

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-79029; File No. SR-NYSEMKT-2016-83)

October 3, 2016

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Partial Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Partial Amendment No. 2, to Amend Rule 67 - Equities Relating to the Tick Size Pilot Program

I. Introduction

On August 25, 2016, NYSE MKT LLC (“Exchange” or “NYSE MKT”) filed with the Securities and Exchange Commission (“Commission”) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to (1) change system functionality to implement the Plan to Implement a Tick Size Pilot Program (“Plan” or Pilot)³ submitted to the Commission pursuant to Rule 608 of Regulation NMS⁴ under the Act, (2) clarify the operation of certain exceptions to the Trade-at Prohibition⁵ on Pilot Securities in the Test Group Three, (3) amend the Limit Up/Limit Down (“LULD” price controls set forth in Exchange Rule 80C – Equities regarding the Regulation NMS Plan to Address Extraordinary Market Volatility (“LULD Plan”)),⁶ and (4) amend the Exchange’s Trading Collars calculation in Exchange Rule 1000-Equities. The proposed rule change was published for

¹ 15 U.S.C.78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) (“Approval Order”). Unless otherwise specified, capitalized terms used in this order are defined as set forth in the Plan.

⁴ 17 CFR 242.608.

⁵ Exchange Rule 67(e)(4)(A) - Equities defines the “Trade-at Prohibition” to mean the prohibition against executions by a Trading Center of a sell order for a Pilot Security at the price of a Protected Bid or the execution of a buy order for a Pilot Security at the price of a Protected Offer during regular trading hours. See also Plan Section I(LL) and Plan Section VI(D).

⁶ See Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (File No. 4-631).

comment in the Federal Register on September 15, 2016.⁷ The Commission received two comment letters on the proposal.⁸ On September 27, 2016, the Exchange filed Partial Amendment No. 1 to the proposed rule change (“Amendment No. 1”). On September 30, 2016, the Exchange withdrew Amendment No. 1 and filed Partial Amendment No. 2 to the proposed rule change (“Amendment No. 2”).⁹

This order provides notice of Amendment No. 2 and approves the proposal, as modified by Amendment No. 2, on an accelerated basis.

II. Description of the Amended Proposal

The Exchange proposes to amend Exchange Rule 67 - Equities to (1) change system functionality to implement the Plan; (2) clarify the operation of certain exceptions to the Trade-at Prohibition on Pilot Securities in Test Group Three; (3) amend the LULD price controls set forth in Exchange Rule 80C - Equities; and (4) amend the Exchange’s trading collar calculation set forth in Exchange Rule 1000 Equities.

A. Amendments to Exchange Systems Functionality to Implement the Plan

1. Trade-at Intermarket Sweep Orders¹⁰

⁷ See Securities Exchange Act Release No. 78803 (September 9, 2016), 81 FR 63552.

⁸ See Letters from Eric Swanson, EVP, General Counsel, Bats Global Markets, Inc., Elizabeth K. King, General Counsel and Corporate Secretary, New York Stock Exchange; and Thomas A. Wittman, EVP, Global Head of Equities, Nasdaq, Inc., dated September 9, 2016 (“Comment Letter No. 1”); and Eric Swanson, EVP, General Counsel, Bats Global Markets, Inc., dated September 12, 2016 (“Comment Letter No. 2”).

⁹ In Amendment No. 2, the Exchange proposes to: (1) specify that in all Pilot Securities, d-Quotes to buy (sell) would not exercise discretion if (A) exercising discretion would result in an execution equal to or higher (lower) than the price of a protected offer (bid) or (B) the price of a protected bid (offer) is equal to or higher (lower) than the filed price of the d-Quote; and (2) correct cross references.

¹⁰ See proposed Exchange Rule 67(f)(1).

The Exchange proposes to accept Trade-at Intermarket Sweep Orders (“TAISO”) in all securities, and that TAISOs must be designated as immediate or cancel (“IOC”), may include a minimum trade size, and do not route. The Exchange would immediately and automatically execute a TAISO against the displayed and non-displayed bid (offer) up to its full size in accordance with and to the extent provided by Exchange Rules 1000 - Equities – 1004 - Equities and will then sweep the Exchange’s book as provided in Rule 1000(e)(iii) - Equities. Any portion of the TAISO that is not executed would be immediately and automatically cancelled. The Exchange proposes to accept TAISOs before the Exchange opens and they would be eligible to participate in the opening transaction at its limit price. TAISOs would not be accepted during a trading halt or pause for participation in a reopening transaction. Finally, the Exchange would not allow TAISOs to be entered as e-Quotes, d-Quotes, or g-Quotes.

2. Pilot Securities in Test Groups One, Two, and Three¹¹

The Exchange proposes that references in Exchange rules to the minimum price variation (“MPV”) would mean the quoting minimum price variation specified in paragraphs (c), (d), and (e) of Exchange Rule 67.¹² The Exchange proposes that pre-opening indications,¹³ would be published in \$0.05 pricing increments for Pilot Securities in Test Groups One, Two, and Three.¹⁴ Mid-Point Passive Liquidity (“MPL”) Orders, which are undisplayed limit orders that automatically execute at the mid-point of the protected best bid (“PBB”) and the protected best

¹¹ See proposed Exchange Rule 67(f)(2).

¹² See proposed Exchange Rule 67(f)(2)(A).

¹³ Rule 15(a) - Equities provides that pre-opening indications will include the security and the price range within which the opening price is anticipated to occur and will be published via the securities information processor and proprietary data feeds.

¹⁴ See proposed Exchange Rule 67(f)(2)(B).

offer (“PBO”),¹⁵ must be entered with a limit price in a \$0.05 pricing increment.¹⁶ Trading collars that are not in the trading MPV for the security would be moved to the nearest price in the trading MPV for the security.¹⁷

3. Pilot Securities in Test Groups Two and Three¹⁸

The Exchange proposes that Retail Price Improvement Orders (“RPI”) for Pilot Securities in Test Groups Two and Three must be entered with a limit price and an offset in a \$0.005 pricing increment.

4. Pilot Securities in Test Group Three¹⁹

The Exchange proposes procedures for handling, executing, re-pricing and displaying of certain order types and order type instructions applicable to Pilot Securities in Test Group Three.

a. Change in Priority²⁰

The Exchange proposes that an incoming automatically executing order to sell (buy) will trade with displayable bids (offers) and route to protected bids (offers) before trading with an unexecuted Market Order held undisplayed at the same price. After trading or routing, or both, any remaining balance of such an incoming automatically executing order would satisfy any unexecuted Market Orders in time priority before trading with non-displayable interest on parity.

b. ISOs²¹

The Exchange proposes that, on entry, Day ISOs would be eligible for the TAISO

¹⁵ See Rule 13(d)(1)(A) - Equities.

¹⁶ See proposed Exchange Rule 67(f)(2)(C).

¹⁷ See proposed Exchange Rule 67(f)(2)(D).

¹⁸ See proposed Exchange Rule 67(f)(3).

¹⁹ See proposed Exchange Rule 67(f)(4).

²⁰ See proposed Exchange Rule 67(f)(4)(A).

²¹ See proposed Exchange Rule 67(f)(4)(B).

exception set forth in proposed Rule 67(e)(4)(C)(ix). In addition, an IOC ISO to buy (sell) would not trade with non-displayed interest to sell (buy) that is the same price as a protected offer (bid) unless the limit price of such IOC ISO is higher (lower) than the price of the protected offer (bid).

c. Non-Displayed Resting Orders²²

The Exchange proposes restrictions applicable to resting non-displayed interest, i.e., a resting order to buy (sell) that is not displayed at the price at which it is eligible to trade. Resting non-displayed interest on the Exchange could include Non-Display Reserve Orders,²³ Non-Display Reserve e-Quotes,²⁴ the reserve interest of Minimum Display Reserve Orders and Minimum Display Reserve e-Quotes,²⁵ and pegging interest that is not displayed.²⁶ The proposed rule changes are intended to assure that these orders would not price match a protected quotation.

First, the Exchange proposes that resting non-displayed interest to buy (sell) would not trade at the price of a protected offer (bid). Second, a resting non-displayed order to buy (sell)

²² See proposed Exchange Rule 67(f)(4)(C).

²³ A “Non Displayed Reserve Order” is a Limit Order that is not displayed, but remains available for potential execution against all incoming automatically executing orders until executed in full or cancelled. See Rule 13(d)(1)(A) - Equities.

²⁴ See Rule 70(f)(ii) - Equities.

²⁵ A “Minimum Display Reserve Order” is a Limit Order that will have a portion of the interest displayed when the order is or becomes the Exchange BBO and a portion of the interest (“reserve interest”) that is not displayed. See Rules 13(d)(2)(C) - Equities and 70(f)(i) - Equities.

²⁶ See Rule 13(f)(1)(A) - Equities (Pegging interest includes non-displayable interest to buy or sell at a price to track the same-side PBBO). d-Quotes enable Floor brokers to enter discretionary instructions as to the price at which the d-Quote may trade and the number of shares to which the discretionary price instructions apply. Executions of d-Quotes within a discretionary pricing instruction range are considered non-displayable interest for purposes of Rule 72 - Equities. See Rule 70.25(a)(ii) - Equities.

would not trade at the price of a protected bid (offer) unless the incoming order to sell (buy) is a TAISO, Day ISO, or IOC ISO that has a limit price lower (higher) than the price of the non-displayed interest. Finally, the Exchange proposes that resting non-displayed interest will be either routed, cancelled, or re-priced, consistent with the terms of the order.

d. Block Size Exception to the Trade-at Prohibition²⁷

The Exchange proposes that only buy and sell orders that are entered into the Cross Function pursuant to Supplementary Material .10 to Rule 76 - Equities and that satisfy the Block Size definition would be eligible for the Block Size exception to the Trade-at Prohibition.

e. Self-Trade Prevention Modifiers²⁸

The Exchange proposes that incoming orders designated with a specific self-trade prevention (“STP”) Modifier, STPN, would cancel before routing or trading with non-displayed orders if the opposite-side resting interest marked with an STP modifier with the same market participant identifier (“MPID”) is a displayed order.

f. G-Quotes and Buy Minus/Zero Plus Orders²⁹

The Exchange proposes to reject g-Quotes and Buy Minus/Zero Plus Orders.

5. d-Quotes³⁰

The Exchange proposes that in all Pilot Securities, d-Quotes to buy (sell) would not exercise discretion if (i) exercising discretion would result in an execution equal to or higher (lower) than the price of a protected offer (bid), or (ii) the price of a protected bid (offer) is equal to or higher (lower) than the filed price of the d-Quote.

²⁷ See proposed Exchange Rule 67(f)(4)(E).

²⁸ See proposed Exchange Rule 67(f)(4)(F).

²⁹ See proposed Exchange Rule 67(f)(4)(G).

³⁰ See proposed Exchange Rule 67(f)(5). See also Amendment No. 2.

B. Operation of certain exceptions to the Trade-at Prohibition on Pilot Securities in Test Group Three

1. TAISOs³¹

The Exchange proposes to add the phrase “or Intermarket Sweep Orders” to the definition of TAISO as well as to the TAISO exception to the Trade-at Prohibition to clarify that ISOs may be routed to execute against the full displayed size of the Protected Quotation that was traded at.³²

2. Block Size Exemption to Trade-at Prohibition³³

The Exchange proposes to amend the Block Size exception to the Trade-at Prohibition to allow execution on multiple Trading Centers to comply with Regulation NMS.

C. LULD Price Bands

The Exchange proposes to add a new subsection (8) to Rule 80C(a) - Equities that would specify that, after the Exchange opens or reopens an Exchange-listed security but before receiving Price Bands from the Securities Information Processor (“SIP”) under the LULD Plan, the Exchange would calculate Price Bands based on the first Reference Price provided to the SIP and, if such Price Bands are not in the MPV for the security, round such Price Bands to the nearest price at the applicable MPV.

D. Trading Collars Rounding³⁴

The Exchange proposes that Trading Collars for both buy and sell orders that are not in the MPV for the security would be rounded down to the nearest price at the applicable MPV.

³¹ See proposed Exchange Rule 67(a)(1)(D) and proposed Exchange Rule 67(e)(4)(C)(x).

³² The Exchange also proposes to add the word “display” to Exchange Rule 67(a)(1)(D) to correct a previous omission.

³³ See proposed Exchange Rule 67(e)(4)(C)(iii).

³⁴ See proposed Exchange Rule 1000 – Equities (c)(i).

III. Summary of Comment Letters

Both comment letters express support for the proposed rule change and suggest that the Commission should approve the proposal. In Comment Letter No. 1, the commenters stated that if the proposal is approved as proposed, then NYSE would be able to meet the October 3, 2016 implementation date. Further, in Comment Letter No. 1, the commenters stated their belief that the requirements from the Commission have been unclear. In Comment Letter No. 2, the commenter questioned Commission staff's authority.

IV. Discussion and Commission's Findings

After careful review of the proposed rule change, as modified by Amendment No. 2, and the comment letters, the Commission finds that the proposal, as modified by Amendment No. 2, is consistent with the requirements of the Act, Rule 608 of Regulation NMS,³⁵ and the rules and regulations thereunder that are applicable to a national securities exchange.³⁶ Specifically, the Commission finds that the rule change is consistent with Section 6(b)(5) of the Act, which requires that the rules of a national securities exchange be designed, among other things, 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 to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As noted in the Approval Order, the Plan is by design, an objective, data-driven test to evaluate how a wider tick size would impact trading, liquidity, and market quality of securities of smaller capitalization companies. In addition, the Plan is designed with three Test Groups and a

³⁵ 17 CFR 242.608.

³⁶ In approving this rule change, the Commission has considered the rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Control Group, to allow analysis and comparison of incremental market structure changes on the Pilot Securities and is designed to produce empirical data that could inform future policy decisions. As such, any proposed changes targeted at particular Test Groups during the Pilot Period should be necessary for compliance with the Plan.

The Exchange proposes changes to modify how the Exchange will handle orders during the Pilot Period. Specifically, the Exchange proposes to accept TAISOs in all securities. In addition, the Exchange proposes to make changes to d-Quotes for all Pilot Securities by limiting instances when d-Quotes would exercise discretion.³⁷ Further, for Pilot Securities in the Test Groups, the Exchange proposes to specify references to the MPV, provide that pre-opening indications would be published in \$0.05 increments, require that MPL Orders with a limit price must be entered in a \$0.05 increment, and clarify how Trading Collars that are not in the trading MPV would be handled. The Exchange also proposes to specify that Retail Price Improvement Orders must be entered with a limit price and an offset in a \$0.005 pricing increment in Test Groups Two and Three.

The Exchange proposes changes for Pilot Securities in Test Group Three to comply with the Trade-at Prohibition, including a different priority for execution of resting orders, how certain ISOs would be handled in Test Group Three, how resting non-displayed orders would trade, how order with a STPN Modifier would be handled, and that g-Quotes and Buy

³⁷ See Amendment No. 2. The Exchange originally proposed to limit d-Quotes from exercising discretion only in Test Group Three. In Amendment No. 2, the Exchange proposes to apply the proposed limitation of discretion to all Pilot Securities. The Commission believes that the amendment to apply the proposed changes to the exercise of discretion by d-Quotes to all Pilot Securities modifies the proposal so that it does not have an unnecessary disparate impact on the different Test Groups and the Control Group. Thus, the Commission believes that the Exchange's proposal is consistent with the Pilot. The Exchange has committed to make the systems changes necessary to implement Amendment No. 2 no later than November 7, 2016. See Email from Clare Saperstein, Exchange to Kelly Riley, SEC date October 2, 2016.

Minus/Zero Plus orders will be rejected. The Exchange also proposes to only permit buy and sell orders that are entered into the Cross Function pursuant to Supplementary Material .10 to Rule 76 to be eligible for the Block Size order exception to the Trade-at Prohibition.³⁸

In addition, the Exchange proposes to amend provisions related to two exceptions to the Trade-at Prohibition. First, the Exchange proposes amend the TAISO definition to reflect that ISOs may be routed to the full displayed size of a Protected Quotation that is traded-at and to make the corresponding change to the specific trade-at exception. Second, the Exchange proposes to amend the exception for Block Size orders to allow an order of Block Size to be executed on multiple Trading Centers.

The Commission believes that these changes are reasonably designed to comply with the Plan. Further, the Commission believes that the proposed changes that are targeted at particular Test Groups are necessary for compliance with the Plan. Accordingly, the Commission finds that these changes are consistent with Section 6(b)(5) of the Act³⁹ and Rule 608 of Regulation NMS⁴⁰ because they implement the Plan and clarify Exchange Rules.

In addition, the Exchange proposes to adopt a rule to specify how the Exchange will calculate LULD Price Bands after the Exchange opens or reopens. The Commission believes that this change should help to ensure that trading does not occur outside of Price Bands when LULD is in effect.

Finally, the Exchange proposes to specify that Trading Collars that are not in the MPV

³⁸ The Commission notes that the orders entered into the Cross Function for purposes of relying on the Block Size exception must satisfy the provisions of the exception, including that it may not be an aggregation of non-block orders, or broken into orders smaller than Block Size prior to submitting the order the Trading Center for execution. See Exchange Rule 67(e)(4)(C)(iii).

³⁹ 15 U.S.C. 78f(b)(5).

⁴⁰ 17 CFR 242.608.

would be rounded down to the nearest price. The Commission believes that this change should provide clarity in the Exchange's rules.

For these reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with the requirements of the Act and Rule 608 of Regulation NMS.

V. Solicitation of Comments on Amendment No. 2

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 2 is consistent with the Exchange 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-2016-83 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-2016-83. 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 20549-1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such 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-2016-83 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

VI. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 2

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 2, prior to the thirtieth day after the date of publication of notice of Amendment No. 2 in the Federal Register. As described above, the Exchange proposes to amend its rules to comply with the Plan and clarify other rules related to LULD and Trading Collars.

The Commission believes that the proposals related to LULD Price Bands and Trading Collars should provide clarity on instances where they are not in the MPV. The Commission believes that the proposals related to the Pilot are designed to ensure compliance with the Plan. The Commission notes that the Pilot is scheduled to start on October 3, 2016, and accelerated approval would ensure that the rules of the Exchange would be in place for the start of the Pilot. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,⁴¹ to approve the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

⁴¹ 15 U.S.C. 78s(b)(2).

VII. Conclusion

IT IS THEREFORE ORDERED THAT, pursuant to Section 19(b)(2) of the Act,⁴² the proposed rule change (SR-NYSEMKT-2016-83), as modified by Amendment No. 2, be and hereby is approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴³

Robert W. Errett
Deputy Secretary

⁴²

Id.

⁴³

17 CFR 200.30-3(a)(12).