



8011-01p
SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-72194; File No. SR-NYSEMKT-2014-45)

May 20, 2014

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 975NY to Provide for New Procedures to Account for Erroneous Trades Occurring from Disruptions and/or Malfunctions of Exchange Systems

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 May 12, 2014, 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 975NY to provide for new procedures to account for erroneous trades occurring from disruptions and/or malfunctions of Exchange systems. 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 15 U.S.C. 78a.

³ 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 Exchange proposes to amend Rule 975NY to provide for new procedures to account for erroneous trades occurring from disruptions and/or malfunctions of Exchange systems. This filing is based on the rules of the Chicago Board Options Exchange, Incorporated (“CBOE”).⁴

Proposed new Rule 975NY(a)(9) would provide that any electronic or open outcry transactions that arise out of a “verifiable systems disruption or malfunction” in the use or operation of an Exchange automated quotation, dissemination, execution, or communication system may either be nullified or adjusted by Trading Officials.⁵ In addition, the proposed rule would provide that transactions that qualify for price adjustment will be adjusted to a Theoretical Price, as defined in paragraph (a)(2) of Rule 975NY. The Exchange notes that proposed Rule 975NY(a)(9) is virtually identical to CBOE Rule 6.25(a)(3) and similar to rules in effect at other options exchanges that allow for the nullification or modification of transactions that resulted from verifiable disruptions and/or malfunctions of Exchanges systems.⁶ The proposed rule change differs from CBOE Rule 6.25(a)(3) because the Exchange proposes to permit a Trading Official to nullify or adjust a transaction, which is similar to NYSE Arca Rule 6.89, rather than require nullification or adjustment as required under CBOE Rule 6.25(a)(3).

⁴ See CBOE Rule 6.25(a)(3). The proposed rule change is also substantially similar to NYSE Arca, Inc. (“NYSE Arca”) Rule 6.89 and is similar to NASDAQ OMX PHLX, LLC (“Phlx”) Rule 1092(c)(ii)(A).

⁵ Trading Officials are employees or officers of the Exchange and are not affiliated with ATP Holders. See Rule 900.2NY(82).

⁶ See supra n. 3 [sic].

The proposed rule change would provide the Exchange with the same authority to nullify or adjust trades in the event of a “verifiable disruption or malfunction” in the use of operation of its systems as other exchanges have. The Exchange believes that it is appropriate to provide the flexibility and authority provided for in proposed Rule 975NY(a)(9) so as not to limit the Exchange’s ability to plan for and respond to unforeseen systems problems or malfunctions. For this reason, the Exchange believes that, in the interest of maintaining a fair and orderly market and for the protection of investors, authority to nullify trades in these circumstances, consistent with the authority on other exchanges, is warranted.

The Exchange notes that the options markets are currently in the process of identifying how to harmonize their respective obvious and catastrophic error rules, including a rule specifying the circumstances in which an options exchange may nullify trades because of a systems problem or malfunction. Because it is uncertain when this harmonized rule will be filed with and approved by the Commission, the Exchange believes it is critical to its current ability to maintain a fair and orderly market and to protect investors to propose an amendment to its current Obvious Error and Catastrophic Errors Rule 975NY. Today’s proposed rule would be superseded by a future proposed harmonized rule.

The Exchange further proposes that, similar to CBOE Rule 6.25(b)(3), the Exchange’s ability to act on its own motion pursuant to proposed Rule 975NY(a)(9) would be subject to Rule 975NY(b)(3) procedures for reviewing trades on Exchange motion. Accordingly, the Exchange proposes to amend Rule 975NY(b)(3) to provide that the Exchange may act on its own motion for any transaction subject to paragraphs (a)(3) – (a)(9) of Rule 975NY.

The Exchange also proposes technical changes that would add paragraphs (a)(7) and (a)(8) to Rule 975NY(b)(3), which is consistent with CBOE rules, and which cross references

were previously inadvertently excluded from Rule 975NY(b)(3). The Exchange also proposes to amend Rule 975NY(a) to be more similar to the corresponding provision in CBOE's rules by deleting the specific paragraph references and instead refer generally to the conditions specified in paragraph (a) of Rule 975NY.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Section 6(b)(5),⁸ in particular, in 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 mechanism of a free and open market and a national market system.

The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and national market system and promote a fair and orderly market because it would provide authority for the Exchange to nullify or adjust trades that may have resulted from a verifiable systems disruption or malfunction. The Exchange believes that it is appropriate to provide the flexibility and authority provided for in proposed Rule 975NY(a)(9) so as not to limit the Exchange's ability to plan for and respond to unforeseen systems problems or malfunctions that may result in harm to the public. The Exchange notes that the proposed rule change is based on CBOE rules and is substantially similar to rules of other markets.⁹ The Exchange further notes that pursuant to existing Rule 975NY(b)(3), when acting under its own motion to nullify or adjust trades pursuant to proposed

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ Supra n. 3 [sic].

Rule 975NY(a)(9), the Exchange must consider whether taking such action would be in the interest of maintaining a fair and order market and for the protection of investors.

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. Rather, the Exchange believes that the proposed rule change is pro-competitive because it will align the Exchange's rules with the rules of other markets, including CBOE, NYSE Arca, and Phlx. By adopting proposed Rule 975NY(a)(9), the Exchange will be in a position to treat transactions that are a result of a verifiable systems issue or malfunction in a manner similar to other 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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹ 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 for 30 days after the date of the filing, 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.¹²

¹⁰ 15 U.S.C. 78s(b)(3)(A)(iii).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² 17 CFR 240.19b-4(f)(6)(iii). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule

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 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)¹³ 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-2014-45 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-2014-45. 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

change, along with a brief description and the 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.

¹³ 15 U.S.C. 78s(b)(2)(B).

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 at 100 F Street, NE, Washington, DC 20549-1090 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-2014-45, 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.¹⁴

Kevin M. O'Neill,
Deputy Secretary.

[FR Doc. 2014-12073 Filed 05/23/2014 at 8:45 am; Publication Date: 05/27/2014]

¹⁴ 17 CFR 200.30-3(a)(12).