

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-68926; File No. SR- NYSEMKT-2013-12)

February 14, 2013

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Rule Change Amending Rule 975NY In Part and Adding a New Section to Address Errors That Involve Complex Orders

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 February 1, 2013, 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, II, and III 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 Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 975NY in part and add a new section to address errors that involve Complex Orders. The text of 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

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<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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend certain existing provisions of Rule 975NY (“Obvious Error Rule”).<sup>4</sup> In addition, the Exchange is proposing to add new language to Rule 975NY specific to how errors involving Complex Orders will be addressed.

**Proposed Amendments to Existing Provisions of Rule 975NY**

The Exchange adopted the Obvious Error Rule to handle situations where an order receives an erroneous execution, such as receiving a price that is higher or lower than the Theoretical Price by a specified amount.<sup>5</sup> The Exchange is proposing several amendments to the Obvious Error Rule. First, the Exchange is proposing to change the portion of the rule that addresses errors in series with zero or no bid. Specifically, the Exchange proposes replacing reference to “series quoted no bid on the Exchange” with “series where the NBBO bid is zero.” This is being done to ensure consistency in the language with other aspects of the existing rule that reference NBBO for determination of whether a transaction is deemed eligible for obvious error treatment. The Exchange believes the NBBO provides greater accuracy in determining the value or valueless of an option because it takes into account interest from all market participants

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<sup>4</sup> See Exchange Rule 975NY.

<sup>5</sup> See e.g. Securities Exchange Act Release Nos. 59472 (February 27, 2008), 74 FR 9843 (March 6, 2009) (NYSEALTR-2008-14); 59575 (March 13, 2009), 74 FR 11803 (March 19, 2009) (NYSEALTR-2009-24); 59736 (April 8, 2009), 74 FR 17708 (April 16, 2009) (NYSEAmex-2009-10); 61394 (January 21, 2010), 75 FR 4435 (January 27, 2010) (NYSEAmex-2010-02); 65505 (October 6, 2011), 76 FR 63966 (October 14, 2011) (NYSEAmex-2011-76); and 67037 (May 21, 2012), 77 FR 31415 (May 25, 2012) (NYSEAmex-2012-32).

and not just those active on the Exchange. The Exchange also believes that ensuring consistency throughout the rule text is important to help avoid investor confusion.

Second, the Exchange proposes to amend the times in which certain ATP Holders are required to notify the Exchange in order to have transactions reviewed under Rule 975NY. Specifically the Exchange is proposing to extend the time Market Makers have to notify the Exchange of a potential error from five minutes to ten minutes. The Exchange believes that the change is appropriate given the increase in the number of options series, as well as the number of exchanges in operation today. Market Makers providing liquidity on multiple exchanges potentially need to call and speak with someone at each of the nine exchanges to have transactions reviewed. As such, the existing five minute time limit makes this impractical if not impossible and therefore it is appropriate to extend the time limit to ten minutes. The Exchange notes that at least one other exchange already provides Market Makers with more than five minutes to request a review under their obvious error rules.<sup>6</sup>

In addition, the Exchange is proposing to extend the time ATP Holders acting as agent for Customer orders have to notify the Exchange of a potential error from twenty minutes to thirty minutes. The Exchange believes that extending the time limit for Customer orders is warranted due to the degree in which many Customers are removed from the operation of the execution. For a Customer order, the brokerage firm with which the customer has an account may not actually be the routing or execution broker for the Customer's options trades. It is fairly common for brokerage firms to route their Customer order flow through a different Broker Dealer that employs a router that weighs various best execution factors in arriving at a routing decision. In such situations, Customers who receive a fill they want reviewed under the obvious

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<sup>6</sup> See CBOE Rule 6.25(b)(1).

error rule must first call their brokerage firm, who will in turn contact the broker-dealer that routed the order to the Exchange for execution. ATP Holders have indicated to the Exchange that Customers may need more than 20 minutes for their requests for review to reach the Exchange. Other market participants, such as Firms, non-member Market Makers, and Professional Customers tend to route their own order flow directly to the Exchange and are not as far removed from the actual execution. Hence the Exchange believes it is appropriate to extend the time to request a review for ATP Holders acting as agent for Customer orders given these facts.<sup>7</sup>

### **Proposed Amendments to Address Complex Orders**

The Exchange also proposes adding new language to address Complex Orders in the context of Rule 975NY. Presently, the Obvious Error Rule is silent on how Complex Orders are handled under the bust and adjust provisions of the rule. The Exchange wants to include language that will give participants some degree of certainty regarding what they should expect when legs of a Complex Order are eligible for obvious error treatment. There are several scenarios in which Complex Orders may be involved in a transaction that is reviewed under the Obvious Error Rule. Each of those scenarios and the proposed approach will be covered below:

**Scenario 1:** A Complex Order trades with another Complex Order in the Complex Order Book. Under this scenario, should any leg(s) upon review qualify for obvious error treatment under the provisions of Rule 975NY, then all legs of the Complex Order will be busted unless both parties mutually agree to an adjustment price.

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<sup>7</sup> While the Exchange acknowledges that extending the time a party can notify the Exchange of a potential error can increase uncertainty regarding the standing of a trade, it believes that such uncertainty will be limited only to those trades that are so outside of normal trading that they might qualify for obvious error treatment.

The Exchange believes that this approach is similar to rules of other markets<sup>8</sup> and appropriate due to several aspects unique to Complex Orders. In particular, the Exchange notes that Complex Orders often are used by participants to enter positions known as spreads that entail limited risk relative to an outright naked sale of a put or call. For example, buying 1 XYZ Dec 55 call and selling 1 XYZ Dec 50 call has risk limited to \$5, less the premium received for the spread. If the leg of the Complex Order consisting of the long 1 XYZ Dec 55 call was eligible to be busted, the ATP Holder would be left with a riskier, naked short position in the single remaining leg of the spread. Given this, the Exchange has decided that the best approach for dealing with Complex Orders in the context of the Obvious Error Rule will be to preserve the spread whenever possible. Therefore, when a trade eligible for obvious error treatment has occurred that involves a Complex Order trading with another Complex Order in the COB, the Exchange believes it is appropriate to bust all legs of the trade involved unless both parties to the trade mutually agree to an adjustment price.

**Scenario 2:** A Complex Order trades with another Complex Order in the Complex Order Book where one leg qualifies for the no-bid provision of Rule 975NY(a)(6). If the only leg(s) of the Complex Order that qualifies for obvious error treatment is pursuant to the no-bid provisions of Rule 975NY(a)(6), then no legs of the Complex Order will be busted (the trade stands as executed), unless both parties to the trade mutually agree otherwise.

The Exchange believes that busting trades solely the result of a leg(s) of a Complex Order executing in a no-bid series could result in abuse. In particular, by entering a spread priced slightly away from the market, the entering party can increase the chance that one of the legs will qualify for no-bid treatment upon execution. In such a scenario, the entity entering the Complex

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<sup>8</sup> See PHLX Rule 1092(c)(v).

Order would have a window of time (equal to the notification provisions of the rule) to evaluate the market before claiming relief under the Obvious Error Rule (which would result in the busting of all legs). In order to prevent manipulation and a potential increase in nullified trades, the Exchange believes it is appropriate to not permit obvious error treatment for those situations where the only error occurred in a no-bid series.

**Scenario 3:** A Complex Order trades with individual orders or quotes in the Consolidated Book. In such situations, each executed leg will be reviewed separately under Rule 975NY. As a result, it is possible that after such a trade, only one leg of a Complex Order may meet the Obvious Error threshold (resulting in a residual position of a single leg). When a Complex Order receives executions in the Consolidated Order Book, it is likely to involve multiple ATP Holders. Although the Exchange prefers to avoid partial execution of a Complex Order, it does not seek to nullify a valid execution in the Consolidated Order Book of an ATP Holder who unknowingly interacted with a leg of a Complex Order. While this is not a change from how the Exchange currently handles all Complex Orders, language is being added to the Obvious Error Rule for purposes of clarification.

## 2. Statutory Basis

The Exchange believes that this proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (“Act”)<sup>9</sup>, in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>10</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and

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

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

perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

In particular, the proposed rule change relating to the handling of transactions in series quoted no bid at the NBBO will promote just and equitable principles of trade by adding more certainty and consistency to the obvious error. The proposed rule change to increase the time limit for both Market Makers and ATP Holders acting as agent for Customers to request a review of a transaction under the provisions of Rule 975NY is designed to protect investors and the public interest. Granting Market Makers more time to request a review of a trade for obvious error treatment will ensure they are comfortable they can meet the deadline. This comfort level should allow Market Makers to continue to aggressively provide that liquidity in a transparent and non-discriminatory manner to all participants which is in the public interest. Further, ensuring Customers sufficient time to request a review for trades is also consistent with investor protection and furthering the public interest as it allows those market participants furthest removed from the point of execution time to evaluate each trade and have adequate time to notify the Exchange of a potential error.

The Exchange believes that the proposed rule changes that address the handling of Complex Orders involved in obvious errors are also consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5), in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. Detailing how Complex Orders involved in obvious errors will be busted and/or adjusted is important since it grants investors greater certainty. Preventing a market participant from busting trades solely the result of a leg(s) of a Complex Order executing in a no-bid series furthers the protection of investors

and the public interest by preventing potential abuse. In the Exchange's view, the determination of whether an "obvious error" has occurred should be based on specific and objective criteria and subject to specific and objective procedures. The Exchange believes that the proposed rule change provides such objective guidelines for the determination of whether an obvious price error has occurred.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the proposal further promotes competition on the Exchange which should lead to tighter, more efficient markets to the benefit of market participants including public investors that engage in trading and hedging on the Exchange, and thereby make the Exchange a desirable market vis a vis other 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 self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEMKT-2013-12 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR- NYSEMKT-2013-12. 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 publicly available. All submissions should refer to File Number SR-NYSEMKT-2013-12 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>11</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).