

concerning the Proposed Rules. Both commenters expressed support for the Proposed Rules.¹²

IV. The PCAOB's EGC Request

Section 103(a)(3)(C) of the Sarbanes-Oxley Act requires that any rules of the Board "requiring mandatory audit firm rotation or a supplement to the auditor's report in which the auditor would be required to provide additional information about the audit and the financial statements (auditor discussion and analysis)" shall not apply to an audit of an EGC.¹³ The Proposed Rules do not fall into this category of rules. Section 103(a)(3)(C) further provides that "[a]ny additional rules" adopted by the PCAOB after April 5, 2012 shall not apply to the audits of EGCs "unless the Commission determines that the application of such additional requirements is necessary or appropriate in the public interest, after considering the protection of investors and whether the action will promote efficiency, competition, and capital formation." The Proposed Rules fall within this category of additional rules and thus the Commission must make a determination under the statute about the applicability of the Proposed Rules to audits of EGCs. Having considered those statutory factors, and as explained further herein, the Commission finds that applying the Proposed Rules to audits of EGCs is necessary or appropriate in the public interest.

In proposing application of the Proposed Rules to audits of all issuers, including EGCs, the Board requested that the Commission make the determination required by Section 103(a)(3)(C). To assist the Commission in making its determination under Section 103(a)(3)(C), the PCAOB prepared and submitted to the Commission its own EGC analysis, which was included in the Commission's public notice soliciting comment on the Proposed Rules. In its analysis, the Board states that the Proposed Rules do not change or add to the requirements that apply to the audits of any issuers, including EGCs. Any inspection of an audit of an EGC would be conducted in the same manner as it would have under existing PCAOB rules. The Proposed Rules only impact the frequency with which the PCAOB may inspect a small number of firms.¹⁴

The Board does not anticipate that the Proposed Rules would impact the audit quality for audits of EGCs by altering auditors' perception regarding inspection likelihood. Specifically, the Board does not believe that the Proposed Rules will affect an auditor's perception, during an audit of an EGC, of the possibility of such audit being inspected or the nature of any inspection or review, if conducted.

Based on the PCAOB's EGC analysis, we believe the information in the record is sufficient for the Commission to make the requested EGC determination in relation to the Proposed Rules. The Commission notes that because only a small number of firms fall within the categories of the Proposed Rules, the impact on the inspection frequency of the audits of EGCs is likely limited. Further, as to the "substantial role only" firms, the PCAOB is merely codifying its current practice.

V. Conclusion

The Commission has carefully reviewed and considered the Proposed Rules and the information submitted therewith by the PCAOB, including the PCAOB's EGC analysis, and the comment letters received. In connection with the PCAOB's filing and the Commission's review,

A. The Commission finds that the Proposed Rules are consistent with the requirements of the Sarbanes-Oxley Act and the securities laws and are necessary or appropriate in the public interest or for the protection of investors; and

B. Separately, the Commission finds that the application of the Proposed Rules to EGC audits is necessary or appropriate in the public interest, after considering the protection of investors and whether the action will promote efficiency, competition, and capital formation.

IT IS THEREFORE ORDERED, pursuant to Section 107 of the Sarbanes-Oxley Act and Section 19(b)(2) of the Exchange Act, that the Proposed Rules (File No. PCAOB-2007-04) be and hereby are approved.

By the Commission.

Jill M. Peterson,
Assistant Secretary.

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there were 12 firms in 2015 that had previously issued an audit report in one year but none in the following two consecutive years. For the firms that would be covered by Proposed Rule 4003(h), the practice of the PCAOB has been to inspect five percent of those firms on an annual basis since 2009.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-78283; File No. SR-NYSEMKT-2016-42]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Amend Rule 952NY With Respect to Opening Trading in an Options Series

July 11, 2016.

I. Introduction

On March 23, 2016, NYSE MKT LLC ("Exchange") 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 Exchange Rule 952NY regarding the process for opening trading in an options series. The proposed rule change was published for comment in the **Federal Register** on April 12, 2016.³ 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 disapprove the proposed rule change to July 11, 2016.⁴ On July 8, 2016, the Exchange submitted Amendment No. 1 to the proposed rule change.⁵ The Commission received no comment letters on the proposed rule change. The Commission is publishing this notice to solicit comment on Amendment No. 1 to the proposed rule change from interested persons and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Proposed Rule Change, as Modified by Amendment No. 1

Exchange Rule 952NY sets forth the Exchange System's automated opening process.⁶ Current Rule 952NY(b)

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 77540 (April 6, 2016), 81 FR 21623 ("Notice").

⁴ See Securities Exchange Act Release No. 77911 (May 25, 2016), 81 FR 35115 (June 1, 2016).

⁵ See Letter to Brent J. Fields, Secretary, Commission, from Martha Redding, Associate General Counsel, Assistant Secretary, NYSE MKT, LLC dated July 11, 2016. As more fully described below, in Amendment No. 1 the Exchange proposes additional modifications to Rule 952NY(c) to clarify and detail how the Exchange would determine the opening price upon dissemination of an NBBO from OPRA.

⁶ See Exchange Rule 952NY. The term "System" refers to the Exchange's electronic order delivery,

¹² See Deloitte letter and anonymous letter.

¹³ 15 U.S.C. 7213(a)(3)(C).

¹⁴ Specifically, out of the proposed amendments, only Proposed Rule 4003(e) would potentially change inspection frequency. However, the number of firms that would be covered by Proposed Rule 4003(e) appear to be small. The Board notes that

provides that, after the primary market for the underlying security disseminates an opening trade or an opening quote, the Exchange will open the related option series automatically based on the following principles and procedures:

(A) The system will determine a single price at which a particular option series will be opened.

(B) Orders and quotes in the system will be matched up with one another based on price-time priority; provided, however, that Orders will have priority over Market Maker quotes at the same price.

(C) Orders in the System Book that were not executed during the Auction Process shall become eligible for the Core Trading Session immediately after the conclusion of the Auction Process.

(D) The System will not conduct an Auction Process if the bid-ask differential for that series is not within an acceptable range. For the purposes of this rule, an acceptable range shall mean within the bid-ask differential guidelines established pursuant to Rule 952NY(b)(4).

(E) If the System does not open a series with an Auction Process, the System shall open the series for trading after receiving notification of an initial NBBO disseminated by OPRA for the series or on a Market Maker quote, provided that the bid-ask differential does not exceed the bid-ask differential specified under Rule 952NY(b)(5).⁷

In addition, Rule 952NY(c) provides for how the System will determine the opening price of a series when an Auction Process is conducted.⁸ Specifically, current Rule 952NY(c) states, in part, that the “opening price of a series will be the price, as determined by the System, at which the greatest number of contracts will trade at or nearest to the midpoint of the initial uncrossed NBBO disseminated by OPRA, if any, or the midpoint of the best quote bids and quote offers in the System Book.”⁹

The Exchange proposes several changes to Exchange Rule 952NY and the System opening process. The proposed changes would also affect the process of re-opening an options series after a trading halt.¹⁰

execution and reporting system through which orders and quotes for listed options are consolidated for execution and/or display. See Exchange Rule 900.2NY(48) (defining “Exchange System” or “System”).

⁷ See Exchange Rule 952NY(b)(A)–(E).

⁸ See Notice and current Exchange Rule 952NY(c).

⁹ See current Exchange Rule 952NY(c).

¹⁰ See Exchange Rule 952NY(a), which provides that the Exchange will follow the same procedures in opening after a trading halt as the procedures followed for the opening of the trading day.

First, the Exchange proposes to amend Exchange Rule 952NY(b) so that trading in an options series will be opened automatically once the primary market for the underlying security disseminates both a quote and a trade that is at or within the quote.¹¹ Further, the Exchange proposes to specify that the opening process will occur at or after 9:30 a.m. Eastern Time.¹²

The Exchange also proposes to modify Exchange Rule 952NY(b)(E) so that if the System does not open a series with an Auction Process, trading in an options series could no longer open on a local Market Maker quote, but would instead require an initial uncrossed NBBO disseminated by OPRA.¹³ According to the Exchange, OPRA disseminates an NBBO based on information collected from the exchanges.¹⁴ Thus, the Exchange states, NYSE MKT’s local Market Maker quotes would be disseminated back to the Exchange from OPRA and may or may not be at the same price as the NBBO.¹⁵

In addition, the Exchange proposes to amend Rule 952NY(c). As noted, current Rule 952NY(c) provides that if there is no initial uncrossed NBBO disseminated by OPRA, the System instead determines an opening price that is “at the midpoint of the best quotes and offers in the System Book.” The Exchange originally proposed to modify Rule 952NY(c) by eliminating this language so that the rule would no longer provide that the opening price of a series could be determined by reference to the best quote bids and offers in the System Book.¹⁶ Thus, as originally proposed, the opening price of a series would be the price, as determined by the System, at which the greatest number of contracts will trade “at or nearest to the midpoint of the initial uncrossed NBBO disseminated by OPRA.”¹⁷ As more fully set forth in the Notice, the Exchange stated that the original proposed modification was a conforming change that was necessary because the Exchange would no longer open solely on a local Market Maker quote.¹⁸

In Amendment No. 1, the Exchange proposes further modifications to Rule 952NY(c) to clarify and detail how the Exchange would determine the opening

price upon dissemination of an NBBO from OPRA. Under proposed 952NY(c), as modified by Amendment No. 1, “[t]he opening price of a series will be the price, as determined by the System, at which the greatest number of contracts will trade at a price at or between the NBBO disseminated by OPRA.”¹⁹ In addition, in Amendment No. 1 the Exchange proposes to specify further the circumstances under which the System would use midpoint pricing.²⁰ In particular, proposed Rule 952NY(c), as modified by Amendment No. 1, would specify what would happen if there is a tie and the same number of contracts can trade at multiple prices. Specifically, proposed Rule 952NY(c), as modified by Amendment No. 1, would provide that if the same number of contracts can trade at multiple prices, the opening price is the price at which the greatest number of contracts can trade that is “at or nearest to the midpoint” of the NBBO disseminated by OPRA. The rule would further specify that (i) if one of such prices is equal to the price of any Limit Order(s) in the Consolidated Book, the opening price will be the same price as the Limit Order(s) with the greatest size and, if the same size, the highest price; and (ii) if there is a tie between price levels and no Limit Orders exist at either of the prices, the Exchange would use the higher price.²¹ In connection with these proposed modifications, the Exchange further proposes to delete language in current Rule 952NY(c) referring to pricing by reference to the best quotes bids and offers in the System. According to the Exchange, the language proposed to be deleted is superfluous, as the Exchange would no longer use Market Maker quotes to determine the opening price.²²

Finally, the Exchange proposes a new provision to permit the Exchange to deviate from the standard manner of the Auction Process, including adjusting the timing of the Auction Process in any option class, when the Exchange believes it to be necessary in the interest of a fair and orderly market.²³

¹⁹ See Amendment No. 1 and proposed Rule 952NY(c).

²⁰ See Amendment No. 1 and proposed Rule 952NY(c).

²¹ See Amendment No. 1 and proposed Rule 952NY(c).

²² See Amendment No. 1 and proposed Rule 952NY(c).

²³ See proposed Rule 952NY(b)(F); see also Notice, *supra* note 3, at 21624. For a more detailed description of the original proposed rule change, see Notice, *supra* note 3.

¹¹ See proposed Rule 952NY(b).

¹² See *id.*

¹³ See proposed Rule 952NY(b)(E).

¹⁴ See Notice, *supra* note 3, at 21624.

¹⁵ See Notice, *supra* note 3, at 21624.

¹⁶ Specifically, the Exchange proposed to delete from current 952NY(c) the words “if any, or the midpoint of the best quotes and offers in the System Book.”

¹⁷ See Notice *supra* note 3 at 21624.

¹⁸ See *id.*

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.²⁴ In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act,²⁵ which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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 Commission believes the Exchange's proposal to require both a disseminated quote and a trade within the quote in an underlying security before opening trading in the related options series, instead of either one or the other, is reasonably designed ensure that the underlying security has been opened pursuant to a robust price discovery process before the overlying option begins trading.²⁶

The Exchange proposes that if it does not open a series with an Auction Process, it will open the series for trading after receiving notification of an initial uncrossed NBBO disseminated by OPRA.²⁷ The Exchange represents that opening an options series for trading after receiving an uncrossed NBBO from OPRA, rather than based on a local Market Maker quote, will eliminate ambiguity as to the source of the information for each options series and should lead to more accurate prices on the Exchange.²⁸

Further, the Exchange proposes that if it does open a series with an Auction Process, the opening price of a series will be the price, as determined by the System, at which the greatest number of contracts will trade at a price at or between the NBBO disseminated by OPRA. The Exchange further proposes to specify how the System will

determine an opening price if the same number of contracts can trade at multiple prices.²⁹ The Commission believes the proposed process for how the System will determine an opening price for an option series at or between the NBBO disseminated by OPRA, and the circumstances under which System would use midpoint pricing, should result in an opening price that is related to the current market for an option and is therefore reasonably designed to protect investors and the public interest.

In addition, the Commission believes it is appropriate to allow the Exchange the discretion to deviate from the standard manner of the Auction Process, as the proposal provides, when it believes it is necessary in the interests of a fair and orderly market. The Commission believes that the ability to exercise such discretion can be important in situations when, for example, the primary market for an options class is unable to open due to a systems or technical issue or if some other unanticipated circumstance arises. The Commission notes that it has previously approved provisions of this kind as consistent with the Act.³⁰

The Commission further believes that the proposed rule change will provide transparency and enhance investors' understanding of the operation of the Exchange's opening process. For these reasons, the Commission believes that the proposed rule change, as modified by Amendment No. 1, is consistent with the Act.

IV. Solicitation of Comments on Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 to the proposed rule change 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 email to rule-comments@sec.gov. Please include File Number SR-NYSEMKT-2016-42 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-2016-42. 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-2016-42 and should be submitted by August 5, 2016.

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the 30th day after the date of publication of notice of Amendment No. 1 in the **Federal Register**. As discussed above, Amendment No. 1 clarifies how the Exchange would determine the opening price upon dissemination of an NBBO from OPRA, an in particular specifies the circumstances in which "at or nearest to the midpoint" pricing is utilized during the Auction Process. Furthermore, the Commission believes it is appropriate to have these changes incorporated into the rules of the Exchange concurrently with the changes discussed in the original filing.

Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Exchange Act,³¹ to approve the proposed rule change, as modified by

²⁴ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²⁵ 15 U.S.C. 78f(b)(5).

²⁶ See Notice, *supra* note 3, at 21624.

²⁷ See *supra* note 13 and accompanying text.

²⁸ See Notice, *supra* note 3, at 21624.

²⁹ See *supra* note 20 and accompanying text.

³⁰ See, e.g., Securities Exchange Act Release No. 71651 (March 5, 2014), 79 FR 13693 (March 11, 2014) (SR-BATS-2014-003).

³¹ 15 U.S.C. 78s(b)(2).

Amendment No. 1 on an accelerated basis.

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Exchange Act,³² that the proposed rule change (SR-NYSEMKT-2016-42), as modified by Amendment No. 1 thereto, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³³

Robert W. Errett,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-78285; File No. SR-NASDAQ-2016-087]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Automated Removal of Orders and Quotes

July 11, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 30, 2016, The NASDAQ Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. 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 the rules of the NASDAQ Options Market LLC (“NOM”) at Chapter VII, Section 6(f), entitled “Automated Removal of Orders and Quotes.”

The text of the proposed rule change is available on the Exchange’s Web site at <http://nasdaq.cchwallstreet.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 Exchange 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 these 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 aspects 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 a NOM Rule at Chapter VII, Section 6(f), entitled “Automated Removal of Orders and Quotes” to modify the minimum Specified Percentage (as described below). A NOM Market Maker³ sets the Specified Percentage to enhance its risk management for an underlying security as market conditions warrant, based on its own risk tolerance level and quoting behavior. The Exchange proposes to permit the NOM Market Maker to set the Specified Percentage more broadly, no less than 1% with this rule change. The Exchange also proposes to replace the term “disseminated size”⁴ with a quantitative description to add transparency with respect to the calculation of Series Percentage.

Background

Today, Chapter VII, Section 6(f) permits NOM Market Makers to monitor risk arising from multiple executions across multiple options series of a single underlying security. A NOM Market Maker may provide a specified time period and a specified percentage by which the Exchange’s System will automatically remove a NOM Market Maker’s quotes and orders in all series of an underlying security submitted through designated NOM protocols, as specified by the Exchange, during a

³ The term “Nasdaq Options Market Maker” or “Options Market Maker” (herein “NOM Market Maker”) means an Options Participant registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter VII of these Rules. See NOM Rules at Chapter I, Section 1(a)(26).

⁴ See Securities Exchange Act Release No 76316 (October 30, 2015), 80 FR 68595 at 68597 (November 5, 2015) (SR-NASDAQ-2015-122). The Exchange defined disseminated size in this rule change in footnote 13, as the original size quoted by the Participant.

specified time period not to exceed 15 seconds (“Percentage-Based Specified Time Period.”)⁵

For each series in an option, the System determines: (i) The percentage that the number of contracts executed in that series represents relative to the NOM Market Maker’s disseminated size of each side in that series (“Series Percentage”); and (ii) the sum of the Series Percentage in the option issue (“Issue Percentage”). The Exchange proposes herein to replace the term “disseminated size” with the more precise phrase “number of contracts available at the time of execution plus the number of contracts executed in unexpired prior executions.”

The System tracks and calculates the net impact of positions in the same option issue during the Percentage-Based Specified Time Period. Specifically, the System tracks transactions, *i.e.*, the sum of buy-side put percentages, the sum of sell-side put percentages, the sum of buy-side call percentages, and the sum of sell-side call percentages. The System then calculates the absolute value of the difference between the buy-side puts and the sell-side puts plus the absolute value of the difference between the buy-side calls and the sell-side calls. If the Issue Percentage, rounded to the nearest integer, equals or exceeds a percentage established by the NOM Market Maker, not less than 100% (“Specified Percentage”), the System automatically removes a NOM Market Maker’s quotes and orders in all series of an underlying security submitted through designated NOM protocols, as specified by the Exchange, during the Percentage-Based Specified Time.

The Percentage-Based Specified Time Period commences for an option every time an execution occurs in any series in such option and continues until the System removes quotes and orders as described in Chapter VII, Section 6(f)(iv) or (v) or the Percentage-Based Specified Time Period expires. The Percentage-Based Specified Time Period operates on a rolling basis among all series in an option in that there may be multiple Percentage-Based Specified Time Periods occurring simultaneously and such Percentage-Based Specified Time periods may overlap.

Proposal

The Exchange proposes to lower the minimum Specified Percentage, which is set by the NOM Market Maker, from 100% to 1%. The proposal would

⁵ A specified time period commences for an option when a transaction occurs in any series in such option.

³² 15 U.S.C. 78s(b)(2).

³³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.