

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-77540; File No. SR-NYSEMKT-2016-42)

April 6, 2016

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Rule Change to Amend Rule 952NY with Respect to Opening Trading in an Options Series

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 March 23, 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 Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 952NY (Opening Process) with respect to opening trading in an options series. 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 specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 changes to Rule 952NY with respect to opening trading in an option series as described below.

Opening Process

Rule 952NY describes the process pursuant to which the System⁴ opens an option series. Paragraphs (b) and (c) of Rule 952NY provide that, after the primary market for the underlying security disseminates the opening trade or opening quote, the System then conducts an "Auction Process" to open a series whereby the System determines a single price at which a series may be opened by looking to: (i) the midpoint of the initial uncrossed NBBO disseminated by the Options Price Reporting Authority ("OPRA"), if any, or (ii) the midpoint of the best quotes or orders in the System Book. If the bid-ask differential for a series is not within an acceptable range, the System will not conduct an Auction Process.⁵ For purposes of this rule, the acceptable range means the bid-ask differential guidelines specified in Rule 925NY(b)(4).⁶ Assuming the

⁴ The term "System" refers to the Exchange's electronic order delivery, execution and reporting system through which orders and quotes for listed options are consolidated for execution and/or display. See Rule 900.2NY(48) (defining "Exchange System" or "System").

⁵ The Auction bid-ask differentials are known in common parlance as "legal-width quotes."

⁶ See Rule 925NY(b)(4). The bid-ask guidelines specified in Rule 925NY(b)(4) that are required to open a series are narrower than the \$5 wide bid-ask differential for options traded on the System during Core Trading Hours.

bid-ask differential is within the acceptable range, the System matches up orders and quotes based on price-time priority⁷ and executes the orders that are matched at the midpoint pricing.⁸

Any orders in the System that are not executed in the Auction Process become eligible for the Core Trading Session immediately after the conclusion of the Auction Process. If the System does not open a series with an Auction Process, the System shall open the series for trading after receiving notification of an initial NBBO disseminated by OPRA for the series or on a Market Maker quote, provided that the bid-ask differential does not exceed the bid-ask differential specified under Rule 925NY(b)(5).⁹

Proposed Modifications to the Opening Process

First, the Exchange proposes to change Rule 952NY(b) regarding how the System determines when to start the Auction Process. Current paragraph (b) of the Rule provides that “[a]fter the primary market for the underlying security disseminates the opening trade or the opening quote, the related option series will be opened automatically.” However, because it is possible that either an opening quote or opening trade alone may not accurately reflect the state of the market, the Exchange proposes to specify that an option series will be opened automatically, “once the primary market for the underlying security disseminates a quote and a trade that is at or within the quote.”¹⁰ The Exchange believes the proposed change makes clear

⁷ Orders will have priority over Market Maker quotes at the same price. See Rule 952NY(b)(B).

⁸ See Rule 952NY(b)(B). The Exchange notes that the word Order appears capitalized in this paragraph and, because it is not a defined term, the Exchange proposes the non-substantive change of eliminating the capitalization.

⁹ See Rule 925NY(b)(5). Rule 925NY(b)(5) provides that options traded on the System during Core Trading Hours may be quoted with a difference not to exceed \$5 between the bid and offer regardless of the price of the bid.

¹⁰ See proposed Rule 952NY(b). The Exchange also proposes to clarify that “[a]t or after 9:30 a.m. Eastern Time,” i.e., when the market opens, the Exchange would initiate the

that the Exchange would only open a series automatically after it receives a quote in the underlying security and a trade in that security at or between the disseminated quote rather than simply upon receipt of either an “opening trade or opening quote.” The Exchange believes that waiting to open trading in an option series until there has been both a disseminated quote and trade in the underlying security would help to augment the Auction Process by ensuring that an underlying security has been opened pursuant to a robust price discovery process before opening the overlying options for trading. The Exchange believes that the proposed change would provide market participants with greater certainty as to the true state of the market at the opening of the trading day and should lead to more accurate prices on the Exchange.¹¹

Next, the Exchange proposes to modify Rule 952NY(b)(E), which currently provides, in relevant part, that “[i]f the System does not open a series with an Auction Process, the System shall open the series for trading after receiving notification of an initial NBBO disseminated by OPRA for the series or on a Market Maker quote.”¹² However, the Exchange has determined that it would no longer open on a local Market Maker quote but would require that Market Maker quotes, like the NBBO, come from OPRA. Thus, the Exchange proposes to open after receiving an “initial uncrossed NBBO from ORRA” and to delete rule text related to opening on a Market Maker quote.¹³ The Exchange notes that OPRA disseminates to each exchange the

Opening Process for all series associated with the underlying security. See id.

¹¹ The Exchange notes that it would not open, for example if the first disseminated quote in the underlying security is \$50.50 bid, \$50.75 ask, and the first trade in the underlying had been executed for \$50.00. The Exchange would, however open if the first trade in the underlying was \$50.50.

¹² See Rule 952NY(b)(E).

¹³ See proposed Rule 952NY(b)(E) (providing that “[i]f the System does not open a series with an Auction Process, the System shall open the series for trading after receiving notification of an initial uncrossed NBBO disseminated by OPRA for the series, provided that the bid-ask differential does not exceed the bid-ask differential specified under Rule

NBBO as well as the top of book for each exchange, such that the Exchange's market maker quote would be disseminated back to the Exchange as the BBO – and could be, but is not necessarily, the NBBO. Because OPRA disseminates this information to all exchanges at the same time, the Exchange believes the proposal to open only after receiving an uncrossed NBBO from OPRA would eliminate any ambiguity as to the source of the information used to open each series and should lead to more accurate prices on the Exchange.

In connection with the proposed changes to Rule 952NY(b), the Exchange likewise proposes to strike from Rule 952NY(c) reference to “the midpoint of the best quote bids and quote offers in the System Book” as it relates to the Exchange determining the opening price for options issues designated for trading on the System.¹⁴ The Exchange believes this conforming change is necessary given that the Exchange would no longer open solely on a Market Maker quote and therefore this information would not form the basis of the opening price of a series. As proposed, the opening price of a series would be the price “at which the greatest number of contracts will trade at or nearest to the midpoint of the initial uncrossed NBBO disseminated by OPRA.”¹⁵ The Exchange believes this change adds transparency and internal consistency to the rule text.

Finally, the Exchange proposes new paragraph (F) to Rule 952NY(c) to provide the Exchange with discretion to deviate from the standard Opening Process where it is necessary in

925NY(b)(5).”

¹⁴ Current Rule 952NY(c) provides, in relevant part, that the opening price of a series will be the price “at which the greatest number of contracts will trade at or nearest to the midpoint of the initial uncrossed NBBO disseminated by OPRA, if any, or the midpoint of the best quote bids and quote offers in the System Book.”

¹⁵ See proposed Rule 952NY(c).

the interests of a fair and orderly market.¹⁶ This proposed rule change is based on the rules of other options exchanges.¹⁷ Similar to how other markets operate, the Exchange believes it may be appropriate, in the interest of a fair and orderly market, to open trading even if the conditions specified in Rule 952NY(b) are not met. For example, if the primary market is unable to open due to a systems or technical issue, but trading in the underlying security is otherwise unaffected, the Exchange believes it would be appropriate to open trading in any options series overlying such securities. Further, proposed Rule 952NY(b)(F) would provide the Exchange with discretion to manage the Opening Process in the event of unanticipated circumstances occurring around 9:30 a.m. Eastern Time or a halt being lifted.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)¹⁸ of the Securities Exchange Act of 1934 (the “Act”), in general, and furthers the objectives of Section 6(b)(5),¹⁹ in particular, in that it is designed 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.

¹⁶ See proposed Rule 952NY(b)(F) (providing that “[t]he Exchange may deviate from the standard manner of the Auction Process, including adjusting the timing of the Auction Process in any option class, when it believes it is necessary in the interests of a fair and orderly market”).

¹⁷ See e.g., BATS Exchange, Inc. (“BATS”) Rule 21.7(c) (Market Opening Procedures) (“The Exchange may deviate from the standard manner of the Opening Process, including adjusting the timing of the Opening Process in any option class, when it believes it is necessary in the interests of a fair and orderly market”).

¹⁸ 15 U.S.C. 78f(b).

¹⁹ 15 U.S.C. 78f(b)(5).

Specifically, the proposed change to Rule 952NY(b) would clarify that the Exchange would only open a series automatically after it receives a quote in the underlying security and a trade in that security at or between the disseminated quote – as opposed to automatically opening on either an opening quote or an opening trade alone per the current rule text, which may not always accurately reflect the state of the market. The Exchange believes this added transparency would promote just and equitable principles of trade and remove impediments to, and perfect the mechanism of, a free and open market and a national market system to the benefit of market participants. Further, the Exchange believes that waiting to open trading in an option series until there has been both a disseminated quote and trade in the underlying security would protect investors and the public interest because it would help to augment the Auction Process by ensuring that an underlying security has been opened pursuant to a robust price discovery process before opening the overlying options for trading. Moreover, this proposed change would promote just and equitable principles of trade to the benefit of investors and the public interest because it would provide market participants with greater certainty as to the true state of the market at the opening of the trading day and should lead to more accurate prices on the Exchange.

The Exchange also believes that specifying that, to open a series, the Exchange would require an initial uncrossed NBBO disseminated by OPRA would promote just and equitable principles of trade as the change is designed to protect investors and the public interest. The Exchange notes that OPRA disseminates to each exchange the NBBO as well as the top of book for each exchange, such that the Exchange's market maker quote would be disseminated back to the Exchange as the BBO – and could be, but is not necessarily, the NBBO. Because OPRA disseminates this information to all exchanges at the same time, the Exchange believes the

proposal to open only after receiving an uncrossed NBBO from OPRA would eliminate any ambiguity as to the source of the information for each series and should lead to more accurate prices on the Exchange.

Similarly, the Exchange believes the conforming change to Rule 952NY(c), which strikes reference to quote bids and quote offers in the OX Book [sic] for purposes of determining an opening price, likewise would promote just and equitable principles of trade as it would add transparency and internal consistency to Exchange rules, which would make them easier for market participants to navigate.

Finally, the Exchange believes the proposal to permit the Exchange to open options trading when such opening is in the interests of a fair and orderly market (even if the conditions set forth in the rule are not met), is consistent with the protection of investors and the public interest because the proposed changes would allow the Exchange to open trading in options contracts in a fair and orderly manner. Specifically, the Exchange believes that the proposed changes would reduce potential delays in opening an option series that may prevent the Exchange from displaying and/or routing orders on its Consolidated Book and may also prevent the Exchange from disseminating a protected quote that draws trading interest from other options markets. Thus, the Exchange believes that the proposed changes would allow the Exchange to open options series faster and more efficiently, thereby reducing any delay in execution of orders on the Exchange that may be unnecessary and harmful to market participants. The Exchange also notes that this proposed rule change is based on the rules of other options exchanges.²⁰

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

²⁰ See supra n. 17.

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 is not designed to address any competitive issue but rather to add specificity and transparency to Exchange rules, thereby reducing confusion and making the Exchange's rules easier to understand and navigate. The Exchange believes that the proposed rule change would 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

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 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-2016-42 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-2016-42. 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 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-2016-42 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.²¹

Robert W. Errett
Deputy Secretary

²¹ 17 CFR 200.30-3(a)(12).