

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-77518; File No. SR-NYSEMKT-2016-13)

April 5, 2016

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, to Amend Rule 955NY(c) by Revising the Clearing Member Requirements for Entering an Order into the Electronic Order Capture System (“EOC”)

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 March 22, 2016, 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. On March 30, 2016, the Exchange filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 955NY(c) by revising the requirements for entering an order into the Electronic Order Capture System (“EOC”). 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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 proposes to amend Exchange Rule 955NY(c) by revising the requirements for entering an order into the EOC. Specifically, the Exchange proposes to eliminate the pre-trade EOC requirement that ATP Holders give up the name of the Clearing Member⁴ responsible for clearing each trade before representing a trade in open outcry.⁵

The EOC is the Exchange’s floor-based electronic audit trail and order tracking system that provides an accurate time-sequenced record of all orders and transactions entered and executed on the floor of the Exchange.⁶ This process, commonly referred to as the “systemization” of an order, is composed of the contractual terms of an order that are required to be disclosed in order to effect a trade. The EOC was developed to comply with an order of the Commission, which required that the Exchange, in coordination with other exchanges, “design

⁴ Rule 900.2NY defines “Clearing Member” as an Exchange ATP Holder which has been admitted to membership in the Options Clearing Corporation pursuant to the provisions of the Rules of the Options Clearing Corporation.

⁵ In Amendment No. 1, the Exchange clarified that it is proposing to amend the timing in which Clearing Member information will be entered into the EOC. More specifically, the Exchange noted that Rule 955NY(c)(1) requires the other items included in Rule 956NY(a), including the “CMTA Information and the name of the clearing OTP Holder or Firm,” to be included in the EOC “as the events occur and/or during trade reporting procedures which may occur after the representation and execution of the order.”

⁶ This system includes the electronic communications interface between booth terminals and the Floor Broker work stations.

and implement a consolidated options audit trail system (‘COATS’),” that would “enable the options exchanges to reconstruct markets promptly, effectively surveil them and enforce order handling, firm quote, trade reporting and other rules.”⁷ In particular, the Exchange was required to incorporate into the audit trail all non-electronic orders “such that the audit trail provides an accurate, time-sequenced record of electronic and other orders, quotations and transactions on such respondent exchange, beginning with the receipt of an order by such respondent exchange and further documenting the life of the order through the process of execution, partial execution, or cancellation of that order, which audit trail shall be readily retrievable in the common computer format.”⁸

Current Rule 955NY(c) sets forth the EOC entry requirements and mandates that every ATP Holder that receives an order for execution on the Exchange “must immediately, prior to representation in the trading crowd, record the details of the order (including any modification of the terms of the order or cancellation of the order) into the EOC, unless such order has been entered into the Exchange’s other electronic order processing facilities (e.g., orders sent electronically through the Exchange’s Member Firm Interface).”⁹ Among other pre-trade EOC requirements under current Rule 955NY(c)(1), every ATP Holder must provide “the name of the clearing ATP Holder” (the “Give Up Requirement”)¹⁰ Rule 955NY(c)(1) also provides that

⁷ See Section IV.B.e.(v) of the Commission’s Order Instituting Public Administrative Proceedings Pursuant to Sections 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions (the “Order”). See Securities Exchange Act Release No. 43268 (September 11, 2000) and Administrative Proceeding File No. 3-10282.

⁸ See id.

⁹ See Rule 955NY(c).

¹⁰ See Rule 955NY(c)(1)(vii). Rule 955NY(c)(1) also requires the following data points to be entered upon receipt of an order: (i) the option symbol; (ii) the expiration date of the option; (iii) the exercise price; (iv) buy or sell with applicable limit or stop price or

“[t]he remaining elements prescribed in Rule 956NY and any additional information with respect to the order shall be recorded as the events occur and/or during trade reporting procedures which may occur after the representation and execution of the order.”¹¹

Pursuant to the proposed rule change, ATP Holders would no longer be subject to the pre-trade Give Up Requirement. Floor Brokers have told the Exchange that the identity of the firm through which each trade will clear is not always initially provided when an order is presented and that waiting to receive this information and enter it into EOC can delay the representation and execution of an order. In today’s trading environment of rapidly moving markets and the need to execute an order and hedge a trade in real or near real time, even a slight delay can prove to be detrimental to the handling of an order. The proposed change to eliminate the Give Up Requirement prior to execution of each trade would not impair the Exchange’s ability to comply with the Order. Specifically, the EOC would still provide an accurate, time-sequenced record beginning with the receipt of an order and document the life of the order

special instructions; (v) call or put; (vi) the quantity of contracts; as well as such other information as may be required by the Exchange from time to time. Rule 955NY(c)(1) also provides that the Exchange may also require additional information if needed and provides that the remaining data elements prescribed in Rule 956NY [see *infra* n. 10] are to be recorded as the events occur and/or during trade reporting procedures. The Exchange proposes to add the words “in the EOC” to Rule 955NY(c)(1) to make clear where the additional information would be recorded. See proposed Rule 955NY(c)(1).

¹¹ See Rule 955NY (c)(1). The Exchange notes that one such element prescribed in Rule 956NY(a) to be recorded by each ATP Holder is “CMTA Information and the name of the clearing ATP Holder,” and therefore, per Rule 955NY(c)(1), this information would still be disclosed “as the events occur and/or during trade reporting procedures which may occur after the representation and execution of the order.” Id. See also Rule 956NY(a) (Record of Orders) (requiring that ATP Holders maintain a record of each order that includes that the following data elements: (1) CMTA Information and the name of the clearing ATP Holder; (2) options symbol, expiration month, exercise price and type of options; (3) side of the market and order type; (4) quantity of options; (5) limit or stop price or special conditions; (6) opening or closing transaction; (7) time in force; (8) account origin code; and (9) whether the order was solicited or unsolicited.) See also Rule 957NY (Reporting Duties), *infra* n. 12.

through the process of execution, partial execution, or cancellation. Entry of information pursuant to the Give Up Requirement would occur after the order had been represented and executed in the Trading Crowd.¹² Thus, only the timing of the disclosure of such information would be affected by this proposal.

The Exchange notes that, similar to a filing it submitted in 2013,¹³ the proposed rule change relates only to the system entry requirements for floor-based orders and would not change rules governing the record of orders (Rule 956NY). Floor Brokers would continue to be required to maintain proper order records, as part of each trade record, including the identity of the clearing ATP Holder.¹⁴ In that regard, Floor Brokers would continue to be required to give

¹² See id.; see also Commentary .01 to Rule 957NY (providing that for each transaction executed on the Options Floor, the responsible ATP Holder will immediately report, among other information, both its assigned broker initial code and the name of the contra clearing member).

¹³ See Securities and Exchange Act Release 69081 (March 8, 2013), 78 FR 16332, 16333 (March 14, 2013) (SR-NYSEMKT-2013-16) (noting that “[b]ecause the CMTA information, the opening/closing designation, the account origin code, the time if force and whether an order was solicited or unsolicited are not contractual terms of a trade itself nor are they required data elements pursuant to the Exchange’s order format requirements, the Exchange does not believe this information needs to be entered into the EOC prior to an order being represented in the Trading Crowd, but may be entered contemporaneously upon the receipt of such information, even if that occurs after the order had been represented and executed in the Trading Crowd”).

¹⁴ The Exchange notes that another exchange has made modifications to its rules related to the Order. See Securities Exchange Act Release No. 63071 (October 8, 2010), 75 FR 63876, 63877-78 (October 18, 2010) (SR-Phlx-2010-139) (immediately effective filing to amend language related to the timing of the entry of clearing information, noting in relevant part that “[t]he clearing information, which is the contra-side clearing information, is not required to be entered pursuant to COATS. Rather, this information facilitates the identification of the trade for clearing.”). The Exchange notes that the Philadelphia Stock Exchange proposed these changes to its rules without solicitation of the exchanges that were subject to the Order, including the Exchange. Accordingly, the Exchange believes that exchanges’ changes to their rules put in place to comply with the Order are appropriately effected pursuant to the provisions of Section 19(b)(1) of the Act and Rule 19b-4 thereunder. See 15 U.S.C. § 78s(b)(1); 17 C.F.R. § 240.19b-4.

up the responsible Clearing Member on each trade as part of each trade record.¹⁵

2. Statutory Basis

The Exchange believes that the proposed change 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 foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitation transactions in securities, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁸ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Specifically, the proposed change to order entry requirements for the EOC (i.e., eliminating the pre-trade Give Up) is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities by ensuring that the terms of an order continue to be properly systematized prior to the order being represented in the Trading Crowd. The proposed change to eliminate the Give Up

¹⁵ See supra nn. 11, 12. In addition, the Exchange notes that this proposal would not change rules governing trade reporting requirements (Rule 957NY) (i.e., that “[t]ransactions not reported to [the Options Pricing Reporting Authority] within 90 seconds after the execution will be designated as ‘late,’ per Rule 957(a)). The Exchange also notes that last year it revised and detailed the process in which an ATP Holder “gives up” or selects a Clearing Member responsible for the clearance of an Exchange transaction (the “Give Up Process”). See Securities and Exchange Act Release 75642 (August 7, 2015), 80 FR 48594 (August 13, 2015) (SR-NYSEMKT-2015-55) (revising the Exchange’s Give Up Process through modifications to Rules 960, 961 and 954NY).

¹⁶ 15 U.S.C. § 78f(b).

¹⁷ 15 U.S.C. § 78f(b)(5).

¹⁸ Id.

Requirement prior to execution of each trade would not impair the Exchange's ability to comply with the Order. Specifically, the EOC would still provide an accurate, time-sequenced record of electronic and other orders, quotations and transactions, beginning with the receipt of the order and documenting the life of the order through the process of execution, partial execution, or cancellation.¹⁹

The proposal is also designed to prevent fraudulent and manipulative acts and practices, by ensuring that the Exchange continues to meet its obligation to create and maintain a time-sequenced record of orders, quotations and transactions on the Exchange. This proposal does not alter – or, as stated above, impair, the Exchange's obligation to incorporate into its audit trail all non-electronic orders to provide an accurate, time-sequenced record of electronic and other orders, quotations and transactions that documents the life of the order from receipt through the execution, partial execution, or cancellation.²⁰ Moreover, the proposed change merely removes the Give Up Requirement from pre-trade systemization, it does not alter that give ups must be disclosed as part of the Give Up Process and as part of trade reporting on the Exchange.²¹ Accordingly, nothing in this proposal would alter the Exchange's obligations pursuant to, or ability to comply with, the Order. The Exchange notes that it has previously modified the non-contractual data elements required pursuant to Rule 955NY(c) (i.e., not mandated by the Order).²²

Finally, the Exchange believes that the proposed change would reduce the burden on Floor Brokers to enter order information prior to representation which would, in turn, promote

¹⁹ See supra n. 7.

²⁰ Id.

²¹ See supra nn. 11, 12, 15.

²² See supra n. 13.

just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market by reducing the delay in representation and execution of an order on the Exchange.

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

The Exchange does not believe that this proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change would reduce the burden on Floor Brokers that have reported that the identity of the firm through which each trade will clear is not always initially provided when an order is presented and that waiting to receive this information and enter it into EOC can delay the representation and execution of an order. By reducing Floor Brokers' burden on order entry compliance, the Exchange believes the proposal will improve the competitiveness of Exchange Floor Brokers, by enabling more timely executions of open outcry trades and promoting competition for order flow among market participants and the options exchanges.

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 (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such 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-2016-13 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 No. SR-NYSEMKT-2016-13. 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, D.C. 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-2016-13, 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.²³

Robert W. Errett
Deputy Secretary

²³ 17 CFR 200.30-3(a)(12).