

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-78283; File No. SR- NYSEMKT-2016-42)

July 11, 2016

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Amend Rule 952NY with Respect to Opening Trading in an Options Series

I. Introduction

On March 23, 2016, NYSE MKT LLC (“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 amend Exchange Rule 952NY regarding the process for opening trading in an options series. The proposed rule change was published for comment in the Federal Register on April 12, 2016.³ On May 25, 2016, the Commission extended the time 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 to July 11, 2016.⁴ On July 8, 2016, the Exchange submitted Amendment No. 1 to the proposed rule change.⁵ The Commission received no comment letters on the proposed rule change. The Commission is publishing this notice to solicit comment on

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 77540 (April 6, 2016), 81 FR 21623 (“Notice”).

⁴ See Securities Exchange Act Release No. 77911 (May 25, 2016), 81 FR 35115 (June 1, 2016).

⁵ See Letter to Brent J. Fields, Secretary, Commission, from Martha Redding, Associate General Counsel, Assistant Secretary, NYSE MKT, LLC dated July 11, 2016. As more fully described below, in Amendment No. 1 the Exchange proposes additional modifications to Rule 952NY(c) to clarify and detail how the Exchange would determine the opening price upon dissemination of an NBBO from OPRA.

Amendment No. 1 to the proposed rule change from interested persons and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Proposed Rule Change, as Modified by Amendment No. 1

Exchange Rule 952NY sets forth the Exchange System's automated opening process.⁶ Current Rule 952NY(b) provides that, after the primary market for the underlying security disseminates an opening trade or an opening quote, the Exchange will open the related option series automatically based on the following principles and procedures:

- (A) The system will determine a single price at which a particular option series will be opened.
- (B) Orders and quotes in the system will be matched up with one another based on price-time priority; provided, however, that Orders will have priority over Market Maker quotes at the same price.
- (C) Orders in the System Book that were not executed during the Auction Process shall become eligible for the Core Trading Session immediately after the conclusion of the Auction Process.
- (D) The System will not conduct an Auction Process if the bid-ask differential for that series is not within an acceptable range. For the purposes of this rule, an acceptable range shall mean within the bid-ask differential guidelines established pursuant to Rule 952NY(b)(4).
- (E) If the System does not open a series with an Auction Process, the System shall open the series for trading after receiving notification of an initial NBBO disseminated by OPRA for the series or on a Market Maker quote, provided that the bid-ask differential does not exceed the bid-ask differential specified under Rule 952NY(b)(5).⁷

In addition, Rule 952NY(c) provides for how the System will determine the opening price of a series when an Auction Process is conducted.⁸ Specifically, current Rule 952NY(c) states, in

⁶ See Exchange Rule 952NY. The term "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 Exchange Rule 900.2NY(48) (defining "Exchange System" or "System").

⁷ See Exchange Rule 952NY(b)(A)-(E).

⁸ See Notice and current Exchange Rule 952NY(c).

part, that the “opening price of a series will be the price, as determined by the System, at which the greatest number of contracts will trade at or nearest to the midpoint of the initial uncrossed NBBO disseminated by OPRA, if any, or the midpoint of the best quote bids and quote offers in the System Book.”⁹

The Exchange proposes several changes to Exchange Rule 952NY and the System opening process. The proposed changes would also affect the process of re-opening an options series after a trading halt.¹⁰

First, the Exchange proposes to amend Exchange Rule 952NY(b) so that trading in an options series will be opened automatically once the primary market for the underlying security disseminates both a quote and a trade that is at or within the quote.¹¹ Further, the Exchange proposes to specify that the opening process will occur at or after 9:30 a.m. Eastern Time.¹²

The Exchange also proposes to modify Exchange Rule 952NY(b)(E) so that if the System does not open a series with an Auction Process, trading in an options series could no longer open on a local Market Maker quote, but would instead require an initial uncrossed NBBO disseminated by OPRA.¹³ According to the Exchange, OPRA disseminates an NBBO based on information collected from the exchanges.¹⁴ Thus, the Exchange states, NYSE MKT’s local

⁹ See current Exchange Rule 952NY(c).

¹⁰ See Exchange Rule 952NY(a), which provides that the Exchange will follow the same procedures in opening after a trading halt as the procedures followed for the opening of the trading day.

¹¹ See proposed Rule 952NY(b).

¹² See id.

¹³ See proposed Rule 952NY(b)(E).

¹⁴ See Notice, supra note 3, at 21624.

Market Maker quotes would be disseminated back to the Exchange from OPRA and may or may not be at the same price as the NBBO.¹⁵

In addition, the Exchange proposes to amend Rule 952NY(c). As noted, current Rule 952NY(c) provides that if there is no initial uncrossed NBBO disseminated by OPRA, the System instead determines an opening price that is “at the midpoint of the best quotes and offers in the System Book.” The Exchange originally proposed to modify Rule 952NY(c) by eliminating this language so that the rule would no longer provide that the opening price of a series could be determined by reference to the best quote bids and offers in the System Book.¹⁶ Thus, as originally proposed, the opening price of a series would be the price, as determined by the System, at which the greatest number of contracts will trade “at or nearest to the midpoint of the initial uncrossed NBBO disseminated by OPRA.”¹⁷ As more fully set forth in the Notice, the Exchange stated that the original proposed modification was a conforming change that was necessary because the Exchange would no longer open solely on a local Market Maker quote.¹⁸

In Amendment No. 1, the Exchange proposes further modifications to Rule 952NY(c) to clarify and detail how the Exchange would determine the opening price upon dissemination of an NBBO from OPRA. Under proposed 952NY(c), as modified by Amendment No. 1, “[t]he opening price of a series will be the price, as determined by the System, at which the greatest number of contracts will trade at a price at or between the NBBO disseminated by OPRA.”¹⁹ In addition, in Amendment No. 1 the Exchange proposes to specify further the circumstances under

¹⁵ See Notice, supra note 3, at 21624.

¹⁶ Specifically, the Exchange proposed to delete from current 952NY(c) the words “if any, or the midpoint of the best quotes and offers in the System Book.”

¹⁷ See Notice supra note 3 at 21624.

¹⁸ See id.

¹⁹ See Amendment No. 1 and proposed Rule 952NY(c).

which the System would use midpoint pricing.²⁰ In particular, proposed Rule 952NY(c), as modified by Amendment No. 1, would specify what would happen if there is a tie and the same number of contracts can trade at multiple prices. Specifically, proposed Rule 952NY(c), as modified by Amendment No. 1, would provide that if the same number of contracts can trade at multiple prices, the opening price is the price at which the greatest number of contracts can trade that is “at or nearest to the midpoint” of the NBBO disseminated by OPRA. The rule would further specify that (i) if one of such prices is equal to the price of any Limit Order(s) in the Consolidated Book, the opening price will be the same price as the Limit Order(s) with the greatest size and, if the same size, the highest price; and (ii) if there is a tie between price levels and no Limit Orders exist at either of the prices, the Exchange would use the higher price.²¹ In connection with these proposed modifications, the Exchange further proposes to delete language in current Rule 952NY(c) referring to pricing by reference to the best quotes bids and offers in the System. According to the Exchange, the language proposed to be deleted is superfluous, as the Exchange would no longer use Market Maker quotes to determine the opening price.²²

Finally, the Exchange proposes a new provision to permit the Exchange to deviate from the standard manner of the Auction Process, including adjusting the timing of the Auction Process in any option class, when the Exchange believes it to be necessary in the interest of a fair and orderly market.²³

III. Discussion and Commission Findings

²⁰ See Amendment No. 1 and proposed Rule 952NY(c).

²¹ See Amendment No. 1 and proposed Rule 952NY(c).

²² See Amendment No. 1 and proposed Rule 952NY(c).

²³ See proposed Rule 952NY(b)(F); see also Notice, supra note 3, at 21624. For a more detailed description of the original proposed rule change, see Notice, supra note 3.

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.²⁴ In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act,²⁵ which requires, among other things, that the rules of a national securities exchange be 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, 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.

The Commission believes the Exchange's proposal to require both a disseminated quote and a trade within the quote in an underlying security before opening trading in the related options series, instead of either one or the other, is reasonably designed ensure that the underlying security has been opened pursuant to a robust price discovery process before the overlying option begins trading.²⁶

The Exchange proposes that if it does not open a series with an Auction Process, it will open the series for trading after receiving notification of an initial uncrossed NBBO disseminated by OPRA.²⁷ The Exchange represents that opening an options series for trading after receiving an uncrossed NBBO from OPRA, rather than based on a local Market Maker quote, will

²⁴ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²⁵ 15 U.S.C. 78f(b)(5).

²⁶ See Notice, supra note 3, at 21624.

²⁷ See supra note 13 and accompanying text.

eliminate ambiguity as to the source of the information for each options series and should lead to more accurate prices on the Exchange.²⁸

Further, the Exchange proposes that if it does open a series with an Auction Process, the opening price of a series will be the price, as determined by the System, at which the greatest number of contracts will trade at a price at or between the NBBO disseminated by OPRA. The Exchange further proposes to specify how the System will determine an opening price if the same number of contracts can trade at multiple prices.²⁹ The Commission believes the proposed process for how the System will determine an opening price for an option series at or between the NBBO disseminated by OPRA, and the circumstances under which System would use midpoint pricing, should result in an opening price that is related to the current market for an option and is therefore reasonably designed to protect investors and the public interest.

In addition, the Commission believes it is appropriate to allow the Exchange the discretion to deviate from the standard manner of the Auction Process, as the proposal provides, when it believes it is necessary in the interests of a fair and orderly market. The Commission believes that the ability to exercise such discretion can be important in situations when, for example, the primary market for an options class is unable to open due to a systems or technical issue or if some other unanticipated circumstance arises. The Commission notes that it has previously approved provisions of this kind as consistent with the Act.³⁰

The Commission further believes that the proposed rule change will provide transparency and enhance investors' understanding of the operation of the Exchange's opening process. For

²⁸ See Notice, supra note 3, at 21624.

²⁹ See supra note 20 and accompanying text.

³⁰ See, e.g., Securities Exchange Act Release No. 71651 (March 5, 2014), 79 FR 13693 (March 11, 2014) (SR-BATS-2014-003).

these reasons, the Commission believes that the proposed rule change, as modified by Amendment No. 1, is consistent with the Act.

IV. Solicitation of Comments on Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 to the proposed rule change is consistent with the Exchange 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-2016-42 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-2016-42. 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 the 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 Number SR-NYSEMKT-2016-42 and should be submitted by [insert date 21 days from the date of publication in the Federal Register].

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the 30th day after the date of publication of notice of Amendment No. 1 in the Federal Register. As discussed above, Amendment No. 1 clarifies how the Exchange would determine the opening price upon dissemination of an NBBO from OPRA, and in particular specifies the circumstances in which “at or nearest to the midpoint” pricing is utilized during the Auction Process. Furthermore, the Commission believes it is appropriate to have these changes incorporated into the rules of the Exchange concurrently with the changes discussed in the original filing.

Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Exchange Act,³¹ to approve the proposed rule change, as modified by Amendment No. 1 on an accelerated basis.

³¹ 15 U.S.C. 78s(b)(2).

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Exchange Act,³² that the proposed rule change (SR-NYSEMKT-2016-42), as modified by Amendment No. 1 thereto, be, and it hereby is, approved on an accelerated basis.

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

Robert W. Errett
Deputy Secretary

³² 15 U.S.C. 78s(b)(2).

³³ 17 CFR 200.30-3(a)(12).