

Exchange Act of 1934 (the “Act”)<sup>13</sup> in general and with Section 6(b)(5) of the Act<sup>14</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposed rule change would allow the Exchange, through MDX, to disseminate a new data service on a voluntary basis.

The Exchange believes the proposal to share revenue from the sale of the Data with qualifying CBOE market-makers that decide to contribute values to MDX for purposes of producing the Data is reasonable in that the Exchange believes it will encourage market-makers to provide values for the Service, which should enhance the quality of the Service. The Exchange believes using values produced by CBOE market-makers would not only differentiate the Service from the services of competing market data vendors, but would also add validity to the Data since the Data would be more closely related to tradable prices. The Exchange believes the proposal is equitable in that the revenue shared by MDX would be divided equally among participating market-makers. Further, the Exchange believes the proposal is not unfairly discriminatory in that CBOE market-makers would be selected to participate in this program based on objective qualifying criteria.

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

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes the proposed rule change is pro-competitive in that it would allow the Exchange, through MDX, to disseminate a new data service on a voluntary basis. The Service is voluntary on the part of the Exchange, which is not required to offer such services, and voluntary on the part of prospective subscribers that are not required to use it. The Exchange believes that the Service would help attract new users and new order flow to the Exchange, thereby improving the Exchange’s ability to compete in the market for options order flow and executions.

#### *C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on 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:

- A. Significantly affect the protection of investors or the public interest;
- B. Impose any significant burden on competition; and
- C. 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>15</sup> of the Act and Rule 19b-4(f)(6)<sup>16</sup> thereunder.

At any time within 60 days of the filing of this 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.

#### **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-CBOE-2012-083 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2012-083. 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 a.m. and 3 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-CBOE-2012-083 and should be submitted on or before October 5, 2012.

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

**Kevin M. O’Neill,**  
*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-67811; File No. SR-NYSEMKT-2012-26]

### **Self-Regulatory Organizations; NYSE MKT LLC; Order Approving Proposed Rule Change Amending Rule 76—Equities To Add Supplementary Material Relating to a Cross Function That Provides a Regulation NMS Rule 611—Compliant Tool for Floor Brokers**

September 10, 2012.

#### **I. Introduction**

On July 13, 2012, NYSE MKT LLC (“Exchange” or “NYSE MKT”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change amending Rule 76—Equities to add supplementary material to provide Floor Brokers with a new functionality

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

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(4) and (5).

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

<sup>16</sup> 17 CFR 240.19b-4(f)(6).

through which to effect manual cross transactions of block size. The proposed rule change was published for comment in the **Federal Register** on July 27, 2012.<sup>3</sup> The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change.

## II. Description of the Proposal

Currently, the Floor Broker and Designated Market Maker (“DMM”), after announcing a proposed cross transaction to the trading crowd,<sup>4</sup> must manually monitor the protected best bid or offer to ensure that the proposed cross can be executed in accordance with the customer’s instructions and in compliance with Rule 611 of Regulation NMS (“Rule 611”).<sup>5</sup> The Exchange contends that, in today’s fast-moving electronic markets, this manual monitoring process may not be the optimal manner by which to facilitate and evidence compliance with Rule 611.

Accordingly, the Exchange proposes to add a new Supplementary Material to Rule 76—Equities.<sup>6</sup> The proposed Supplementary Material would allow Floor Brokers to enter a cross transaction into their hand held device (“HHD”); the Exchange would provide a quote minder function that would monitor protected bids and offers to determine when the limit price assigned to the proposed crossed transaction is

<sup>3</sup> See Securities Exchange Act Release No. 67489 (July 23, 2012), 77 FR 44294 (“Notice”).

<sup>4</sup> According to the Exchange, a DMM, on behalf of a Floor Broker, will enter a cross transaction into the Exchange’s Display Book system as a completed transaction in situations where no one in the trading crowd otherwise breaks up a proposed cross. The completed transaction is printed to the consolidated tape (“Tape”) at that price.

<sup>5</sup> 17 CFR 242.611. Commission staff has issued guidance pertaining to the manual execution of orders under staff FAQ 3.23 of Rule 611 (“FAQ 3.23”).

<sup>6</sup> Rule 76—Equities governs the execution of “cross” or “crossing” orders by Floor Brokers. Rule 76—Equities applies only to manual transactions executed at the point of sale on the trading floor and provides that when a member has an order to buy and an order to sell the same security that can be crossed at the same price, the member is required to announce to the trading crowd the proposed cross by offering the security at a price that is higher than his or her bid by a minimum variation permitted in the security before crossing the orders. Any other member, including the Designated Market Maker (“DMM”), can break up the announced bid and offer by trading with either side of the proposed cross transaction. According to the Exchange, an agency “cross” of 10,000 shares or more at or between the Exchange best bid or offer has priority and can only be broken up to provide price improvement that is better than the cross price as to all or part of such bid or offer. A buy and sell order to be crossed pursuant to Rule 72(d)—Equities is subject to Rule 76, including the requirement that such a proposed cross be announced to the crowd. See Notice, *supra* note 3 at 44295; see also, Rule 72(d)—Equities.

such that the orders may be executed consistent with Regulation NMS Rule 611.

When the trade can be effected at or between the protected bid and offer, the Exchange-provided quote minder will: (i) Deliver an alert message to the Floor Broker’s HHD indicating that the orders may be crossed; (ii) capture a time-stamped quote within Exchange systems that includes the time that the alert was sent to the HHD and the protected bid and offer at that time; (iii) commence a 20-second timer from the moment a cross trade may be executed at or between the protected and bid offer; and (iv) enable a print key function in the HHD permitting the Floor Broker to cross the orders and print the trade through Exchange systems to the Tape within that 20-second time period.

When the Floor Broker receives the alert message mentioned above, the Floor Broker must first announce the proposed cross transaction to the trading crowd; if the crowd or the DMM does not break up the proposed cross trade, the Floor Broker may then execute the trade using the print key function of the HHD before the expiration of the 20-second time period.

The proposed Supplementary Material would require the proposed cross transaction to consist of at least 10,000 shares or a quantity of stock having a market value of \$200,000 or more. Further, the proposed cross transaction may not be for the account of the member or member organization, an account of an associated person, or an account with respect to which the member, member organization or associated person exercises investment discretion. The Exchange has represented that this restriction would help ensure that the functionality would not be used for affiliated principal order flow.

## III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>7</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>8</sup> in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and

<sup>7</sup> In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

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

facilitating transactions in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest.

The Commission finds that the proposed Supplementary Material to Rule 76—Equities removes impediments to and perfects the mechanism of a free and open market because the proposed cross functionality is reasonably designed to assist Floor Brokers’ ability to cross orders on the Exchange, particularly if there is significant quote traffic with flickering prices, while facilitating compliance with the trade-through restrictions of Rule 611. Given the rapid quotation changes in today’s electronic markets, the Commission believes that it is reasonable to allow Floor Brokers a 20-second look-back period in which to manually execute the cross transaction without violating the trade-through rule. The Commission also notes that the proposal does not otherwise change the operation of Rule 76—Equities. For example, the Floor Broker is still required to expose the proposed cross transaction to the trading crowd, and the proposed cross transaction may be broken up by members by trading with either side of the proposed transaction during the 20-second time period.

The Commission further notes that the proposal would bring more automation to the Exchange, which could support more efficient executions of the cross transactions. Moreover, because the transaction terms will be captured in an automated system, the proposed cross functionality is reasonably designed to provide a better audit trail for manually crossed orders, which may facilitate review of Floor Broker transactions for purposes of compliance with Rule 611.

## IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (SR-NYSEMKT-2012-26) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Kevin M. O’Neill,**  
*Deputy Secretary.*

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<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</sup> 17 CFR 200.30-3(a)(12).