

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77749; File No. SR-NYSEMKT-2016-47]

### Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 967.1NY Regarding Price Protection for Market Maker Quotes

April 29, 2016.

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 April 27, 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 967.1NY regarding price protection for Market Maker quotes. 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 is proposing to amend Rule 967.1NY regarding price protection for Market Maker quotes.

Rule 967.1NY provides two layers of price protection to incoming Market Maker quotes, rejecting those Market Maker quotes that exceed certain parameters, as a risk mitigation tool.<sup>4</sup> The Exchange proposes to modify Rule 967.1NY(a)(2) and (3), which relates to the second layer of protection, the “Underlying Price Check,” which assesses the price of call or put bids against a specified benchmark. The Underlying Price Check applies to bids in call options or put options when (1) there is no NBBO available, for example, during pre-opening or prior to conducting a re-opening after a trading halt, or (2) if the NBBO is so wide as to not reflect an appropriate price for the respective options series.<sup>5</sup>

To date, the Exchange has not implemented the Underlying Price Check because of technological issues discovered shortly after the Exchange adopted the rule. However, the Exchange has finalized the technology related to this aspect of the Rule and proposes to modify the Rule as it relates to the Underlying Price Check.<sup>6</sup> Specifically, the Exchange proposes to exclude certain securities that do not have reliable (or, in some cases, any available) underlying consolidated last sale information (“last sale”) against which to perform the Underlying Price Check because, in the absence of reliable price data, the Underlying Price Check may result in Market Maker quotes being rejected too frequently. Accordingly, the Exchange proposes to modify Commentary .01 to the Rule to provide that the Underlying Price Check would not apply to “(i) any options

series for which the underlying security has a non-standard cash or stock deliverable as part of a corporate action; (ii) any options series for which the underlying security is identified as over-the-counter (“OTC”); (iii) any option series on an index; (iv) Binary Return Derivatives (“ByRDs”)” (the “Excluded Options”).<sup>8</sup> The proposed change would enable the Exchange to implement this price protection feature and apply it to securities for which there is reliable price data for the underlying security to perform the check. Specifically, the Exchange would exclude any options series for which the underlying security has a non-standard cash or stock deliverable as part of a corporate action because the last sale information would not have been adjusted for the non-standard deliverable, and would therefore be unreliable.<sup>9</sup> Options in OTC would be considered Excluded Options because unlike listed securities, the Exchange does not receive an active data feed with last sale information for OTC securities. The Exchange would exclude any options series overlying a stock index because such indices do not have last sale information. Similarly, the Exchange would exclude options on ByRDs because ByRDS track a value weighted average price (“VWAP”) and not the last sale of the underlying security.<sup>10</sup> The Exchange notes the Excluded Options would continue to be subject to the NBBO Reasonability Check, which is the first layer of price protection (*see supra* n. 4) when there is a reliable NBBO and, thus, Market Maker quotes in these securities are not without price protection on the Exchange.

The Exchange also proposes to exempt from the Underlying Price Check any option series for which the Exchange determines it is necessary to exclude underlying securities in the interests of maintaining a fair and

<sup>4</sup> The first layer of protection, referred to as the NBBO Reasonability Check, assesses incoming sell quotes against the National Best Bid (“NBB”) and incoming buy quotes against the National Best Offer (“NBO”). Specifically, per Rule 967.1NY(a)(1), provided that an NBBO is available, a Market Maker quote would be rejected if it is priced a specified dollar amount or percentage through the contra-side NBBO. The Exchange has implemented the NBBO Reasonability Check and does not propose to modify rule text related to this feature.

<sup>5</sup> See Rule 967.1NY, Commentary .01 (directing ATP Holders to consult Trader Updates for additional information regarding the implementation schedule for paragraphs (a)(2) and (a)(3) of the Rule, with final implementation of such paragraphs to be completed by no later than July 31, 2016).

<sup>6</sup> See Securities Exchange Act Release No. 74440 (March 4, 2015), 80 FR 12687 (March 10, 2015) (SR-NYSEMKT-2014-116) (Approval Order); *see also* Securities Exchange Act Release No. 74017 (January 8, 2015), 80 FR 1979 (January 14, 2015) (SR-NYSEMKT-2014-116) (Notice). *See also* Securities Exchange Act Release Nos. 75151 (June 11, 2015), 80 FR 34770 (June 17, 2015) (SR-NYSEMKT-2015-42) (modifying rule related to the Underlying Price Check to allow for implementation of the feature by March 4, 2016); 77356 (March 14, 2016), 81 FR 14917 (March 18, 2015) (SR-NYSEMKT-2016-36) (extending March 4, 2016 deadline until July 31, 2016).

<sup>7</sup> Options on OTC securities, which are not considered NMS stocks, are subject to trading pursuant to Rule 916 (Withdrawal of Approval of Underlying Securities), Commentary .01(5). The Commission notes that Rule 916 provides for the continued listing of options on underlying securities that no longer meet the criteria for listing and trading on the Exchange.

<sup>8</sup> See proposed Rule 967.1NY, Commentary .01. *See also* proposed Rule 967.1NY (a)(2) and (3) (providing that the Underlying Price Check would apply, “except as provided in Commentary .01 to this Rule”).

<sup>9</sup> Corporate actions such as mergers or reorganizations can result in options being adjusted to a non-standard deliverable.

<sup>10</sup> *See generally* Section 17, Binary Return Derivatives, Rules 900ByRDs–980ByRDs. ByRDs are European-style option contracts on individual stocks, exchange-traded funds and Index-Linked Securities that have a fixed return in cash based on a set strike price.

<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.

orderly market.<sup>11</sup> The Exchange believes this proposed change would enable the Exchange to exclude option series, other than Excluded Options, from the Underlying Price Check if the Exchange determines that the price protection feature would not function as intended.<sup>12</sup> For example, if the last sale is zero, for whatever reason, the Exchange would have the discretion to forego the Underlying Price Check for a particular call bid. Similarly, if there was some other event or change that impacted the underlying security (for example if there was a change to the ticker symbol for the underlying security), the Exchange would retain discretion to exclude the affected options series from the Underlying Price Check. The Exchange notes that another options exchange likewise has retained discretion to withhold price protection features consistent with the Underlying Price Check.<sup>13</sup> If the Exchange determines that the Underlying Price Check should not apply in the interest of maintaining a fair and orderly market, as proposed, the Exchange would announce this decision by electronic message to ATP Holders that request to receive such messages.

#### Implementation

The Exchange will announce the implementation date of the proposed rule change, which will be before July 31, 2016, by Trader Update.<sup>14</sup>

#### 2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Securities Exchange Act of 1934 (the "Act"),<sup>15</sup> which requires the rules of an exchange 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.

<sup>11</sup> See proposed Rule 967.1NY, Commentary .01. See also proposed Rule 967.1NY (a)(2) and (3) (providing that the Underlying Price Check would apply, "except as provided in Commentary .01 to this Rule").

<sup>12</sup> The Exchange would document, retain, and periodically review any Exchange decision to not apply the Underlying Price Check, including the reason for the decision.

<sup>13</sup> See Securities Exchange Act Release No. 76960 (January 21, 2016), 81 FR 4728 (January 27, 2016) (SR-CBOE-2015-107) (approving price protection mechanisms for quotes and orders, which includes the Chicago Board Options Exchange, Inc. retaining discretion to withhold its Put Strike Price and Call Underlying Value Checks).

<sup>14</sup> See *supra* n. 5. Once implemented, the Exchange will file a separate proposed rule change to delete text in Commentary .01 regarding the July 31, 2016 implementation deadline.

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

The Exchange believes the proposed modifications would remove impediments to and perfect the mechanism of a free and open market and would protect investors and the public interest because it would exempt from the Underlying Price Check those Excluded Options for which there is no reliable pricing data for the underlying security or index to perform the Check properly. Similarly, the Exchange believes the proposal to exclude any option series for which the Exchange determines it is necessary to exclude underlying securities in the interests of maintaining a fair and orderly market would likewise protect investors and the public interest because this change would enable the Exchange to ensure that the Underlying Price Check operates as intended (*i.e.*, when there is reliable price data against which to perform the Check). Absent the proposed modification, otherwise acceptable Market Maker quotes would be erroneously rejected upon arrival because the Underlying Price Check would deem such quotes to be at prices that are through the (unreliable) last sale price, which would be disruptive to Market Makers that provide necessary liquidity to the Exchange. Thus, the Exchange believes that this proposal meets these requirements because it would assist with the maintenance of a fair and orderly market by allowing the Exchange to implement the Underlying Price Check to work as intended—to reduce the risk of Market Maker quotes sweeping through multiple price points resulting in executions at prices that are through the last sale price and potentially erroneous.

Finally, the Exchange believes the proposed change would promote just and equitable principles of trade because it would enable the Exchange to implement the second layer of price protection for when an NBBO is not available, which would further assist the Exchange in avoiding the processing of erroneous quotes that otherwise may cause price dislocation before such quotes could cause harm to the market.

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

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 Exchange believes the proposal would not unduly burden any particular group of market participants trading on the Exchange vis-à-vis another group (*i.e.*, Market Makers versus non-Market Makers) as the Underlying Price Check, as modified, is designed to address the

unique role of Market Makers to enter two-sided quotations in their appointments and would apply equally to all Market Makers. Moreover, the Exchange believes the proposal would provide market participants with additional protection from anomalous executions while ensuring that the Underlying Price Check would not be performed in instances where the Exchange lacks reliable pricing data for the underlying security. Thus, the Exchange does not believe the proposal creates any significant impact on competition. The Exchange believes this proposal is pro-competitive as it allows the Exchange to implement the second layer of price protection, which may encourage Market Makers to quote tighter deeper markets, which will increase liquidity and enhance competition.

#### 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)<sup>16</sup> of the Act and Rule 19b-4(f)(6) thereunder.<sup>17</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

<sup>16</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>17</sup> 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.

#### 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-NYSEMKT-2016-47 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-2016-47. 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 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-2016-47, and should be submitted on or before May 26, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**Brent J. Fields,**

*Secretary.*

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Dated: April 27, 2016.

**Mark Taplin,**

*Deputy Assistant Secretary for Policy, Bureau of Educational and Cultural Affairs, Department of State.*

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#### DEPARTMENT OF STATE

##### [Public Notice 9548]

#### **Culturally Significant Objects Imported for Exhibition Determinations: "Graphic Masters: Dürer, Rembrandt, Hogarth, Goya, Picasso, R. Crumb" Exhibition**

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E. O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236-3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257-1 of December 11, 2015), I hereby determine that the objects to be included in the exhibition "Graphic Masters: Dürer, Rembrandt, Hogarth, Goya, Picasso, R. Crumb," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at the Seattle Art Museum, Seattle, Washington, from on or about June 9, 2016, until on or about August 28, 2016, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the imported objects, contact the Office of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S. Department of State (telephone: 202-632-6471; email: [section2459@state.gov](mailto:section2459@state.gov)). The mailing address is U.S. Department of State, L/PD, SA-5, Suite 5H03, Washington, DC 20522-0505.

#### DEPARTMENT OF STATE

##### [Public Notice 9547]

#### **Culturally Significant Objects Imported for Exhibition Determinations: "Bestowing Beauty: Masterpieces From The Hossein Afshar Collection" Exhibition**

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236-3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257-1 of December 11, 2015), I hereby determine that the objects to be included in the exhibition "Bestowing Beauty: Masterpieces from The Hossein Afshar Collection," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at the Museum of Fine Arts, Houston, Houston, Texas, from on about November 30, 2017, until on or about November 27, 2022, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the imported objects, contact the Office of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S. Department of State (telephone: 202-632-6471; email: [section2459@state.gov](mailto:section2459@state.gov)). The mailing address is U.S. Department of State, L/PD, SA-5, Suite 5H03, Washington, DC 20522-0505.

Dated: April 27, 2016.

**Mark Taplin,**

*Deputy Assistant Secretary for Policy, Bureau of Educational and Cultural Affairs, Department of State.*

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<sup>18</sup> 17 CFR 200.30-3(a)(12).