

For the Atomic Safety and Licensing Board.

**Michael M. Gibson,**

*Chair, Administrative Judge, Rockville, Maryland.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76063; File No. SR-NYSEARCA-2015-81]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Several Rules to Address Certain Order Handling Obligations on the Part of Its Floor Brokers

October 1, 2015.

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 September 16, 2015, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) 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 several rules to address certain order handling obligations on the part of its Floor Brokers. The text of the proposed rule change is available on the Exchange’s Web site 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 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 proposes to amend several rules to address certain order handling obligations on the part of its Floor Brokers. Specifically, the Exchange is proposing to amend Rules 6.62, 6.46, and 6.48 to clarify whether orders sent to Floor Brokers are considered “Held” or “Not Held”. This proposal would enable the Exchange to compete with options exchanges that have already implemented the types of changes being proposed here.<sup>4</sup>

Current Rule 6.62(f) defines whether orders sent to Floor Brokers are presumed to be “Held” or “Not Held.”<sup>5</sup> A “Not Held” order generally is one where the customer gives the Floor Broker discretion in executing the order, both with respect to the time of execution and the price (though the customer may specify a limit price), and the Floor Broker works the order over a period of time to avoid market impact while seeking best execution of the order. A “Held” order generally is one where the customer seeks a prompt execution at the best currently available price or prices.

The Exchange now proposes to establish in Rules 6.62(f), 6.46, and 6.48 a different default status for orders sent to Floor Brokers because the Exchange believes that these provisions are intended to protect against a broker failing to properly represent and ultimately execute orders.<sup>6</sup> Specifically the Exchange is proposing to amend Rule 6.62(f) to provide that “[a]n order entrusted to a Floor Broker will be considered a Not Held Order, unless

<sup>4</sup> See Securities and Exchange Act Release Nos. 75299 (June 25, 2015), 80 FR 37700 (July 1, 2015) (Approval Order); 74990 (May 18, 2015), 80 FR 29767 (May 22, 2015) (SR-CBOE-2015-047) (Notice). The Exchange notes that, unlike CBOE, the Exchange does not route certain electronic order to Floor Brokers. Therefore, the Exchange is not proposing rule text mirroring CBOE’s rule in this regard.

<sup>5</sup> Rule 6.62(f) (Orders Defined) defines a “Not Held Order” as an order that is marked as “not held”, “NH”, or “take time,” or “which bears any qualifying notation giving discretion as to the price or time at which such order is to be executed.”

<sup>6</sup> The Exchange notes that at the time these rules were adopted, virtually all options orders (large or small and retail or professional) were handled by Floor Brokers. Given the discrete profile of orders handled by Floor Brokers today (generally large size orders and often multi-leg) it is reasonable for Floor Brokers to “work” orders that are entrusted to them because that is the reason a customer would utilize a Floor Broker in today’s environment.

otherwise specified by a Floor Broker’s client.” The Exchange is also proposing to add new Commentary .06 to Rule 6.46 (Responsibilities of Floor Brokers) and to add language to Rule 6.46 (Discretionary Transaction) that mirrors the language it proposes to add to Rule 6.62(f). The Exchange believes that these proposed changes, taken together, would result in a change to the default order handling obligations for orders sent to Floor Brokers (*i.e.*, the Exchange would consider all orders sent to Floor Brokers to be “Not Held” by default).

The Exchange notes that Rules 6.46 and 6.48 were based upon rules that were adopted prior to electronic trading and, therefore, did not contemplate the interaction between an electronic environment and a trading floor and have not been amended to specifically address that interaction. While it is clear that Floor Brokers have more discretion with regards to the manner in which they represent and execute orders on a trading floor than does a computer routing an order to the Exchange for execution, the bounds of the discretion have not been entirely clear. Rules 6.46 and 6.48, among others, set certain boundaries to a Floor Broker’s discretion, but the Exchange believes the current marketplace, with electronic and floor trading, favors an amendment to those boundaries.

Electronic and floor trading gives clients the choice between an Options Trading Permit (“OTP”) Holder or OTP Firm that routes orders to the Exchange electronically or an OTP Holder or OTP Firm that executes orders via a Floor Broker. The Exchange believes that clients are keenly aware that the differences between electronic and floor trading include at least the following factors: A computer cannot deviate from its programed instructions, whereas a Floor Broker can take into account the nuance of the marketplace, such as the makeup of a particular trading floor, the individuals on that trading floor, and how the electronic books interact with that environment. The Exchange believes that clients use Floor Brokers precisely because Floor Brokers can take into account the nuance of the marketplace (*i.e.*, exercise a certain level of discretion) to potentially provide higher execution quality. The Exchange likewise believes that if a client did not want a Floor Broker to use their expertise in the execution of an order, the client would simply send orders to the Exchange electronically.

Given that Floor Brokers have more discretion with regards to the manner in which they represent and execute orders than do computers executing electronic orders, the Exchange is proposing to

<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.

change certain boundaries related to that discretion. In particular, in recognition of the discretion implicit with the use of a Floor Broker, the Exchange seeks to provide notice to the marketplace that, unless otherwise specified by a Floor Broker's client, an order is deemed to be "not held." The Exchange believes clients that choose to use Floor Brokers do so in order to utilize a Floor Broker's expertise in the execution of orders. This rule change would update Exchange rules by setting forth the presumptive discretion available to Floor Brokers in a manner consistent with modern market structure and the Floor Broker's role in the current trading environment. This filing also serves as notice to the investing community that orders sent to Floor Brokers will be deemed "not held" unless otherwise specified by the Floor Broker's client.

In addition, the Exchange will announce the implementation of this rule change by Trader Update.

## 2. Statutory Basis

The Exchange believes that the proposed change is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>8</sup> in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitation transactions in securities, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>9</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that it has articulated a reasonable basis for changing the current default presumption of whether a customer intends to provide a Floor Broker with the ability to exercise time and price discretion on its behalf as long as the order is not otherwise marked in a manner to suggest that the customer did not intend for its order to be treated as Not Held. Other than changing the default presumption to "Not Held" for most orders sent to Floor Brokers, the Exchange is not proposing to change any other order handling obligations applicable to Floor Brokers. The

Exchange believes that its proposal is consistent with the Act and is designed to promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market because it responds to an understanding of the changing role of Floor Brokers on the Exchange's Floor since it adopted Rule 6.48, and its understanding of how customers today use, and intend to continue to use, the services of Floor Brokers on the Exchange. In addition, the Exchange believes designating certain orders as "not held" is in the interest of facilitating transactions in securities and reflective of today's marketplace, which generally helps to protect investors and the public interest.

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

The Exchange does not believe that this proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule change will impose any burden on competition because the rule change adds clarity regarding the default orders handling obligations for orders sent to Floor Brokers, reflects the modern market structure, is consistent with the reasons customers utilize Floor Brokers, and will be applied equally to all OTP Holders and OTP Firms. To the extent that the proposed rule change will cause clients or brokers to choose the Exchange over other trading venues, market participants on other exchanges are welcome to become OTP Holders or OTP Firms and trade at the Exchange if they determine that this proposed rule change has made the Exchange more attractive or favorable. In addition, as noted above, the Exchange believes the proposed rule change is pro-competitive and would allow the Exchange to compete more effectively with other options exchanges that have already adopted similar rule changes.<sup>10</sup>

### *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**

The Exchange has filed the proposed rule change pursuant to Section

19(b)(3)(A)(iii) of the Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup> Because the 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>13</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),<sup>14</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange stated that such a waiver would allow implementation of this proposed rule change without delay and enable the Exchange to compete with other option exchanges that changed the default order handling obligation for orders sent to Floor Brokers to "Not Held." The Commission believes the waiver of the operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposed rule change to be operative upon filing.<sup>15</sup>

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)<sup>16</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> 17 CFR 240.19b-4(f)(6)(iii).

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

<sup>16</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> *Id.*

<sup>10</sup> See *supra* n. 4.

#### 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEARCA-2015-81 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-NYSEARCA-2015-81. This file number should be included on the subject line if email 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 Web site (<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 Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549-1090. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at [www.nyse.com](http://www.nyse.com). 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-NYSEARCA-2015-81 and should be submitted on or before October 28, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Robert W. Errett,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76064; File No. SR-NYSEMKT-2015-66]

#### **Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Several Rules To Address Certain Order Handling Obligations on the Part of Its Floor Brokers**

October 1, 2015.

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 September 16, 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 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**

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#### **II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

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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 proposes to amend several rules to address certain order handling obligations on the part of its Floor Brokers. Specifically, the Exchange is proposing to amend Rules 900.3NY, 933NY, and 936NY to clarify whether orders sent to Floor Brokers are considered "Held" or "Not Held". This proposal would enable the Exchange to compete with options exchanges that have already implemented the types of changes being proposed here.<sup>4</sup>

Current Rule 900.3NY(f) defines whether orders sent to Floor Brokers are presumed to be "Held" or "Not Held."<sup>5</sup> A "Not Held" order generally is one where the customer gives the Floor Broker discretion in executing the order, both with respect to the time of execution and the price (though the customer may specify a limit price), and the Floor Broker works the order over a period of time to avoid market impact while seeking best execution of the order. A "Held" order generally is one where the customer seeks a prompt execution at the best currently available price or prices.

The Exchange now proposes to establish in Rules 900.3NY(f), 933NY, and 936NY a different default status for orders sent to Floor Brokers because the Exchange believes that these provisions are intended to protect against a broker failing to properly represent and ultimately execute orders.<sup>6</sup> Specifically the Exchange is proposing to amend Rule 900.3NY(f) to provide that "[a]n order entrusted to a Floor Broker will be

<sup>4</sup> See Securities and Exchange Act Release Nos. 75299 (June 25, 2015), 80 FR 37700 (July 1, 2015) (Approval Order); 74990 (May 18, 2015), 80 FR 29767 (May 22, 2015) (SR-CBOE-2015-047) (Notice). The Exchange notes that, unlike CBOE, the Exchange does not route certain electronic order to Floor Brokers. Therefore, the Exchange is not proposing rule text mirroring CBOE's rule in this regard.

<sup>5</sup> Rule 900.3NY(f) (Orders Defined) defines a "Not Held Order" as an order that is marked as "not held", "NH", or "take time," or "which bears any qualifying notation giving discretion as to the price or time at which such order is to be executed."

<sup>6</sup> The Exchange notes that at the time these rules were adopted, virtually all options orders (large or small and retail or professional) were handled by Floor Brokers. Given the discrete profile of orders handled by Floor Brokers today (generally large size orders and often multi-leg) it is reasonable for Floor Brokers to "work" orders that are entrusted to them because that is the reason a customer would utilize a Floor Broker in today's environment.

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

<sup>15</sup> U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.