

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-78324; File No. SR-NYSEMKT-2016-69)

July 14, 2016

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Pilot Period Applicable to the Customer Best Execution Auction Per Rule 971.1NY

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 July 8, 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 the Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot period applicable to the Customer Best Execution Auction (“CUBE”), per Rule 971.1NY, until January 18, 2017. 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 extend the pilot period applicable to certain aspects of the Customer Best Execution –or CUBE– Auction, which is currently set to expire on July 18, 2016, until January 18, 2017.

Background

Rule 971.1NY sets forth an electronic crossing mechanism for single-leg orders with a price improvement auction on the Exchange, referred to as the CUBE Auction.⁴ The CUBE Auction, which was approved in April 2014, is designed to provide price improvement for paired orders of any size.⁵ Two aspects of the CUBE were approved on a pilot basis – Rule 971.1NY(b)(1)(B), which establishes the permissible range of executions for CUBE Auctions for fewer than 50 contracts; and Rule 971.1NY(b)(8), which establishes that the minimum size for a CUBE Auction is one contract (together, the “CUBE Pilot”).

An ATP Holder may initiate a CUBE Auction by electronically submitting for execution a limit order it represents as agent on behalf of a public customer, broker dealer, or any other entity (“CUBE Order”) against principal interest or against any other order it represents as agent,

⁴ See generally Rule 971.1NY (Electronic Cross Transactions).

⁵ See Securities Exchange Act Release No. 72025 (April 25, 2014), 79 FR 24779 (May 1, 2014) (NYSEMKT-2014-17) (the “CUBE Approval Order”).

provided the initiating ATP Holder complies with Rule 971.1NY.⁶ Rule 971.1NY(b)(1) sets forth the permissible range of executions for a CUBE Order.⁷ Pursuant to the CUBE Pilot, a CUBE Order for fewer than 50 contracts is subject to tighter ranges of execution than larger CUBE Orders to maximize price improvement.⁸ Specifically, if the CUBE Order is for fewer than 50 contracts, the range of permissible execution will be equal to or better than the National Best Bid/Offer (“NBBO”), provided that such price must be at least one cent better than any displayed interest in the Exchange’s Consolidated Book.⁹

The CUBE Pilot was initially approved for a one-year pilot, and has since been extended for two subsequent years.¹⁰ Pursuant to Commentary .01 to Rule 971.1NY, the CUBE Pilot would, if not amended, end on July 18, 2016. In connection with the CUBE Pilot, the Exchange agreed to submit certain data to provide supporting evidence that, among other things, there is

⁶ In addition, CUBE provides for the automatic execution, under certain conditions, of a crossing transaction where there is a public customer order in the same options series on each side.

⁷ Subject to specified exceptions, a CUBE Order to buy (sell) may execute at prices equal to or between the initiating price as the upper (lower) bound and the National Best Bid (“NBB”) (National Best Offer (“NBO”)) as the lower (upper) bound. See Rule 971.1NY(b).

⁸ See Rule 971.1NY(b)(1)(B). Rule 971.1NY(b)(8), also subject to the pilot period, provides that the minimum size for a CUBE Auction is one contract.

⁹ See Rule 971.1NY(b)(1)(B).

¹⁰ See CUBE Approval Order, supra, n. 5. The CUBE Pilot was subsequently extended, most recently until July 18, 2016, in order to align the expiration of the pilot period with that of other competing options exchange that offer electronic price improvement auctions similar to the CUBE. See Securities Exchange Act Release Nos. 74695 (April 9, 2015), 80 FR 20274 (April 15, 2015) (SR-NYSEMKT-2015-28); 75460 (July 15, 2015), 80 FR 43140 (July 21, 2015) (SR-NYSEMKT-2015-48).

meaningful competition for all size orders and that there is an active and liquid market functioning on the Exchange outside of the CUBE Auction.¹¹

Proposal to Extend the Operation of the CUBE Pilot

The Exchange implemented the CUBE Auction to provide an electronic crossing mechanism for single-leg orders with a price improvement auction. The CUBE Pilot was designed to create tighter markets and ensure that each order receives the best possible price. The Exchange believes that the CUBE Pilot attracts order flow and promotes competition and price improvement opportunities for CUBE Orders of fewer than 50 contracts. The Exchange believes that extending the pilot period is appropriate because it will allow the Exchange and the Commission additional time to analyze data regarding the CUBE Pilot that the Exchange has committed to provide.¹² As such, the Exchange believes that it is appropriate to extend the current operation of the Pilot. Through this filing, the Exchange seeks to amend Commentary .01 to Rule 971.1NY and extend the current pilot period until January 18, 2017.¹³ The Exchange notes that it would retain the text of Rules 971.1NY(b)(1)(B) and 971.1NY(b)(8). In further support of this proposed rule change, the Exchange would continue to submit to the Commission detailed data from, and analysis of, the CUBE Pilot. Further, in January 2016, the Exchange provided the Commission certain additional requested data regarding trading in the CUBE Auction for the six (6) month period from January 1, 2015 through June 30, 2015 and agreed to make a summary of this data provided publicly available.

¹¹ See CUBE Approval Order, supra n. 5, at 79 FR 24779, at 24785-86, fn. 94-95. See also Commentary .01 to Rule 971.1NY.

¹² Id.

¹³ See proposed Commentary .01 to Rule 971.1NY.

The Exchange continues to believe that there remains meaningful competition for all size orders and that there is an active and liquid market functioning on the Exchange outside of the CUBE Auction. The Exchange believes the additional data will substantiate the Exchange's belief and provide further evidence in support of permanent approval of the CUBE Pilot.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act¹⁴ in general, and furthers the objectives of Section 6(b)(5) of the Act¹⁵ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, 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 extending the pilot period is consistent with these principles because the CUBE Pilot is reasonably designed to create tighter markets and ensure that each order receives the best possible price, which benefits investors by increasing competition thereby maximizing opportunities for price improvement. The proposed extension would allow the CUBE Pilot to continue uninterrupted, thereby avoiding any potential investor confusion that could result from a temporary interruption in the CUBE Pilot. Because the CUBE Pilot is applicable to all CUBE Orders for fewer than 50 contracts, and to the requirement that the minimum size of the CUBE Auction is one contract, the proposal to extend the pilot merely acts to maintain status quo on the Exchange, which promotes just and equitable principles of trade and removes impediments to, and perfects the mechanism of, a free and open market and a national market system. The extension of the pilot period will allow the Commission and the Exchange to continue to monitor the CUBE Pilot to ascertain whether there is meaningful

¹⁴ 15 U.S.C. § 78f(b).

¹⁵ 15 U.S.C. § 78f(b)(5).

competition for all size orders and whether there is an active and liquid market functioning on the Exchange outside of the CUBE Auction.

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. The proposed rule change simply extends an established pilot program for an additional period and would allow for further analysis of the CUBE Pilot. In addition, the proposed extension would allow the CUBE Pilot to continue uninterrupted, thereby avoiding any potential investor confusion that could result from a temporary interruption in the CUBE Pilot. Thus, the proposal 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

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

Because the foregoing 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 from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁶ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁷ A proposed rule change filed

¹⁶ 15 U.S.C. 78s(b)(3)(a)(iii).

¹⁷ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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. The Exchange has satisfied this requirement.

under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing.¹⁸ Rule 19b-4(f)(6)(iii), however, permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.¹⁹

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because such waiver will allow the pilot program to continue without interruption. The Commission has therefore determined to waive the 30-day operative delay and designate the proposed rule change as operative upon filing with the Commission.²⁰

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) of the Act²¹ 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:

¹⁸ 17 CFR 240.19b-4(f)(6)(iii).

¹⁹ Id.

²⁰ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²¹ 15 U.S.C. 78s(b)(2)(B).

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 No. SR-NYSEMKT-2016-69 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 No. SR-NYSEMKT-2016-69. 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, D.C. 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 available publicly. All submissions should refer

to File No. SR-NYSEMKT-2016-69, 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.²²

Jill M. Peterson
Assistant Secretary

²² 17 CFR 200.30-3(a)(12).