

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-75095; File No. SR-NYSEMKT-2015-41)

June 2, 2015

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Rule Change Amending Rule 980NY(e), Electronic Complex Order Auction Process Removing the Limitation on Who Can Respond to a COA and Provide a Response Time Interval of at least 500 Milliseconds; and Amend Rule 935NY, Order Exposure Requirements to Add Use of the COA for a User to Satisfy the Order Exposure Requirement in Rule 935NY and Delete the Reference in Rule 980NY(e) to the Order Exposure Requirements Being Separate from the Duration of the COA Response Time Interval

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 21, 2015, 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 Exchange. 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: (1) amend Rule 980NY(e) (Electronic Complex Order Auction (“COA”) Process) to remove the limitation on who can respond to a COA and to provide a Response Time Interval of at least 500 milliseconds; and (2) amend Rule 935NY (Order Exposure Requirements) to add use of the COA as a means for a User to satisfy the Order Exposure Requirement in Rule 935NY and delete the reference in Rule 980NY(e) to the Order Exposure Requirements being separate from the duration of the COA Response Time Interval.

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 Exchange 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 these statements may be examined at the places 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

Participation in and Minimum Response Time Interval for the COA

The Exchange operates COA, which allows an entering ATP Holder to initiate an auction for eligible Electronic Complex Orders (“COA-eligible orders”).⁴ Upon receiving a COA-eligible order, and the direction from the entering ATP Holder that an auction be initiated, the Exchange sends an automated request for response message (“RFR”) to all ATP Holders who subscribe to RFR messages.⁵ ATP Holders that are eligible to participate in a COA may respond to an RFR message (“RFR Responses”) indicating the price and the number of contracts they

⁴ The Exchange may determine, on a class by class basis, which Electronic Complex Orders are eligible for a COA based on marketability (defined as a number of ticks from the current market), size, and Complex Order origin type. See Rule 980NY(e)(1).

⁵ RFR messages identify the component series, size and side of the market of the order and any contingencies. See Rule 980NY(e)(2).

would be willing trade in the COA. RFR Responses must be submitted during the Response Time Interval (“RTI”), the duration of which is determined by the Exchange, but may not exceed one (1) second.⁶

Rule 980NY(e)(4) currently provides that each Market Maker with an appointment in the relevant option class, and each ATP Holder acting as agent for orders resting at the top of the Consolidated Book in the relevant options series may submit RFR Responses during an RTI. The Exchange proposed to amend Rule 980NY(e)(4) to provide that any ATP Holder may submit RFR Responses during the RTI. The Exchange believes that the proposed amendment may increase participation in COAs, which would foster greater competition and provide additional price improvement opportunities for COA-eligible orders exposed during the COA. In addition, the Exchange believes the proposed amendment is fair and reasonable and would benefit market participants because it would enable the Exchange to better compete with option exchanges that permit all members to participate in electronic auctions for crossing transactions that are similar to the COA.⁷

⁶ See Rule 980NY(e)(3) (stating, in part, “[t]he Exchange will determine the length of the Response Time Interval; provided, however, that the duration shall not exceed one (1) second.”).

⁷ See, e.g., ISE Rule 723(a) (Price Improvement Orders may be entered by all Members for their own account or for the account of a Public Customer in one-cent increments at the same price as the Crossing Transaction or at an improved price for the Agency Order, and for any size up to the size of the Agency Order). The Exchange also notes that it places no restriction on the ATP Holders that may participate in a Customer Best Execution (“CUBE”) Auction for single-legged transactions on the Exchange. See Rule 971.1(c)(2)(C). The Exchange believes that although ISE Rule 723(a) and Rule 971.1NY relate to electronic crossing transactions and provide for a guaranteed execution, these electronic auction mechanisms are analogous to the COA as they are designed to attract liquidity to the exchange and provide opportunities for price improvement.

As noted above, the duration of a COA is determined by the Exchange, but may not exceed one (1) second. Currently, the Exchange has not established a minimum duration for the RTI. The Exchange believes it is important to establish a minimum duration for the RTI to ensure that orders entered into a COA are exposed for a sufficient time period to allow the opportunity for participating ATP Holders to provide RFR Responses. Accordingly, the Exchange is proposing to establish a minimum of 500 milliseconds as the length of time the Exchange may determine for the RTI, with the maximum length of time continuing to be one (1) second.⁸

The Exchange believes that a minimum of 500 milliseconds is a sufficient time to submit RFR Responses and would encourage competition among participants, thereby enhancing the potential for price improvement for orders in the COA.⁹ The proposed 500 millisecond minimum for the RTI is comparable to the response time interval in the Exchange's Customer Best Execution ("CUBE") Auction for single-leg orders, which disseminates an RFR message for an auction lasting a random period of time of between 500 and 750 milliseconds.¹⁰ In addition, BOX Options Exchange LLC ("BOX")'s Complex Order Price Improvement Period

⁸ See proposed Rule 980NY(e)(3) (providing that "the that the duration [of the RTI] shall not be less than 500 milliseconds and shall not exceed one (1) second.").

⁹ In May 2015, to determine whether the proposed RTI would provide sufficient time to respond to a COA, the Exchange conducted a survey of ATP Holders to determine whether their firms "could respond to an auction lasting 100 milliseconds." Of the ATP Holders that have electronic access to the Exchange and are able to submit responses to a COA (the "Relevant ATP Holders"), thirteen (13) responded the survey. Of the thirteen (13) Relevant ATP Holders, ten (10) – or 77% – said that they could respond to an auction lasting 100 milliseconds. Thus, the Exchange believes that the proposed RTI duration of at least 500 milliseconds would provide a meaningful opportunity for participants on the Exchange to respond to a COA while at the same time facilitating the prompt execution of orders.

¹⁰ See Rule 971.1NY(c)(2)(B).

(“COPIP”), like the Exchange’s COA, is designed to offer price improvement to complex orders, and is only 100 milliseconds in length.¹¹ Although both the CUBE and the COPIP relate to electronic crossing transactions and provide for a guaranteed execution, the Exchange believes the CUBE and COPIP are analogous to the COA as they are designed to attract liquidity and provide opportunities for price improvement.

Amendment to Order Exposure Requirements

In addition, the Exchange proposes to amend Rule 935NY by adding that use of the COA is a means for a User to satisfy the Order Exposure Requirement in Rule 935NY. Exchange Rule 935NY prohibits Users (i.e., ATP Holders)¹² from trading as principal with orders they represent as agent unless the order exposure requirements under the rule are met. The order exposure requirements are designed to enhance opportunities for competition among market participants.¹³ Specifically, a User may only trade as principal with an order it represents as agent if:

- The agency order is first exposed on the Exchange for at least one (1) second;
- 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; or
- The User utilizes the Customer Best Execution Auction (“CUBE Auction”) pursuant to Rule 971.1NY.

¹¹ See Box Rule 7245(f)(1).

¹² A “User” is “any ATP Holder that is authorized to obtain access to the System pursuant to Rule 902.1NY.”

¹³ See Rule 935NY Commentary .01 (“Rule 935NY prevents a User from executing agency orders to increase its economic gain from trading against the order without first giving other trading interest on the Exchange an opportunity to either trade with the agency order or to trade at the execution price when the User was already bidding or offering on the book.”)

The Exchange proposes to amend Rule 935NY to also permit a User who utilizes the COA pursuant to Rule 980NY(e) to submit a principal order during the RTI to trade against an order it represents as agent.¹⁴ As described above, the Exchange is proposing a minimum duration for the RTI of 500 milliseconds. RTIs would thus last for at least 500 milliseconds and no more than one (1) second, as determined by the Exchange.¹⁵

As stated above, the Exchange believes that a COA with an RTI of at least 500 milliseconds is a sufficient length of time to permit ATP Holders to respond to a RFR and enhance opportunities for competition among participants, increasing the likelihood for price improvement for the COA-eligible order in the COA. Accordingly, the Exchange proposes to amend Rule 935NY to state that a User may execute as principal an order that the User represents as agent if the User avails itself of COA pursuant to Rule 980NY(e). Thus, an Electronic Complex Order subject to a COA would not be subject to the one-second order exposure requirement of Rule 935NY. This exclusion from the one-second order exposure requirement is consistent with the treatment of orders in the CUBE Auction, which has a minimum duration of 500 milliseconds, as is proposed for COA.¹⁶ This proposed exception is also consistent with the treatment of similar orders entered in the BOX Complex Order Price Improvement Period.¹⁷ Consistent with Rule 935NY Commentary .01, ATP Holders shall only use COA where there is a genuine intention to execute bona fide transactions.

¹⁴ See proposed Rule 935NY(iv). The Exchange also proposes to add semi-colons to separate the subparts of Rule 935NY, in lieu of “or”, which the Exchange believes would simplify the rule.

¹⁵ See proposed Rule 980NY(e)(3).

¹⁶ See Rule 935NY(iii). See also supra n. 10.

¹⁷ See BOX IM-7140-2; see also Box Rule 7245(f)(1).

The Exchange also proposes to delete rule text from Rule 980NY(e)(3), which provides that “[t]he obligations of Rule 935NY, Order Exposure Requirements, are separate from the duration of the Response Time Interval.” The Exchange is proposing to delete this text because it would no longer be accurate with the proposed changes to Rule 935NY described above.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b)(5) of the Securities Exchange Act of 1934 (the “Act”),¹⁸ which requires the rules of an exchange to promote just and equitable principles of trade, 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 Exchange believes that the proposed rule change to amend Rule 980NY(e)(4) to provide that any ATP Holder may submit an RFR Response during an RTI would remove impediments to and perfect the mechanism of a free and open market and a national market system because it could result in increased participation in the COA process, which should increase competition within a COA, potentially offering greater price improvement opportunities to the COA-eligible order. The Exchange notes that at least two other options exchanges allow all members to participate in electronic auctions similar to the COA.¹⁹

The Exchange believes the proposed minimum of 500 milliseconds for a RTI within a COA promotes just and equitable principles of trade and removes impediments to a free and open market because it allow [sic] sufficient time for ATP Holders participating in a COA to submit RFR Responses and would encourage competition among participants, thereby enhancing

¹⁸ 15 U.S.C. 78f(b).

¹⁹ See supra n. 7.

the potential for price improvement for orders in the COA to the benefit of investors and public interest. The Exchange believes the proposed rule change is not unfairly discriminatory because it establishes a minimum exposure period applicable to COA-eligible orders, which would be the same for all ATP Holders participating in a COA. In addition, the proposed minimum of 500 millisecond [sic] is consistent with CUBE and is comparable to BOX's Complex Order Price Improvement Period, which similar to the Exchange's COA, is designed to offer price improvement to complex orders, and is only 100 milliseconds in length.²⁰

The Exchange believes the proposal to allow Users who utilize the COA to enter an order as principal to potentially execute against an order it represents as agent promotes just and equitable principles of trade because the proposed minimum of 500 milliseconds for the RTI would provide ample time for participants in the COA to respond and would encourage competition and opportunities for price improvement, to the benefit of investors and the public interest. In addition, exempting Electronic Complex Orders subject to a COA from the one-second order exposure requirement of Rule 935NY is consistent with the treatment of orders in the CUBE Auction as well as the treatment of similar orders entered in the BOX Complex Order Price Improvement Period.²¹ Additionally, the Exchange believes the proposed exemption from Rule 935NY would reduce market risk for ATP Holders responding to COA-eligible orders by providing timely executions of these orders.

Accordingly, for foregoing reasons, the Exchange believes the proposed change is consistent with the Act.

(B) Self-Regulatory Organization's Statement on Burden on Competition

²⁰ See supra nn. 10, 11.

²¹ See supra nn. 16, 17.

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposal to allow all OTP Holders to participate in the COA process should increase the level of competition within COAs, which will increase opportunities to trade for all participants on the Exchange and may increase opportunities for COA-eligible orders to receive price improvement. The Exchange also believes that this proposed expansion would enable the Exchange to better compete with other options exchanges that already offer all participants the ability to participate in electronic auctions.²² The Exchange believes the proposed 500 millisecond minimum for a RTI is pro-competitive as it would afford ATP Holders sufficient time to respond to a COA and enhance opportunities for price improvement while encouraging timely executions. The Exchange believes that the proposed limited exception to Rule 935NY would enable the Exchange to better compete with other options exchanges that already exempt market participants from the one-second order exposure requirements when utilizing certain price improvement and auction mechanisms.²³ Accordingly, the proposed rule change would also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

²² See supra n. 7.

²³ See supra nn. 16, 17.

Within 45 days of the date of publication of this notice in the Federal Register or up to 90 days (i) as the Commission may designate 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. Please include File Number SR-NYSEMKT-2015-41 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEMKT-2015-41. 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 will also 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-2015-41 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.²⁴

Robert W. Errett
Deputy Secretary

²⁴ 17 CFR 200.30-3(a)(12).