

Text of Proposed Rule Change
New text is underscored; deleted text is in brackets

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Rule 153. Record of Orders

(a)-(i) No change.

Commentary

.01 Consolidated Options Audit Trail System Requirements—Non-System Orders—COATS Phase V.—The Exchange has undertaken with the other options exchanges to build a Consolidated Options Audit Trail System (COATS) which, when fully implemented, will provide an accurate, time-sequenced record of electronic and other orders, quotations and transactions in listed options on the exchanges. Rule 153(b) currently requires members and member organizations to systematize "immediately upon receipt" orders "that are eligible for input into the Exchange's electronic order processing facilities" if such orders are not already systematized in the Exchange's electronic order processing facilities. Members and member organizations must systematize in BARS those options orders and modifications and cancellations of such orders that are not already systematized in an Exchange system prior to representing the orders in the crowd. Members and member organizations also must record in BARS immediately upon receipt information pertaining to the execution of option orders.

The Exchange currently is developing an enhancement to its BARS system (called "Order Ticket") to facilitate order systemization by floor brokers and their clerks. This enhancement will be available by the end of the first quarter in 2005. The Order Ticket enhancement will allow members and member organizations to create electronic, time stamped, handwritten order tickets which will be saved by the Exchange as JPEG files. This enhancement, when implemented, will provide members and member organizations with a second acceptable means for complying with their COATS Phase V obligation to systematize orders prior to representation. The following information must be recorded in an Order Ticket if this enhancement is used to record an option order prior to representing it:

- Buy/Sell
- Symbol
- Quantity
- Call/Put (calls are assumed unless "P" is written)

- Expiration
- Strike (fractions are assumed, e.g., "22 1/2" should be written as "22")
- Price term (a limit order is assumed if a price is written, e.g., "1.20" means a 1.20 limit. Market orders are blank or represented by a dash)
- Contingencies (if applicable, e.g., NH, AON, FOK, IOC)
- Open/Close (close is assumed unless "O" is written)
- Customer/Firm/Member Market Maker/Non-Member Market Maker/Professional Customer (customer is assumed unless "F", "P", [or]"N", or "PC" is written.)
- Give-up

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Rule 900.2NY. Definitions

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(18) *Customer*. The term "Customer" means an individual or organization that is not a Broker/Dealer; when not capitalized, "customer" refers to any individual or organization whose order is being represented, including a Broker/Dealer.

(18A) *Professional Customer*. The term "Professional Customer" means individual or organization that (i) is not a Broker/Dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). A Professional Customer will be treated in the same manner as a Broker/Dealer (or non-Customer) in securities for the purposes of Rule 900.3NY(j)(Facilitation Order), 904G(f) (FLEX Trading Procedures and Principles – Crossing Limitations), 934NY(Crossing), 934.1NY (Facilitation Cross Transactions), 934.2NY(At-Risk Cross Transactions), 934.3NY(Solicitation), 963NY(Priority and Order Allocation Procedures – Open Outcry), 963.1NY (Complex Order Transactions), 964NY (Display, Priority and Order Allocation – Trading Systems), 964.2NY(b)(1)(iii)(Participation Entitlement of Specialists and e-Specialists), 964.2NY(b)(3)(B)(Allocation Of Participation Entitlement Amongst Specialist Pool), 980NY(b) (Electronic Complex Order Trading), Rule 995NY(b)(Prohibited Conduct – Limit Orders) and the Exchange's schedule of fees.

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Rule 930NY. Floor Broker Defined

(a) A Floor Broker for the purposes of this Rule is a sole proprietor ATP Holder or a representative of an ATP Holder who is registered with the Exchange for the purpose, while on the Exchange Floor, of accepting and executing option orders received from ATP Holders. A Floor Broker shall not accept an order from any other source unless he is a sole proprietor ATP Holder or a representative of an ATP Holder approved to transact business with the public in accordance with Rule 441, in which event he may accept orders for customers of the ATP Holder.

(b) Conducting a Limited Public Business

(1) Notwithstanding the provisions of subsection (a) of this Rule, qualified Floor Brokers and Floor Clerks of qualified Floor Brokers may conduct a public business limited to accepting orders directly from Professional Customers, as defined below, for execution on the Floor of the Exchange. Any Floor Broker or Floor Clerk of a Floor Broker seeking to conduct such a limited public business must first:

(A) successfully complete the Series 7 Examination; and

(B) register and receive approval from the Exchange. The form of registration will be prescribed by the Exchange.

(2) For purposes of this rule, a "Professional Customer" does not include[s] those participants defined in Rule 900.2NY(18A) but instead includes a bank; trust company; insurance company; investment trust; a state or political subdivision thereof; charitable or nonprofit educational institution regulated under the laws of the United States, or any state, or pension or profit sharing plan subject to ERISA or of any agency of the United States as of a state or political subdivision thereof; or any person (other than a natural person) who has, or who has under management, net tangible assets of at least sixteen million dollars.

(3) ATP Holders who conduct a limited public business pursuant to the provisions of subsection (b) of this Rule 930NY are strictly prohibited from holding Customer funds and Customer securities.

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Rule 935NY. Order Exposure Requirements

With respect to orders routed to the NYSE Amex System, Users may not execute as principal orders they represent as agent unless (i) agency orders are first exposed on the Exchange for at least one (1) second or (ii) the User has been bidding or offering on the Exchange for at least one (1) second prior to receiving an agency order that is executable against such bid or offer.

Commentary

.01 – No change.

.02 It will be a violation of Rule 935NY for a User to cause the execution of an order it represents as agent on NYSE Amex System against orders it solicited from ATP Holders, Professional Customers and non-ATP Holder broker-dealers, whether such solicited orders are entered into NYSE Amex System directly by the User or by the solicited party (either directly or through another User), if the User fails to expose orders on NYSE Amex System as required by Rule 935NY.

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Rule 956NY. Record of Orders

(a) Every ATP Holder must maintain and preserve for the period specified under SEC Rule 17a-4, a record of every order and of any other instruction given or received for the purchase or sale of option contracts. Such record must show the terms and conditions (market order, limit order, etc.) of the order or instruction and of any modification or cancellation thereof, and in addition must include:

- (1) CMTA Information and clearing ATP Holder;
- (2) Option symbol, expiration month, exercise price, and type of option (call or put);
- (3) Side of market (buy or sell) and order type (customer, firm, firm market maker, professional customer);
- (4) –(14) No change.

(b) No change.

Rule 957NY. Reporting Duties

(a) – (e). No change.

Commentary

.01 - No change.

.02 *Origin Codes for Orders Excepted from EOC or the Electronic Tablet Pursuant to Rule 955NY.* For purposes of Rule 957NY, trade information includes the proper account origin codes, which are as follows: "C" for non-broker-dealer customer accounts; "F" for firm proprietary accounts; "M" for Market Maker accounts; "PC" for Professional Customers and "B/D" for firm orders of non-ATP Holder or ATP Holder broker-dealer accounts, stock specialist accounts, or customer account trades of the broker-dealer or non-ATP Holder or ATP Holder broker-dealer. In addition, Market Maker clearing firms are directed to instruct their respective trading desks to identify Market Maker orders that

are entered from off the floor and not entitled to Market Maker margin treatment by placing a "C" after the Market Maker's number in the "firm" box on the ticket. Floor Brokers, when accepting an order by phone from a Market Maker, are similarly directed to identify that order in the same manner.

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Rule 964NY. Display, Priority and Order Allocation - Trading Systems

(a) The NYSE Amex System shall display to Users all non-marketable limit orders in the Display Order Process, unless indicated otherwise. The System also will disseminate current consolidated quotations/last sale information, and such other market information as may be made available from time to time pursuant to agreement between the Exchange and other Market Centers, consistent with the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information.

(b) Priority and Allocation Procedures for Orders and Quotes with Size

(1) Price Priority. The highest bid has priority over all other bids; and the lowest offer has priority over all other offers.

(2) Multiple bids or offers at the same price are afforded priority based on account type and other principles, as set forth below.

(A) Customer Orders. Bids and offers in the Consolidated Book for Customer accounts, including the displayed portion of Customer Reserve Orders, have first priority over other bids or offers at the same price. If there is more than one highest bid for a Customer account or more than one lowest offer for a Customer account, then such bids or offers, respectively, will be ranked based on time priority.

(B) Directed Order Market Maker Guaranteed Participation. Bids and offers in the Consolidated Book for the account of a Directed Order Market Maker have second priority for Directed Orders if the Directed Order Market Maker is eligible to receive guaranteed participation on such bid or offer pursuant to Rule 964.1NY.

(i) – (iii) No change.

(C) Specialist Pool Guaranteed Participation. Bids and Offers in the Consolidated Book for the account of participants in the Specialist Pool have third priority if the Specialist Pool is eligible to receive guaranteed participation on such bid or offer pursuant to Rule 964.2NY. The Specialist Pool will not receive a guaranteed allocation if a Directed Order Market Maker has received a guaranteed allocation. If a Directed Order Market Maker has received a guaranteed allocation, the bids and offers of the Specialist Pool will be included in the "size pro rata pool" as described in (D) below.

(i) – (iv) No change.

(D) Non-Customer Orders and Quotes with Size. Orders and Quotes with Size in the Consolidated Book for the accounts of non-Customers, including Professional Customers, have next priority. If there is more than one highest bid or more than one lowest offer in the Consolidated Book for the account of a non-Customer, then such bids or offers will be afforded priority on a "size pro rata" basis, and will comprise the "size pro rata pool".

(E) - (F) No change.

(3) No change.

(c) Executions. This subsection (c) addresses situations in which orders or Quotes with Size are executed through NYSE Amex System.

(1) No change.

(2) An inbound order will be either fully or partially executed as follows:

(A) the inbound order will first be matched against all available displayed Customer interest in the Consolidated Book, including the displayed portion of Customer Reserve Orders;

(B) the inbound order, if not entirely filled, will then satisfy any available interest based on Directed Order Market Maker or Specialist Pool guaranteed participation pursuant to Rule 964NY(a);

(C) the inbound order, if not entirely filled, will then match, on a size pro rata basis, with the interest of the Market Makers, Firms, Professional Customers, and Non-ATP Holder Market Makers in the Consolidated Book; and

(D) – (E) No change.

(3) Split-Price Executions. An inbound electronic order will receive an execution at multiple prices if there is some, but insufficient, trading interest at a price and the remainder of the order can be filled at one (or more) other prices based on available trading interest in the Consolidated Book. Orders will not be executed at a price that trades through another market. Executions at prices beyond the initial execution prices will match the inbound order:

(A) first, against Customer Orders in the Consolidated Book at the price level according to entry time.

(B) second, against the interest of the Market Makers, Firms, Professional Customers and Non-ATP Holder Market Makers in the Consolidated Book, on a size pro rata basis.

(d) No change.

(e) Orders Executed Manually.

Floor Brokers manually representing orders in the trading crowd must comply with the order execution and priority principles set forth in Rule 963NY and, in addition, with the following provisions establishing priority for bids and offers by account type:

(1) Customer orders in the Consolidated Book have first priority. Multiple Customer orders at the same price are ranked based on time priority.

(2) Bids and offers of the ATP Holders of the trading crowd have second priority. These bids and offers include those made by Market Makers and Floor Brokers (on behalf of orders they are representing).

(3) Bids and Offers of broker-dealers, Professional Customers (including Quotes with Size and orders of Market Makers) in the Consolidated Book have third priority. Multiple bids and offers of broker-dealers will be executed on a size pro rata basis pursuant to Rule 964NY.

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