

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-70955; File No. SR-NYSEMKT-2013-84)

November 27, 2013

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Rule Change Amending NYSE MKT Rules 13 – Equities, 70.25 – Equities, 107C – Equities and 1000 – Equities to Adopt a New Order Type Called a Midpoint Passive Liquidity Order

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 November 18, 2013, 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: (1) NYSE MKT Rule 13 - Equities to adopt a new order type called a Midpoint Passive Liquidity (“MPL”) Order; (2) NYSE MKT Rule 1000 – Equities to specify that MPL Orders may interact with Capital Commitment Schedule (“CCS”) interest; (3) NYSE MKT Rule 70.25 - Equities to permit d-Quotes to be designated with a midpoint modifier in order to set the discretionary price to the midpoint of the PBBO; and (4) NYSE MKT Rule 107C - Equities to incorporate the new MPL Order into the Retail Liquidity Program. 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, on the Commission’s website at www.sec.gov, and at the Commission’s Public Reference Room.

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend: (1) NYSE MKT Rule 13 - Equities to adopt a new order type called an MPL Order; (2) NYSE MKT Rule 1000 – Equities to specify that MPL Orders may interact with CCS interest; (3) NYSE MKT Rule 70.25 - Equities to permit d-Quotes to be designated with a midpoint modifier in order to set the discretionary price to the midpoint of the PBBO; and (4) NYSE MKT Rule 107C - Equities to incorporate the new MPL Order into the Retail Liquidity Program.

Proposed MPL Order

As proposed, an MPL Order would be defined as an undisplayed limit order that would automatically execute at the mid-point of the protected best bid (“PBB”) and the protective best offer (“PBO”) (collectively, “PBBO”). An MPL Order would interact with any incoming order, including another MPL Order, and could execute at prices out to four decimal places. Such an order would not be eligible to trade if it would trade at a price below \$1.00 or if the execution price would be out to five decimal places above \$1.00. An MPL Order could not be designated as Good Till Cancelled (“GTC”). An MPL Order would not execute if the market was locked or

crossed. When the market unlocked or uncrossed, the Exchange would execute all eligible MPL Orders and other hidden interest eligible to execute at the midpoint of the PBBO.⁴ MPL Orders would be allocated consistent with Rule 72 - Equities. An MPL Order's time priority would be based on its time of entry into Exchange systems and would not reset when an MPL Order's price shifted due to changes in the PBBO. For example, consider an MPL Order to buy entered when the PBBO was \$10.01 by \$10.05 and therefore was eligible to trade at \$10.03. The MPL Order's time priority would be based on when the order was originally entered, even if the PBBO shifted to \$10.03 by \$10.05 and the MPL Order was eligible to trade at \$10.04.

An MPL Order could include a Minimum Triggering Volume ("MTV") and would not be eligible to trade unless the aggregated contra-side quantity of all interest marketable at the midpoint of the PBBO was equal to or greater than the MPL Order's MTV. There would not be a guaranteed trade size based on the MTV. Exchange systems would enforce an MTV restriction even if the unexecuted portion of an MPL Order with an MTV was less than the MTV.⁵ An MPL Order that included an MTV would be rejected if it also included a Self Trade Prevention ("STP") Modifier.

As proposed, STP Modifiers could be used with MPL Orders; however, whether an MPL Order with an STP Modifier would be cancelled would depend on what type of order was on the

⁴ The other hidden interest at the Exchange eligible to execute at the midpoint after the market unlocked or uncrossed would be Non-Displayed Reserve Orders pursuant to Rule 13 - Equities and Floor-broker interest without a published quantity pursuant to Rules 70(e) and (f)(i) - Equities. Such interest would execute only if the midpoint of the PBBO was in whole pennies. An MPL Order designated with an Add Liquidity Only ("ALO") Modifier, as described below, would not participate in the execution when the market unlocked or uncrossed.

⁵ For example, if an MPL Order to buy for 1,000 shares with an MTV of 500 shares received a partial execution of 800 shares, Exchange systems would enforce the MTV of 500 shares on a subsequent execution even though the leaves quantity of the MPL Order (200 shares) is less than the MTV.

contra-side. Consistent with Rule 13 - Equities governing STP Modifiers, an MPL Order with an STP Modifier would not execute against either another MPL Order or a non-MPL Order with an STP Modifier with the same market participant identifier (“MPID”). The Exchange would follow the rules set forth for cancelling an MPL Order (i.e., whether the incoming or resting MPL Order gets cancelled) if the contra-side order with the same MPID was another MPL Order. However, the Exchange would not cancel an MPL Order with an STP Modifier when the contra-side order with the same MPID was a non-MPL Order. Instead, if an MPL Order with an STP Modifier and a non-MPL Order with an STP Modifier with the same MPID would participate in the same trade, the MPL Order would not participate in the execution and would be maintained in Exchange systems.

Further, as proposed, Users could designate an MPL Order with an ALO Modifier (“MPL-ALO Order”). An MPL-ALO Order would not execute on arrival, even if marketable, but would remain non-displayed in the NYSE MKT book until triggered to trade by arriving marketable interest; however, an incoming non-marketable MPL-ALO Order could trigger a discretionary trade.⁶ An MPL-ALO Order would be only eligible to trade against incoming contra-side interest, and would ignore contra-side interest resting in the NYSE MKT book. A resting MPL-ALO Order would not be eligible to trade when arriving, same-side interest triggered a trade with contra-side interest. An MPL-ALO Order must be at least one round lot.

Because an MPL Order would not be eligible for manual executions, including openings, re-openings, or closing transactions, MPL Orders would not be available to be designated as Limit “On-the-Open” (“LOO”) or Limit “At-the-Close” (“LOC”) Orders. The Exchange believes it is appropriate to not permit such a combination because the midpoint concept is not

⁶ An MPL-ALO Order triggering a discretionary trade would be the “liquidity provider,” and the triggered discretionary order would be the “liquidity taker.”

compatible with single-priced transactions that occur during the openings, re-openings, or closing transactions. As fully undisplayed interest, MPL Orders would not be visible to the DMM on the Floor under any circumstances.

As proposed, MPL Orders would be available for any participant at the Exchange, unless specifically noted otherwise. DMM interest entered via the CCS pursuant to Rule 1000 would not be permitted to be designated as MPL Orders. The CCS is a liquidity schedule setting forth various price points at which the DMM is willing to interact with incoming orders. The CCS informs the Display Book of the number of shares that the DMM is willing to trade at price points outside, at, and inside the Exchange Best Bid or Offer. CCS interest will either execute at the price at which the full size of the order can be satisfied (the “completion price”) or at the next price that is one minimum price variation (“MPV”) or more higher (in the case of an order to sell) or lower (in the case of an order to buy). Therefore, because MPL Orders are priced at the midpoint of the PBBO and could be priced less than one MPV above or below the completion price, the Exchange believes it is appropriate that CCS interest cannot be designated as an MPL Order.

While CCS interest cannot be designated as an MPL Order, CCS interest would be eligible to interact with MPL Orders at the midpoint of the PBBO, including sub-penny executions. Currently, CCS interest is eligible to trade inside the Exchange BBO when eligible to trade at the price of interest representing non-displayable reserve interest of Reserve Orders and Floor broker agency interest files reserve interest. The Exchange is proposing to expand this list by amending Rule 1000(f)(1)(B) to include MPL Orders. Therefore, CCS interest would also be eligible to trade inside the Exchange BBO when eligible to trade at the price of interest representing MPL Orders.

The Exchange proposes to specify that MPL Orders would not be available for d-Quotes. As described below, the Exchange proposes to amend Rule 70.25 - Equities to specify how a midpoint modifier would be made available for d-Quotes. MPL Orders would not be available for pegging interest. Pegging interest is set to track the PBB or the PBO as the PBBO changes. The offset value for pegging interest is the specified amount by which the price of the pegging interest differs from the price of the interest to which it pegs. MPL Orders, on the other hand, would always be priced at the midpoint of the PBBO. Thus, the Exchange believes that the MPL Order and pegging interest are incompatible and would not permit pegging interest to be designated as an MPL Order.

As further proposed, MPL Orders would not be available for Retail Orders or Retail Price Improvement Interest, as defined in Rule 107C - Equities. As noted below, MPL Orders could interact with incoming Retail Orders.

D-Quotes Designated with a Midpoint Modifier

The Exchange proposes to make a midpoint modifier available for d-Quotes. A d-Quote is an e-Quote with discretionary instructions, allowing Floor brokers to set a price range within which they are willing to initiate or participate in a trade. The discretion is used, as necessary, to initiate or participate in a trade with an incoming order capable of trading at a price within the discretionary range. As proposed, a d-Quote with a midpoint modifier would have a discretionary range up to the midpoint of the PBBO.⁷

⁷ For clarity, the Exchange notes that the MPL Order and the midpoint modifier are completely distinct functionality. An MPL Order would always be priced at the midpoint of the PBBO and would execute at such price. A d-Quote designated with a midpoint modifier would use its discretion to execute up to the midpoint but could execute at a less aggressive price. As such, a d-Quote with a midpoint modifier would operate as a d-Quote that updated with changes in the PBBO to set the discretionary price range to the midpoint of the PBBO.

For example, assume the PBBO is 10.01 x 10.04, and a Floor broker entered a sell d-Quote with a midpoint modifier and a floor price of 10.02. Because the midpoint of the PBBO is 10.025, which is above the 10.02 floor price, that d-Quote to sell would not execute at the 10.02 floor price while the PBBO is 10.01 x 10.04. If a limit order to buy priced at 10.03 entered the market, the d-Quote would use one cent of its price discretion and initiate a trade at 10.03. Additionally, if the order to buy was an MPL Order, the d-Quote would use all of its price discretion and initiate a trade at 10.025. However, if the limit order to buy were priced at 10.02, the d-Quote would not exercise discretion since the price of the limit order was outside the discretionary range of the d-Quote, even though the floor price of the d-Quote is within the limit order's price.

Assume the same facts as above, except the PBBO has shifted to 9.99 x 10.03. Because the midpoint (10.01) is below the floor price, the d-Quote with a midpoint modifier would be eligible to execute at its floor price. As a result, if an incoming limit order to buy were priced at 10.02, the d-Quote would be eligible to use its price discretion to initiate a trade at 10.02. However, if the limit order to buy were priced at 10.01, because the floor of the discretionary price range for the d-Quote is 10.02, the d-Quote would not initiate a trade with that buy order priced at 10.01.

In order to accommodate the use of a midpoint modifier, the Exchange is proposing to amend Rule 70.25(b)(ii) - Equities, which states that the minimum price range for a d-Quote is the minimum price variation set forth in Exchange Rule 62 - Equities. Rule 62 - Equities sets the minimum price variation to \$0.01 for stocks priced greater than \$1.00. However, with the midpoint modifier, a d-Quote can have a minimum price variation of \$0.005. Therefore, the Exchange is proposing to amend this restriction by excepting d-Quotes with a midpoint modifier.

Incorporation of MPL Orders into Retail Liquidity Program

As proposed, MPL Orders would be available to interact with Retail Orders within the Retail Liquidity Program (the “Program”). The Program, which is a pilot program, is designed to attract retail order flow to the Exchange, and allows such order flow to receive potential price improvement. Under the Program, Retail Liquidity Providers (“RLPs”) are able to provide potential price improvement in the form of a non-displayed order that is priced better than the PBBO, called a Retail Price Improvement Order (“RPI”). Retail Member Organizations (“RMOs”) can submit a Retail Order to the Exchange, which interacts, to the extent possible, with available contra-side RPIs.

Pursuant to Rule 107C(k) - Equities, Retail Orders may be designated as Type 1, Type 2, or Type 3. A Type 1 Retail Order interacts with available contra-side RPIs and does not interact with other available contra-side interest in Exchange systems or route to other markets. A Type 2 Retail Order interacts with available contra-side RPIs and any remaining portion of the Retail Order is executed as a Regulation NMS-compliant Immediate or Cancel Order pursuant to NYSE MKT Rule 13 - Equities. A Type 3 Retail Order interacts first with available contra-side RPIs and any remaining portion of the Retail Order is executed as an Exchange Immediate or Cancel Order pursuant to Rule 13 - Equities.

The Exchange proposes to amend Rules 107C(k) and (l) - Equities to permit all Retail Orders to interact with, in addition to available contra-side RPIs, available contra-side MPL Orders. When determining the price to execute a Retail Order, Exchange systems would consider all eligible RPIs and MPL Orders. If the only interest was MPL Orders, the Retail Order would execute at the midpoint of the PBBO. If the only interest was RPIs, then the execution would occur at the price level that completes the incoming order’s execution. If both

RPIs and MPL Orders were present, Exchange systems would evaluate at what price level the incoming Retail Order could be executed in full (“clean-up price”). If the clean-up price was equal to the midpoint of the PBBO, RPIs would receive priority over MPL Orders, and Retail Orders would execute against both RPIs and MPL Orders at the midpoint. If the clean-up price was worse than the midpoint of the PBBO, the Retail Order would execute first with the MPL Orders at the midpoint of the PBBO and any remaining quantity of the Retail Order would execute with the RPIs at the clean-up price. If the clean-up price was better than the midpoint of the PBBO, then the Retail Order would execute against the RPIs at the clean-up price and would ignore the MPL Orders.

The following example illustrates the incorporation of MPL Orders into the Program:

PBBO for security DEF is \$10.00 – 10.01

RLP 1 enters a Retail Price Improvement Order to buy DEF at \$10.006 for 500.

RLP 2 enters a Retail Price Improvement Order to buy DEF at \$10.005 for 500.

MPL 1 enters an MPL Order to buy DEF at \$10.01 for 1000.

RLP 3 enters a Retail Price Improvement Order to buy DEF at \$10.002 for 1000.

An incoming Retail Order to sell DEF for 2,500 arrives. The clean-up price is \$10.002.

Because the midpoint of the PBBO is priced better than the clean-up price, the Retail Order executes with MPL 1 for 1000 shares at \$10.005. The Retail Order then executes at \$10.002 against RLP 1’s bid for 500, because it is the best-priced bid, then against RLP 2’s bid for 500 because it is the next best-priced bid and then RLP 3 receives an execution for 500 of its bid for 1000, at which point the entire size of the Retail Order to sell 2,500 is depleted.

Assume the same facts above. An incoming Retail Order to sell DEF for 1,000 arrives. The clean-up price is \$10.005. Because the clean-up price is equal to the midpoint of the PBBO, RPIs will receive priority over MPL Orders. As a result, the Retail Order executes first against RLP 1’s bid for 500, because it is the best-priced bid, then against RLP 2’s bid for 500 because it

is the next best-priced bid, at which point the entire size of the Retail Order to sell 1,000 is depleted.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)⁸ of the Act, in general, and furthers the objectives of Section 6(b)(5),⁹ in particular, in that it is designed to promote just and equitable principles of trade, 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 believes that the proposal is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system because the introduction of the MPL Order on the Exchange will increase competition, not only between market participants, but also between exchanges offering similar functionality. The MPL Order will enable Members to enter an order that is not displayed publicly but is to be executed at the midpoint of the PBBO. The Exchange believes this order type will enhance order execution opportunities on the Exchange and help provide Members with flexibility in executing transactions that meet the specific requirements of the order type. MPL Orders will allow for additional opportunities for investors to interact with orders priced at the midpoint of the PBBO, thus providing price improving liquidity to investors. The MPL Order will offer market participants added functionality and additional trading opportunities similar to what is offered in other trading venues.

Additionally, the Exchange believes that the MPL Order definition is clear and transparent, thus ensuring the conditions under which an MPL Order will be executed, accepted

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

by Exchange systems, or rejected, and therefore is designed to promote just and equitable principles of trade.

The Exchange believes the incorporation of the MPL Order into the Retail Liquidity Program will further the objectives of the Program and is therefore designed to protect investors and the public interest. The Program was designed to increase competition among execution venues, encourage additional liquidity, and offer the potential for price improvement to retail investors. By including MPL Orders as available contra-side interest for Retail Orders, the proposal creates additional incentives to attract retail order flow to the exchange environment and ensures that retail investors benefit from the better prices afforded by MPL Orders.

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 the proposed MPL Order will enhance order execution opportunities for member organizations. Further, the Exchange believes the MPL Order will enhance competition between the Exchange and other exchanges that currently offer similar order types by offering investors another option to access liquidity at the midpoint of the PBBO.

Additionally, by incorporating MPL Orders into the Retail Liquidity Program, the proposal will promote competition for retail order flow among execution venues, and will benefit retail investors by creating additional price improvement opportunities for their order flow. Because the MPL Order is priced at the midpoint of the PBBO, any Retail Order that executes against the MPL Order will be receiving price improvement. As such, the proposal enhances the Program and its objectives by creating additional incentives to attract retail order flow to the

exchange environment, while helping to ensure that retail investors benefit from the better prices that Members submitting MPL Orders are willing to provide.

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 the 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. Please include File No. SR-NYSEMKT-2013-84 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 No. SR-NYSEMKT-2013-84. 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 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 available publicly. All submissions should refer to File No. SR-NYSEMKT-2013-84 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.¹⁰

Kevin M. O'Neill
Deputy Secretary

¹⁰ 17 CFR 200.30-3(a)(12).