed from the actual execution. The Exchange further explains that it is fairly common for broker-dealers that receive a Customer order to route that order to another broker-dealer that uses a router that evaluates best execution factors to determine where to ultimately route the order. In these situations, if a Customer chooses to request an Obvious Error review, Customers may need more than 20 minutes for their requests for review to reach the Exchange. The Exchange acknowledges that extending the notification period can increase the uncertainty of the standing of the trade, however, it believes that such uncertainty will be limited to trades that are so outside the bounds of normal trading that they might qualify for Obvious Error treatment.

Finally, the Exchange is proposing to add a new section to Rule 975NY to address Complex Orders in the Obvious Error context, as its current rule is silent on how such Complex Orders are handled. According to the Exchange, Complex Orders are often used by market participants to enter positions known as spreads that entail limited risk relative to an outright naked sale of a put or call. The Exchange believes that the best approach for dealing with Complex Orders in the Obvious Error context is to preserve the spread whenever possible to mitigate the risk of such trades. Therefore, in the situation where a Complex Order trades with another Complex Order in the Complex Order Book, and one of the legs qualifies for Obvious Error treatment under Rule 975NY, then all legs of the Complex Order will be busted unless both parties mutually agree to an adjustment price.

The Exchange also believes that it is appropriate not to permit Obvious Error treatment in situations where the only error in the trade occurred in a no-bid series. Therefore, in situations where a Complex Order trades with another Complex Order in the Complex Order Book where

one leg qualifies for the no-bid provision of Rule 975NY, the trade will stand as executed, unless both parties to the trade mutually agree otherwise. The Exchange believes that this provision will prevent manipulation and a potential increase in nullified trades, particularly because it prevents parties from being able to enter a spread price slightly away from the market, thus increasing the chance that one of the legs will qualify for no-bid treatment, and providing the party entering the order with a window of time to evaluate the market and decide if it would be to its benefit to nullify the trade.

Finally, the Exchange is codifying its current practice for handling situations in which a Complex Order trades with individual orders or quotes in the Consolidated Book. Pursuant to the proposed rule, each executed leg will be reviewed separately under Rule 975NY. The Exchange notes that while it prefers to avoid the partial execution of a Complex Order, pursuant to this provision, it is possible that after a Complex Order trade, only one leg qualifies for Obvious Error treatment, resulting in the residual position of a single leg. The Exchange explains that it will not seek to nullify a valid execution in the Consolidated Order Book of an ATP Holder who unknowingly interacted with a leg of a Complex Order.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act⁷ and the rules and regulations thereunder applicable to a national securities exchange.⁸ In particular, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act,⁹ which requires, among other

⁷ 15 U.S.C. 78f.

⁸ 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).

⁹ 15 U.S.C. 78f(b)(5).

things, that the Exchange's rules 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 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.

The Exchange is replacing reference to "series quoted no bid on the Exchange" with "series where the NBBO bid is zero" because it believes that the NBBO provides greater accuracy in determining the value of an option because it takes into account interest from participants across all markets, not just those active on the Exchange. The Exchange also believes that this change will promote just and equitable principles of trade by adding more certainty and consistency to the Exchange's Obvious Error rule. This consistency, according to the Exchange, is important to help avoid investor confusion.

The Exchange believes that the change to increase the time limit for Market Makers to request review of transactions protects investors and the public interest because it will ensure they are comfortable meeting the deadline, thereby allowing Market Makers to continue to aggressively provide liquidity in a transparent and nondiscriminatory manner to all participants. Further, the Exchange notes that increasing the time limit for ATP Holders acting as agent for Customers (but not acting as agent for Professional Customers) to request review of transactions should give those Customers that are not Professional Customers sufficient time to request a review for trades, which is also consistent with investor protection and furthering the public interest as it allows those market participants furthest removed from the point of execution time to evaluate each trade and have adequate time to notify the Exchange of a potential error.

The Exchange believes that the proposed rule changes that address the handling of Complex Orders under the Obvious Error rule are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Exchange notes that detailing the treatment of Complex Orders involved in Obvious Errors provides investors with greater certainty. The Exchange also believes that the best approach for dealing with Complex Orders in the context of the Obvious Error rule is to preserve the spread whenever possible. Second, the Exchange believes that preventing market participants from busting trades solely the result of a leg(s) of a Complex Order executing in a no-bid series furthers the protection of investors and the public interest by preventing potential abuse. Finally, the Exchange believes that the proposed rule change provides objective guidelines for the determination of whether an obvious price error has occurred, as it notes that the determination of whether an “Obvious Error” has occurred should be based on specific and objective criteria and subjective to specific and objective procedures.

The Commission notes that, in approving past proposals relating to Obvious Errors, it has emphasized the importance of specific and objective criteria to determine how and when to nullify or adjust trades involving Obvious Errors.¹⁰ The Commission believes the changes that comprise this current proposal further this objective. For the reasons noted above, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹¹ which requires, among other things, that the Exchange’s rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster

¹⁰ See, e.g., Securities Exchange Release Nos. 54228 (July 27, 2006), 71 FR 44066 (August 3, 2006) (SR-CBOE-2006-14) and 58778 (October 14, 2008), 73 FR 62577 (October 21, 2008) (SR-CBOE-2008-90) (both approving revisions to CBOE’s Obvious Error Rules).

¹¹ 15 U.S.C. 78f(b)(5).

cooperation and coordination with persons engaged in 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.

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-NYSEMKT-2013-12 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.

All submissions should refer to File Number SR- NYSEMKT-2013-12. 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-NYSEMKT-2013-12 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 with respect to what types of entities would benefit from the proposed time extension for ATP Holders acting as agent for Customers to notify the Exchange of a potential error. The proposed rule change increases such time from twenty minutes to thirty minutes. In Amendment No. 1, the Exchange specifies that the extension would not apply to Professional Customers. The Commission believes that the amendment addresses potential concerns about whether the Exchange's justification for this proposed change applies to Professional Customers. The Exchange states that because Customers, a broadly defined term in the Exchange's rules that includes Professional Customers, are typically further removed from the trade execution and slower to receive information about the status of their orders and executions, it is appropriate to afford them more time to notify the Exchange of a potential error. Professional Customers, however, are frequent traders that are potentially more likely to closely follow their trade execution than other types of Customers according to the Exchange. The Exchange explained that Professional Customers tend to route their own order flow directly to the Exchange and are not as far removed from the actual execution. By revising the proposed rule change to specify that the time

extension would not apply to Professional Customers, the Commission believes the Exchange has adequately addressed this potential inconsistency between the proposed change and its justification. 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.

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹³ that the proposed rule change (SR-NYSEMKT-2013-12), as modified by Amendment No. 1, is hereby 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

¹² 15 U.S.C. 78s(b)(2).

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ 17 CFR 200.30-3(a)(12).