

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-74087; File No. SR-NYSEMKT-2014-86)

January 16, 2015

Self-Regulatory Organizations; NYSE MKT LLC; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to Remove the Exchange's Quote Mitigation Plan as Provided by Exchange Rule 970.1NY

I. Introduction

On October 2, 2014, NYSE MKT LLC, (“NYSE MKT” or “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 remove the Exchange's quote mitigation plan as provided by NYSE MKT Rule 970.1NY. The proposed rule change was published for comment in the Federal Register on October 21, 2014.³ On December 2, 2014, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵ On January 8, 2015, the Exchange submitted a letter in further support of the proposal.⁶ The

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 73367 (October 15, 2014), 79 FR 63009 (“Notice”).

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 73718, 79 FR 72748 (December 8, 2014). The Commission designated January 19, 2014, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

⁶ See Letter from Elizabeth King, Secretary & General Counsel, Exchange, to Kevin O'Neill, Deputy Secretary, Commission, dated January 8, 2015 (“NYSE MKT Letter”) available at <http://www.sec.gov/comments/sr-nysemkt-2014-86/nysemkt201486-1.pdf>.

Commission received no comments on the proposal. This order institutes proceedings under Section 19(b)(2)(B) of the Act⁷ to determine whether to approve or disapprove the proposal.

II. Description of the Proposal

In 2007, the Exchange adopted a quote mitigation plan in connection with the Penny Pilot Program.⁸ According to the Exchange, the quote mitigation plan was designed to reduce the number of quotation messages sent by the Exchange to the Options Price Reporting Authority (“OPRA”) by only submitting quote messages for “active” series.⁹ The Exchange defines active series under the quote mitigation plan in Exchange Rule 970.1NY as: (i) series that have traded on any options exchange in the previous 14 calendar days; or (ii) series that are solely listed on the Exchange; or (iii) series that have been trading ten days or less, or; (iv) series for which the Exchange has received an order.¹⁰ In addition, under the Exchange’s quote mitigation plan, the Exchange may define a series as active on an intraday basis if: (i) the series trades at any options exchange; (ii) the Exchange receives an order in the series; or (iii) the Exchange receives a request for quote from a customer in that series.¹¹

The Exchange proposes to remove its quote mitigation plan from its rules by deleting Exchange Rule 970.1NY.¹² The Exchange believes that its quote mitigation plan is no longer necessary primarily for three reasons. First, the Exchange states that its incorporation of select

⁷ 15 U.S.C. 78s(b)(2)(B).

⁸ See Securities and Exchange Release No. 55162 (January 24, 2007), 72 FR 4738 (February 1, 2007) (Order Granting Approval of SR-Amex-2006-106) (“Quote Mitigation Approval Order”).

⁹ See Notice, supra note 3, at 63009.

¹⁰ See Exchange Rule 970.1NY, and Notice, supra note 3, at 63009.

¹¹ See id.

¹² In addition, the Exchange proposes to amend paragraphs (b)(1) and (b)(2) of Exchange Rule 970NY (Firm Quotes) to delete references to the “Quote Mitigation Plan.” See Notice, supra note 3, at 63010.

provisions of the Options Listing Procedures Plan (“OLPP”)¹³ in Exchange Rule 903A serves to reduce the potential for excess quoting because the OLPP limits the number of options series eligible to be listed, which, according to the Exchange, reduces the number of options series a market maker would be obligated to quote.¹⁴ Second, the Exchange states its view that Exchange Rule 925.1NY Commentary .01, which removes certain options series from market makers’ continuous quoting obligations, reduces the number of quote message traffic that the Exchange sends to OPRA.¹⁵ The Exchange states that reliance on the OLPP, via Exchange Rule 930A, and the refined market maker quoting obligations, pursuant to Commentary .01 to Exchange Rule 925.1NY, is sufficient as a quote mitigation plan.¹⁶ Third, the Exchange states that both its systems capacity and OPRA’s systems capacity are more than sufficient to accommodate any additional increase in quote traffic that might be sent to OPRA as a result of the deletion of the quote mitigation strategy.¹⁷ The Exchange represents that it continually

¹³ See Amendment to Plan for the Purpose of Developing and Implementing Procedures Designed to Facilitate the Listing and Trading of Standardized Options Submitted Pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act available at <http://www.theocc.com/clearing/industry-services/olpp.jsp> (providing for the most current OLPP). See also Securities and Exchange Release No. 44521 (July 6, 2001), 66 FR 36809 (July 13, 2001) (order approving the OLPP).

¹⁴ See Notice, supra note 3, at 63009. See also Securities and Exchange Release No. 61978 (April 23, 2010), 75 FR 22886 (April 30, 2010) (in which the Exchange adopted select provisions of the OLPP into Exchange Rule 903A).

¹⁵ Commentary .01 to Exchange Rule 925.1NY provides that Exchange market makers continuous quoting obligations do not apply “to adjusted option series, and series with a time to expiration of nine months or greater, for options on equities and Exchange Traded Fund Shares, and series with a time to expiration of twelve months or greater for Index options.” See also Notice, supra note 3, at 63010.

¹⁶ See id. The Exchange states its view that limiting the number of options series listed on the Exchange is preferable to suppressing the quotes of inactive options series, as required under current Exchange Rule 970.1NY, because all quotes sent by Exchange market makers are actionable even if not displayed. See id.

¹⁷ See Notice, supra note 3, at 63010.

assesses its capacity needs and ensures that the capacity that it requests from OPRA is sufficient and compliant with the requirements established in the OPRA Capacity Guidelines.¹⁸

The Exchange represents that it has in place certain measures that the Exchange believes serve as additional safeguards against excessive quoting.¹⁹ According to the Exchange, these safeguards include monitoring and alerting market makers disseminating an unusual number of quotes, a business plan designed to ensure that new listings are actively traded,²⁰ and excessive bandwidth utilization fees designed to encourage the efficient quoting.²¹

The Exchange proposes to announce the implementation date of the proposed rule change by Trader Update and publish such announcement no later than 60 days following the effective date of this proposal.²²

III. Proceedings to Determine Whether to Approve or Disapprove SR-NYSEMKT-2014-86 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act²³ to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change, as discussed below. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as

¹⁸ See id.

¹⁹ See id.

²⁰ See id. at n.13 (citing to Commentary .09(b) to Exchange Rule 915).

²¹ See id. at n.14 (citing to NYSE Amex Options Fee Schedule, available at, https://www.theice.com/publicdocs/nyse/markets/amex-options/NYSE_Amex_Options_Fee_Schedule.pdf).

²² See Notice, supra note 3, at 63010.

²³ 15 U.S.C. 78s(b)(2)(B).

described in greater detail below, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,²⁴ the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of, and input from commenters with respect to the consistency of the proposed rule change, as supplemented by the NYSE MKT Letter,²⁵ with Section 6(b)(5) of the Act, which require that the rules of a national securities exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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; and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.²⁶

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the concerns identified above, as well as any other concerns they may have with the proposed rule change. Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request

²⁴ Id. Section 19(b)(2)(B) of the Exchange Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. See id. The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding. See id.

²⁵ See NYSE MKT Letter, supra note 6.

²⁶ 15 U.S.C. 78f(b)(5).

for an opportunity to make an oral presentation.²⁷ Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by [insert date 21 days from publication in the Federal Register]. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by [insert date 35 days from publication in the Federal Register].

The Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5)²⁸ or any other provision of the Act, or the rules and regulations thereunder. The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposed rule change, in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on the following:

1. As described above, the Exchange adopted its quote mitigation plan as provided in Exchange Rule 970.1NY in connection with its adoption of the Penny Pilot Program, which permits quoting of certain options series in certain increments.²⁹ The Commission has previously noted that the Penny Pilot Program has contributed to an increase in quotation message traffic from the options markets.³⁰ In approving the extension and expansion of the

²⁷ Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Pub. L. 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding – either oral or notice and opportunity for written comments – is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

²⁸ Id.

²⁹ See supra note 8 and accompanying text.

³⁰ See Securities and Exchange Release No. 60711 (September 23, 2009), 74 FR 49419, 49422 (September 28, 2009) (Order Granting Partial Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 3 thereto, Amending NYSE Arca Rule 6.72 and Expanding the Penny Pilot Program).

Penny Pilot Program in 2009 by the Exchange's affiliated exchange, NYSE Arca, Inc., the Commission relied, in part, on the NYSE Arca's representation that it would continue to use quote mitigation strategies that would continue to mitigate quotation traffic sent to OPRA.³¹

As noted above, the Exchange believes that its quote mitigation strategy is no longer necessary because: (1) the Exchange has incorporated select provisions of the OLPP in Exchange Rule 930A, which the Exchange believes limits the number of series eligible to be listed; (2) current Exchange Rule 925.1NY Commentary .01 removes certain options series from market makers' continuous quoting obligations, which the Exchange believes reduces the number of quote messages that the Exchange sends to OPRA; and (3) both the Exchange's systems capacity and OPRA's systems capacity are more than sufficient to accommodate any additional increase in quote traffic that might be sent to OPRA as a result of the deletion of the quote mitigation strategy.³² Do commenters believe that reliance on the Exchange's current rules and the existing systems capacity of the Exchange and OPRA are sufficient or insufficient means to mitigate quote message traffic from the Exchange to OPRA? Please explain.

³¹ See id. The Commission stated: "While the Commission anticipates that NYSE Arca's proposed expansion of the Pilot Program will contribute to further increases in quotation message traffic, the Commission believes that NYSE Arca's proposal is sufficiently limited such that it is unlikely to increase quotation message traffic beyond the capacity of market participants' systems and disrupt the timely receipt of quote information. NYSE Arca has proposed to roll out the additional 300 classes over time, in groups of 75 classes each quarter beginning on October 26, 2009. The Commission further notes that a June 2, 2009 sustained message traffic peak of 852,350 messages per second reported by OPRA is still well below OPRA's current messages per second capacity limit of 2,050,000. Moreover, NYSE Arca has adopted and will continue to utilize quote mitigation strategies that should continue to mitigate the expected increase in quotation traffic." Id. The Exchange extended and expanded its participation the Penny Pilot Program and made other changes to its Penny Pilot Program consistent with the changes proposed by its affiliate exchange, NYSE Arca, Inc. See Securities and Exchange Release No. 61106 (December 3, 2009), 74 FR 65193 (December 9, 2009) (citing Securities and Exchange Release No. 60711 (September 23, 2009), 74 FR 49419 (September 28, 2009)).

³² See supra notes 13- 18 and accompanying text.

2. What are commenters' views on the impact, if any, that might result from the Exchange's proposal to remove its current quote mitigation plan as provided in Exchange Rule 970.1NY? For example, what are commenters' views on the impact the Exchange's proposal would have, if any, on OPRA's system capacity? Please explain. Or, what are commenters' views on the impact the Exchange's proposal would have on market participants using OPRA and/or the Exchange's quotation message feeds? Please explain.

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-2014-86 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-2014-86. 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 filings 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-2014-86 and should be submitted on or before [insert date 21 days from publication in the Federal Register]. Rebuttal comments should be submitted by [insert date 35 days from date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³³

Brent J. Fields
Secretary

³³ 17 CFR 200.30-3(a)(57).