

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79720; File No. SR-NYSEMKT-2016-102]

### Self-Regulatory Organizations; NYSE MKT LLC; Order Approving Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Introducing NYSE OptX

January 3, 2017.

#### I. Introduction

On November 3, 2016, NYSE MKT LLC, on behalf of NYSE Amex Options (the “Exchange”) 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 to introduce NYSE OptX, an order entry platform that will allow for the submission of Qualified Contingent Cross (“QCC”) Orders and orders executed in the Exchange’s Customer Best Execution (“CUBE”) Auction by ATP Holders. On November 15, 2016, the Exchange filed Amendment No. 1 to the proposal. <sup>3</sup> The proposed rule change, as modified by Amendment No. 1, was published for comment in the *Federal Register* on November 22, 2016. <sup>4</sup> The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change, as modified by Amendment No. 1.

#### II. Description of the Proposed Rule Change

The Exchange proposes to introduce NYSE OptX, an order entry platform that will allow ATP Holders to submit QCC Orders and CUBE Orders (collectively, “paired orders”) to the Exchange. <sup>5</sup> According to the Exchange, ATP Holders currently send paired orders to the Exchange through the use of third-party front end order management systems or by calling Floor

Brokers and relaying their orders by telephone. <sup>6</sup>

According to the Exchange, NYSE OptX is an order entry platform that will utilize a combination of Instant Messaging (“IM”) and browser-based technology to allow ATP Holders to submit paired orders for execution on the Exchange’s trading system. <sup>7</sup> To execute a paired order through NYSE OptX, an ATP Holder will send the order in plain text to NYSE OptX, <sup>8</sup> which will then translate the message into a pre-populated order ticket with details of the order and return the order ticket to the ATP Holder in a browser-based URL. The ATP Holder will then confirm the order ticket and submit the order to the Exchange for execution, or send the order to a Floor Broker for execution. After an order is executed on the Exchange, NYSE OptX will remit details of the execution back to the ATP Holder.

According to the Exchange, NYSE OptX is designed as an alternative to front end order management systems and the use of telephones for the sending of paired orders to the Exchange. <sup>9</sup> The Exchange notes that NYSE OptX will not provide ATP Holders with the capability to send any other type of orders or the capability to send paired orders for execution to other options markets. <sup>10</sup> Further, ATP Holders will continue to be able to submit paired orders through the use of a third-party front end order management system, or by telephone, as they currently do. <sup>11</sup> The Exchange notes that use of OptX to send paired orders is optional and voluntary. <sup>12</sup>

The Exchange stated that it will announce the effective date of NYSE OptX in a Trader Update to be published no later than 90 days following approval of this proposal, and that such effective date will be no later

than 270 days following publication of the Trader Update. <sup>13</sup>

#### III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act <sup>14</sup> and the rules and regulations thereunder applicable to a national securities exchange. <sup>15</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act, <sup>16</sup> 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 regulating, clearing, settling, processing information with respect to, and 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 and that the rules not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Commission notes that, according to the Exchange, NYSE OptX will provide ATP Holders an alternative to third-party front end order management systems and the use of telephones to send paired orders to the Exchange. <sup>17</sup> Such an alternative may help protect the interests of investors by offering ATP Holders an additional way to send paired orders to the Exchange for execution. The Commission notes that the use of OptX will be entirely voluntary and ATP Holders will still be able to submit paired orders as they do today, either through the use of third-party front end order management systems or by telephone. For these reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act and the rules

<sup>13</sup> See *id.*

<sup>14</sup> 15 U.S.C. 78f.

<sup>15</sup> 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).

<sup>16</sup> 15 U.S.C. 78f(b)(5).

<sup>17</sup> See Notice, *supra* note 4, at 83889. As stated above, the Exchange represented that ATP Holders will be required to provide all the essential information regarding the paired order when sending the order to NYSE OptX and QCC Orders sent to the Exchange for execution will comply with the order format and EOC entry requirements established by the Exchange. *Id.* at 83889, n.10.

<sup>6</sup> See Notice, *supra* note 4, at 83889.

<sup>7</sup> See *id.* The Exchange represents that NYSE OptX will not require any changes to the Exchange’s communication or surveillance rules. *Id.* at 83889, n.8.

<sup>8</sup> The Exchange states that ATP Holders will be required to provide all the essential information regarding the paired order when sending the order to NYSE OptX, including the price of the option and the stock, the size and side of the order, and delta. The Exchange further represents that QCC Orders sent to the Exchange for execution will comply with the order format and EOC entry requirements established by the Exchange. See Notice, *supra* note 4, at 83889, n.10. See also Exchange Rule 955NY—Order Format and System Entry Requirements.

<sup>9</sup> See Notice, *supra* note 4, at 83889.

<sup>10</sup> See *id.*

<sup>11</sup> See *id.*

<sup>12</sup> See *id.*

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

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

<sup>3</sup> In Amendment No. 1, the Exchange clarified that QCC Orders sent through NYSE OptX to the Exchange for execution will comply with the order format and EOC entry requirements established by the Exchange, which are set forth in Exchange Rule 955NY.

<sup>4</sup> See Securities Exchange Act Release No. 79328 (November 16, 2016), 81 FR 83888 (“Notice”).

<sup>5</sup> The term “ATP Holder” refers to a natural person, sole proprietorship, partnership, corporation, limited liability company, or other organization, in good standing, that has been issued an ATP. An ATP Holder must be a registered broker or dealer pursuant to Section 15 of the Act. See Exchange Rule 900.2NY.(5).

and regulations thereunder applicable to a national securities exchange.

#### IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>18</sup> that the proposed rule change (SR-NYSEMKT-2016-102), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79718; File No. SR-BatsEDGX-2016-41]

#### Self-Regulatory Organizations; Bats EDGX Exchange, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, Related to the Exchange's Equity Options Platform To Adopt a Price Improvement Auction, the Bats Auction Mechanism

January 3, 2017.

#### I. Introduction

On September 16, 2016, Bats EDGX Exchange, Inc. (the "Exchange" or "EDGX") 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 for the Exchange's equity options platform ("EDGX Options") to adopt a price improvement auction, the Bats Auction Mechanism. The proposed rule change was published for comment in the **Federal Register** on October 5, 2016.<sup>3</sup> The Commission received no comments regarding the proposal. On November 17, 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.<sup>4</sup> On December 15, 2016, EDGX filed

Amendment No. 1 to the proposal.<sup>5</sup> The Commission is publishing this notice to solicit comment on Amendment No. 1 from interested persons and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis, with certain provisions subject to a pilot period scheduled to expire on January 18, 2017.

#### II. Description of the Proposal, as Amended

EDGX proposes to establish a price-improvement auction, the Bats Auction Mechanism ("BAM," "BAM Auction," or "Auction") on the Exchange's equity options platform, in which an Exchange Member (an "Initiating Member") may electronically submit for execution a two-sided paired order, where one side is an order it represents as agent on behalf of a Priority Customer,<sup>6</sup> broker-dealer, or any other person or entity ("Agency Order") and the other side is principal interest or any other order it represents as agent (an "Initiating Order") provided that the Member first

<sup>5</sup> In Amendment No. 1, EDGX provided additional details to its proposal and made certain changes to original aspects of the proposal. Specifically, the proposal as revised would: (i) Restrict an Auction from commencing with a stop price equal to a same side resting order unless the resting order is not a Priority Customer order, the Exchange's "Customer Overlay" is in effect, and the incoming Agency Order is a Priority Customer order; (ii) prohibit an Initiating Order from being a solicited order for the account of an Options Market Maker assigned in the affected series on the Exchange; (iii) describe a survey conducted by the Exchange regarding the ability of participants to respond to an Auction lasting no less than one hundred milliseconds and no more than one second; (iv) provide additional explanation and justification of certain aspects of the proposal, including additional examples describing Auction processing and order allocation in various scenarios and details regarding the handling of overlapping Auctions for 50 contracts or more; and (v) make other minor structural, technical, and clarifying amendments to the proposal and the proposed rule text that EDGX believes does not result in any material differences over its original proposal. Amendment No. 1 amends and replaces the original filing in its entirety. To promote transparency of its proposed amendment, when EDGX filed Amendment No. 1 with the Commission, it also submitted a comment letter to the file with a brief description of Amendment No. 1, which the Commission posted on its Web site and placed in the public comment file for SR-BatsEDGX-2016-41. The Exchange also posted a copy of its Amendment No. 1 on its Web site when it filed the amendment with the Commission.

<sup>6</sup> A "Priority Customer" means any person or entity that is not: (A) A broker or dealer in securities; or (B) a Professional. The term "Priority Customer Order" means an order for the account of a Priority Customer. See EDGX Rule 16.1(a)(45). A "Professional" is any person or entity that: (A) Is not a broker or dealer in securities; and (B) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). All Professional orders shall be appropriately marked by Options Members. See EDGX Rule 16.1(a)(46).

exposes the Agency Order in the BAM Auction pursuant to the proposed Rule.

#### A. Auction Eligibility Requirements

All options traded on the Exchange are eligible for BAM.<sup>7</sup> To initiate a BAM Auction, an Initiating Member first must "stop" the Agency Order such that: (A) If the Agency Order is for less than 50 option contracts and the difference between the National Best Bid and Offer ("NBBO") is \$0.01, the Initiating Member must stop the entire Agency Order at one minimum price improvement increment better than the NBBO; or (B) for any other Agency Order, the Initiating Member must stop the entire Agency Order at the better of the NBBO or the Agency Order's limit price. In addition, if the EDGX BBO on the same side of the market as the Agency Order represents a Priority Customer order on the book, the stop price must be at least \$0.01 better than the booked order's limit price. If the EDGX BBO on the same side of the market as the Agency Order represents a quote or order that is not a Priority Customer order on the book, the stop price must be at least \$0.01 better than the booked order's limit price unless the Agency Order is a Priority Customer order and the Customer Overlay set forth in Rule 21.8(d)(1) is in effect.<sup>8</sup> In addition, Auctions in the same series of Agency Orders for less than 50 contracts may not queue or overlap in any manner; however, Auctions of Agency Orders for 50 contracts or more will be allowed to occur at the same time as other Auctions (of any size Agency Order) in the same series.<sup>9</sup> Finally, an

<sup>7</sup> See proposed EDGX Rule 21.19(a).

<sup>8</sup> According to the Exchange, this condition is consistent with the operation of the Exchange generally, where Priority Customer orders receive a priority advantage over all other orders. See Amendment No. 1, *supra* note 5. See also EDGX Rule 21.8(d)(1), which specifies that when the Customer Overlay is in effect, Priority Customer Orders shall have priority over orders on behalf of all other types of participants ("non-Customers") at the same price. The Exchange noted that the Customer Overlay is currently in effect with respect to all options traded on the Exchange. See Amendment No. 1, *supra* note 5.

<sup>9</sup> In its proposal, the Exchange notes that although it is possible for one or more Auctions for 50 contracts or more to overlap, each Auction will be started in a sequence and will have a distinct conclusion at which time the Auction will be allocated. Therefore, when the first Auction concludes, unrelated orders that then exist will be considered for participation in that Auction. If there is remaining unrelated order interest after the first Auction has been allocated, then such unrelated order interest will be considered for allocation when the subsequent Auction is processed. If there are multiple Auctions underway that are each terminated early pursuant to proposed EDGX Rule 21.19(b)(2)(B) or (C), the Auctions will be processed sequentially based on the order in which they commenced. See Notice, *supra* note 3, at 69178-79 and Amendment No. 1, *supra* note 5. See also

<sup>18</sup> 15 U.S.C. 78s(b)(2).

<sup>19</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>3</sup> See Securities Exchange Act Release No. 78988 (September 29, 2016), 81 FR 69172.

<sup>4</sup> See Securities Exchange Act Release No. 79339, 81 FR 84625 (November 23, 2016).