

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-78721; File No. SR-NYSEMKT-2016-75)

August 30, 2016

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 9217 to Add a Provision and Related Fines Addressing Trade-Through Violations

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on August 17, 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. 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 9217 to add a provision and related fines addressing trade-through violations. The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://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

---

<sup>1</sup> 15 U.S.C.78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the filing is to amend Rule 9217 (Violations Appropriate for Disposition Under Rule 9216(b)) to add a provision and related fines addressing trade-throughs. The proposed amendment would correct an oversight in not including trade-throughs when the Exchange adopted Rule 9217 in connection with the Options Order Protection and Locked/Crossed Market Plan (the “Linkage Plan”).

When the Linkage Plan was adopted in 2009, the Exchange filed and received approval for conforming rules,<sup>4</sup> including modifications to Rule 476A (Imposition of Fines for Minor Violation(s) of Rules) to provide for certain violations of Rule 990NY, Rule 991NY, and Rule 992NY to be enforced under the Minor Rule Plan (“MRP”).<sup>5</sup> However, the Exchange did not adopt a provision as part of the MRP regarding the avoidance of trade-throughs as required by Rule 991NY(a). Thus, when the Exchange adopted Rule 9217, it did not include violations of trade-throughs, which was likely an oversight because the Exchange simply “retain[ed] its

---

<sup>4</sup> See Securities Exchange Act Release No. 60520 (August 18, 2009), 74 FR 43176 (August 26, 2009) (SR-NYSEAmex-2009-19).

<sup>5</sup> The Exchange’s MRP fosters compliance with applicable rules and also helps to reduce the number and extent of rule violations committed by ATP Holders and associated persons. The prompt imposition of a financial penalty helps to quickly educate and improve the conduct of ATP Holders and associated persons that have engaged in inadvertent or otherwise minor violations of the Exchange’s rules. By promptly imposing a meaningful financial penalty for such violations, the MRP focuses on correcting conduct before it gives rise to more serious enforcement action.

currently applicable list of minor rule violations and accompanying fine levels.”<sup>6</sup> The Exchange notes that the rules of other options exchanges, including the BOX Options Exchange LLC (“BOX”) and Chicago Board Options Exchange (“CBOE”), include as part of their minor rule plans provisions and related fines for trade-through violations.<sup>7</sup>

To address this oversight, and to align with the rules of other options exchanges, the Exchange proposes to amend Rule 9217 to adopt “[f]ailure to comply with the requirements for avoidance of trade-throughs set forth in Rule 991NY(a)” as MRP Violation 35 and to add provision 35 to the Recommended Fine Schedule. As proposed, when an ATP Holder engages in a pattern or practice of trading through better prices available on other exchanges, the Exchange would recommend a 1<sup>st</sup> Level Fine of \$500; a 2<sup>nd</sup> Level Fine of \$1,000; and a 3<sup>rd</sup> Level Fine of \$2,500. The Exchange notes that these fines are consistent with those adopted by competing options exchanges.<sup>8</sup>

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b)<sup>9</sup> of the Securities Exchange Act of 1934 (the “Act”), in general, and furthers the objectives of Section 6(b)(5),<sup>10</sup> in particular, in

---

<sup>6</sup> See Securities Exchange Act Release No. 77241(February 26, 2016), 81 FR 11311 (March 3, 2016) (SR-NYSE MKT-2016-30). The Exchange is not proposing to amend Rule 476A, which is part of Section 9A, Legacy Disciplinary Rules, because that rule applies “only to a proceeding for which a Charge Memorandum has been filed with the hearing board under Rule 476(d) *prior to April 15, 2016*, until such proceeding is final; otherwise, the Rule 9000 Series shall apply.” See Rule 476A (emphasis added).

<sup>7</sup> See, e.g., Securities Exchange Act Release Nos. 69259 (March 29, 2013), 78 FR 20706 (April 5, 2013) (SR-BOX-2013-17); 62602 (July 29, 2010) (regarding BOX Rule 12140(13); [sic] 75 FR 47672 (August 6, 2010) (SR-CBOE-2010-69) (regarding [sic] and CBOE Rule 17.50(g)(12)).

<sup>8</sup> See *supra* note 7.

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

that 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 mechanisms of a free and open market and a national market system. The proposed rule change is also consistent with Sections 6(b)(6) and 6(b)(7) of the Act because it would promote the Exchange's ability to appropriately discipline its market participants and provide fair procedures when addressing violations of Exchange rules that are deemed by the Exchange to be minor in nature.<sup>11</sup>

The proposed change would foster cooperation and coordination with persons engaged in facilitating transactions in securities because addressing violations of trade-throughs in Rule 9217 would align Exchange rules with rules of other options exchanges that likewise have trade-throughs as part of their minor rule plans.<sup>12</sup> In addition, the Exchange believes that the proposed rule change would promote the efficient use and reasonable allocation of Exchange resources such that trade-through violations could be dealt with via the MRP allowing the Exchange to devote more time and effort to more serious violations. The proposed change would also strengthen the Exchange's ability to carry out its oversight responsibilities as a self-regulatory organization and reinforce its enforcement functions. Further, the Exchange believes the proposal would provide notice to, and fair procedures for the disciplining of, ATP Holders and persons associated with ATP Holders for violations of trade-throughs and would, in turn, protect investors and the investing public. The proposed changes are non-discriminatory in that they would be applied equally to all ATP Holders in a similar situation. The proposed changes also

---

<sup>11</sup> 15 U.S.C. 78f(b)(6) and (7).

<sup>12</sup> See supra note 7.

permit the Exchange to levy progressively larger fines against a repeat offender, in a manner and an amount consistent with those applied for violations on other markets.<sup>13</sup>

In addition, the proposed changes would promote consistency in minor rule violations and respective SRO reporting obligations, resulting in less burdensome and more efficient regulatory compliance for common permit holders.

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

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change would align Exchange rules with rules of other options exchanges and would therefore promote consistency in minor rule violations and respective SRO reporting obligations, resulting in less burdensome and more efficient regulatory compliance and facilitating performance of regulatory functions.<sup>14</sup> The proposed rule change is not intended to address competitive issues, but rather it is designed to provide notice to, and fair procedures for the disciplining of, ATP Holders and persons associated with ATP Holders for violations of trade-throughs.

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

Because the foregoing 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 for 30 days from the date on which it was filed, or such shorter time as the

---

<sup>13</sup> See supra note 7.

<sup>14</sup> See supra note 7.

Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>15</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>16</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>17</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change will become operative on filing. The Exchange stated that the proposed rule change would allow the Exchange to align its rules with those of competing options exchanges, without delay, and would also strengthen the Exchange's ability to carry out its oversight responsibilities as a self-regulatory organization and reinforce its enforcement functions. The Exchange also stated that waiver of the operative delay would promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposed rule change to be operative upon filing.<sup>18</sup>

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

---

<sup>15</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>16</sup> 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.

<sup>17</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>18</sup> For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEMKT-2016-75 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-2016-75. 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 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-2016-75, 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.<sup>19</sup>

Robert W. Errett  
Deputy Secretary

---

<sup>19</sup> 17 CFR 200.30-3(a)(12).