

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 66	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4		File No.* SR - 2013 - * 09	Amendment No. (req. for Amendments *)
Filing by NYSE MKT LLC. Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934				
Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input checked="" type="checkbox"/>	Section 19(b)(3)(A) * <input type="checkbox"/>
			Section 19(b)(3)(B) * <input type="checkbox"/>	
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	Rule <input type="checkbox"/> 19b-4(f)(1) <input type="checkbox"/> 19b-4(f)(4) <input type="checkbox"/> 19b-4(f)(2) <input type="checkbox"/> 19b-4(f)(5) <input type="checkbox"/> 19b-4(f)(3) <input type="checkbox"/> 19b-4(f)(6)	
Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010 Section 806(e)(1) <input type="checkbox"/>			Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 Section 3C(b)(2) <input type="checkbox"/>	
Exhibit 2 Sent As Paper Document <input type="checkbox"/>		Exhibit 3 Sent As Paper Document <input type="checkbox"/>		
Description Provide a brief description of the action (limit 250 characters, required when Initial is checked *). Proposal to adopt Rule 964.3NY to provide for certain electronic crossing mechanisms				
Contact Information Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action. First Name * Brian Last Name * O'Neill Title * Chief Counsel NYSE Regulation E-mail * boneill@nyx.com Telephone * (212) 656-2373 Fax (212) 656-2223				
Signature Pursuant to the requirements of the Securities Exchange Act of 1934, has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized. (Title *) Date 01/25/2013 Vice President By Sudhir Bhattacharyya (Name *) Sudhir Bhattacharyya, NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.				

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

Form 19b-4 Information *

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of Proposed Rule Change

- (a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² NYSE MKT LLC ("NYSE MKT" or the "Exchange"), through NYSE Amex Options LLC ("NYSE Amex Options"), is proposing to adopt Rule 964.3NY to provide for certain electronic crossing mechanisms.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1 and the text of the proposed rule change is attached as Exhibit 5. A copy of this filing is available on the Exchange's website at www.nyse.com, at the Exchange's principal office and at the Commission's Public Reference Room.

- (b) The Exchange does not believe that the proposed rule change will have any direct effect, or any significant indirect effect, on any other Exchange rule in effect at the time of this filing.
- (c) Not applicable.

2. Procedures of the Self-Regulatory Organization

Senior management has approved the proposed rule change pursuant to authority delegated to it by the Board of the Exchange. No further action is required under the Exchange's governing documents. Therefore, the Exchange's internal procedures with respect to the proposed rule change are complete.

The persons on the Exchange staff prepared to respond to questions and comments on the proposed rule change are:

Glenn Gsell
Managing Director
NYSE Regulation
415-835-4805

Mike Babel
Managing Director, Options
NYSE Euronext
212-656-4744

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

- (a) Purpose

The Exchange proposes to adopt new Rule 964.3NY and associated commentaries to specify rules regarding electronic crossing on the Exchange. In particular, the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Exchange proposes to adopt (i) a Customer³ Cross Order functionality to provide a method to effect Customer-to-Customer crosses electronically; (ii) a Facilitation Mechanism; and (iii) a Solicited Order Mechanism to provide methods to effect orders in electronic auctions.

The Exchange has based the proposed Rules on approved rules of the International Securities Exchange (“ISE”), particularly ISE Rules 716 and 721.⁴ As further described below, however, the Exchange is proposing to provide a different process to determine the length of time in which auction responses may be submitted.

As discussed in further detail below, the Exchange is proposing rules to provide for new electronic auction mechanisms on the Exchange. While these mechanisms are electronic, ATP Holders on and off the Trading Floor of the Exchange have the ability to participate in them, subject to the requirements of Section 11(a) of the Securities Exchange Act of 1934 (“Exchange Act” or “Act”) (discussed below). Floor-based crossing rules will remain in place to provide for negotiated executions of large transactions in less liquid issues. The Exchange maintains a single electronic order book, called the Consolidated Book for the Exchange, where all limit orders sent to the Exchange are placed and reside as a file on the Exchange System. The Consolidated Book is used to determine priority for resting order interest in connection with all electronic and Floor-based trading at the Exchange, including the proposed electronic auction mechanisms that are the subject of this rule filing. As described below, orders resting in the Consolidated Book will interact with the proposed electronic auction mechanisms.⁵

Customer Cross Orders

Proposed Rule 964.3NY(a) provides for Customer Cross Orders to be executed automatically upon entry, if the Customer-to-Customer cross can be executed on or inside the Exchange Bid/Offer (“BBO”)⁶ at a regular trading increment. This

³ See NYSE MKT Rule 900.2NY(18).

⁴ For purposes of clarification, the ISE differentiates between “Priority Customers” and “Professional Customers”. The Exchange makes the same differentiation, but uses the terms “Customer” and “Professional Customer.” In this filing, the term “non-Customer” includes Professional Customer.

⁵ See Rule 964NY.

⁶ In general, Customer Cross Orders and orders entered into both the Facilitation Mechanism and the Solicited Order Mechanism will only be executed at or between the NBBO at the time of entry consistent with Exchange Rule 991NY(b)(9), with the only exception being Complex Orders. See *infra* note 25. Pursuant to Exchange Rule 991NY(b)(7), Complex Trades are exempt from NBBO trade through liability and therefore may trade at or between Exchange

proposed Rule is based on ISE Rule 721(a).⁷ Under the proposed rule, Customer Cross Orders are automatically executed upon entry provided that the execution is at or between the BBO on the Exchange and (i) is not at the same price as Customer orders on the Consolidated Book, and (ii) will not trade through the National Best Bid/Offer (“NBBO”).⁸ The proposed rule further provides that (i) Customer Cross Orders will be automatically canceled if they cannot be executed; (ii) Customer Cross Orders may only be entered in the regular trading increments applicable to the options class under Rule 960NY; and (iii) Commentary .01 to Rule 935NY applies to the entry and execution of Customer Cross Orders. Proposed Commentary .01 generally provides that it will be a violation of Rule 935NY for an ATP Holder to be a party to any arrangement designed to circumvent Rule 935NY by providing an opportunity for a Customer to regularly execute against agency orders handled by the ATP Holder immediately upon their entry into the Exchange System. In contrast to ISE Rule 721(a), the Exchange proposes to not allow ATP Holders to use the Customer Cross Order to execute Complex Orders.⁹

Facilitation Mechanism

Proposed Rule 964.3NY(b) describes a Facilitation Mechanism similar to the one set forth in ISE Rule 716(d), except as described below. Under the proposed rule, an ATP Holder may seek to facilitate an order (“initiating order”) it represents as

BBO without regard to the NBBO.

⁷ Proposed Rule 964.3NY is based on and nearly identical to ISE Rule 721(a), except to the extent that market participants on ISE may trade Complex Orders including Stock-option orders, Complex-to-Complex orders, and Complex orders with an equity leg through the Customer Cross Order functionality on ISE. ISE adopted ISE Rule 721(a) pursuant to a filing that was immediately effective upon filing. See Securities Exchange Act Release No. 60253 (July 7, 2009), 74 FR 34063 (July 14, 2009). The Exchange notes that, although not explicit in ISE Rule 721(a), market participants on ISE may trade Complex Orders including Stock-option orders, Complex-to-Complex orders, and Complex orders with an equity leg through the Customer Cross Order functionality on ISE. The Exchange would like to adopt nearly identical functionality in its proposed Customer Cross Order and thus in this proposal included proposed rule language nearly identical to the language found in ISE Rule 721(a) that it adopted pursuant to an immediately effective filing. However, the Exchange intends to file a subsequent 19b-4 Rule filing to extend the Exchange’s Customer Cross Order functionality to the extent currently available on ISE pursuant to ISE Rule 721(a), specifically to include the ability to execute Stock/Option Orders, Complex-to-Complex Orders, and Complex Orders with an equity leg.

⁸ See supra note 6.

⁹ See supra note 7.

agent and/or has solicited interest to execute against an initiating order it represents as agent.¹⁰ As with ISE, the submitting ATP Holder must be willing to execute the entire order entered in the mechanism, the initiating order must be for at least 50 contracts and the facilitation price must be at or better than the NBBO¹¹ at the time the initiating order is entered into the mechanism. For Complex Orders entered into the Facilitation Mechanism, all legs of the order must be for 50 contracts or more. In this respect, the facilitating order is intended to provide to the initiating order price improvement over the NBBO and/or sufficient liquidity beyond the displayed size. In recognition of the liquidity provided by the facilitating order, the Exchange proposes that the facilitating order will receive an execution guarantee equal to 40% of the contracts traded, at the facilitation price, after any Customer interest at the facilitation price has been satisfied.¹² In addition, initiating orders entered into the mechanism cannot be modified, but may be cancelled, subject to the requirement in proposed Commentary .01 that it would be violative conduct to cancel an initiating order to avoid execution of the order at a better price.

A broadcast message will be disseminated at the initiation of the mechanism.¹³ As with the broadcast message in ISE's facilitation mechanism, the broadcast message in the Exchange's Facilitation Mechanism will include the price and side (*i.e.*, buy or sell) of the initiating order along with the series and size of the initiating order. The Exchange believes that complete information may lead to better prices for the initiating order. After the broadcast message is disseminated, ATP Holders will have an opportunity to submit Responses (including Responses on behalf of Customers) with the price and size at which they want to

¹⁰ The contra-side order used by an ATP Holder to facilitate the initiating order is referred to as a "facilitating order."

¹¹ In general, orders entered into both the Facilitation Mechanism and the Solicited Order Mechanism will only be executed at or between the NBBO at the time of entry consistent with Exchange Rule 991NY(b)(9), with the only exception being Complex Orders. See infra note 25. Pursuant to Exchange Rule 991NY(b)(7), Complex Trades are exempt from NBBO trade through liability and therefore may trade at or between Exchange BBO without regard to the NBBO.

¹² The 40% allocation to a facilitation order is consistent with the allocation for facilitation orders in facilitation cross transactions. See Exchange Rule 934.1NY(4)(A).

¹³ For the Exchange, broadcast messages from the NYSE Amex Options auction mechanisms are disseminated via ArcaBook, a proprietary data feed available to anyone (including all ATP Holders) by subscription. Included in that options data feed, at no incremental cost to the ArcaBook subscriber, will be the broadcast messages from the auction mechanisms. Thus, any subscriber that chooses to receive the options data, including any ATP Holder subscriber, has the ability to respond to those broadcast messages.

participate.¹⁴ Responses, orders and quotes received during the auction that are larger than the size of the initiating order will be treated as if they were the same size as the initiating order for purposes of the auction.

The proposed rule is similar to the ISE rule, in that Customer orders are afforded priority. On NYSE Amex Options, Customer orders at a particular price on the Consolidated Book have priority over non-Customer interest at that price, and are ranked according to time. Non-Customer interest at a particular price on the Consolidated Book, regardless of when it is received, is executed pursuant to a size pro rata allocation. This priority is carried over to the Facilitation Mechanism.¹⁵ At the conclusion of the auction process, the mechanism looks to see if the total Responses, orders and quotes can fill the entire initiating order at a price better than the facilitation price. If so, the initiating order is matched against the Responses, orders, and quotes at their prices, subject to the priority methodology described above. If not, Customer interest (Responses and orders) at the time the initiating order is executed that is priced better than the facilitation price will be executed first at the facilitation price. All other Responses, orders and quotes (including Professional Customer orders) that are priced better than the facilitation price will be executed at their limit price, thereby providing the initiating order an improved price for the number of contracts associated with such higher bids or lower offers.

¹⁴ Responses are not entered into the Exchange's Consolidated Book during an auction, nor are they displayed in any manner. Thus, participants in an auction cannot see the prices or sizes of any Responses during the auctions. See proposed Rule 964.3NY Commentary .02.

¹⁵ Customer orders received during a particular Facilitation Mechanism auction are time-stamped when they are received in the Exchange's Consolidated Book, and if they are not executed in that auction, the time-stamps are used to determine time priority for their execution outside of that auction. In addition, any unfilled Responses (or portions thereof) to an auction are automatically cancelled at the conclusion of the auction.

For instance, assume the following is true; there is both Customer and non-Customer trading interest at the facilitation price during an auction, and that trading interest is eligible to execute against the initiating order (or remainder thereof). There may be a "remainder" of the initiating order because there may be resting interest at a price better than the Facilitation price that is matched prior to the allocation against the facilitating order and the Responses and quotes. In this scenario, if the Customer interest is smaller than the size of the initiating order (or remainder thereof) but exceeds the initiating order's size when combined with the non-Customer interest, the Customer interest will be executed first in time priority, and any remaining portion of the initiating order will be executed first by allocating the facilitating order 40% and then against the non-Customer interest pursuant to a size pro rata allocation.

The facilitating order will then be executed against the initiating order for up to 40% of its original size,¹⁶ but only after all better priced Responses, orders and quotes, and equally priced Customer interest, is executed in full. Thereafter, if the size of the Responses, orders and quotes at the facilitation price exceeds the size of the remaining unexecuted portion of the initiating order, such Responses, orders and quotes will participate in the execution of that portion of the initiating order based upon a size pro rata allocation, and any unfilled Responses (or portions thereof) will be automatically cancelled at the conclusion of the process. If, however, the Responses, orders and quotes at the facilitation price are not of sufficient size to fill the remaining unexecuted portion of the initiating order, such Responses, orders and quotes will be executed against the initiating order and the remainder of the initiating order will be executed against the facilitating ATP Holder's facilitating order.

As an example, suppose a firm enters an initiating order to buy 100 contracts with a facilitation price of \$1.20 into the Facilitation Mechanism, when the NBBO is 1.15 – 1.25. In response to a broadcast message, the Exchange receives Responses offering 15 contracts at 1.17; 20 contracts at 1.18, and 80 contracts at 1.20 (10 of which are for Customers).

The initiating order would thus be executed as follows:

- At 1.17: 15 contracts against the Responses.
- At 1.18: 20 contracts against the Responses.
- At 1.20: 10 contracts against the Customers Responses, 40 contracts against the facilitating order, which fills the facilitating order's 40% entitlement, and 15 contracts apportioned amongst the respondents on a size pro rata basis in a proportion of 15/70 (or 3/14ths) the size of each individual Response (see proposed Commentary .09 pertaining to pro rata basis).

If, however, there had been 10 Customer contracts offered at 1.20 prior to the start of the auction (which, for the purposes of this example, would have made the NBBO 1.15-1.20), the 10 contracts offered at 1.20 would have priority. In that case, the initiating order would thus be executed as follows;

- At 1.20: 10 contracts against the resting Customer order, 40 contracts to the facilitating order, and the remaining 15 contracts apportioned amongst the respondents on a size pro rata basis in a proportion of 15/70 (or 3/14ths) the size of each individual Response.

The Exchange is also adopting a provision similar to ISE's in which the Facilitating ATP Holder may elect to have the facilitating order automatically match ("auto match") the prices and sizes of Responses, orders and quotes

¹⁶ See supra note 12 and accompanying text.

received during the exposure period.¹⁷ By matching the volume at each price level, the auto match doubles the number of contracts of the initiating order that are provided price improvement. The match essentially allows for increased price improvement for the initiating order by increasing the execution size at each price level.

Under the proposed auto-match, the facilitating ATP Holder will be allocated its full size at each price point, or at each price point within its limit price if a limit is specified, until a price point is reached where the balance of the order can be fully executed, provided Customer interest at such price point is filled first. At such price point, the facilitating ATP Holder shall be allocated additional contracts to ensure receiving at least 40% of the original size of the initiating order, but only after Customer interest at such price point is filled first. Thereafter, if the size of the Responses, orders and quotes at such price point exceeds the size of the remaining unexecuted portion of the initiating order, such Responses, orders and quotes will participate in the execution of that portion of the initiating order based upon a size pro rata allocation, and any unfilled Responses (or portions thereof) will be automatically cancelled at the conclusion of the process. If, however, the Responses, orders and quotes at such price point are not of sufficient size to fill the remaining unexecuted portion of the initiating order, such Responses, orders and quotes will be executed against the initiating order and the remainder of the initiating order will be executed against the facilitating ATP Holder's facilitating order.

As an example, suppose a firm enters an initiating order to buy 100 contracts with a facilitation price of \$1.20 into the Facilitation Mechanism, when the NBBO is 1.15 – 1.25. In addition, the firm's facilitating order is marked to auto match at each price level. In response to a broadcast message, the Exchange receives Responses offering for 15 contracts at 1.17; 20 contracts at 1.18, and 80 contracts at 1.19 (10 of which are for Customers).

The initiating order would thus be executed as follows:

- At 1.17: 15 contracts against the Responses, and 15 contracts against the facilitating order.
- At 1.18: 20 contracts against the Responses, and 20 contracts against the facilitating order.
- At 1.19: 10 contracts against the Customers orders, 5 contracts against the facilitating order, which fills the facilitating order's 40% entitlement, and 15 contracts apportioned amongst the respondents on a size pro rata basis in a proportion of 15/70 (or 3/14ths) the size of each individual Response.

¹⁷

An election to automatically match better prices cannot be cancelled or altered during the exposure period.

As described above, the Facilitation Mechanism is designed to work seamlessly with the Exchange's Consolidated Book. If orders and/or quotes are received by the Exchange during the period when a Facilitation Mechanism auction is occurring, such orders and/or quotes will be eligible to participate in the auction, subject to the process described above. If the orders and/or quotes received are not executed in the auction, the time stamps they received will be used to determine time priority for their execution outside of the auction.

Solicited Order Mechanism

Proposed Rule 964.3NY(c) describes a Solicited Order Mechanism similar to the one set forth in ISE Rule 716(e). With such a mechanism, an ATP Holder can attempt to execute large (>499 contracts) orders it represents as agent ("Agency Order") against orders it has solicited. ATP Holders can solicit interest from all market participants to obtain liquidity for Agency Order, with one exception. Solicited orders¹⁸ may not be for the account of NYSE Amex Options Market Makers assigned to the option class. For Complex Orders entered into the Solicited Order Mechanism, all legs of the order must meet the >499 contract requirement. To do so, each order must be entered as All-or-None. Upon entry of the orders at the NBBO or better,¹⁹ a broadcast message is disseminated.²⁰ As with the broadcast message in ISE's solicited order mechanism, the broadcast message in the Exchange's Solicited Order Mechanism will include the series, price, size, and side (buy or sell) of the Agency Order. The Exchange believes that such complete information may lead to better prices for the Agency Order. After the broadcast is disseminated, ATP Holders will have an opportunity to submit Responses (including Responses on behalf of Customers) with the price and size at which they want to participate.²¹

As in the ISE rule, to execute against the Agency Order, the Responses, orders and quotes must be of sufficient size in aggregate, and must be at an improved price (or prices) to the proposed execution price. If at the time of execution there

¹⁸ The order that is solicited to be the contra-side of an Agency Order is referred to as a "solicited order."

¹⁹ See supra note 6.

²⁰ See supra note 13.

²¹ Responses are not entered into the Exchange's Consolidated Book during the auction, nor are they displayed to any market participant. Thus, participants in the auctions cannot see the prices or sizes of any Responses during the auctions. In addition, like the Facilitation Mechanism, Customer interest continues to have priority over non-Customer interest at the same price. Similarly, any unfilled Responses (or portions thereof) to an auction are automatically cancelled at the conclusion of the auction.

is insufficient size to execute the entire Agency Order at an improved price (or prices), the Agency Order will be executed against the solicited order at the proposed execution price so long as, at the time of execution, there are no Customer orders on the Exchange on the opposite side of the Agency Order that could execute against the Agency Order at the proposed execution price. If, however, there are Customer orders on the Exchange on the opposite side of the Agency Order that could execute against the Agency Order at the proposed execution price, and there is sufficient size in all of the Responses, orders and quotes at that price (including the Customer orders) to execute the entire size of the Agency Order, the Agency Order will be executed against such Responses, orders and quotes, and the solicited order will be cancelled.

If at the time of execution there is sufficient size to execute the entire Agency Order at an improved price (or prices), the Agency Order will be executed at the improved price(s), and the solicited order will be cancelled.²²

Both the solicited order and Agency Order will be cancelled if an execution would take place at a price that is inferior to the NBBO at the time the Agency Order is entered into the Solicited Order Mechanism, or if there is Customer interest on the Exchange on the opposite side of the Agency Order that could execute against the Agency Order at the proposed execution price but there is insufficient size in all of the Responses, orders and quotes at that price (including that Customer interest) to execute the entire Agency Order.²³

²² The aggregate size of all Responses, orders and quotes at each price received during the auction will be used to determine whether the entire Agency Order can be executed at an improved price (or prices).

²³ Rule 991NY(b)(9) provides an exception from the Trade-Through requirements in Rule 991NY(a) and the Options Order Protection and Locked/Crossed Market Plan (“Options Linkage Plan”) for the execution of orders through auction mechanisms such as the Solicited Order Mechanism. See Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009) (order approving the Options Linkage Plan). In particular, Rule 991NY(b)(9) provides that “[t]he transaction that constituted the Trade-Through was the execution of an order that was stopped at a price that did not Trade-Through an Eligible Exchange at the time of the stop.” In describing the exception in the Options Linkage Plan on which Rule 991NY(b)(9) is based, the Commission stated this exception would allow an exchange “to seek price improvement for an order, even if the market moves in the interim, and the transaction ultimately is effected at a price that would trade through the then currently displayed market,” and that by allowing this exception, the Commission expects that exchanges “would be able to continue to use price improvement mechanisms, thereby offering market participants potentially better-priced executions.” Options Linkage Plan, 74 FR at 39368.

When executing the Agency Order against the Responses, orders and quotes, or at an improved price (or prices), Customer interest will be executed first. Other Responses, orders and quotes (including Professional Customer orders) participate in the execution of the Agency Order based upon a size pro rata allocation.

Prior to entering Agency Orders into the Solicited Order Mechanism on behalf of a customer, ATP Holders must deliver to the customer a written notification informing the customer that its order may be executed using the Exchange's Solicited Order Mechanism. Such written notification must disclose the terms and conditions contained in this Rule and must be in a form approved by the Exchange.

Commentaries

The Exchange is also proposing various commentaries to the proposed Rule.

Commentary .01 clarifies that it would be violative conduct to cancel an initiating order to avoid execution of the initiating order at a better price. The Commentary is based on ISE Rule 716 Supplementary Material .01.

Commentary .02 will clarify that Responses to the Solicited Order or Facilitation Mechanism represent non-firm interest and will not be disclosed to any market participant. Because of this, the Responses to the broadcast message are non-firm for any trading interest that may be entered.

Commentary .03 establishes the time period for Responses to be submitted to all Mechanisms as a random time period (calculated by the applicable Mechanism) that shall not be less than 500 milliseconds and shall not exceed 750 milliseconds. The random time period shall be determined by the Facilitation or Solicitation Mechanism after the receipt of an initiating order or an Agency Order, as applicable, and contemporaneously with the dissemination of the broadcast message. The purpose of using an undisclosed random time period for Responses is that it is designed to provide the Mechanism with a functional difference to distinguish the Mechanism from similar mechanisms offered by other exchanges.

The Exchange believes that the proposed auction timer is sufficiently long to permit ATP Holders to respond in a timely manner to ensure competition among participants so that the agency order has opportunity for price improvement. This is based on the results of a survey conducted by the Exchange of ATP Holders who subscribe to ArcaBook and also act as Market Makers on the Exchange. After reviewing various auction timers in place at other options exchanges, which range from 100 milliseconds to 1000 milliseconds, the Exchange conducted a survey which asked the permit holders to indicate, "whether or not your firm can respond to an auction lasting *100 milliseconds*." For the survey of ATP Holders on the Exchange, twenty-three (23) market making firms were surveyed. Of the

fourteen (14) respondents who answered the question, eleven (11) (representing 87% of ArcaBook subscriber Market Maker volume) indicated that yes their firm could respond and three responded that their firm could not. Based on this feedback, the Exchange believes that the proposed auction duration of at least *500 milliseconds*, which is the mid-range of approved mechanisms at other market centers, will provide a meaningful opportunity for the market participants on the Exchange to respond to an auction, while at the same time facilitating the prompt execution of orders.

Commentary .04 clarifies that the Solicited Order Mechanism is not to be used by ATP Holders to circumvent limitations on principal transactions as defined in Rule 935NY. The Solicited Order Mechanism provides a facility for ATP Holders that locate liquidity for their Agency Orders. It is not intended for, and prohibits, use of the mechanism for the entry of contra orders that are solicited from affiliated broker-dealers or others with whom the ATP Holder has an arrangement that allows the ATP Holder to realize similar economic benefits from the solicited transaction as it would achieve by executing the Agency Order in whole or in part as principal.

Commentary .05 clarifies how the Facilitation and Solicited Order Mechanisms may be used to execute Complex Orders. Complex Orders will continue to be processed pursuant to Rule 980NY,²⁴ however each leg of the Complex Order must meet the size requirements of the respective mechanisms (as required under paragraphs (b) and (c) of proposed Rule 964.3NY). Consistent with existing order entry requirements for electronic Complex Orders, such orders may be entered in net debit/credit prices. Complex Orders entered into either the Facilitation or Solicited Order Mechanisms must be priced at or better than the Exchange's BBO²⁵ for that series.²⁶ Notwithstanding Rule 980NY(c)(i), a Complex Order that is entered into the Facilitation Mechanism or the Solicited Order Mechanism will not immediately execute automatically, in whole or in part, against an individual leg or Complex Order interest resting in the Consolidated Book. The execution of Complex Orders using the Facilitation or Solicited Order Mechanism will occur in the Complex Matching Engine ("CME") as described in Rule 980NY(c). The CME is the mechanism designed to rank and maintain priority for Complex Orders, and also to monitor the bids and offers in the leg markets for possible execution of a Complex Order. By integrating the Facilitation and Solicited Order Mechanisms for Complex Orders into the CME,

²⁴ Rule 980NY governs the trading of electronic Complex Orders on the NYSE Amex Options System.

²⁵ Pursuant to Exchange Rule 991NY(b)(7), Complex Trades are exempt from NBBO trade through liability and therefore may trade at or between Exchange BBO without regard to the NBBO.

²⁶ See supra note 6.

the Exchange is able to assure that the Facilitation and Solicited Order Mechanisms are in compliance with Complex Order Priority Rules.

Commentary .05 also clarifies that the Priority Rules of Rule 980NY with respect to bids and offers for the individual legs of a Complex Order will be maintained within the Facilitation and Solicited Order Mechanisms, including that described in Commentary .02 of Rule 980NY. Interest resting in the Consolidated Book at the commencement of a Facilitation Mechanism or Solicited Order Mechanism process will retain time priority at its price over Responses for Complex Orders that ATP Holders enter during the Facilitation Mechanism or Solicited Order Mechanism auction, and over incoming orders and quotes received during the Facilitation Mechanism or Solicited Order Mechanism auction. This ensures that all resting orders in the Consolidated Book that are entitled to participate in the execution of a Complex Order will do so. In addition, only after such resting orders are fully exhausted will incoming Responses or orders trade against the Complex Order. The processing of resting orders before any Responses or incoming orders is consistent with Complex Order functionality at the ISE.

Commentary .05 also provides that at the conclusion of the Facilitation Mechanism or Solicited Order Mechanism auction, the auctioned order will execute against (i) individual orders or quotes in the leg market that were entered prior to the commencement of the auction, provided that the auctioned order can be executed in full (or in a permissible ratio) against such orders or quotes; and (2) complex orders or quotes that were entered prior to the commencement of the auction. Following any such execution(s), the auctioned order will execute against other complex orders, Responses, and quotes as provided in paragraphs (b) and (c) of this Rule 964.3NY. Individual orders and quotes in the leg market that cause the derived Complex Best Bid/Offer to be improved during the auction and match the best complex orders, Responses, and quotes received during the auction will be filled after complex orders, Responses, and quotes at the same price. The Exchange believes that it is important that the processing of Complex Orders in both the Facilitation and the Solicitation Mechanism is consistent with Exchange procedures for executing Complex Orders in CME. By adopting provisions from existing Rule 980NY pertaining to the pricing, priority and order allocation, will help ensure the processing of Complex Orders is consistent across the Exchange.

Commentary .06 provides for the handling of market or marketable limit orders received by the Exchange while an initiating order is being auctioned in the Solicitation Mechanism or the Facilitation Mechanism. Anytime the Exchange receives a market or marketable limit order on the opposite side of the market of the initiating order while an initiating order is being auctioned in the Solicited Order Mechanism or the Facilitation Mechanism, the auction will terminate immediately. Specifically, the receipt by the Exchange of a market or marketable limit order on the opposite side as an initiating order will prematurely terminate the auction if at the time of submission the Buy (Sell) limit order price of the

unrelated order is equal to or higher (lower) than the National Best Offer (Bid) and either: (i) the Exchange's Best Offer (Bid) is equal to the National Best Offer (Bid); or (ii) the Exchange's Best Offer (Bid) is higher (lower) than the National Best Offer (Bid) and the price of the best auction response is equal to or lower (higher) than the National Best Offer (Bid). In addition, the receipt by the Exchange of a market or marketable limit order on the same side as an initiating order will prematurely terminate the auction if at the time of submission the Buy (Sell) limit order price of the unrelated order is lower (higher) than the National Best Offer (Bid) and its limit price equals or crosses the price of the best auction response. Specifically for Complex Orders, the receipt by the Exchange of a market or marketable limit order (Complex Order or derived Complex Order) on the opposite side as an initiating order will prematurely terminate the auction if at the time of submission: (i) the Buy (Sell) limit order price of the unrelated Complex Order is equal to or higher (lower) than the Exchange Best Offer (Bid); or (ii) the Buy (Sell) limit order price of the unrelated Complex Order is lower (higher) than the Exchange Best Offer (Bid) and its limit price equals or crosses the price of the best auction response. Upon termination of the auction, the initiating order will be filled as described in (b)(3) or (c)(2), above. In addition, if the initiating order being auctioned is a Complex Order, the provisions of Commentary .05 also will apply to the execution of the auctioned order. Following the execution of the initiating order being auctioned, any remaining auction responses are cancelled and the market order or marketable limit order is processed pursuant to Rule 964NY, Display, Priority, and Order Allocation, Trading Systems.

The following examples describe how market or marketable limit orders received on the opposite side of the market of the initiating order would be handled.

- Assume the NBBO and the Exchange BBO in the relevant series is \$2.00 bid - \$2.10 offer and the initiating order is a buy order for 50 contracts. During the auction, orders are submitted to the Facilitation Mechanism until the price of the best Response order is \$2.07. Then, a market order to sell 20 contracts is submitted to the Exchange. On the Exchange, even though the Response order may only execute against the initiating order, the priority rules still apply, and no order can be executed at a price worse than the best price available to another order. Therefore, the Facilitation Mechanism must terminate, the initiating order must be executed in full against the market order, any leftover Response orders must be cancelled immediately, and then any remainder of the market order or marketable limit order is processed pursuant to Rule 964NY. The result would be the same regardless if the market order was to sell 40 contracts or to sell 60 contracts.
- Assume the NBBO and the Exchange BBO in the relevant series is \$2.00 bid - \$2.10 offer and the initiating order is a buy order for 50 contracts. During the auction, orders are submitted to the Facilitation Mechanism

until the price of the best Response order is \$2.07. Then, a marketable limit order to sell 50 contracts at \$2.00 is submitted to the Exchange. On the Exchange, even though Response orders may only execute against the initiating order, the priority rules still apply, and no order can be executed at a price worse than the best price available to another order. Therefore, the Facilitation Mechanism must terminate, the initiating order must be executed in full against the marketable limit order, any leftover Response order must be cancelled immediately, and then any remainder of the market order or marketable limit order is processed pursuant to Rule 964NY. The result would be the same regardless if the marketable limit order was to sell 40 contracts or to sell 60 contracts.

Commentary .06 also provides that anytime the Exchange receives a market or marketable limit order on the same side of the market of the initiating order while an initiating order is being auctioned in the Solicited Order Mechanism or the Facilitation Mechanism, the auction will terminate immediately. Specifically, the receipt by the Exchange of a market or marketable limit order on the same side as an initiating order will prematurely terminate the auction if at the time of submission the Buy (Sell) limit order price of the unrelated order is equal to or higher (lower) than the National Best Offer (Bid) and either: (i) the Exchange's Best Offer (Bid) is equal to the National Best Offer (Bid); or (ii) the Exchange's Best Offer (Bid) is higher (lower) than the National Best Offer (Bid) and the price of the best auction response is equal to or lower (higher) than the National Best Offer (Bid). In addition, the receipt by the Exchange of a market or marketable limit order on the same side as an initiating order will prematurely terminate the auction if at the time of submission the Buy (Sell) limit order price of the unrelated order is lower (higher) than the National Best Offer (Bid) and its limit price equals or crosses the price of the best auction response. Specifically for Complex Orders, the receipt by the Exchange of a market or marketable limit order (Complex Order or derived Complex Order) on the same side as an initiating order will prematurely terminate the auction if at the time of submission: (i) the Buy (Sell) limit order price of the unrelated Complex Order is equal to or higher (lower) than the Exchange Best Offer (Bid); or (ii) the Buy (Sell) limit order price of the unrelated Complex Order is lower (higher) than the Exchange Best Offer (Bid) and its limit price equals or crosses the price of the best auction response. Upon termination of the auction, the initiating order will be filled as described in (b)(3) or (c)(2), above. Following the execution of the initiating order being auctioned, any remaining auction responses are executed against the market order, or marketable limit order and then any remainder of the market order, or marketable limit order is processed pursuant to the Display, Priority and Parity Rule 964NY. In addition, if the initiating order being auctioned is a Complex Order, the provisions of Commentary .05 also will apply to the execution of the auctioned order. Proposed Commentary .06 is similar, but not identical to provisions in the BOX rules.²⁷

²⁷

See BOX Rule 7150(h)(5)(i). Proposed Commentary .06 differs from the BOX

The following examples describe how market or marketable limit orders received on the same side of the market of the initiating order would be handled.

- Assume the NBBO and the Exchange BBO in the relevant series is \$2.00 bid - \$2.10 offer and the initiating order is a buy order for 50 contracts. During the auction, orders are submitted to the Facilitation Mechanism until the price of the best Response order is \$2.07. Then, a market order to buy 50 contracts is submitted to the Exchange. If the Facilitation Mechanism continued, the market order would have been executed at \$2.10, a price that would have violated the Exchange's priority rules because the best Response order is at \$2.07 is at a better price than \$2.10. On the Exchange, even though the Response order may only execute against the initiating order, the priority rules still apply, and no order can be executed at a price worse than the best price available to another order. Therefore, the Facilitation Mechanism must terminate, the initiating order must be executed in full, any remaining auction responses are executed against the market order or marketable limit order, and then any remainder of the market order or marketable limit order is processed pursuant to Rule 964NY. The result would be the same regardless if the market order was to buy 40 contracts or to buy 60 contracts.
- Assume the NBBO and the Exchange BBO in the relevant series is \$2.00 bid - \$2.10 offer and the initiating order is a buy order for 50 contracts. During the auction, orders are submitted to the Facilitation Mechanism until the price of the best Response order is \$2.07. Then, a marketable limit order to buy 50 contracts at \$2.10 is submitted to the Exchange. If the Facilitation Mechanism continued, the marketable limit order would have been executed at \$2.10, a price that would have violated the Exchange's priority rules because the best Response order is at \$2.07 is at a better price than \$2.10. On the Exchange, even though Response orders may only execute against initiating orders, the priority rules still apply, and no order can be executed at a price worse than the best price available to another order. Therefore, the Facilitation Mechanism must terminate, the initiating order must be executed in full, any remaining auction responses are executed against the market order or marketable limit order, and then any remainder of the market order or marketable limit order is processed pursuant to Rule 964NY. The result would be the same

PIP in its treatment of unrelated orders in several aspects including but not limited to the following: (i) the Exchange does not have an order comparable to a BOX-Top Order for use in the mechanisms; and (ii) the Exchange does not provide one penny better than the NBBO executions of unrelated orders on the opposite side of the market of the initiating order when the Exchange BBO is equal to the NBBO at the time of execution.

regardless if the marketable limit order was to buy 40 contracts or to buy 60 contracts.

The following example describes how a marketable Complex Order received on the same side of the market of the initiating Complex Order would be handled in the Facilitation Mechanism.

- Complex Strategy: BUY 100 IBM Apr 95 Call/ BUY 100 IBM Apr 95 Put - \$7.34 Debit
- Leg Markets:

IBM Apr 95 Call	2.35 x 10	2.45 x 10
IBM Apr 95 Put	4.70 x 15	4.90 x 15
Derived BBO = 7.05 – 7.35 10 x 10		
- An auction is initiated with an RFQ broadcast to all who subscribe. Responses are received in the following order: Response A 7.34 credit x 25, Response B 7.31 credit x 20, Response C 7.32 credit x 35. 720 milliseconds after the auction begins, another Complex Order is received to buy the same strategy 50 times with a net debit of 7.35, and locking the leg market BBO. The auction immediately ends, and the orders are executed as follows:
 - The initiating Complex Order (7.34 debit) is executed -
 - 20 times against Response B at prices of 2.42 and 4.89 (7.31 net),
 - 35 times against Response C at prices of 2.43 and 4.89 (7.32 net),
 - 40 times against the contra guarantee order (facilitating order's 40% entitlement) at prices of 2.44, and 4.90 (7.34 net), 5 times against Response A at prices of 2.44 and 4.90 (7.34 net)
 - The inbound 50–lot Complex Order with a net price of 7.35 will trade against the Response A 20 times at prices of 2.44 and 4.90 (7.34 net), the leg markets 10 times, at prices of 2.45 and 4.90 (7.35 net), and the balance of 20 will post in the complex order book paying a net debit of 7.35.
 - The market after in the leg markets is: IBM Apr 95 Call 2.35 x 10, 2.50 x 10, IBM Apr 95 Put 4.70 x 15, 4.90 x 5.
The market after in the complex order book is: 7.35 debit x 20 – 7.40 credit x 10 (derived BBO).

Commentary .07 affirms that it would be a violation of just and equitable principles of trade for an ATP Holder to enter orders, quotes, Agency Orders or Responses to disrupt or manipulate the Facilitation Mechanism or the Solicited Order Mechanism.

Commentary .08 notes that the Orders and Responses to the Solicited Order or Facilitation Mechanism may be entered and executed in penny increments, regardless of the Minimum Price Variation (“MPV”) designated for the series. All of the auction mechanisms are designed to provide an opportunity for possible price improvement which would not be as readily possible if Orders and Responses were only permitted in the series MPV. This provision is similar to provisions in the CBOE rules.²⁸

Lastly, Commentary .09 clarifies that references to size pro rata allocation is the allocation of an order to market participants on the same basis as in Rule 963NY(e)(5)(A)(ii). For example, assume there are 200 contracts to be allocated, Market Maker #1 is bidding for 100, Respondent #2 is bidding for 200 and Market Maker #3 is bidding for 500. Under the "size pro rata" allocation formula, Market Maker #1 will be allocated 25 contracts ($200 \times 100 \div 800$); Respondent #2 will be allocated 50 contracts ($200 \times 200 \div 800$); and Market Maker #3 will be allocated 125 contracts ($200 \times 500 \div 800$).

Section 11(a) of the Exchange Act

Section 11(a) of the Exchange Act prohibits any member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated persons exercises discretion (“covered accounts”), unless an exception applies.²⁹ Section 11(a)(1) contains a number of exceptions for principal transactions by members and their associated persons. As set forth below, the Exchange believes that the proposed rules for Facilitation and Solicited Order Mechanisms are consistent with the requirements of Section 11(a) and the rules thereunder.³⁰ The Exchange also believes that the proposed rules for Facilitation and Solicited Order Mechanisms are consistent with the requirements of Section 11(a) and the rules thereunder, whether the order is for a standard order, Complex to Complex Order, or a Stock-Option Order.

In this regard, Section 11(a)(1)(A) provides an exception from the prohibitions in Section 11(a) for dealers acting in the capacity of market makers. With respect to on- and off-floor market makers on the Exchange, the Exchange believes that

²⁸ See CBOE Rule 6.74B(a)(3).

²⁹ 15 U.S.C. 78k(a)(1). The Exchange believes that the proposed Customer Cross Order has no nexus with Section 11(a) in that it is a customer-to-customer cross that does not involve principal transactions, nor covered accounts.

³⁰ The Exchange also believes that the Exchange’s proposed rules for the Customer Cross Order are consistent with the requirements of Section 11(a) and the rules thereunder. The Exchange believes that the crossing of two Customer orders in the proposed Customer Cross Order would not involve prohibitive conduct under Section 11(a), thus an analysis of applicable exceptions is unnecessary.

orders sent by them for covered accounts to the proposed Facilitation and Solicited Order Mechanisms would qualify for this exception from Section 11(a).³¹ The Exchange also believes that a Complex to Complex Order or a Stock-Option Order sent by on- and off-floor market makers on the Exchange for covered accounts to the proposed Facilitation and Solicited Order Mechanisms would qualify for this exception from Section 11(a).

In addition to this market maker exception, Rule 11a2-2(T) under the Exchange Act, known as the “effect versus execute” rule, provides exchange members with an exception from Section 11(a) by permitting them, subject to certain conditions, to effect transactions for covered accounts by arranging for an unaffiliated member to execute the transactions on the exchange.³² To comply with the “effect versus execute” rule’s conditions, a member: (i) must transmit the order from off the exchange floor; (ii) may not participate in the execution of the transaction once it has been transmitted to the member performing the execution;³³ (iii) may not be affiliated with the member executing the transaction on the floor through the facilities of the Exchange; and (iv) with respect to an account over which the member has investment discretion, neither the member nor its associated person may retain any compensation in connection with effecting the transaction except as provided in the rule.³⁴

With respect to off-floor ATP Holders, the Exchange believes that orders sent by them for covered accounts to the proposed Facilitation and Solicited Order Mechanisms would qualify for this “effect versus execute” exception from Section 11(a), as described below.³⁵ In this regard, the first condition of Rule

³¹ The Exchange also believes that Customer orders sent to on-and off-floor market makers on the Exchange to execute as a Customer Cross Order would qualify for this exception.

³² 17 CFR 240.11a2-2(T).

³³ The member, however, may participate in clearing and settling the transaction. See Securities Exchange Act Release No. 14563 (March 14, 1978), 43 FR 11542 (March 17, 1978).

³⁴ 17 CFR 240.11a2-2(T).

³⁵ The Exchange also believes that Customer orders sent to off-floor ATP Holders to execute as a Customer Cross Order would qualify for this exception if necessary and applicable. The Customer order would be transmitted from remote terminals that are off the Exchange floor directly to the mechanisms by electronic means and execute against another Customer order which by definition would not involve the member participation in the order execution. For the second condition, the execution of the order in the mechanism would not depend on the ATP Holder entering the order, but rather what other orders are present and the priority of those orders. For the third condition, the Exchange represents that the Customer Cross Order mechanism is designed so that no ATP Holder has any

11a2-2(T) is that orders for covered accounts be transmitted from off the exchange floor. The Exchange represents that orders for covered accounts from off-floor ATP Holders sent to the Facilitation and Solicited Order Mechanisms would be transmitted from remote terminals that are off the Exchange floor directly to the mechanisms by electronic means.³⁶ In the context of other automated trading systems, the Commission has found that the off-floor transmission requirement is met if a covered account order is transmitted from a remote location directly to an exchange's floor by electronic means.³⁷ The second condition of Rule 11a2-2(T) requires that the member not participate in the execution of its order once the order is transmitted to the floor for execution.³⁸ The Exchange represents that, upon submission to the Facilitation and Solicited Order Mechanisms, an order will be executed automatically pursuant to the rules set forth for each of the mechanisms. In particular, execution of an order sent to the mechanisms depends not on the ATP Holder entering the order, but rather on what other orders are present and the priority of those orders. Thus, at

special or unique trading advantage in the handling of its orders after transmitting its orders to the mechanisms. For the fourth condition, the Exchange recognizes that ATP Holders relying on Rule 11a2-2(T) for transactions effected through the Customer Cross Order must comply with this condition of the Rule if necessary and applicable.

³⁶ In the alternative, orders for a covered account may be sent by an off-floor ATP Holder to an unaffiliated Floor Broker for entry into the auction mechanisms. Floor Brokers, however, may not enter orders for their own covered accounts into the auction mechanisms from on the floor, or transmit such orders from on the floor to off of the floor for entry into the auction mechanisms.

³⁷ See, e.g., Securities Exchange Act Release Nos. 59154 (December 23, 2008), 73 FR 80468 (December 31, 2008) (SR-BSE-2008-48) (approving, among other things, the equity rules of the Boston Stock Exchange ("BSE")); 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR-NASDAQ-2007-004 and SR-NASDAQ-2007-080) (approving rules governing the trading of options on The NASDAQ Options Market); 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (SR-BSE-2002-15) (approving the Boston Options Exchange as an options trading facility of BSE); 15533 (January 29, 1979), 44 FR 6084 (January 31, 1979) (approving the Amex Post Execution Reporting System, the Amex Switching System, the Intermarket Trading System, the Multiple Dealer Trading Facility of the Cincinnati Stock Exchange, the PCX Communications and Execution System, and the Philadelphia Stock Exchange Automated Communications and Execution System) ("1979 Release"); and 14563 (March 14, 1978), 43 FR 11542 (March 17, 1978) (approving NYSE's Designated Order Turnaround System) ("1978 Release").

³⁸ The description above covers the universe of the types of ATP Holders (*i.e.*, on- and off-floor market makers, off-floor firms that are not market makers, and Floor Brokers).

no time following the submission of an order is an ATP Holder able to acquire control or influence over the result or timing of order execution.³⁹ Rule 11a2-2(T)'s third condition requires that the order be executed by an exchange member who is unaffiliated with the member initiating the order. The Commission has stated that the requirement is satisfied when automated exchange facilities, such as the Facilitation and Solicited Order Mechanisms, are used, as long as the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange.⁴⁰ The Exchange represents that the Facilitation and Solicited Order Mechanisms are designed so that no ATP Holder has any special or unique trading advantage in the handling of its orders after transmitting its orders to the mechanisms. Rule 11a2-2(T)'s fourth condition requires that, in the case of a transaction effected for an account with respect to which the initiating member or an associated person thereof exercises investment discretion, neither the initiating member nor any associated person thereof may retain any compensation in connection with effecting the transaction, unless the person authorized to transact business for the account has expressly provided otherwise by written contract referring to Section 11(a) of the Act and Rule 11a2-2(T) thereunder.⁴¹ The

³⁹ The Exchange notes that an ATP Holder may cancel or modify the order, or modify the instructions for executing the order, but that such instructions would be transmitted from off of the floor of the Exchange. The Commission has stated that the non-participation requirement is satisfied under such circumstances so long as such modifications or cancellations are also transmitted from off the floor. See 1978 Release (stating that the "non-participation requirement does not prevent initiating members from canceling or modifying orders (or the instructions pursuant to which the initiating member wishes orders to be executed) after the orders have been transmitted to the executing member, provided that any such instructions are also transmitted from off the floor").

⁴⁰ In considering the operation of automated execution systems operated by an exchange, the Commission noted that, while there is not an independent executing exchange member, the execution of an order is automatic once it has been transmitted into the system. Because the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange, the Commission has stated that executions obtained through these systems satisfy the independent execution requirement of Rule 11a2-2(T). See 1979 Release.

⁴¹ See 17 CFR 240.11a2-2(T)(a)(2)(iv). In addition, Rule 11a2-2(T)(d) requires a member or associated person authorized by written contract to retain compensation, in connection with effecting transactions for covered accounts over which such member or associated persons thereof exercises investment discretion, to furnish at least annually to the person authorized to transact business for the account a statement setting forth the total amount of compensation retained by the member in connection with effecting transactions for the account during the period covered by the statement which amount must be exclusive of all amounts

Exchange recognizes that ATP Holders relying on Rule 11a2-2(T) for transactions effected through the Facilitation and Solicited Order Mechanisms must comply with this condition of the Rule.

The Exchange also believes that a Complex Order or a Stock/Option Order sent by off-floor ATP Holders to the floor for execution would qualify for this exception. The Exchange represents that a Complex Order or a Stock/Option Order for covered accounts from off-floor ATP Holders sent to the Facilitation and Solicited Order Mechanisms would be transmitted from remote terminals that are off the Exchange floor directly to the mechanisms by electronic means. For the second condition, the execution of the Complex Order or a Stock/Option Order in the mechanism would not depend on the ATP Holder entering the Complex Order or a Stock/Option Order, but rather what other Complex Order or a Stock/Option Order are present and the priority of those orders. For the third condition, the Exchange represents that the Facilitation and Solicited Order Mechanisms are designed so that no ATP Holder has any special or unique trading advantage in the handling of its orders, including a Complex Order or a Stock/Option Order after transmitting its orders to the mechanisms. For the fourth condition, the Exchange recognizes that ATP Holders relying on Rule 11a2-2(T) for transactions effected through the Facilitation and Solicited Order Mechanisms must comply with this condition of the Rule if necessary and applicable.

Implementation

The Exchange will announce the implementation date of the proposed rule change in a Trader Update to be published no later than 60 days following Commission approval. The implementation date will be no later than 60 days following publication of the Trader Update announcing Commission approval.

(b) Statutory Basis

For the reasons set forth above, the Exchange believes the proposed rule change is consistent with Section 6(b) of the Act⁴² in general, and furthers the objectives of Section 6(b)(5) of the Act, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. In particular, the proposal is based on existing rules of

paid to others during that period for services rendered to effect such transactions. See also 1978 Release (stating “[t]he contractual and disclosure requirements are designed to assure that accounts electing to permit transaction-related compensation do so only after deciding that such arrangements are suitable to their interests”).

another exchange,⁴³ and will provide ATP Holders and Customers a mechanism to execute various crossing transactions electronically and with an opportunity for price improvement, while ensuring equal access to exposed orders for all market participants. In this regard, the Facilitation and Solicited Order Mechanisms are intended to be beneficial to investors because they are designed to provide investors seeking to effect large options orders with an opportunity for price improvement and additional liquidity. In addition, the Facilitation and Solicited Order Mechanisms promote equal access by providing ATP Holders that subscribe to ArcaBook with the opportunity to interact with orders in the mechanisms. In this regard, any ATP Holder can subscribe to the options data provided through ArcaBook. The mechanisms are also non-discriminatory by using a random timer for the exposure period that is not disclosed to any participants nor to Exchange staff, and is not even determined until the broadcast message is sent.

4. 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 Facilitation and Solicited Order Mechanisms are designed to increase competition for order flow on the Exchange in a manner intended to be beneficial to investors because they are designed to provide investors seeking to effect large options orders with an opportunity for price improvement and additional liquidity. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues who offer similar functionality. The Exchange believes the proposed rule change is precompetitive because it would enable the Exchange to provide market participants with functionality that is similar to that of other options exchanges.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

6. Extension of Time Period for Commission Action

The Exchange does not consent at this time to an extension of any time period for Commission action.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2).

Not Applicable

⁴³ See ISE Rules 716 and 721, and attendant Supplementary Materials.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

As described above in Item 3, this proposal is based on ISE Rules 716 and 721, and attendant Supplementary Materials. There are certain differences between this proposal and the ISE's Customer Cross Order, facilitation and solicited order mechanisms, which are discussed above. In addition, the proposed rules differ from the ISE Rules in that all trading in the Exchange's Facilitation and Solicitation Mechanisms will be in penny increments, similar to the provisions of CBOE Rule 6.74B(a)(3), which is applicable to the CBOE Solicited Auction Mechanism. Finally, Proposed Commentary .06 is similar, but not identical to provisions in the BOX Rule 7150(h)(5)(i). Proposed Commentary .06 differs from the BOX PIP in its treatment of unrelated orders in several aspects including but not limited to the following: (i) the Exchange does not have an order comparable to a BOX-Top Order for use in the mechanisms; and (ii) the Exchange does not provide one penny better than the NBBO executions of unrelated orders on the opposite side of the market of the initiating order when the Exchange BBO is equal to the NBBO at the time of execution.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

Exhibit 1 –Form of Notice of Proposed Rule Change for Federal Register

Exhibit 5 –Text of Proposed Changes

SECURITIES AND EXCHANGE COMMISSION
 (Release No. 34- ; File No. SR-NYSEMKT-2013-09)

[Date]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Rule Change Adopting Rule 964.3NY to Provide for Certain Electronic Crossing Mechanisms

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on January 25, 2013, 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, II, and III 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 adopt Rule 964.3NY to provide for certain electronic crossing mechanisms. 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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 proposes to adopt new Rule 964.3NY and associated commentaries to specify rules regarding electronic crossing on the Exchange. In particular, the Exchange proposes to adopt (i) a Customer⁴ Cross Order functionality to provide a method to effect Customer-to-Customer crosses electronically; (ii) a Facilitation Mechanism; and (iii) a Solicited Order Mechanism to provide methods to effect orders in electronic auctions.

The Exchange has based the proposed Rules on approved rules of the International Securities Exchange (“ISE”), particularly ISE Rules 716 and 721.⁵ As further described below, however, the Exchange is proposing to provide a different process to determine the length of time in which auction responses may be submitted.

As discussed in further detail below, the Exchange is proposing rules to provide for new electronic auction mechanisms on the Exchange. While these mechanisms are electronic, ATP Holders on and off the Trading Floor of the Exchange have the ability to

⁴ See NYSE MKT Rule 900.2NY(18).

⁵ For purposes of clarification, the ISE differentiates between “Priority Customers” and “Professional Customers”. The Exchange makes the same differentiation, but uses the terms “Customer” and “Professional Customer.” In this filing, the term “non-Customer” includes Professional Customer.

participate in them, subject to the requirements of Section 11(a) of the Securities Exchange Act of 1934 (“Exchange Act” or “Act”) (discussed below). Floor-based crossing rules will remain in place to provide for negotiated executions of large transactions in less liquid issues. The Exchange maintains a single electronic order book, called the Consolidated Book for the Exchange, where all limit orders sent to the Exchange are placed and reside as a file on the Exchange System. The Consolidated Book is used to determine priority for resting order interest in connection with all electronic and Floor-based trading at the Exchange, including the proposed electronic auction mechanisms that are the subject of this rule filing. As described below, orders resting in the Consolidated Book will interact with the proposed electronic auction mechanisms.⁶

Customer Cross Orders

Proposed Rule 964.3NY(a) provides for Customer Cross Orders to be executed automatically upon entry, if the Customer-to-Customer cross can be executed on or inside the Exchange Bid/Offer (“BBO”)⁷ at a regular trading increment. This proposed Rule is based on ISE Rule 721(a).⁸ Under the proposed rule, Customer Cross Orders are

⁶ See Rule 964NY.

⁷ In general, Customer Cross Orders and orders entered into both the Facilitation Mechanism and the Solicited Order Mechanism will only be executed at or between the NBBO at the time of entry consistent with Exchange Rule 991NY(b)(9), with the only exception being Complex Orders. See infra note 26. Pursuant to Exchange Rule 991NY(b)(7), Complex Trades are exempt from NBBO trade through liability and therefore may trade at or between Exchange BBO without regard to the NBBO.

⁸ Proposed Rule 964.3NY is based on and nearly identical to ISE Rule 721(a), except to the extent that market participants on ISE may trade Complex Orders including Stock-option orders, Complex-to-Complex orders, and Complex orders with an equity leg through the Customer Cross Order functionality on ISE. ISE

automatically executed upon entry provided that the execution is at or between the BBO on the Exchange and (i) is not at the same price as Customer orders on the Consolidated Book, and (ii) will not trade through the National Best Bid/Offer (“NBBO”).⁹ The proposed rule further provides that (i) Customer Cross Orders will be automatically canceled if they cannot be executed; (ii) Customer Cross Orders may only be entered in the regular trading increments applicable to the options class under Rule 960NY; and (iii) Commentary .01 to Rule 935NY applies to the entry and execution of Customer Cross Orders. Proposed Commentary .01 generally provides that it will be a violation of Rule 935NY for an ATP Holder to be a party to any arrangement designed to circumvent Rule 935NY by providing an opportunity for a Customer to regularly execute against agency orders handled by the ATP Holder immediately upon their entry into the Exchange System. In contrast to ISE Rule 721(a), the Exchange proposes to not allow ATP Holders to use the Customer Cross Order to execute Complex Orders.¹⁰

adopted ISE Rule 721(a) pursuant to a filing that was immediately effective upon filing. See Securities Exchange Act Release No. 60253 (July 7, 2009), 74 FR 34063 (July 14, 2009). The Exchange notes that, although not explicit in ISE Rule 721(a), market participants on ISE may trade Complex Orders including Stock-option orders, Complex-to-Complex orders, and Complex orders with an equity leg through the Customer Cross Order functionality on ISE. The Exchange would like to adopt nearly identical functionality in its proposed Customer Cross Order and thus in this proposal included proposed rule language nearly identical to the language found in ISE Rule 721(a) that it adopted pursuant to an immediately effective filing. However, the Exchange intends to file a subsequent 19b-4 Rule filing to extend the Exchange’s Customer Cross Order functionality to the extent currently available on ISE pursuant to ISE Rule 721(a), specifically to include the ability to execute Stock/Option Orders, Complex-to-Complex Orders, and Complex Orders with an equity leg.

⁹ See supra note 7.

¹⁰ See supra note 8.

Facilitation Mechanism

Proposed Rule 964.3NY(b) describes a Facilitation Mechanism similar to the one set forth in ISE Rule 716(d), except as described below. Under the proposed rule, an ATP Holder may seek to facilitate an order (“initiating order”) it represents as agent and/or has solicited interest to execute against an initiating order it represents as agent.¹¹ As with ISE, the submitting ATP Holder must be willing to execute the entire order entered in the mechanism, the initiating order must be for at least 50 contracts and the facilitation price must be at or better than the NBBO¹² at the time the initiating order is entered into the mechanism. For Complex Orders entered into the Facilitation Mechanism, all legs of the order must be for 50 contracts or more. In this respect, the facilitating order is intended to provide to the initiating order price improvement over the NBBO and/or sufficient liquidity beyond the displayed size. In recognition of the liquidity provided by the facilitating order, the Exchange proposes that the facilitating order will receive an execution guarantee equal to 40% of the contracts traded, at the facilitation price, after any Customer interest at the facilitation price has been satisfied.¹³ In addition, initiating orders entered into the mechanism cannot be modified, but may be cancelled, subject to the requirement in proposed Commentary .01 that it would be

¹¹ The contra-side order used by an ATP Holder to facilitate the initiating order is referred to as a “facilitating order.”

¹² In general, orders entered into both the Facilitation Mechanism and the Solicited Order Mechanism will only be executed at or between the NBBO at the time of entry consistent with Exchange Rule 991NY(b)(9), with the only exception being Complex Orders. See infra note 26. Pursuant to Exchange Rule 991NY(b)(7), Complex Trades are exempt from NBBO trade through liability and therefore may trade at or between Exchange BBO without regard to the NBBO.

¹³ The 40% allocation to a facilitation order is consistent with the allocation for facilitation orders in facilitation cross transactions. See Exchange Rule 934.1NY(4)(A).

violative conduct to cancel an initiating order to avoid execution of the order at a better price.

A broadcast message will be disseminated at the initiation of the mechanism.¹⁴ As with the broadcast message in ISE's facilitation mechanism, the broadcast message in the Exchange's Facilitation Mechanism will include the price and side (i.e., buy or sell) of the initiating order along with the series and size of the initiating order. The Exchange believes that complete information may lead to better prices for the initiating order. After the broadcast message is disseminated, ATP Holders will have an opportunity to submit Responses (including Responses on behalf of Customers) with the price and size at which they want to participate.¹⁵ Responses, orders and quotes received during the auction that are larger than the size of the initiating order will be treated as if they were the same size as the initiating order for purposes of the auction.

The proposed rule is similar to the ISE rule, in that Customer orders are afforded priority. On NYSE Amex Options, Customer orders at a particular price on the Consolidated Book have priority over non-Customer interest at that price, and are ranked according to time. Non-Customer interest at a particular price on the Consolidated Book, regardless of when it is received, is executed pursuant to a size pro rata allocation. This

¹⁴ For the Exchange, broadcast messages from the NYSE Amex Options auction mechanisms are disseminated via ArcaBook, a proprietary data feed available to anyone (including all ATP Holders) by subscription. Included in that options data feed, at no incremental cost to the ArcaBook subscriber, will be the broadcast messages from the auction mechanisms. Thus, any subscriber that chooses to receive the options data, including any ATP Holder subscriber, has the ability to respond to those broadcast messages.

¹⁵ Responses are not entered into the Exchange's Consolidated Book during an auction, nor are they displayed in any manner. Thus, participants in an auction cannot see the prices or sizes of any Responses during the auctions. See proposed Rule 964.3NY Commentary .02.

priority is carried over to the Facilitation Mechanism.¹⁶ At the conclusion of the auction process, the mechanism looks to see if the total Responses, orders and quotes can fill the entire initiating order at a price better than the facilitation price. If so, the initiating order is matched against the Responses, orders, and quotes at their prices, subject to the priority methodology described above. If not, Customer interest (Responses and orders) at the time the initiating order is executed that is priced better than the facilitation price will be executed first at the facilitation price. All other Responses, orders and quotes (including Professional Customer orders) that are priced better than the facilitation price will be executed at their limit price, thereby providing the initiating order an improved price for the number of contracts associated with such higher bids or lower offers.

The facilitating order will then be executed against the initiating order for up to 40% of its original size,¹⁷ but only after all better priced Responses, orders and quotes, and equally priced Customer interest, is executed in full. Thereafter, if the size of the

¹⁶ Customer orders received during a particular Facilitation Mechanism auction are time-stamped when they are received in the Exchange's Consolidated Book, and if they are not executed in that auction, the time-stamps are used to determine time priority for their execution outside of that auction. In addition, any unfilled Responses (or portions thereof) to an auction are automatically cancelled at the conclusion of the auction.

For instance, assume the following is true; there is both Customer and non-Customer trading interest at the facilitation price during an auction, and that trading interest is eligible to execute against the initiating order (or remainder thereof). There may be a "remainder" of the initiating order because there may be resting interest at a price better than the Facilitation price that is matched prior to the allocation against the facilitating order and the Responses and quotes. In this scenario, if the Customer interest is smaller than the size of the initiating order (or remainder thereof) but exceeds the initiating order's size when combined with the non-Customer interest, the Customer interest will be executed first in time priority, and any remaining portion of the initiating order will be executed first by allocating the facilitating order 40% and then against the non-Customer interest pursuant to a size pro rata allocation.

¹⁷ See supra note 13 and accompanying text.

Responses, orders and quotes at the facilitation price exceeds the size of the remaining unexecuted portion of the initiating order, such Responses, orders and quotes will participate in the execution of that portion of the initiating order based upon a size pro rata allocation, and any unfilled Responses (or portions thereof) will be automatically cancelled at the conclusion of the process. If, however, the Responses, orders and quotes at the facilitation price are not of sufficient size to fill the remaining unexecuted portion of the initiating order, such Responses, orders and quotes will be executed against the initiating order and the remainder of the initiating order will be executed against the facilitating ATP Holder's facilitating order.

As an example, suppose a firm enters an initiating order to buy 100 contracts with a facilitation price of \$1.20 into the Facilitation Mechanism, when the NBBO is 1.15 – 1.25. In response to a broadcast message, the Exchange receives Responses offering 15 contracts at 1.17; 20 contracts at 1.18, and 80 contracts at 1.20 (10 of which are for Customers).

The initiating order would thus be executed as follows:

- At 1.17: 15 contracts against the Responses.
- At 1.18: 20 contracts against the Responses.
- At 1.20: 10 contracts against the Customers Responses, 40 contracts against the facilitating order, which fills the facilitating order's 40% entitlement, and 15 contracts apportioned amongst the respondents on a size pro rata basis in a proportion of $15/70$ (or $3/14$ ths) the size of each individual Response (see proposed Commentary .09 pertaining to pro rata basis).

If, however, there had been 10 Customer contracts offered at 1.20 prior to the start of the auction (which, for the purposes of this example, would have made the NBBO 1.15-1.20), the 10 contracts offered at 1.20 would have priority. In that case, the

initiating order would thus be executed as follows;

- At 1.20: 10 contracts against the resting Customer order, 40 contracts to the facilitating order, and the remaining 15 contracts apportioned amongst the respondents on a size pro rata basis in a proportion of 15/70 (or 3/14ths) the size of each individual Response.

The Exchange is also adopting a provision similar to ISE's in which the Facilitating ATP Holder may elect to have the facilitating order automatically match ("auto match") the prices and sizes of Responses, orders and quotes received during the exposure period.¹⁸ By matching the volume at each price level, the auto match doubles the number of contracts of the initiating order that are provided price improvement. The match essentially allows for increased price improvement for the initiating order by increasing the execution size at each price level.

Under the proposed auto-match, the facilitating ATP Holder will be allocated its full size at each price point, or at each price point within its limit price if a limit is specified, until a price point is reached where the balance of the order can be fully executed, provided Customer interest at such price point is filled first. At such price point, the facilitating ATP Holder shall be allocated additional contracts to ensure receiving at least 40% of the original size of the initiating order, but only after Customer interest at such price point is filled first. Thereafter, if the size of the Responses, orders and quotes at such price point exceeds the size of the remaining unexecuted portion of the initiating order, such Responses, orders and quotes will participate in the execution of that portion of the initiating order based upon a size pro rata allocation, and any unfilled Responses (or portions thereof) will be automatically cancelled at the conclusion of the

¹⁸ An election to automatically match better prices cannot be cancelled or altered during the exposure period.

process. If, however, the Responses, orders and quotes at such price point are not of sufficient size to fill the remaining unexecuted portion of the initiating order, such Responses, orders and quotes will be executed against the initiating order and the remainder of the initiating order will be executed against the facilitating ATP Holder's facilitating order.

As an example, suppose a firm enters an initiating order to buy 100 contracts with a facilitation price of \$1.20 into the Facilitation Mechanism, when the NBBO is 1.15 – 1.25. In addition, the firm's facilitating order is marked to auto match at each price level. In response to a broadcast message, the Exchange receives Responses offering for 15 contracts at 1.17; 20 contracts at 1.18, and 80 contracts at 1.19 (10 of which are for Customers).

The initiating order would thus be executed as follows:

- At 1.17: 15 contracts against the Responses, and 15 contracts against the facilitating order.
- At 1.18: 20 contracts against the Responses, and 20 contracts against the facilitating order.
- At 1.19: 10 contracts against the Customers orders, 5 contracts against the facilitating order, which fills the facilitating order's 40% entitlement, and 15 contracts apportioned amongst the respondents on a size pro rata basis in a proportion of 15/70 (or 3/14ths) the size of each individual Response.

As described above, the Facilitation Mechanism is designed to work seamlessly with the Exchange's Consolidated Book. If orders and/or quotes are received by the Exchange during the period when a Facilitation Mechanism auction is occurring, such orders and/or quotes will be eligible to participate in the auction, subject to the process described above. If the orders and/or quotes received are not executed in the auction, the time stamps they received will be used to determine time priority for their execution

outside of the auction.

Solicited Order Mechanism

Proposed Rule 964.3NY(c) describes a Solicited Order Mechanism similar to the one set forth in ISE Rule 716(e). With such a mechanism, an ATP Holder can attempt to execute large (>499 contracts) orders it represents as agent (“Agency Order”) against orders it has solicited. ATP Holders can solicit interest from all market participants to obtain liquidity for Agency Order, with one exception. Solicited orders¹⁹ may not be for the account of NYSE Amex Options Market Makers assigned to the option class. For Complex Orders entered into the Solicited Order Mechanism, all legs of the order must meet the >499 contract requirement. To do so, each order must be entered as All-or-None. Upon entry of the orders at the NBBO or better,²⁰ a broadcast message is disseminated.²¹ As with the broadcast message in ISE’s solicited order mechanism, the broadcast message in the Exchange’s Solicited Order Mechanism will include the series, price, size, and side (buy or sell) of the Agency Order. The Exchange believes that such complete information may lead to better prices for the Agency Order. After the broadcast is disseminated, ATP Holders will have an opportunity to submit Responses (including Responses on behalf of Customers) with the price and size at which they want to participate.²²

¹⁹ The order that is solicited to be the contra-side of an Agency Order is referred to as a “solicited order.”

²⁰ See supra note 7.

²¹ See supra note 14.

²² Responses are not entered into the Exchange’s Consolidated Book during the auction, nor are they displayed to any market participant. Thus, participants in the auctions cannot see the prices or sizes of any Responses during the auctions. In addition, like the Facilitation Mechanism, Customer interest continues to have

As in the ISE rule, to execute against the Agency Order, the Responses, orders and quotes must be of sufficient size in aggregate, and must be at an improved price (or prices) to the proposed execution price. If at the time of execution there is insufficient size to execute the entire Agency Order at an improved price (or prices), the Agency Order will be executed against the solicited order at the proposed execution price so long as, at the time of execution, there are no Customer orders on the Exchange on the opposite side of the Agency Order that could execute against the Agency Order at the proposed execution price. If, however, there are Customer orders on the Exchange on the opposite side of the Agency Order that could execute against the Agency Order at the proposed execution price, and there is sufficient size in all of the Responses, orders and quotes at that price (including the Customer orders) to execute the entire size of the Agency Order, the Agency Order will be executed against such Responses, orders and quotes, and the solicited order will be cancelled.

If at the time of execution there is sufficient size to execute the entire Agency Order at an improved price (or prices), the Agency Order will be executed at the improved price(s), and the solicited order will be cancelled.²³

Both the solicited order and Agency Order will be cancelled if an execution would take place at a price that is inferior to the NBBO at the time the Agency Order is entered into the Solicited Order Mechanism, or if there is Customer interest on the

priority over non-Customer interest at the same price. Similarly, any unfilled Responses (or portions thereof) to an auction are automatically cancelled at the conclusion of the auction.

²³ The aggregate size of all Responses, orders and quotes at each price received during the auction will be used to determine whether the entire Agency Order can be executed at an improved price (or prices).

Exchange on the opposite side of the Agency Order that could execute against the Agency Order at the proposed execution price but there is insufficient size in all of the Responses, orders and quotes at that price (including that Customer interest) to execute the entire Agency Order.²⁴

When executing the Agency Order against the Responses, orders and quotes, or at an improved price (or prices), Customer interest will be executed first. Other Responses, orders and quotes (including Professional Customer orders) participate in the execution of the Agency Order based upon a size pro rata allocation.

Prior to entering Agency Orders into the Solicited Order Mechanism on behalf of a customer, ATP Holders must deliver to the customer a written notification informing the customer that its order may be executed using the Exchange's Solicited Order Mechanism. Such written notification must disclose the terms and conditions contained in this Rule and must be in a form approved by the Exchange.

²⁴ Rule 991NY(b)(9) provides an exception from the Trade-Through requirements in Rule 991NY(a) and the Options Order Protection and Locked/Crossed Market Plan ("Options Linkage Plan") for the execution of orders through auction mechanisms such as the Solicited Order Mechanism. See Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009) (order approving the Options Linkage Plan). In particular, Rule 991NY(b)(9) provides that "[t]he transaction that constituted the Trade-Through was the execution of an order that was stopped at a price that did not Trade-Through an Eligible Exchange at the time of the stop." In describing the exception in the Options Linkage Plan on which Rule 991NY(b)(9) is based, the Commission stated this exception would allow an exchange "to seek price improvement for an order, even if the market moves in the interim, and the transaction ultimately is effected at a price that would trade through the then currently displayed market," and that by allowing this exception, the Commission expects that exchanges "would be able to continue to use price improvement mechanisms, thereby offering market participants potentially better-priced executions." Options Linkage Plan, 74 FR at 39368.

Commentaries

The Exchange is also proposing various commentaries to the proposed Rule.

Commentary .01 clarifies that it would be violative conduct to cancel an initiating order to avoid execution of the initiating order at a better price. The Commentary is based on ISE Rule 716 Supplementary Material .01.

Commentary .02 will clarify that Responses to the Solicited Order or Facilitation Mechanism represent non-firm interest and will not be disclosed to any market participant. Because of this, the Responses to the broadcast message are non-firm for any trading interest that may be entered.

Commentary .03 establishes the time period for Responses to be submitted to all Mechanisms as a random time period (calculated by the applicable Mechanism) that shall not be less than 500 milliseconds and shall not exceed 750 milliseconds. The random time period shall be determined by the Facilitation or Solicitation Mechanism after the receipt of an initiating order or an Agency Order, as applicable, and contemporaneously with the dissemination of the broadcast message. The purpose of using an undisclosed random time period for Responses is that it is designed to provide the Mechanism with a functional difference to distinguish the Mechanism from similar mechanisms offered by other exchanges.

The Exchange believes that the proposed auction timer is sufficiently long to permit ATP Holders to respond in a timely manner to ensure competition among participants so that the agency order has opportunity for price improvement. This is based on the results of a survey conducted by the Exchange of ATP Holders who subscribe to ArcaBook and also act as Market Makers on the Exchange. After reviewing various

auction timers in place at other options exchanges, which range from 100 milliseconds to 1000 milliseconds, the Exchange conducted a survey which asked the permit holders to indicate, “whether or not your firm can respond to an auction lasting *100 milliseconds*.” For the survey of ATP Holders on the Exchange, twenty-three (23) market making firms were surveyed. Of the fourteen (14) respondents who answered the question, eleven (11) (representing 87% of ArcaBook subscriber Market Maker volume) indicated that yes their firm could respond and three responded that their firm could not. Based on this feedback, the Exchange believes that the proposed auction duration of at least *500 milliseconds*, which is the mid-range of approved mechanisms at other market centers, will provide a meaningful opportunity for the market participants on the Exchange to respond to an auction, while at the same time facilitating the prompt execution of orders.

Commentary .04 clarifies that the Solicited Order Mechanism is not to be used by ATP Holders to circumvent limitations on principal transactions as defined in Rule 935NY. The Solicited Order Mechanism provides a facility for ATP Holders that locate liquidity for their Agency Orders. It is not intended for, and prohibits, use of the mechanism for the entry of contra orders that are solicited from affiliated broker-dealers or others with whom the ATP Holder has an arrangement that allows the ATP Holder to realize similar economic benefits from the solicited transaction as it would achieve by executing the Agency Order in whole or in part as principal.

Commentary .05 clarifies how the Facilitation and Solicited Order Mechanisms may be used to execute Complex Orders. Complex Orders will continue to be processed pursuant to Rule 980NY,²⁵ however each leg of the Complex Order must meet the size

²⁵ Rule 980NY governs the trading of electronic Complex Orders on the NYSE

requirements of the respective mechanisms (as required under paragraphs (b) and (c) of proposed Rule 964.3NY). Consistent with existing order entry requirements for electronic Complex Orders, such orders may be entered in net debit/credit prices. Complex Orders entered into either the Facilitation or Solicited Order Mechanisms must be priced at or better than the Exchange's BBO²⁶ for that series.²⁷ Notwithstanding Rule 980NY(c)(i), a Complex Order that is entered into the Facilitation Mechanism or the Solicited Order Mechanism will not immediately execute automatically, in whole or in part, against an individual leg or Complex Order interest resting in the Consolidated Book. The execution of Complex Orders using the Facilitation or Solicited Order Mechanism will occur in the Complex Matching Engine ("CME") as described in Rule 980NY(c). The CME is the mechanism designed to rank and maintain priority for Complex Orders, and also to monitor the bids and offers in the leg markets for possible execution of a Complex Order. By integrating the Facilitation and Solicited Order Mechanisms for Complex Orders into the CME, the Exchange is able to assure that the Facilitation and Solicited Order Mechanisms are in compliance with Complex Order Priority Rules.

Commentary .05 also clarifies that the Priority Rules of Rule 980NY with respect to bids and offers for the individual legs of a Complex Order will be maintained within the Facilitation and Solicited Order Mechanisms, including that described in Commentary .02 of Rule 980NY. Interest resting in the Consolidated Book at the

Amex Options System.

²⁶ Pursuant to Exchange Rule 991NY(b)(7), Complex Trades are exempt from NBBO trade through liability and therefore may trade at or between Exchange BBO without regard to the NBBO.

²⁷ See supra note 7.

commencement of a Facilitation Mechanism or Solicited Order Mechanism process will retain time priority at its price over Responses for Complex Orders that ATP Holders enter during the Facilitation Mechanism or Solicited Order Mechanism auction, and over incoming orders and quotes received during the Facilitation Mechanism or Solicited Order Mechanism auction. This ensures that all resting orders in the Consolidated Book that are entitled to participate in the execution of a Complex Order will do so. In addition, only after such resting orders are fully exhausted will incoming Responses or orders trade against the Complex Order. The processing of resting orders before any Responses or incoming orders is consistent with Complex Order functionality at the ISE.

Commentary .05 also provides that at the conclusion of the Facilitation Mechanism or Solicited Order Mechanism auction, the auctioned order will execute against (i) individual orders or quotes in the leg market that were entered prior to the commencement of the auction, provided that the auctioned order can be executed in full (or in a permissible ratio) against such orders or quotes; and (2) complex orders or quotes that were entered prior to the commencement of the auction. Following any such execution(s), the auctioned order will execute against other complex orders, Responses, and quotes as provided in paragraphs (b) and (c) of this Rule 964.3NY. Individual orders and quotes in the leg market that cause the derived Complex Best Bid/Offer to be improved during the auction and match the best complex orders, Responses, and quotes received during the auction will be filled after complex orders, Responses, and quotes at the same price. The Exchange believes that it is important that the processing of Complex Orders in both the Facilitation and the Solicitation Mechanism is consistent with Exchange procedures for executing Complex Orders in CME. By adopting

provisions from existing Rule 980NY pertaining to the pricing, priority and order allocation, will help ensure the processing of Complex Orders is consistent across the Exchange.

Commentary .06 provides for the handling of market or marketable limit orders received by the Exchange while an initiating order is being auctioned in the Solicitation Mechanism or the Facilitation Mechanism. Anytime the Exchange receives a market or marketable limit order on the opposite side of the market of the initiating order while an initiating order is being auctioned in the Solicited Order Mechanism or the Facilitation Mechanism, the auction will terminate immediately. Specifically, the receipt by the Exchange of a market or marketable limit order on the opposite side as an initiating order will prematurely terminate the auction if at the time of submission the Buy (Sell) limit order price of the unrelated order is equal to or higher (lower) than the National Best Offer (Bid) and either: (i) the Exchange's Best Offer (Bid) is equal to the National Best Offer (Bid); or (ii) the Exchange's Best Offer (Bid) is higher (lower) than the National Best Offer (Bid) and the price of the best auction response is equal to or lower (higher) than the National Best Offer (Bid). In addition, the receipt by the Exchange of a market or marketable limit order on the same side as an initiating order will prematurely terminate the auction if at the time of submission the Buy (Sell) limit order price of the unrelated order is lower (higher) than the National Best Offer (Bid) and its limit price equals or crosses the price of the best auction response. Specifically for Complex Orders, the receipt by the Exchange of a market or marketable limit order (Complex Order or derived Complex Order) on the opposite side as an initiating order will prematurely terminate the auction if at the time of submission: (i) the Buy (Sell) limit order price of

the unrelated Complex Order is equal to or higher (lower) than the Exchange Best Offer (Bid); or (ii) the Buy (Sell) limit order price of the unrelated Complex Order is lower (higher) than the Exchange Best Offer (Bid) and its limit price equals or crosses the price of the best auction response. Upon termination of the auction, the initiating order will be filled as described in (b)(3) or (c)(2), above. In addition, if the initiating order being auctioned is a Complex Order, the provisions of Commentary .05 also will apply to the execution of the auctioned order. Following the execution of the initiating order being auctioned, any remaining auction responses are cancelled and the market order or marketable limit order is processed pursuant to Rule 964NY, Display, Priority, and Order Allocation, Trading Systems.

The following examples describe how market or marketable limit orders received on the opposite side of the market of the initiating order would be handled.

- Assume the NBBO and the Exchange BBO in the relevant series is \$2.00 bid - \$2.10 offer and the initiating order is a buy order for 50 contracts. During the auction, orders are submitted to the Facilitation Mechanism until the price of the best Response order is \$2.07. Then, a market order to sell 20 contracts is submitted to the Exchange. On the Exchange, even though the Response order may only execute against the initiating order, the priority rules still apply, and no order can be executed at a price worse than the best price available to another order. Therefore, the Facilitation Mechanism must terminate, the initiating order must be executed in full against the market order, any leftover Response orders must be cancelled immediately, and then any remainder of the market order or marketable limit order is processed pursuant to Rule 964NY. The result would be the same regardless if the market order was to sell 40 contracts or to sell 60 contracts.
- Assume the NBBO and the Exchange BBO in the relevant series is \$2.00 bid - \$2.10 offer and the initiating order is a buy order for 50 contracts. During the auction, orders are submitted to the Facilitation Mechanism until the price of the best Response order is \$2.07. Then, a marketable limit order to sell 50 contracts at \$2.00 is submitted to the Exchange. On the Exchange, even though Response orders may only execute against the initiating order, the priority rules still apply, and no order can be executed

at a price worse than the best price available to another order. Therefore, the Facilitation Mechanism must terminate, the initiating order must be executed in full against the marketable limit order, any leftover Response order must be cancelled immediately, and then any remainder of the market order or marketable limit order is processed pursuant to Rule 964NY. The result would be the same regardless if the marketable limit order was to sell 40 contracts or to sell 60 contracts.

Commentary .06 also provides that anytime the Exchange receives a market or marketable limit order on the same side of the market of the initiating order while an initiating order is being auctioned in the Solicited Order Mechanism or the Facilitation Mechanism, the auction will terminate immediately. Specifically, the receipt by the Exchange of a market or marketable limit order on the same side as an initiating order will prematurely terminate the auction if at the time of submission the Buy (Sell) limit order price of the unrelated order is equal to or higher (lower) than the National Best Offer (Bid) and either: (i) the Exchange's Best Offer (Bid) is equal to the National Best Offer (Bid); or (ii) the Exchange's Best Offer (Bid) is higher (lower) than the National Best Offer (Bid) and the price of the best auction response is equal to or lower (higher) than the National Best Offer (Bid). In addition, the receipt by the Exchange of a market or marketable limit order on the same side as an initiating order will prematurely terminate the auction if at the time of submission the Buy (Sell) limit order price of the unrelated order is lower (higher) than the National Best Offer (Bid) and its limit price equals or crosses the price of the best auction response. Specifically for Complex Orders, the receipt by the Exchange of a market or marketable limit order (Complex Order or derived Complex Order) on the same side as an initiating order will prematurely terminate the auction if at the time of submission: (i) the Buy (Sell) limit order price of the unrelated Complex Order is equal to or higher (lower) than the Exchange Best Offer

(Bid); or (ii) the Buy (Sell) limit order price of the unrelated Complex Order is lower (higher) than the Exchange Best Offer (Bid) and its limit price equals or crosses the price of the best auction response. Upon termination of the auction, the initiating order will be filled as described in (b)(3) or (c)(2), above. Following the execution of the initiating order being auctioned, any remaining auction responses are executed against the market order, or marketable limit order and then any remainder of the market order, or marketable limit order is processed pursuant to the Display, Priority and Parity Rule 964NY. In addition, if the initiating order being auctioned is a Complex Order, the provisions of Commentary .05 also will apply to the execution of the auctioned order. Proposed Commentary .06 is similar, but not identical to provisions in the BOX rules.²⁸

The following examples describe how market or marketable limit orders received on the same side of the market of the initiating order would be handled.

- Assume the NBBO and the Exchange BBO in the relevant series is \$2.00 bid - \$2.10 offer and the initiating order is a buy order for 50 contracts. During the auction, orders are submitted to the Facilitation Mechanism until the price of the best Response order is \$2.07. Then, a market order to buy 50 contracts is submitted to the Exchange. If the Facilitation Mechanism continued, the market order would have been executed at \$2.10, a price that would have violated the Exchange's priority rules because the best Response order is at \$2.07 is at a better price than \$2.10. On the Exchange, even though the Response order may only execute against the initiating order, the priority rules still apply, and no order can be executed at a price worse than the best price available to another order. Therefore, the Facilitation Mechanism must terminate, the initiating order must be executed in full, any remaining auction responses are executed against the market order or marketable limit order, and then any remainder

²⁸ See BOX Rule 7150(h)(5)(i). Proposed Commentary .06 differs from the BOX PIP in its treatment of unrelated orders in several aspects including but not limited to the following: (i) the Exchange does not have an order comparable to a BOX-Top Order for use in the mechanisms; and (ii) the Exchange does not provide one penny better than the NBBO executions of unrelated orders on the opposite side of the market of the initiating order when the Exchange BBO is equal to the NBBO at the time of execution.

of the market order or marketable limit order is processed pursuant to Rule 964NY. The result would be the same regardless if the market order was to buy 40 contracts or to buy 60 contracts.

- Assume the NBBO and the Exchange BBO in the relevant series is \$2.00 bid - \$2.10 offer and the initiating order is a buy order for 50 contracts. During the auction, orders are submitted to the Facilitation Mechanism until the price of the best Response order is \$2.07. Then, a marketable limit order to buy 50 contracts at \$2.10 is submitted to the Exchange. If the Facilitation Mechanism continued, the marketable limit order would have been executed at \$2.10, a price that would have violated the Exchange's priority rules because the best Response order is at \$2.07 is at a better price than \$2.10. On the Exchange, even though Response orders may only execute against initiating orders, the priority rules still apply, and no order can be executed at a price worse than the best price available to another order. Therefore, the Facilitation Mechanism must terminate, the initiating order must be executed in full, any remaining auction responses are executed against the market order or marketable limit order, and then any remainder of the market order or marketable limit order is processed pursuant to Rule 964NY. The result would be the same regardless if the marketable limit order was to buy 40 contracts or to buy 60 contracts.

The following example describes how a marketable Complex Order received on the same side of the market of the initiating Complex Order would be handled in the Facilitation Mechanism.

- Complex Strategy: BUY 100 IBM Apr 95 Call/ BUY 100 IBM Apr 95 Put - \$7.34 Debit

- Leg Markets:

IBM Apr 95 Call	2.35 x 10	2.45 x 10
IBM Apr 95 Put	4.70 x 15	4.90 x 15
Derived BBO = 7.05 – 7.35 10 x 10		

- An auction is initiated with an RFQ broadcast to all who subscribe. Responses are received in the following order: Response A 7.34 credit x 25, Response B 7.31 credit x 20, Response C 7.32 credit x 35. 720 milliseconds after the auction begins, another Complex Order is received to buy the same strategy 50 times with a net debit of 7.35, and locking the leg market BBO. The auction immediately ends, and the orders are executed as follows:

- The initiating Complex Order (7.34 debit) is executed - 20 times against Response B at prices of 2.42 and 4.89 (7.31 net), 35 times against Response C at prices of 2.43 and 4.89 (7.32 net), 40 times against the contra guarantee order (facilitating order's 40% entitlement) at prices of 2.44, and 4.90 (7.34 net), 5 times against Response A at prices of 2.44 and 4.90 (7.34 net)
- The inbound 50-lot Complex Order with a net price of 7.35 will trade against the Response A 20 times at prices of 2.44 and 4.90 (7.34 net), the leg markets 10 times, at prices of 2.45 and 4.90 (7.35 net), and the balance of 20 will post in the complex order book paying a net debit of 7.35.
 - The market after in the leg markets is: IBM Apr 95 Call 2.35 x 10, 2.50 x 10, IBM Apr 95 Put 4.70 x 15, 4.90 x 5.
The market after in the complex order book is: 7.35 debit x 20 – 7.40 credit x 10 (derived BBO).

Commentary .07 affirms that it would be a violation of just and equitable principles of trade for an ATP Holder to enter orders, quotes, Agency Orders or Responses to disrupt or manipulate the Facilitation Mechanism or the Solicited Order Mechanism.

Commentary .08 notes that the Orders and Responses to the Solicited Order or Facilitation Mechanism may be entered and executed in penny increments, regardless of the Minimum Price Variation (“MPV”) designated for the series. All of the auction mechanisms are designed to provide an opportunity for possible price improvement which would not be as readily possible if Orders and Responses were only permitted in the series MPV. This provision is similar to provisions in the CBOE rules.²⁹

Lastly, Commentary .09 clarifies that references to size pro rata allocation is the allocation of an order to market participants on the same basis as in Rule 963NY(e)(5)(A)(ii). For example, assume there are 200 contracts to be allocated, Market Maker #1 is bidding for 100, Respondent #2 is bidding for 200 and Market Maker #3 is

²⁹ See CBOE Rule 6.74B(a)(3).

bidding for 500. Under the "size pro rata" allocation formula, Market Maker #1 will be allocated 25 contracts ($200 \times 100 \div 800$); Respondent #2 will be allocated 50 contracts ($200 \times 200 \div 800$); and Market Maker #3 will be allocated 125 contracts ($200 \times 500 \div 800$).

Section 11(a) of the Exchange Act

Section 11(a) of the Exchange Act prohibits any member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated persons exercises discretion ("covered accounts"), unless an exception applies.³⁰ Section 11(a)(1) contains a number of exceptions for principal transactions by members and their associated persons. As set forth below, the Exchange believes that the proposed rules for Facilitation and Solicited Order Mechanisms are consistent with the requirements of Section 11(a) and the rules thereunder.³¹ The Exchange also believes that the proposed rules for Facilitation and Solicited Order Mechanisms are consistent with the requirements of Section 11(a) and the rules thereunder, whether the order is for a standard order, Complex to Complex Order, or a Stock-Option Order.

In this regard, Section 11(a)(1)(A) provides an exception from the prohibitions in Section 11(a) for dealers acting in the capacity of market makers. With respect to on-

³⁰ 15 U.S.C. 78k(a)(1). The Exchange believes that the proposed Customer Cross Order has no nexus with Section 11(a) in that it is a customer-to-customer cross that does not involve principal transactions, nor covered accounts.

³¹ The Exchange also believes that the Exchange's proposed rules for the Customer Cross Order are consistent with the requirements of Section 11(a) and the rules thereunder. The Exchange believes that the crossing of two Customer orders in the proposed Customer Cross Order would not involve prohibitive conduct under Section 11(a), thus an analysis of applicable exceptions is unnecessary.

and off-floor market makers on the Exchange, the Exchange believes that orders sent by them for covered accounts to the proposed Facilitation and Solicited Order Mechanisms would qualify for this exception from Section 11(a).³² The Exchange also believes that a Complex to Complex Order or a Stock-Option Order sent by on- and off-floor market makers on the Exchange for covered accounts to the proposed Facilitation and Solicited Order Mechanisms would qualify for this exception from Section 11(a).

In addition to this market maker exception, Rule 11a2-2(T) under the Exchange Act, known as the “effect versus execute” rule, provides exchange members with an exception from Section 11(a) by permitting them, subject to certain conditions, to effect transactions for covered accounts by arranging for an unaffiliated member to execute the transactions on the exchange.³³ To comply with the “effect versus execute” rule’s conditions, a member: (i) must transmit the order from off the exchange floor; (ii) may not participate in the execution of the transaction once it has been transmitted to the member performing the execution;³⁴ (iii) may not be affiliated with the member executing the transaction on the floor through the facilities of the Exchange; and (iv) with respect to an account over which the member has investment discretion, neither the member nor its associated person may retain any compensation in connection with effecting the transaction except as provided in the rule.³⁵

³² The Exchange also believes that Customer orders sent to on-and off-floor market makers on the Exchange to execute as a Customer Cross Order would qualify for this exception.

³³ 17 CFR 240.11a2-2(T).

³⁴ The member, however, may participate in clearing and settling the transaction. See Securities Exchange Act Release No. 14563 (March 14, 1978), 43 FR 11542 (March 17, 1978).

³⁵ 17 CFR 240.11a2-2(T).

With respect to off-floor ATP Holders, the Exchange believes that orders sent by them for covered accounts to the proposed Facilitation and Solicited Order Mechanisms would qualify for this “effect versus execute” exception from Section 11(a), as described below.³⁶ In this regard, the first condition of Rule 11a2-2(T) is that orders for covered accounts be transmitted from off the exchange floor. The Exchange represents that orders for covered accounts from off-floor ATP Holders sent to the Facilitation and Solicited Order Mechanisms would be transmitted from remote terminals that are off the Exchange floor directly to the mechanisms by electronic means.³⁷ In the context of other automated trading systems, the Commission has found that the off-floor transmission requirement is met if a covered account order is transmitted from a remote location directly to an exchange’s floor by electronic means.³⁸ The second condition of Rule

³⁶ The Exchange also believes that Customer orders sent to off-floor ATP Holders to execute as a Customer Cross Order would qualify for this exception if necessary and applicable. The Customer order would be transmitted from remote terminals that are off the Exchange floor directly to the mechanisms by electronic means and execute against another Customer order which by definition would not involve the member participation in the order execution. For the second condition, the execution of the order in the mechanism would not depend on the ATP Holder entering the order, but rather what other orders are present and the priority of those orders. For the third condition, the Exchange represents that the Customer Cross Order mechanism is designed so that no ATP Holder has any special or unique trading advantage in the handling of its orders after transmitting its orders to the mechanisms. For the fourth condition, the Exchange recognizes that ATP Holders relying on Rule 11a2-2(T) for transactions effected through the Customer Cross Order must comply with this condition of the Rule if necessary and applicable.

³⁷ In the alternative, orders for a covered account may be sent by an off-floor ATP Holder to an unaffiliated Floor Broker for entry into the auction mechanisms. Floor Brokers, however, may not enter orders for their own covered accounts into the auction mechanisms from on the floor, or transmit such orders from on the floor to off of the floor for entry into the auction mechanisms.

³⁸ See, e.g., Securities Exchange Act Release Nos. 59154 (December 23, 2008), 73 FR 80468 (December 31, 2008) (SR-BSE-2008-48) (approving, among other

11a2-2(T) requires that the member not participate in the execution of its order once the order is transmitted to the floor for execution.³⁹ The Exchange represents that, upon submission to the Facilitation and Solicited Order Mechanisms, an order will be executed automatically pursuant to the rules set forth for each of the mechanisms. In particular, execution of an order sent to the mechanisms depends not on the ATP Holder entering the order, but rather on what other orders are present and the priority of those orders. Thus, at no time following the submission of an order is an ATP Holder able to acquire control or influence over the result or timing of order execution.⁴⁰ Rule 11a2-2(T)'s third condition requires that the order be executed by an exchange member who is unaffiliated

things, the equity rules of the Boston Stock Exchange ("BSE")); 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR-NASDAQ-2007-004 and SR-NASDAQ-2007-080) (approving rules governing the trading of options on The NASDAQ Options Market); 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (SR-BSE-2002-15) (approving the Boston Options Exchange as an options trading facility of BSE); 15533 (January 29, 1979), 44 FR 6084 (January 31, 1979) (approving the Amex Post Execution Reporting System, the Amex Switching System, the Intermarket Trading System, the Multiple Dealer Trading Facility of the Cincinnati Stock Exchange, the PCX Communications and Execution System, and the Philadelphia Stock Exchange Automated Communications and Execution System) ("1979 Release"); and 14563 (March 14, 1978), 43 FR 11542 (March 17, 1978) (approving NYSE's Designated Order Turnaround System) ("1978 Release").

³⁹ The description above covers the universe of the types of ATP Holders (i.e., on- and off-floor market makers, off-floor firms that are not market makers, and Floor Brokers).

⁴⁰ The Exchange notes that an ATP Holder may cancel or modify the order, or modify the instructions for executing the order, but that such instructions would be transmitted from off of the floor of the Exchange. The Commission has stated that the non-participation requirement is satisfied under such circumstances so long as such modifications or cancellations are also transmitted from off the floor. See 1978 Release (stating that the "non-participation requirement does not prevent initiating members from canceling or modifying orders (or the instructions pursuant to which the initiating member wishes orders to be executed) after the orders have been transmitted to the executing member, provided that any such instructions are also transmitted from off the floor").

with the member initiating the order. The Commission has stated that the requirement is satisfied when automated exchange facilities, such as the Facilitation and Solicited Order Mechanisms, are used, as long as the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange.⁴¹ The Exchange represents that the Facilitation and Solicited Order Mechanisms are designed so that no ATP Holder has any special or unique trading advantage in the handling of its orders after transmitting its orders to the mechanisms. Rule 11a2-2(T)'s fourth condition requires that, in the case of a transaction effected for an account with respect to which the initiating member or an associated person thereof exercises investment discretion, neither the initiating member nor any associated person thereof may retain any compensation in connection with effecting the transaction, unless the person authorized to transact business for the account has expressly provided otherwise by written contract referring to Section 11(a) of the Act and Rule 11a2-2(T) thereunder.⁴² The Exchange recognizes that ATP Holders relying on

⁴¹ In considering the operation of automated execution systems operated by an exchange, the Commission noted that, while there is not an independent executing exchange member, the execution of an order is automatic once it has been transmitted into the system. Because the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange, the Commission has stated that executions obtained through these systems satisfy the independent execution requirement of Rule 11a2-2(T). See 1979 Release.

⁴² See 17 CFR 240.11a2-2(T)(a)(2)(iv). In addition, Rule 11a2-2(T)(d) requires a member or associated person authorized by written contract to retain compensation, in connection with effecting transactions for covered accounts over which such member or associated persons thereof exercises investment discretion, to furnish at least annually to the person authorized to transact business for the account a statement setting forth the total amount of compensation retained by the member in connection with effecting transactions for the account during the period covered by the statement which amount must be exclusive of all amounts paid to others during that period for services rendered to effect such transactions.

Rule 11a2-2(T) for transactions effected through the Facilitation and Solicited Order Mechanisms must comply with this condition of the Rule.

The Exchange also believes that a Complex Order or a Stock/Option Order sent by off-floor ATP Holders to the floor for execution would qualify for this exception. The Exchange represents that a Complex Order or a Stock/Option Order for covered accounts from off-floor ATP Holders sent to the Facilitation and Solicited Order Mechanisms would be transmitted from remote terminals that are off the Exchange floor directly to the mechanisms by electronic means. For the second condition, the execution of the Complex Order or a Stock/Option Order in the mechanism would not depend on the ATP Holder entering the Complex Order or a Stock/Option Order, but rather what other Complex Order or a Stock/Option Order are present and the priority of those orders. For the third condition, the Exchange represents that the Facilitation and Solicited Order Mechanisms are designed so that no ATP Holder has any special or unique trading advantage in the handling of its orders, including a Complex Order or a Stock/Option Order after transmitting its orders to the mechanisms. For the fourth condition, the Exchange recognizes that ATP Holders relying on Rule 11a2-2(T) for transactions effected through the Facilitation and Solicited Order Mechanisms must comply with this condition of the Rule if necessary and applicable.

Implementation

The Exchange will announce the implementation date of the proposed rule change in a Trader Update to be published no later than 60 days following Commission approval.

See also 1978 Release (stating “[t]he contractual and disclosure requirements are designed to assure that accounts electing to permit transaction-related compensation do so only after deciding that such arrangements are suitable to their interests”).

The implementation date will be no later than 60 days following publication of the Trader Update announcing Commission approval.

2. Statutory Basis

For the reasons set forth above, the Exchange believes the proposed rule change is consistent with Section 6(b) of the Act⁴³ in general, and furthers the objectives of Section 6(b)(5) of the Act, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. In particular, the proposal is based on existing rules of another exchange,⁴⁴ and will provide ATP Holders and Customers a mechanism to execute various crossing transactions electronically and with an opportunity for price improvement, while ensuring equal access to exposed orders for all market participants. In this regard, the Facilitation and Solicited Order Mechanisms are intended to be beneficial to investors because they are designed to provide investors seeking to effect large options orders with an opportunity for price improvement and additional liquidity. In addition, the Facilitation and Solicited Order Mechanisms promote equal access by providing ATP Holders that subscribe to ArcaBook with the opportunity to interact with orders in the mechanisms. In this regard, any ATP Holder can subscribe to the options data provided through ArcaBook. The mechanisms are also non-discriminatory by using a random timer for the exposure period that is not disclosed to any participants nor to Exchange staff, and is not even determined until the broadcast message is sent.

⁴³ 15 U.S.C. 78f (b).

⁴⁴ See ISE Rules 716 and 721, and attendant Supplementary Materials.

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 Facilitation and Solicited Order Mechanisms are designed to increase competition for order flow on the Exchange in a manner intended to be beneficial to investors because they are designed to provide investors seeking to effect large options orders with an opportunity for price improvement and additional liquidity. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues who offer similar functionality. The Exchange believes the proposed rule change is precompetitive because it would enable the Exchange to provide market participants with functionality that is similar to that of other options exchanges.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be 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-2013-09 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-2013-09. 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 inspection and copying in the Commission's Public Reference Section, 100 F Street, NE, Washington, DC 20549-1090. Copies of the filing will also be available for inspection

and copying at the NYSE's principal office and on its Internet website at www.nyse.com. 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-2013-09 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.⁴⁵

Kevin M. O'Neill
Deputy Secretary

⁴⁵ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

New text is underlined;
Deleted text is in [brackets]

NYSE MKT Rules

Trading of Option Contracts

Section 900NY. Rules Principally Applicable to Trading of Option Contracts

Rule 964.3NY. Crossing Orders on the Exchange's System

(a) Customer Cross Orders are automatically executed upon entry provided that the execution is at or between the best bid and offer on the Exchange and (i) is not at the same price as Customer orders on the Consolidated Book, and (ii) will not trade through the NBBO, (except for Complex Orders).

(1) Customer Cross Orders will be automatically canceled if they cannot be executed.

(2) Customer Cross Orders may only be entered in the regular trading increments applicable to the options class under Rule 960NY.

(3) Commentary .01 to Rule 935NY applies to the entry and execution of Customer Cross Orders.

(4) ATP Holders may not use the Customer Cross Order to execute Complex Orders, as defined in Rule 900.3NY(e), or any Stock/Option Order or Stock/Complex Order as defined in Rule 900.3NY(h).

(b) *Facilitation Mechanism.* The Facilitation Mechanism is a process by which an ATP Holder can execute a transaction wherein the ATP Holder seeks to facilitate an order (initiating order) it represents as agent, and/or a transaction wherein the ATP Holder solicited interest to execute against an initiating order it represents as agent. ATP Holders must be willing to execute the entire size of initiating orders entered into the Facilitation Mechanism. Initiating orders entered into the Facilitation Mechanism cannot be modified, but may be cancelled, subject to the requirement in Commentary .01 of this Rule 964.3NY.

(1) The size of the initiating order subject to facilitation must be at least fifty contracts and the facilitation price, at the time the initiating order is entered into the Facilitation Mechanism must be at or better than the (i) NBBO for single leg orders or (ii) the BBO for Complex Orders.

(2) Upon the entry of an order into the Facilitation Mechanism, a broadcast message will be sent noting the series, price, side (buy or sell), and size of the initiating order. ATP Holders will be given an opportunity to enter Responses (including Responses on behalf of Customers) with the prices and sizes at which they want to participate in the facilitation of the order. Responses, orders and quotes received during the auction that are larger than the size of the initiating order will be treated as if they were the same size as the initiating order for purposes of the auction.

(3) At the end of the period given for the entry of Responses, the initiating order will be automatically executed.

(i) Unless there is sufficient size to execute the entire initiating order at a better price, Customer interest (Responses and orders) at the time the initiating order is executed that is priced higher (lower) than the facilitation price will be executed first at the facilitation price. All other Responses, orders and quotes (including Professional Customer orders) at the time the initiating order is executed that are priced higher (lower) than the facilitation price will be executed at their limit price, thereby providing the initiating order a better price for the number of contracts associated with such higher (lower) priced trading interest.

(ii) The facilitating ATP Holder will execute at least forty percent (40%) of the original size of the initiating order, but only after all better-priced Responses, orders and quotes, as well as Customer interest at the facilitation price, are executed in full. If the size of the Responses, orders and quotes (including Professional Customer orders) at the facilitation price exceeds the size of the remaining unexecuted portion of the initiating order, such Responses, orders and quotes will participate in the execution of that portion of the initiating order based upon a size pro rata allocation, and any unfilled Responses (or portions thereof) will be automatically cancelled at the conclusion of the process. If, however, the Responses, orders and quotes at the facilitation price are not of sufficient size to fill the remaining unexecuted portion of the initiating order, such Responses, orders and quotes will be executed against the initiating order and the remainder of the initiating order will be executed against the facilitating ATP Holder's order.

(iii) Upon entry of an order into the Facilitation Mechanism, the facilitating ATP Holder can elect to automatically match the price and size of Responses, orders and quotes received during the exposure period up to

a specified limit price or without specifying a limit price. In this case, the facilitating ATP Holder will be allocated its full size at each price point, or at each price point within its limit price if a limit is specified, until a price point is reached where the balance of the order can be fully executed, provided Customer interest at such price point is filled first. At such price point, the facilitating ATP Holder shall be allocated additional contracts to ensure receiving at least forty percent (40%) of the original size of the initiating order, but only after Customer interest at such price point is filled first. Thereafter, if the size of the Responses, orders and quotes at such price point exceeds the size of the remaining unexecuted portion of the initiating order, such Responses, orders and quotes will participate in the execution of that portion of the initiating order based upon a size pro rata allocation, and any unfilled Responses (or portions thereof) will be automatically cancelled at the conclusion of the process. If, however, the Responses, orders and quotes at such price point are not of sufficient size to fill the remaining unexecuted portion of the initiating order, such Responses, orders and quotes will be executed against the initiating order and the remainder of the initiating order will be executed against the facilitating ATP Holder's order. An election to automatically match better prices cannot be cancelled or altered during the exposure period.

(c) *Solicited Order Mechanism.* The Solicited Order Mechanism is a process by which an ATP Holder can attempt to execute orders for 500 contracts or more that it represents as agent (the "Agency Order") against contra orders that it solicited (the "solicited order"). Each order entered into the Solicited Order Mechanism shall be designated as all-or-none.

(1) Upon entry of both orders into the Solicited Order Mechanism at a proposed execution price, a broadcast message will be sent noting the series and the size, price, and side (buy or sell) of the Agency Order. The proposed execution price at the time the Agency Order is entered into the Solicited Order Mechanism, must be (i) at or better than the NBBO for single leg orders or (ii) at or better than the BBO for Complex Orders. ATP Holders will be given an opportunity to enter Responses (including Responses on behalf of Customers) with the prices and sizes at which they would be willing to participate in the execution of the Agency Order.

(2) At the end of the period given ATP Holders to enter Responses, the Agency Order will be automatically executed in full or cancelled.

(i) If at the time of execution there is insufficient size to execute the entire Agency Order at an improved price (or prices), the Agency Order will be executed against the solicited order at the proposed execution price so long as, at the time of execution, there are no Customer orders on the Exchange on the opposite side of the Agency Order that can execute against the Agency Order at the proposed execution price. If, however,

there are Customer orders on the Exchange on the opposite side of the Agency Order that could execute against the Agency Order at the proposed execution price, and there is sufficient size in all of the Responses, orders and quotes at that price (including the Customer orders) to execute the entire size of the Agency Order, the Agency Order will be executed against such Responses, orders and quotes, and the solicited order will be cancelled.

(ii) If at the time of execution there is sufficient size to execute the entire Agency Order at an improved price (or prices), the Agency Order will be executed at the improved price(s), and the solicited order will be cancelled. The aggregate size of all orders, quotes and Responses at each price received during the auction will be used to determine whether the entire Agency Order can be executed at an improved price (or prices).

(iii) Both the solicited order and Agency Order will be cancelled if an execution would take place at a price that is inferior to the NBBO (or BBO for Complex Orders) at the time the Agency Order is entered into the Solicited Order Mechanism, or if there are Customer orders on the Exchange on the opposite side of the Agency Order that could execute against the Agency Order at the proposed execution price but there is insufficient size in all of the Responses, orders and quotes at that price (including the Customer orders) to execute the entire Agency Order.

(iv) When executing the Agency Order against the Responses, orders and quotes in accordance with paragraph (i) above, or at an improved price (or prices) in accordance with paragraph (ii) above, Customer orders will be executed first. Other Responses, orders and quotes (including Professional Customer orders) participate in the execution of the Agency Order based upon a size pro rata allocation.

(3) Prior to entering Agency Orders into the Solicited Order Mechanism on behalf of a customer, ATP Holders must deliver to the customer a written notification informing the customer that its order may be executed using the Exchange's Solicited Order Mechanism. Such written notification must disclose the terms and conditions contained in this Rule and must be in a form approved by the Exchange.

Commentary:

.01 It will be a violation of an ATP Holder's duty of best execution to its customer if it were to cancel an initiating order to avoid execution of the order at a better price. The availability of the Facilitation Mechanism does not alter an ATP Holder's best execution duty to get the best price for its customer. Accordingly, while initiating orders can be canceled during the time period given for the entry of Responses, if an ATP Holder were to cancel an initiating order when there was a superior price available on the Exchange

and subsequently re-enter the initiating order at the same facilitation price after the better price was no longer available without attempting to obtain that better price for its customer, there would be a presumption that the ATP Holder did so to avoid execution of the initiating order in whole or in part by other brokers at the better price.

.02 Responses to the Facilitation or Solicitation Mechanism represent non-firm interest that may be cancelled at any time prior to execution. Responses are not displayed to any market participants.

.03 The time given to ATP Holders to enter Responses under paragraphs (b) and (c) shall be a random time period determined by the Facilitation or Solicited Order Mechanism, as applicable, that shall not be less than 500 milliseconds and shall not exceed 750 milliseconds. The random time period shall be determined by the Facilitation or Solicitation Mechanism after the receipt of an initiating order or an Agency Order, as applicable.

.04 Under paragraph (c) above, ATP Holders may enter contra orders that are solicited. The Solicited Order Mechanism provides a facility for ATP Holders that locate liquidity for their Customer orders. ATP Holders may not use the Solicited Order Mechanism to circumvent Exchange Rule 935NY limiting principal transactions. This may include, but is not limited to, ATP Holders entering contra orders that are solicited from (1) affiliated broker-dealers, or (2) broker-dealers with which the ATP Holder has an arrangement that allows the ATP Holder to realize similar economic benefits from the solicited transaction as it would achieve by executing the customer order in whole or in part as principal. Additionally, any solicited contra orders entered by ATP Holders to trade against Agency Orders may not be for the account of a market maker that is appointed to the options class.

.05 Complex Orders. ATP Holders may use the Facilitation Mechanism and the Solicited Order Mechanism according to paragraphs (b) and (c) of this Rule 964.3NY to execute Complex Orders, as defined in Rule 900.3NY(e). Complex Orders will continue to be processed in accordance with Rule 980NY, however each leg of the Complex order must meet the order size requirements in (b) or (c), as applicable. Complex Orders may be entered at a net debit/credit price. Each leg of a Complex Order entered into one of the mechanisms must be priced at or better than the Exchange BBO for that series, but do not have to be priced at or better than the NBBO. Notwithstanding Rule 980NY(c)(i), a Complex Order that is entered into the Facilitation Mechanism or the Solicited Order Mechanism will not immediately execute automatically, in whole or in part, against an individual leg or Complex Order interest resting in the Consolidated Book. The execution of Complex Orders using the Facilitation Mechanism and the Solicited Order Mechanism will occur within the Complex Matching Engine, as described in Rule 980NY(c). The priority provisions in Rule 980NY, Commentary .02 will continue to apply to Complex Orders executed through the Facilitation Mechanism and the Solicited Order Mechanism. Interest resting in the Consolidated Book at the commencement of a Facilitation Mechanism or Solicited Order Mechanism process will retain time priority at its price over Responses for Complex Orders that ATP Holders enter during the

Facilitation Mechanism or Solicited Order Mechanism auction, and over incoming orders and quotes received during the Facilitation Mechanism or Solicited Order Mechanism auction. At the conclusion of the Facilitation Mechanism or Solicited Order Mechanism auction, the auctioned order will execute against (i) individual orders or quotes in the leg market that were entered prior to the commencement of the auction, provided that the auctioned order can be executed in full (or in a permissible ratio) against such orders or quotes; and (2) complex orders or quotes that were entered prior to the commencement of the auction. Following any such execution(s), the auctioned order will execute against other complex orders, Responses, and quotes as provided in paragraphs (b) and (c) of this Rule 964.3NY. Individual orders and quotes in the leg market that cause the derived Complex Best Bid/Offer to be improved during the auction and match the best complex orders, Responses, and quotes received during the auction will be filled after complex orders, Responses, and quotes at the same price.

.06 Early Termination of an Auction.

(a) Anytime a market or marketable limit order on the opposite side of the market of the initiating order is received by the Exchange while an initiating order is being auctioned in the Solicited Order Mechanism or the Facilitation Mechanism, the auction will terminate immediately. (1) Specifically, the receipt by the Exchange of a market or marketable limit order on the opposite side of an initiating order will prematurely terminate the auction if at the time of submission:

(A) the Buy (Sell) limit order price of the unrelated order is equal to or higher (lower) than the National Best Offer (Bid) and either: (i) the Exchange's Best Offer (Bid) is equal to the National Best Offer (Bid); or (ii) the Exchange's Best Offer (Bid) is higher (lower) than the National Best Offer (Bid) and the price of the best auction response is equal to or lower (higher) than the National Best Offer (Bid); or

(B) the Buy (Sell) limit order price of the unrelated order is lower (higher) than the National Best Offer (Bid) and its limit price equals or crosses the price of the best auction response.

(2) Specifically for Complex Orders, the receipt by the Exchange of a market or marketable limit order (Complex Order or derived Complex Order) on the opposite side of an initiating order will prematurely terminate the auction if at the time of submission:

(A) the Buy (Sell) limit order price of the unrelated Complex Order is equal to or higher (lower) than the Exchange Best Offer (Bid); or

(B) the Buy (Sell) limit order price of the unrelated Complex Order is lower (higher) than the Exchange Best Offer (Bid) and its limit price equals or crosses the price of the best auction response.

(3) Upon termination of the auction, the initiating order will be filled as described in (b)(3) or (c)(2), above. In addition, if the initiating order being auctioned is a Complex Order, the provisions of Commentary .05 also will apply to the execution of the auctioned order. Following the execution of the initiating order being auctioned, any remaining auction responses are cancelled and the market order or marketable limit order is processed pursuant to the Display, Priority and Parity Rule 964NY.

(b) Anytime a market or marketable limit order on the same side of the market of the initiating order is received by the Exchange while an initiating order is being auctioned in the Solicited Order Mechanism or the Facilitation Mechanism, the auction will terminate immediately. (1) Specifically, the receipt by the Exchange of a market or marketable limit order on the same side as an initiating order will prematurely terminate the auction if at the time of submission:

(A) the Buy (Sell) limit order price of the unrelated order is equal to or higher (lower) than the National Best Offer (Bid) and either: (i) the Exchange's Best Offer (Bid) is equal to the National Best Offer (Bid); or (ii) the Exchange's Best Offer (Bid) is higher (lower) than the National Best Offer (Bid) and the price of the best auction response is equal to or lower (higher) than the National Best Offer (Bid); or

(B) the Buy (Sell) limit order price of the unrelated order is lower (higher) than the National Best Offer (Bid) and its limit price equals or crosses the price of the best auction response.

(2) Specifically for Complex Orders, the receipt by the Exchange of a market or marketable limit order (Complex Order or derived Complex Order) on the same side as an initiating order will prematurely terminate the auction if at the time of submission:

(A) the Buy (Sell) limit order price of the unrelated Complex Order is equal to or higher (lower) than the Exchange Best Offer (Bid); or

(B) the Buy (Sell) limit order price of the unrelated Complex Order is lower (higher) than the Exchange Best Offer (Bid) and its limit price equals or crosses the price of the best auction response.

(3) Upon termination of the auction, the initiating order will be filled as described in (b)(3) or (c)(2), above. In addition, if the initiating order being auctioned is a Complex Order, the provisions of Commentary .05 also will apply to the execution of the auctioned order. Following the execution of the initiating order being auctioned, any remaining auction responses are executed against the market order, or marketable limit order and then any remainder of the market order or marketable limit order is processed pursuant to the Display, Priority and Parity Rule 964NY.

.07 It shall be considered conduct inconsistent with just and equitable principles of trade for any ATP Holder to enter orders, quotes, Agency Orders, or Responses for the

purpose of disrupting or manipulating the Facilitation Mechanism or the Solicited Order Mechanism.

.08 Penny Prices. Orders and Responses may be entered into the Facilitation or Solicited Order Mechanism and receive executions at penny increments. Customer interest in the market that receives the benefit of the execution price under paragraph (b)(3)(i) of this Rule 964.3NY may also receive executions at penny increments.

.09 Size Pro Rata Allocation. As used in this Rule 964.3NY, size pro rata allocation means that an order is filled in the same manner as an order is filled pursuant to Rule 963NY(e)(5)(A)(ii).
