

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-72815; File No. SR-NYSEMKT-2014-65)

August 12, 2014

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 935NY and Rule 964NY to Delete Obsolete References to Tracking Orders and Make Other Non-Substantive, Technical Changes to the Exchange Rules

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that, on July 31, 2014, NYSE MKT LLC (“Exchange” or “NYSE MKT”) filed with the Securities and Exchange Commission (“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 935NY (Order Exposure Requirements) and Rule 964NY (Display, Priority and Order Allocation – Trading Systems) to delete obsolete references to Tracking Orders and make other non-substantive, technical changes to the Exchange rules.

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.

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

¹ 15 U.S.C.78s(b)(1).

² 17 CFR 240.19b-4.

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 recently filed and received approval of a rule change amending rules governing Exchange order types, which included the deletion of Tracking Orders, an order type which had been deemed obsolete due to a lack of demand by market participants.³ When the Exchange eliminated Tracking Orders, references to Tracking Orders were inadvertently left in Rule 935NY and Rule 964NY. This filing is intended to correct that oversight by deleting the references to Tracking Orders that are no longer relevant.

First, the Exchange is proposing to delete Commentary .05 to Rule 935NY to eliminate reference to Tracking Orders, which as noted are no longer valid for use on the Exchange, and to designate Commentary .05 as Reserved.

Similarly, the Exchange is proposing to delete section (F) from Rule 964NY(b)(2) to delete reference to Tracking Orders. In addition, the Exchange proposes to amend Rule 964NY(c)(2)(E) by combining subsections (ii) and (iii), in doing so the Exchange would eliminate reference to Tracking Orders and would update the subsequent rule text in that section to accurately describe the functionality now that Tracking Orders are no longer valid. In light of the foregoing change, the Exchange believes it is also appropriate to amend the paragraph following former subsection Rule 964NY(c)(2)(E)(iii) by deleting the clause bracketed below, as the Exchange believes that it is rendered superfluous by the proposed change:

³ See Securities and Exchange Release 71630 (February 27, 2014), 79 FR 12553 (March 5, 2014) (SR-NYSEMKT-2014-05).

If [neither of the conditions specified in subsections (i) or (ii) apply, and] the order is no longer marketable, or, if an order has been designated as an order type that is not eligible to be routed away, the order either will be placed in the Consolidated Book or cancelled if such order would lock or cross the NBBO.

The Exchange believes the proposed deletion of this clause is appropriate because the order is either going to be executed at the next available price (Rule 964NY(c)(2)(E)(i)) or, if it locks or crosses the NBBO, the Exchange will route it out (proposed Rule 964NY(c)(2)(E)(ii), which incorporates language from current subsection (iii)). Finally, the Exchange also proposes to delete the reference to Tracking Orders as contained in Rule 964NY(c)(3)(C) because it is an obsolete reference.

The above mentioned rule changes are non-substantive and technical in nature and simply designed to remove references to an obsolete order type.

Separately, the Exchange is also proposing to update an obsolete reference in Rule 964NY(d) (Prohibited Conduct Relating to Crossing Orders). In 2009, the Exchange filed and received approval of a rule change that reduced the exposure time during which Amex Users may not execute as principal against orders they represent as agent from three seconds to one second as found in Rule 935NY.⁴ However, Rule 964NY(d)(1), which references the exposure time, was never adjusted to reflect the change. The Exchange now proposes to remove the outdated reference to the three-second exposure requirement found in Rule 964NY(d)(1). The Exchange also proposes to add a reference to Rule 935NY, in lieu of including the actual exposure time in Rule 964NY(d)(1). The Exchange believes changing the rule text in Rule

⁴ See Securities and Exchange Release No. 59956 (May 21, 2009), 74 FR 25782, (May 29, 2009) (NYSEAmex-2009-15).

964NY(d)(1) to reference to Rule 935NY would ensure consistency and transparency in Exchange rules, as any future changes to Rule 935NY would automatically be taken into account by Rule 964NY(d)(1), and would reduce any confusion among market participants.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)⁵ of the Securities Exchange Act of 1934 (the “Act”), in general, and furthers the objectives of Section 6(b)(5),⁶ in particular, in that it is designed 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. Specifically, the Exchange believes that the proposed rule change will remove impediments to and perfect the mechanisms of a free and open market and add transparency and clarity to the Exchange’s rules. The Exchange further believes that eliminating references to an obsolete order type and updating an outmoded reference promotes just and equitable principles of trade, fosters cooperation and coordination among persons engaged in facilitating securities transactions, and removes impediments to and perfects the mechanism of a free and open market by ensuring that members, regulators and the public can more easily navigate the Exchange’s rulebook and better understand the order types available for trading on the Exchange.

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

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

proposed change is not designed to address any competitive issue but rather to revise obsolete or inaccurate rule text and to remove language pertaining to unavailable functionality in the Exchange's rulebook, thereby reducing confusion and making the Exchange's rules easier to understand and navigate. The Exchange believes that the proposed rule change will serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

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 Act⁷ and Rule 19b-4(f)(6) thereunder.⁸ 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 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

⁷ 15 U.S.C. 78s(b)(3)(A)(iii).

⁸ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and text of 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.

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)⁹ 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-2014-65 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NYSEMKT-2014-65. 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

⁹ 15 U.S.C. 78s(b)(2)(B).

available for website viewing and printing in the Commission’s Public Reference Section, 100 F Street, NE, Washington, DC 20549-1090. Copies of the filing will also be available for website viewing and printing 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-2014-65 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).