

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-70760; File No. SR-NYSEMKT-2013-85)

October 28, 2013

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 980NY to Specify that the Specialist Pool and Directed Order Market Makers Receive Execution Allocations of Incoming Electronic Complex Orders and Complex Order Auction Eligible Orders in Accordance with the Guaranteed Participation Provision of Rule 964NY(c)(2)(B), Without Any Exceptions

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on October 24, 2013, NYSE MKT LLC (the “Exchange”) 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 980NY to specify that the Specialist Pool and Directed Order Market Makers receive execution allocations of incoming Electronic Complex Orders and Complex Order Auction (“COA”) eligible orders in accordance with the guaranteed participation provision of Rule 964NY(c)(2)(B), without any exceptions. The text of the proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend Rules 980NY(c)(i), (c)(iii), (e)(6)(A), and (e)(6)(D) to specify that the Specialist Pool and Directed Order Market Makers receive execution allocations of the individual components of a legged out incoming Electronic Complex Order or COA-eligible order in accordance with the guaranteed participation provision of Rule 964NY(c)(2)(B), without any exceptions. Exchange systems currently provide the Specialist Pool with such guaranteed participations when Electronic Complex Orders are legged out to trade with individual quotes and orders in the leg markets that include bids or offers from the Specialist Pool. Directed Order Market Makers, however, do not currently receive guaranteed participation with respect to Electronic Complex Orders. As proposed, an Electronic Complex Order that is marked as a Directed Order may execute against Directed Order Market Makers if it legs out to trade with individual

quotes and orders in the leg markets and there is a Directed Order Market Maker quoting in one or more of the leg markets.

Rule 980NY governs trading of “Electronic Complex Orders,” as that term is defined in Rule 900.3NY(e).⁴ Rule 980NY(c)(i) currently provides that Electronic Complex Orders accepted in the Exchange’s Complex Matching Engine (“CME”)⁵ are executed automatically against other Electronic Complex Orders in the Consolidated Book,⁶ unless individual orders or quotes in the Consolidated Book can execute against incoming Electronic Complex Orders, subject to specified conditions, in which case such individual orders and quotes have priority. Rule 980NY(c)(iii) currently provides that ATP Holders can view Electronic Complex Orders in the Consolidated Book via an electronic interface and may submit Electronic Complex Orders to the CME to trade against orders in the Consolidated Book.

Rule 980NY(e) governs the COA process, and specifically, Rule 980(e)(6) governs the execution of COA-eligible orders.⁷ Upon receiving a COA-eligible order

⁴ Rule 900.3NY(e) defines an Electronic Complex Order as “any order involving the simultaneous purchase and/or sale of two or more different option series in the same underlying security, for the same account, in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00) and for the purpose of executing a particular investment strategy.”

⁵ Rule 980NY(a) defines the CME as “the mechanism in which Electronic Complex Orders are executed against each other or against individual quotes and orders in the Consolidated Book.”

⁶ Rule 900.2NY(14) defines the Consolidated Book as “the Exchange’s electronic book of limit orders for the accounts of Customers and broker-dealers, and Quotes with Size. All orders and Quotes with Size that are entered into the Book will be ranked and maintained in accordance with the rules of priority as provided in Rule 964NY.”

⁷ Rule 980NY(e)(1) defines a COA-eligible order as “an Electronic Complex Order that, as determined by the Exchange on a class-by-class basis, is eligible for a COA considering the order’s marketability (defined as a number of ticks away

and a request by the ATP Holder representing the order that an auction be initiated, the Exchange sends an automated request for responses (“RFR”) message to ATP Holders with an interface connection to the Exchange that have elected to receive such RFR messages. Market Makers with an appointment in the relevant options class, and ATP Holders acting as agent for orders resting at the top of the Consolidated Book in the relevant options series may electronically submit responses (“RFR Responses”), and modify, but not withdraw, the RFR response at anytime during the request response time interval (the “Response Time Interval”). When the Response Time Interval expires, the COA-eligible order is executed and allocated to the extent it is marketable, or routed to the Consolidated Book to the extent it is not marketable.

Rule 980NY(e)(6) provides that COA-eligible orders are executed against the best priced contra-side interest, and provides an allocation process for orders at the same net price. Rule 980NY(e)(6)(A) currently provides that individual orders and quotes in the leg markets resting in the Consolidated Book prior to the initiation of a COA will have first priority to trade against a COA-eligible order, provided the COA-eligible order can be executed in full (or in a permissible ratio) by the orders and quotes in the Consolidated Book.⁸ Rule 980NY(e)(6)(D) currently provides that individual orders and quotes in the leg markets that cause the derived Complex Best Bid/Offer to be improved during the COA and match the best RFR Response and/or Electronic Complex Orders received during the Response Time Interval will be filled after Electronic Complex Orders and

from the current market), size, number of series, and complex order origin types (i.e., Customers, broker-dealers that are not Market-Makers or specialists on an options exchange, and/or Market-Makers or specialists on an options exchange).”

⁸ Allocations to individual orders and quotes in the leg markets in the Consolidated Book occur in time, with Customer orders having priority ahead of non-customer orders and quotes at the same price.

RFR Responses at the same net price. Allocations to individual orders or quotes in the leg markets that cause the derived BBO to be improved occur on a Customer/order/size pro rata basis.

Under Rules 980NY(c)(i) and (c)(iii), incoming orders or quotes, or those residing in the Consolidated Book, that execute against Electronic Complex Orders are allocated pursuant to Rule 964NY.⁹ Additionally, under Rules 980NY(e)(6)(A) and (e)(6)(D), individual orders or quotes residing in the Consolidated Book that execute against a COA-eligible order are allocated pursuant to Rule 964NY. Rule 964NY(c)(2)(B) grants the Specialist Pool and Directed Order Market Makers guaranteed participation after Customer interest is filled, which means that if the Specialist Pool or Directed Order Market Maker is quoting at a price equal to the National Best Bid or Offer (“NBBO”) in an option series that the Specialist Pool or Directed Order Market Maker is assigned, incoming bids and offers in that series will, depending on order ranking provisions of Rule 964NY, be matched against the Specialist Pool’s or Directed Order Market Makers’ quotes, up to specified thresholds.¹⁰ Currently, Rules 980NY(c)(i), (c)(iii), (e)(6)(A), and (e)(6)(D) provide that the Specialist Pool and Directed Order Market Maker guaranteed participation afforded in Rule 964NY(c)(2)(B) will not apply to executions against an Electronic Complex Order or a COA-eligible order. However, Exchange systems do

⁹ The Exchange proposes a technical, non-substantive amendment to Rule 964NY(c)(2)(B) to change the cross-reference from Rule 964NY(a) to Rule 964NY(b).

¹⁰ Rule 900.3NY(s) defines a “Directed Order” as “any marketable order to buy or sell which has been directed to a particular Market Maker by an Order Flow Provider. To qualify as a Directed Order, an order must be delivered electronically to the System.” An incoming order marked as a “Directed Order” is matched against the quotes of “Directed Order Market Makers” under Rule 964NY(b)(2)(B).

apply the Specialist Pool guaranteed participation afforded in Rule 964NY(c)(2)(B) to Electronic Complex Orders and COA-eligible orders that execute against individual quotes and orders in the Consolidated Book.

The Exchange is proposing to amend Rules 980NY(c)(i), (c)(iii), (e)(6)(A), and (e)(6)(D) to specify that both the Specialist Pool and Directed Order Market Makers receive execution allocations of incoming Electronic Complex Orders and COA-eligible orders in accordance with the guaranteed participation provision of Rule 964NY(c)(2)(B), without any exceptions. The proposed change would codify existing processing of Electronic Complex Orders that leg out to the individual markets and how they may interact with the Specialist Pool in the individual markets. In addition, the proposed change would add the ability to designate an Electronic Complex Order as a Directed Order. As proposed, the Directed Order instructions for an Electronic Complex Order would only be applicable if the Electronic Complex Order legs out to the individual markets and a Directed Order Market Maker is quoting in one or more of those markets. The proposed change does not provide for a Direct Order program for Electronic Complex Orders that trade with other Electronic Complex Orders.¹¹

The Exchange notes that under the proposed amendment to Rule 980NY(c)(iii), the execution of an Electronic Complex Order against another Electronic Complex Order in the Consolidated Book would not result in a guaranteed participation for a Specialist or Directed Order Market Maker. Rather, the guaranteed participation provision of that rule is only applicable if an Electronic Complex Order legs out individual components to

¹¹ The Exchange will announce, via Trader Update, the allocation process that applies when an Electronic Complex Order legs out to the individual markets and the implementation date of the proposed change to designate an Electronic Complex Order as a Directed Order.

trade with the quotes of a Specialist or Directed Order Market Maker. Consequently, the individual options components of an Electronic Complex Order, and not the Electronic Complex Order itself, may be designated as Directed Orders. The guaranteed participation associated with the allocation of Directed Orders will, therefore, only be available where the Electronic Complex Order legs out individual components to trade with the quotes of a Directed Order Market Maker that meets its quoting obligations, as discussed in more detail below.

The Exchange believes that it is appropriate to provide Specialists and Directed Order Market Makers with guaranteed participation in relation to execution allocations of the individual components of an Electronic Complex Order. The guaranteed participation strikes a reasonable balance between rewarding certain participants for making markets (in the case of Specialists) or bringing liquidity to the Exchange (in the case of Directed Order Market Makers), and providing other market participants an incentive to quote aggressively.¹² Although Exchange rules did not originally afford the Specialist Pool and Directed Order Market Makers any guaranteed participation when an Electronic Complex Order executes against the individual leg markets, the Exchange believes that permitting such guaranteed participation will further incentivize the provision of liquidity that is aggressively priced. Therefore, the Exchange believes it is reasonable to provide the Specialist Pool and Directed Order Market Makers with guaranteed participations

¹² See Exchange Act Release No. 59472 (Feb. 27, 2009), 74 FR 9843, 9847 (Mar. 6, 2009) (SR-NYSEALTR-2008-14) (approving guaranteed participation for the Specialist Pool and Directed Order Market Makers) (“The Commission believes that these guarantees strike a reasonable balance between rewarding certain participants for making markets (in the case of Specialists and e-Specialists) or bringing liquidity to the exchange (in the case of Directed Order Market Makers), with providing other market participants an incentive to quote aggressively.”).

whether the contra-side order is a leg of an Electronic Complex Order or an individual order. The Exchange notes that the proposed rule change is consistent with the allocation process for executing Complex Orders against individual orders and quotes on the Chicago Board Options Exchange (“CBOE”) and NASDAQ OMX PHLX LLC (“PHLX”).¹³

The Exchange notes, moreover, that to receive a guaranteed participation, the Specialist and Directed Order Market Maker are subject to heightened quoting obligations. A Specialist must provide continuous two-side quotations throughout the trading day in its appointed issues for 90% of the time the Exchange is open for trading in each issue.¹⁴ Further, a Directed Order Market Maker must provide continuous two-sided quotations throughout the trading day in issues for which it receives Directed Orders for 90% of the time the Exchange is open for trading in each issue.¹⁵

Finally, the Exchange also believes that eliminating the inconsistency between Rule 964NY and Rule 980NY with respect to the guarantee will eliminate potential confusion as to whether the Specialist Pool and Directed Order Market Makers are receiving their guaranteed participation when they quote at a price equal to the NBBO.

¹³ See CBOE Rules 6.53C(c)(ii)(2), 6.53C(d)(v)(1), 6.45A(a)(i)(C), and 6.45B(a)(ii)(C). The CBOE’s rules governing priority and allocation include cross references to the CBOE’s participation entitlement programs: CBOE Rules 8.13 (Preferred Market-Maker Program), 8.15B (Participation Entitlement of LMMs), and 8.87 (Participation Entitled of DPMs and e-DPMs). See also Commentaries .08(e)(vi)(A)(1) and .08(f)(iii) to PHLX Rule 1080 and PHLX Rule 1014(g)(vii) (setting forth PHLX’s guaranteed participation program, including the Enhanced Specialist Participation program).

¹⁴ See Rule 925.1NY(b).

¹⁵ See Rule 964.1NY(iv).

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,¹⁶ in general, and furthers the objectives of Section 6(b)(5),¹⁷ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Exchange believes that providing the guaranteed participation allocation for the Specialist Pool and Directed Order Market Makers for the execution of incoming Electronic Complex Orders and COA-eligible orders removes impediments to and perfects the mechanism of a free and open market by (1) promoting liquidity on the Exchange because the Specialist Pool's and Directed Order Market Makers' quotes interact with incoming Electronic Complex Orders and COA-eligible orders, (2) providing consistency among Exchange rules by applying the same allocation logic to the execution of incoming Electronic Complex Orders/COA-eligible orders and single-leg orders, and (3) eliminating potential confusion with respect to guaranteed participation for such participants trading in Electronic Complex Orders. Additionally, the Exchange believes that the proposal is designed to protect investors and the public interest because the proposed rule change is consistent with the allocation process for executing Complex Orders against individual orders and quotes on CBOE and PHLX. The Exchange further believes that the proposal will promote liquidity on the Exchange because the Specialist Pool and Directed Order Market Maker guaranteed participation strike a reasonable balance between rewarding certain participants for making markets or bringing liquidity

¹⁶ 15 U.S.C. § 78f(b).

¹⁷ 15 U.S.C. § 78f(b)(5).

to the Exchange and providing other market participants an incentive to quote aggressively.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will not impose a significant burden on competition; instead, the Exchange believes the proposed rule change will enhance competition by increasing liquidity in the options market. By permitting the guaranteed participation allocation with respect to Electronic Complex Orders and COA-eligible orders, the Specialist Pool and Directed Order Market Makers are encouraged to quote at the NBBO in their assigned options series, which increases the level of liquidity in the options market. While allocations due to guaranteed participations may direct order flow to particular participants, the Commission has previously approved such allocations as a reasonable balance between rewarding such participants for making markets or bringing liquidity to the exchange, and providing other market participants an incentive to quote aggressively.¹⁸ By allocating 40 percent of the order to the Specialist Pool or Directed Order Market Maker, the Exchange believes that it properly incentivizes the provision of liquidity from the Specialist Pool or Directed Order Market Makers, while still ensuring that other market participants are able to participate and receive allocations.

In addition, eliminating the current exception from the guaranteed participation allocation will also provide consistency and eliminate potential confusion concerning guaranteed participation allocation for such participants with respect to Electronic Complex Orders and COA-eligible orders. Further, the Exchange does not believe the

¹⁸ See 74 FR at 9847.

proposal will impose a significant burden on competition since the proposal is consistent with the allocation process on CBOE and PHLX.

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 foregoing 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 after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁹ and Rule 19b-4(f)(6)²⁰ thereunder.

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 under Section 19(b)(2)(B)²¹ of the Act to determine whether the proposed rule change should be approved or disapproved.

¹⁹ 15 U.S.C. 78s(b)(3)(A).

²⁰ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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. The Exchange has satisfied this requirement.

²¹ 15 U.S.C. 78s(b)(2)(B).

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. Please include File Number SR-NYSEMKT-2013-85 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-2013-85. 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-2013-85 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.²²

Kevin M. O'Neill
Deputy Secretary

²² 17 CFR 200.30-3(a)(12).