

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-78238; File No. SR-NYSEMKT-2016-13]

Self-Regulatory Organizations; NYSE MKT LLC; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To Amend Rule 955NY(c) by Revising the Clearing Member Requirement for Entering an Order Into the Electronic Order Capture System

July 7, 2016.

I. Introduction

On March 22, 2016, NYSE MKT LLC (the “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 amend Rule 955NY(c) to change the timing for recording the name of the Clearing Member³ in the Electronic Order Capture system (“EOC”). On March 29, 2016,⁴ the Exchange filed Amendment No. 1 to the proposed rule change. The Commission published the proposed rule change, as modified by Amendment No. 1, for comment in the **Federal Register** on April 11, 2016.⁵ The Commission received no comments on the proposed rule change. On May 25, 2016 the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to July 10, 2016.⁶ The Commission did not receive any comments on the proposed rule change. This order institutes proceedings under section 19(b)(2)(B) of

the Act⁷ to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1 thereto.

II. Description of the Proposal, as Modified by Amendment No. 1

The Exchange proposes to amend Rule 955NY(c) by revising the timing for an ATP holder to record the name of the Clearing Member in the EOC.⁸ In 2000, the Commission issued an order, which required the Exchange, in coordination with other exchanges, to “design and implement a consolidated options audit trail system (“COATS”),” that would “enable the options exchanges to reconstruct markets promptly, effectively surveil them and enforce order handling, firm quote, trade reporting and other rules.”⁹ The Commission Order requires the Exchange to incorporate into the audit trail all non-electronic orders “such that the audit trail provides an accurate, time-sequenced record of electronic and other orders, quotations and transactions on such respondent exchange, beginning with the receipt of an order by such respondent exchange and further documenting the life of the order through the process of execution, partial execution, or cancellation of that order, which audit trail shall be readily retrievable in the common computer format.”¹⁰ To comply with the Commission Order, the Exchange developed the EOC system for ATP holders.¹¹

The EOC is the Exchange’s floor-based electronic audit trail and order tracking system that provides an accurate time-sequenced record of all orders and transactions represented on the Exchange’s trading floor.¹² Rule 955NY(c) sets forth the EOC entry requirements and requires every ATP holder that receives an order for execution on the Exchange to “immediately, prior to representation in the trading crowd, record the details of the order (including any modification of the terms of the order or cancellation of the order) into the EOC, unless such order has been entered into the Exchange’s other electronic order

processing facilities.”¹³ The pre-trade EOC requirements under current Rule 955NY(c)(1) include “the name of the clearing ATP Holder.”¹⁴ Rule 955NY(c)(1) further states that “[t]he remaining elements prescribed in Rule 956NY and any additional information with respect to the order shall be recorded as the events occur and/or during trade reporting procedures which may occur after the representation and execution of the order.”¹⁵

The Exchange proposes to amend Rule 955NY(c)(1) to allow an ATP Holder to record the name of the Clearing Member in the EOC “as the events occur and/or during trade reporting procedures” rather than prior to representation of the order in the trading crowd.¹⁶ The Exchange states that because the identity of the firm through which each trade will clear is not always initially provided when an order is presented, Floor Brokers waiting to receive this information and enter it into the EOC are delayed in representing and executing an order.¹⁷ The Exchange represents that the proposal would amend only the timing for the recording of the Clearing Member in the EOC while still maintaining the requirement to record the Clearing Member in the EOC for audit trail purposes.¹⁸ According to the Exchange, Floor Brokers would continue to be required to maintain proper order records, as part of each trade record, including the identity of the clearing ATP Holder, and would continue to be required to give up the responsible Clearing Member on each trade as part of each trade record.¹⁹

III. Proceedings To Determine Whether To Approve or Disapprove SR-NYSEMKT-2016-13 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to section

¹³ See Rule 955NY(c).

¹⁴ See Rule 955NY(c)(1)(vii).

¹⁵ See Rule 955NY(c)(1); see also Rule 956NY(a) (Record of Orders) (requiring that ATP Holders maintain a record of each order that includes that the following data elements: (1) CMTA Information and the name of the clearing ATP Holder; (2) options symbol, expiration month, exercise price and type of options; (3) side of the market and order type; (4) quantity of options; (5) limit or stop price or special conditions; (6) opening or closing transaction; (7) time in force; (8) account origin code; and (9) whether the order was solicited or unsolicited).

¹⁶ See Notice, *supra* note 5, 81 FR at 21415-16.

¹⁷ See *id.* at 21416.

¹⁸ See *id.*

¹⁹ See Notice, *supra* note 5, 81 FR at 21416; see also Rule 956NY(a).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Rule 900.2NY defines “Clearing Member” as an Exchange ATP Holder which has been admitted to membership in the Options Clearing Corporation pursuant to the provisions of the Rules of the Options Clearing Corporation.

⁴ The Commission notes that the amendment date of March 30, 2016 in the SR-NYSEMKT-2016-13 Notice is incorrect and the proper date is March 29, 2016.

⁵ See Securities Exchange Act Release No. 34-77518 (April 5, 2016), 81 FR 21415 (“Notice”). Amendment No. 1 was included in the Notice and provided the clarification that the CMTA Information and the name of the clearing ATP Holder would be entered into the EOC “as the events occur and/or during trade reporting procedures which may occur after the representation and execution of the order.”

⁶ See Securities Exchange Act Release No. 34-77910 (May 25, 2016), 81 FR 35098 (June 1, 2016).

⁷ 15 U.S.C. 78s(b)(2)(B).

⁸ See Notice, *supra* note 5, 81 FR at 21415.

⁹ See Section IV.B.e.(v) of the Commission’s Order Instituting Public Administrative Proceedings Pursuant to sections 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions (“Commission Order”), Securities Exchange Act Release No. 43268 (September 11, 2000) and Administrative Proceeding File No. 3-10282.

¹⁰ See *id.*

¹¹ See Notice, *supra* note 5, 81 FR at 21415.

¹² See *id.*; see also Rule 955NY(c).

19(b)(2)(B) of the Act²⁰ to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change, as discussed below. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described in greater detail below, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change.

Pursuant to section 19(b)(2)(B) of the Act, the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings because the proposal raises important issues that warrant further public comment and Commission consideration. Specifically, the Commission is instituting proceedings to allow for additional analysis of, and input from commenters with respect to, the proposed rule change's consistency with section 6(b)(5) of the Act,²¹ 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, in general, to protect investors and the public interest.

Under the Exchange's current rules, a floor broker must record the name of the Clearing Member in the EOC prior to representing an order on the floor. As discussed above,²² the Exchange developed the EOC and created the pre-trade Clearing Member requirement in response to the Commission Order. The Exchange justifies the proposed elimination of the pre-trade clearing requirement by stating that "Floor Brokers have told the Exchange that the identity of the firm through which each trade will clear is not always initially provided when an order is presented and that waiting to receive this information and enter it into EOC can delay the representation and execution of an order. In today's trading

environment of rapidly moving markets and the need to execute an order and hedge a trade in real or near real time, even a slight delay can prove to be detrimental to the handling of an order."²³ The Exchange further states that the "proposed change to eliminate the Give Up Requirement prior to execution of each trade would not impair the Exchange's ability to comply with the [Commission] Order. Specifically, the EOC would still provide an accurate, time-sequenced record beginning with the receipt of an order and document the life of the order through the process of execution, partial execution, or cancellation. Entry of information pursuant to the Give Up Requirement would occur after the order had been represented and executed in the Trading Crowd. Thus, only the timing of the disclosure of such information would be affected by this proposal."²⁴

The Exchange, however, does not explain why the identity of the Clearing Member may not be provided when an order is presented to a Floor Broker, how frequently this occurs, or why it is burdensome to identify the Clearing Member in advance. As a result, the Exchange does not appear to offer a credible justification for proposing to incur the risk of delaying the recording of this important information into the EOC. The Commission accordingly believes the proposal, as modified by Amendment No. 1, raises questions as to whether it is consistent with the requirements of section 6(b)(5) of the Act, including whether the proposal 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.

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data and arguments with respect to the concerns identified above, as well as any other concerns they may have with the proposed rule change. In particular, the Commission invites the written views of interested persons concerning whether the proposal, as modified by Amendment No. 1, is consistent with sections 6(b)(5)²⁵ or any other provision of the Act, or the rules and regulations

thereunder. Although there does not appear to be any issue relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4 under the Act,²⁶ any request for an opportunity to make an oral presentation.²⁷ Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by August 3, 2016. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by August 17, 2016. In light of the concerns raised by the proposed rule change, as discussed above, the Commission invites additional comment on the proposed rule change as the Commission continues its analysis of the proposed rule change's consistency with sections 6(b)(5) and 6(b)(8),²⁸ or any other provision of the Act, or the rules and regulations thereunder. The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposed rule change, in addition to any other comments they may wish to submit about the proposed rule change.

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. Please include File No. SR-NYSEMKT-2016-13 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-2016-13. 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

²⁰ 15 U.S.C. 78s(b)(2)(B). Section 19(b)(2)(B) of the Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. *See id.* The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding. *See id.*

²¹ 15 U.S.C. 78f(b)(5).

²² *See supra* note 9.

²³ *See* Notice, *supra* note 5, 81 FR at 21416.

²⁴ *See id.*

²⁵ 15 U.S.C. 78f(b)(5).

²⁶ 17 CFR 240.19b-4.

²⁷ Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94-29 (June 4, 1975), grants to the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

²⁸ 15 U.S.C. 78f(b)(5), (b)(8).

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 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 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-2016-13, and should be submitted by August 3, 2016. Rebuttal comments should be submitted by August 17, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁹

Brent J. Fields,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-78241; File No. SR-NYSEMKT-2016-65]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Commentary .07 to Rule 904 To Extend the Pilot Program That Eliminated the Position Limits for Options on SPDR S&P 500 ETF

July 7, 2016.

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 June 29, 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 amend Commentary .07 to Rule 904 to extend the pilot program that eliminated the position limits for options on SPDR S&P 500 ETF ("SPY") ("SPY Pilot Program"). The proposed rule change is available on the Exchange's Web site 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 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 amend Commentary .07 to Rule 904 to extend the time period of the SPY Pilot Program,⁴ which is currently scheduled to expire on July 12, 2016, through July 12, 2017.

This filing does not propose any substantive changes to the SPY Pilot Program. In proposing to extend the SPY Pilot Program, the Exchange reaffirms its consideration of several factors that supported the original proposal of the SPY Pilot Program, including (1) the availability of economically equivalent products and their respective position limits, (2) the liquidity of the option and the underlying security, (3) the market capitalization of the underlying security

and the related index, (4) the reporting of large positions and requirements surrounding margin, and (5) the potential for market on close volatility.

In the July 2015 Extension, the Exchange stated that if it were to propose an extension, permanent approval or termination of the program, the Exchange would submit, along with any filing proposing such amendments to the program, a report providing an analysis of the SPY Pilot Program covering the period since the previous extension (the "Pilot Report"). Accordingly, the Exchange is submitting a Pilot Report detailing the Exchange's experience with the SPY Pilot Program for the period covering thirteen (13) months from May 2015 to May 2016. The Pilot Report is attached as Exhibit 3 to this filing. The Exchange notes that it is unaware of any problems created by the SPY Pilot Program and does not foresee any as a result of the proposed extension. In extending the SPY Pilot Program, the Exchange states that if it were to propose another extension, permanent approval or termination of the program, the Exchange would submit another Pilot Report covering the period since the previous extension, which would be submitted at least 30 days before the end of the proposed extension. If the SPY Pilot Program is not extended or adopted on a permanent basis by July 12, 2017, the position limits for SPY would revert to limits in effect at the commencement of the pilot program. The proposed extension will allow the Exchange and the Commission additional time to further evaluate the SPY Pilot Program and its effect on the market.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act⁶ 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 SPY Pilot Program promotes just and equitable principles of trade by permitting market participants, including market makers, institutional investors and retail investors, to establish greater positions

⁴ See Securities Exchange Act Release No. 67672 (August 15, 2012), 77 FR 50750 (August 22, 2012). The SPY Pilot Program was subsequently extended. See Securities Exchange Release Nos. 70734 (October 22, 2013), 78 FR 64255 (October 28, 2013); 73847 (December 16, 2014), 79 FR 76426 (December 22, 2014); and 75416 (July 9, 2015), 80 FR 41521 (July 15, 2016) (the "July 2015 Extension").

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

²⁹ 17 CFR 200.30-3(a)(57).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.