

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-70978; File No. SR-NYSEMKT-2013-96)

December 4, 2013

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 925NY to Eliminate the Requirement that Market Makers Comply with the Bid-Ask Differential Requirements Specified in Rule 925NY(b)(4)(A)-(E) When Electronically Bidding and Offering on the Exchange System During the Opening Auction Process

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 20, 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, II, and III 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 925NY to eliminate the requirement that Market Makers comply with the bid-ask differential requirements specified in Rule 925NY(b)(4)(A)-(E) when electronically bidding and offering on the Exchange system during the opening auction process (“Auction”). 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 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 proposes to amend Rule 925NY(b)(5) to eliminate the requirement that Market Makers, when electronically bidding and offering on the Exchange system (“System”)⁴ during an Auction, must comply with the bid-ask differentials specified in Rule 925NY(b)(4)(A)-(E) and instead make the bid-ask differential specified in Rule 925NY(b)(5) applicable at all times, including during an Auction.

Current Rule 925NY(b)(5) provides that options traded on the System during core trading hours may be quoted with a difference not to exceed \$5 between the bid and offer regardless of the price of the bid (“standard-width quote”), except with respect to an Auction, in which case Rule 925NY(b)(4) governs bidding and offering quote differentials. Rule 925NY(b)(4)(A)-(E) set out Auction bid-ask differentials that vary depending on the price of the bid. Under Rule 925NY(b)(4)(A)-(E), the quote widths

⁴ The term “Exchange System” refers to the Exchange’s electronic order delivery, execution and reporting system through which orders and quotes for listed options are consolidated for execution and/or display. See NYSE MKT Options Rule 900.2NY(48).

may not be more than: \$0.25 if the bid is less than \$2; \$0.40 if the bid is at least \$2 but does not exceed \$5; \$0.50 if the bid is more than \$5 but does not exceed \$10; \$0.80 if the bid is more than \$10 but does not exceed \$20; and \$1 if the bid is more than \$20. The Exchange now proposes to replace the varying narrow-width bid-ask differentials that apply to Market Maker quotations during an Auction with the \$5 quote differential that is in place at all other times.

The Exchange notes that the narrow-width bid-ask differentials applicable to Market Maker quotations during an Auction, which the current proposal would replace, were previously deleted from Rule 925NY in 2010,⁵ and reinstated in 2011.⁶ The Exchange found that at times the absence of more narrow quotes during an Auction prevented series from opening promptly, and could unnecessarily delay the execution of orders. At that time, the Exchange believed that setting a narrower differential for Auction quotes would expedite the opening of all option series on the Exchange promptly after the opening of the underlying security.

The Exchange now believes, however, that the rationales⁷ under which it first eliminated the narrow-width quoting obligations for Auctions in 2010 are once again

⁵ See Securities Exchange Act Release No. 62248 (June 9, 2010), 75 FR 34194 (June 16, 2010) (SR-NYSEAmex-2010-51).

⁶ See Securities Exchange Act Release No. 63746 (January 20, 2011), 75 FR 4961 (Jan. 27, 2011) (SR-NYSEAmex-2011-05).

⁷ The obligation for Market Makers to provide opening quotes at the widths described in Rule 925NY(b)(4)(A)-(E) had been adapted from the era when the Exchange conducted open outcry rotations, had only open outcry quotes available to respond to an order, and did not disseminate Firm Quotes. Further, an open outcry opening rotation only required a response from a single Market Maker. The opening market represented the firm quote for all Market Makers in a trading crowd, and any such Market Maker could be held to fill orders at the quoted market. The original intent of maintaining the obligation for Market Makers to

evident to such an extent that the narrow-width quoting obligations are no longer necessary for Auctions, and thus the Exchange proposes to eliminate them again. The Exchange no longer has the concerns it had in 2011 regarding potential delays, both in the opening of series and in the execution of orders. In particular, the Exchange's 2012 amendment to Rule 952NY allows for series to open on the wider, standard-width quote when an Auction is not to take place,⁸ which is currently the case in a majority of series openings on the Exchange.

Additionally, it is no longer necessary to require Market Makers to submit narrow, traditional bid-ask quotations to encourage a narrower Exchange market during the auction process, as was the original intent of the limitations on bid-ask differentials. Since the time of the original introduction of the System, the Exchange has instituted increased functionality to define price parameters during the auction process. The system will not conduct an Auction in a series until one of two conditions is met: (i) a Market Maker submits a narrow-width quote, or (ii) a narrow-width NBBO is received from OPRA. This is a systemic solution which renders the rules-based narrow bid-ask differential moot. Further, in light of the lowering of the Lead Market Maker quoting

submit narrow, traditional bid-ask quotations was to encourage a narrower aggregated Exchange market during the opening auction. This was especially necessary as NYSE MKT was often the first market to open a series, there was not necessarily an accurate National Best Bid/Offer ("NBBO") available, and the Exchange did not have a systemically enforced narrow-width bid-ask differential applicable to the auction process. Since the time of the original introduction of the System, however, NYSE MKT has instituted increased functionality to define price parameters during the auction process.

⁸ See Securities Exchange Act Release No. 68383 (Dec. 7, 2012), 77 FR 74258 (Dec. 13, 2012) (SR-NYSEMKT-2012-72).

obligation to 90% in 2008,⁹ there is no requirement for a Market Maker to submit a quotation for an Auction, and thus the Auction quote-width requirement imposes limits on a non-existent obligation.

Finally, the opening auction parameters described in Rule 952NY, under which an Auction will not be conducted unless the composite NYSE MKT bid-ask is within an acceptable range (identical to the bid-ask parameters pursuant to Rule 925NY(b)(4)(A)-(E)) would remain in effect under the Exchange's current proposal.

The Exchange thus believes that the current proposal is appropriate and further notes that the proposal would more closely align the Exchange's rules with the rules of other options exchanges that do not require narrow-width quotes during an opening auction. Neither BATS Exchange, Inc. ("BATS") nor NASDAQ Stock Market LLC ("NOM") imposes narrow-width quote requirements during an opening auction.¹⁰

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹² in particular, because it is 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, and to remove impediments to, and perfect the mechanism of a free and open market and a national market system.

⁹ See Securities Exchange Act Release No. 59472 (Feb. 27, 2009) 74 FR 9843 (Mar. 6, 2009) (SR-NYSEAltr-2008-14).

¹⁰ See BATS Rule 22.5; NOM Rules Chapter VII, Sections 5-6.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

The proposed rule change is designed to remove impediments to, and perfect the mechanism of a free and open market and a national market system by setting price parameters for the opening Auction rather than relying on a restriction that does not have obligatory performance. The wider quote differential requirement for openings when an Auction is conducted will implement a less burdensome quoting obligation in a way that benefits market participants and enables them to safely execute their orders on the Exchange because the proposal maintains the price protection parameters established under Rule 952NY. This will reduce the likelihood of disadvantageous pricing for orders executed during an Auction, which also contributes to the protection of investors and the public interest generally. The Exchange believes that by maintaining these price protection parameters within the Auction process, rather than just as a requirement for submitted quotes, Customers and other market participants will continue to be afforded a level of price protection on executions that occur during an Auction. The proposed rule is also designed to promote just and equitable principles of trade because it would permit Market Makers to provide opening quotes more consistent with those provided by market makers on other options exchanges.¹³

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 not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that the proposal will result in the Exchange operating in a more efficient way. The adoption of a less burdensome quoting obligation on NYSE MKT Market Makers during the auction process will allow them to compete

¹³ See note 10, *supra*.

more effectively with their counterparts on other options exchanges that are similarly not subject to a narrow-width bid-ask differential applicable during auctions. In addition, the proposed rule change is pro-competitive on both an inter-market and intra-market basis in that it is not only designed to help the Exchange compete more effectively with other options exchanges with similar rules, but could also lead to increased participation by a greater number of Market Makers on the Exchange during the auction process because of the more flexible quoting obligations it would impose.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁴ and Rule 19b-4(f)(6) thereunder.¹⁵ Because the 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public

¹⁴ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁵ 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.

interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such 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)¹⁶ of the Act to determine whether the proposed rule change should be approved or 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 Number SR-NYSEMKT-2013-96 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-2013-96. This file number

¹⁶ 15 U.S.C. 78s(b)(2)(B).

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 will also be available for inspection and copying at the NYSE's principal office and on its Internet website at www.nyse.com. 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-2013-96 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.¹⁷

Kevin M. O'Neill
Deputy Secretary

¹⁷ 17 CFR 200.30-3(a)(12).