

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-68710; File No. SR-NYSEMKT-2013-02)

January 23, 2013

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 107C - Equities to Allow Retail Liquidity Providers to Enter Retail Price Improvement Orders in a Non-RLP Capacity for Securities to Which the RLP is Not Assigned

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 January 11, 2013, NYSE MKT LLC (the “Exchange” or “NYSE MKT”) filed with the Securities and Exchange Commission (“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 107C - Equities to clarify that Retail Liquidity Providers (“RLPs”) may enter Retail Price Improvement Orders (“RPIs”) in a non-RLP capacity for securities to which the RLP is not assigned. The text of the proposed rule change is available on the Exchange’s website 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

¹ 15 U.S.C. 78s(b)(2).

² 17 CFR 240.19b-4.

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 an amendment to Rule 107C - Equities to clarify that RLPs may enter RPIs in a non-RLP capacity for securities to which the RLP is not assigned.

Under current Rule 107C - Equities, a member organization that is registered as an RLP must submit RPIs for securities that are assigned to the RLP, with an RPI being required to be priced better than the PBBO by at least \$0.001 per share. For each assigned securities, an RLP must maintain RPIs that are better than the PBBO at least 5% of the trading day. If an RLP fails to meet this 5% quoting requirement in any assigned security for three consecutive months, the Exchange may: (1) revoke the assignment of any or all of the affected securities; (2) revoke the assignment of unaffected securities; or (3) disqualify the member organization to serve as a Retail Liquidity Provider. Under the Retail Liquidity Program, member organizations that are not RLPs are permitted to interact with Retail Orders within the Program by also submitting RPIs. Member organizations are not eligible for the lower execution fees available to RLPs who satisfy their quoting requirements.

The Exchange is proposing to amend Rule 107C - Equities to clarify that RLPs may act in a non-RLP capacity for those securities to which it is not assigned, and as a result, may submit RPIs for those securities. For securities to which it is not assigned, the RLP would not be required to satisfy the quoting requirements found in Rule 107C(f) - Equities, but would also not be eligible for the lower execution fees available to RLPs submitting RPIs for assigned

securities.³ For assigned securities, the RLP would still be subject to the quoting requirements found in Rule 107C(f) - Equities, and failure to meet those requirements, could still result in the actions found in Rule 107C(g) - Equities.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),⁴ in general, and furthers the objectives of Section 6(b)(5),⁵ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes the change proposed herein meets these requirements because it permits member organizations who have taken on the extra requirements of being an RLP in its assigned securities to still participate in the Program with other member organizations for those securities to which it is not assigned, which promotes just and equitable principles of trade. Without such permission, an RLP would be effectively penalized for taking on the responsibilities of becoming an RLP in assigned securities by not being permitted to participate in the program in securities to which it is not assigned. The proposed rule change would rectify this disparate treatment between RLPs and non-RLP member organizations in non-assigned securities. Additionally, the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system because it will allow RLPs to submit RPIs in both its assigned and non-assigned

³ Currently, RLPs who satisfy the applicable percentage requirement of Rule 107C – Equities are not charged a fee per share per execution of RPIs against a Retail Order. Non-RLP member organizations, unless they execute an average daily volume during the month of at least 500,000 shares of RPIs, would be charged a fee per share per execution of RPIs against Retail Orders of \$0.0003.

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5).

securities, thus creating a larger pool of liquidity for Retail Orders to interact with and stimulating further price competition for retail orders.

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

The Exchange 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. The Exchange believes that the amendment, by increasing the level of participation in the program, will increase the level of competition around executions such that retail investors would receive better prices than they currently do on the Exchange and potentially through bilateral internalization arrangements. The Exchange believes that the transparency and competitiveness of operating a program such as the Retail Liquidity Program on an exchange market would result in better prices for retail investors, and benefits retail investors by expanding the capabilities of Exchanges to encompass practices currently allowed on non-Exchange venues.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act⁶ and Rule 19b-4(f)(6) thereunder.⁷ Because the 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to

⁶ 15 U.S.C. 78s(b)(3)(A)(iii).

⁷ 17 CFR 240.19b-4(f)(6).

Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)⁸ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),⁹ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.¹⁰ The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The proposal would explicitly state that RLPs could submit RPIs in non-assigned securities, which should allow retail orders additional opportunities to receive price improvement. Therefore, the Commission designates the proposed rule change as operative upon filing.¹¹

At any time within 60 days of the filing of such 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. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)¹² of the Act to determine

⁸ 17 CFR 240.19b-4(f)(6).

⁹ 17 CFR 240.19b-4(f)(6)(iii).

¹⁰ In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of 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.

¹¹ For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹² 15 U.S.C. 78s(b)(2)(B).

whether the proposed rule change should be approved or disapproved.

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 e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEMKT-2013-02 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-NYSEMKT-2013-02. This file number should be included on the subject line if e-mail 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 website (<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 website 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 Number SR-NYSEMKT-2013-02 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Kevin M. O'Neill
Deputy Secretary

¹³ 17 CFR 200.30–3(a)(12).