Paper Comments

• Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2015–70. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–Phlx–2015–70 and should be submitted on or before September 3, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Jill M. Peterson,

Assistant Secretary.

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[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75642; File No. SR–NYSEMKT–2015–55]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 961 To Establish Exchange Rules Governing the Give Up of a Clearing Member by ATP Holders and Conforming Changes to Rules 960 and 954NY

August 7, 2015

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 July 27, 2015, 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 and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 961 to establish Exchange rules governing the give up of a Clearing Member by ATP Holders and proposes conforming changes to Rules 960 and 954NY. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

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

1. Purpose

The Exchange proposes to amend Rule 961 to establish Exchange rules governing the ''give up'' of a Clearing Member[4] by ATP Holders. In addition, the Exchange proposes changes to Rules 960 and 954NY to reflect proposed amendments to Rule 961. The Exchange believes that this proposal to include the give-up process in Exchange rules would result in the fair and reasonable use of resources by both the Exchange and ATP Holders. In addition, the proposed change would align the Exchange with competing options exchanges that have recently adopted rules consistent with this proposal.[5]

By way of background, to enter transactions on the Exchange, an ATP Holder must either be a Clearing Member or must have a Clearing Member agree to accept financial responsibility for all of its transactions. Specifically, Rule 961 provides that every Clearing Member will be responsible for the clearance of Exchange option transactions of ATP Holder that gives up the Clearing Member's name in an Exchange option transaction, provided the clearing member has authorized such member or member organization to give up its name with respect to Exchange option transactions.[6] In addition, Rule 954NY(a) (Order Identification) provides that for each transaction in which an ATP Holder participates, the ATP Holder must give up the name of the Clearing Member through whom the transaction will be cleared. The

[4] Rule 900.2NY (11) defines ''Clearing Member'' as an Exchange ATP Holder which has been admitted to membership in the Options Clearing Corporation pursuant to the provisions of the Rules of the Options Clearing Corporation.

[5] *See* Securities and Exchange Act Release No. 72668 (July 24, 2014), 79 FR 44229 (July 30, 2014) (SR–CBOE–2014–048) (order approving proposed rule change relating to the ''give up'' process, the process by which a Trading Permit Holder ''gives up'' or selects and indicates the Clearing Trading Permit Holder responsible for the clearance of an Exchange transaction). *See also* Securities Exchange Act Release No. 72325 (June 5, 2014), 79 FR 33614 (June 11, 2014) (Notice). The Exchange notes that this proposal is a copycat filing, which is substantially similar in all material respects to the give-up process approved on CBOE, except as noted herein. *See infra* n. 14 (regarding rule text in amended Rule 961(f) explicitly describing procedures for Guarantors to reject a trade).

[6] *See also* Rule 960 (General Comparison and Clearance Rule) (providing that all Exchange transactions shall be submitted to the Exchange for comparison of trade information, and all compared transactions shall be cleared through the Options Clearing Corporation and shall be subject to the Rules of the Options Clearing Corporation).

Exchange has determined that it would be beneficial to amend Rule 961 and specify in detail the give-up process and to modify Rules 960 and 954NY, as described below. The Exchange believes the proposed changes would result in a more comprehensive streamlined give up process.

Designated Give Ups and Guarantors

The Exchange proposes to amend current Rule 961 by replacing the current rule text [7] with details regarding the give up procedure for ATP Holders executing transactions on the Exchange, and to re-title this rule ''Give Up of a Clearing Member.'' [8] As amended, Rule 961 would provide that an ATP Holder may only give up a ''Designated Give Up'' or its ''Guarantor,'' as those roles would be defined in the Rule.

Specifically, amended Rule 961 would introduce and define the term ''Designated Give Up'' as any Clearing Member that an ATP Holder (other than a Market Maker [9]) identifies to the Exchange, in writing, as a Clearing Member the ATP Holder requests the ability to give up. To designate a ''Designated Give Up,'' an ATP Holder must submit written notification to the Exchange, in a form and manner prescribed by the Exchange (''Notification Form''). A copy of the proposed Notification Form is included with this filing in Exhibit 3. Similarly, should an ATP Holder no longer want the ability to give up a particular Designated Give Up, as proposed, the ATP Holder would have to submit written notification to the Exchange, in a form and manner prescribed by the Exchange.

The Exchange notes that, as proposed, an ATP Holder may designate any Clearing Member as a Designated Give Up. Additionally, there would be no minimum or maximum number of Designated Give Ups that an ATP Holder must identify. The Exchange would notify a Clearing Member, in writing and as soon as practicable, of each ATP Holder that has identified it as a Designated Give Up. The Exchange, however, would not accept any instructions, and would not give effect to any previous instructions, from a Clearing Member not to permit an ATP Holder to designate the Clearing Member as a Designated Give Up. Further, the Exchange notes that there is no subjective evaluation of an ATP Holder's list of proposed Designated Give Ups by the Exchange. Rather, the Exchange proposes to process each list as submitted and ensure that the Clearing Members identified as Designated Give Ups are in fact current Clearing Members, as well as confirm that the Notification Forms are complete (*e.g.,* contain appropriate signatures) and that the Options Clearing Corporation (''OCC'') numbers listed for each Clearing Member are accurate.

As amended, Rule 961 would also define the term ''Guarantor'' as a Clearing Member that has issued a Letter of Guarantee or Letter of Authorization for the executing ATP Holder, pursuant to Rules of the Exchange [10] that is in effect at the time of the execution of the applicable trade. An executing ATP Holder may give up its Guarantor without such Guarantor being a ''Designated Give Up.'' The Exchange notes that Rule 924NY provides that a Letter of Guarantee is required to be issued and filed by each Clearing Member through which a Market Maker clears transactions. Accordingly, a Market Maker would only be enabled to give up a Guarantor that had executed a Letter of Guarantee on its behalf pursuant to Rule 932NY. Thus, Market Makers would not identify any Designated Give Ups.

As noted above, amended Rule 961 would provide that an ATP Holder may give up only (i) the name of a Clearing Member that has previously been identified and processed by the Exchange as a Designated Give Up for that ATP Holder, if not a Market Maker or (ii) its Guarantor.[11] This proposed requirement would be enforced by the Exchange's trading systems. Specifically, the Exchange has configured its trading systems to only accept orders from an ATP Holder that identifies a Designated Give Up or Guarantor for that ATP Holder and would reject any order entered by an ATP Holder that designates a give up that is not at the time a Designated Give Up or Guarantor of the ATP Holder.[12] The Exchange notes that it would notify an ATP Holder in writing when an identified Designated Give Up becomes ''effective'' (*i.e.,* when a Clearing Member that has been identified by the ATP Holder as a Designated Give Up has been enabled by the Exchange's trading systems to be given up). A Guarantor for an ATP Holder, by virtue of having an effective Letter of Authorization or Letter of Guarantee on file with the Exchange, would be enabled to be given up for that ATP Holder without any further action by the ATP Holder. The Exchange notes that this configuration (*i.e.,* the trading system accepting only orders that identify a Designated Give Up or Guarantor) is intended to help reduce ''keypunch errors'' and prevent ATP Holders from mistakenly giving up the name of a Clearing Member that it does not have the ability to give up a trade.

Acceptance of a Trade

The Exchange proposes in paragraph (e) of amended Rule 961 that a Designated Give Up and a Guarantor may, in certain circumstances, determine not to accept a trade on which its name was given up. If a Designated Give Up or Guarantor determines not to accept a trade, the proposed Rule would provide that it may reject the trade in accordance with the procedures described more fully below under ''Procedures to Reject a Trade.''

As proposed, a Designated Give Up may determine to not accept a trade on which its name was given up so long as it believes in good faith that it has a valid reason not to accept the trade and follows the procedures to reject a trade in proposed paragraph (f) of the amended Rule.[13]

The Exchange also proposes to provide that a Guarantor may opt to not accept (and thereby reject) a non-Market Maker trade on which its name was given up, provided that the following steps are completed: (i) Another Clearing Member agrees to be the give up on the trade; (ii) that other Clearing Member has notified both the Exchange and executing ATP Holder in writing of its intent to accept the trade; and (iii) the procedures in Rule 961(f) are

[7] *See* Rule 961 (Responsibility of Clearing Members for Exchange Option Transactions) (''Every member organization which is a clearing member of the Options Clearing Corporation shall be responsible for the clearance of the Exchange option transactions of such member organization and of each member or member organization who gives up the name of such clearing member in an Exchange option transaction, provided the clearing member has authorized such member or member organization to give up its name with respect to Exchange option transactions.'').

[8] As discussed below, proposed paragraph (h) of amended Rule 961 addresses and clarifies the financial responsibility of Clearing Members, and, as such, the Exchange believes the original rule text is rendered unnecessary.

[9] For purposes of this rule, references to ''Market Maker'' refer to ATP Holders acting in the capacity of a Market Maker and include all Exchange Market Maker capacities *e.g.,* Lead Market Makers. As explained below, Market Makers give up Guarantors that have executed a Letter of Guarantee on behalf of the Marker Maker, pursuant to Rule 932NY; Market Makers need not give up Designated Give Ups.

[10] *See* Rule 924NY (Letters of Guarantees); Rule 932NY (Letters of Authorization).

[11] As described below, amended Rule 961(f) provides that a Designated Give Up or Guarantor may, under certain circumstances, reject a trade on which it is given up and another Clearing Member may agree to accept the subject trade.

[12] *See id.*

[13] An example of a valid reason to reject a trade may be that the Designated Give Up does not have a customer for that particular trade.

followed. In addition, the give up must be changed to the Clearing Member that has agreed to accept the trade in accordance with the procedures in paragraph (f) of Rule 961. A Guarantor may not reject a trade given up by a Market Maker.

The Exchange notes that only a Designated Give Up or Guarantor whose name was initially given up on a trade is permitted to reject the trade, subject to the conditions noted above. The Clearing Member or Guarantor that becomes the give up on a rejected trade may not also reject the trade.

Procedures to Reject a Trade

The Exchange proposes to include in amended Rule 961 procedures that must be followed and completed in order for a Designated Give Up or Guarantor [14] to reject a trade. Specifically, a Designated Give Up can only change the give up to (1) another Clearing Member that has agreed to be the give up on the subject trade (''New Clearing Member''), provided the New Clearing Member has notified the Exchange and the executing ATP Holder in writing of its intent to accept the trade in a form and manner prescribed by the Exchange (''Give-Up Change Form for Accepting Clearing Member'');[15] or (2) a Guarantor for the executing ATP Holder, provided the Designated Give Up has notified the Guarantor in writing that it is changing the give up on the trade to the Guarantor.[16] Further, as proposed, a Guarantor, can only reject a non-Market Maker trade[17] for which its name was the initial give up by an ATP Holder and change the give up to another Clearing Member that has agreed to be the give up on the subject trade, provided the New Clearing Member has notified the Exchange and the executing ATP Holder in writing of its intent to accept the trade (*i.e.,* by filling out a Give-Up Change Form for Accepting Clearing Member). A Guarantor that becomes the give up on a trade as a result of the Designated Give Up rejecting the trade is prohibited from not accepting the trade/rejecting the trade. This prohibition would provide finality to the trade and ensure that the trade is not repeatedly reassigned from one Clearing Member to another.

As proposed, a Guarantor may only reject a non-Market Maker trade for which its name was the initial give up by an ATP Holder, if another Clearing Member has agreed to be the give up on the trade and has notified the Exchange and executing ATP Holder in writing of its intent to accept the trade. If a Guarantor of an ATP Holder decides to reject a trade on the trade date, it must follow the same procedures to change the give up as would be followed by a Designated Give Up. The ability to make any changes, either by the Designated Give Up or Guarantor, to the give up pursuant to this procedure would end at the Trade Date Cutoff Time.

Finally, once the give up on a trade has been changed, the Designated Give Up or Guarantor making the change must immediately thereafter notify in writing the Exchange, the parties to the trade and the Clearing Member given up of the change.

Rejection on Trade Date

As proposed, a trade may only be rejected on (i) the trade date or (ii) the business day following the trade date (''T+1'') (except that transactions in expiring options series on the last trading day prior to expiration may not be rejected on T+1).

If, on the trade date, a Designated Give Up decides to reject a trade, or another Clearing Member agrees to be the give up on a trade for which a Guarantor's name was given up, the Exchange proposes that the rejecting Designated Give Up or Guarantor must notify, in writing, the executing ATP Holder or its designated agent, as soon as possible and attempt to resolve the disputed give up. This requirement puts the executing ATP Holder on notice that the give up on the trade may be changed and provides the executing ATP Holder and Designated Give Up or Guarantor an opportunity to resolve the dispute. The Exchange notes that a Designated Give Up or Guarantor may request from the Exchange the contact information of the executing ATP Holder or its designated agent for any trade it intends to reject.

Following notification to the executing ATP Holder on the trade date, a Designated Give Up or Guarantor may request the ability from the Exchange to change the give up on the trade, in a form and manner prescribed by the Exchange (''Give-Up Change Form''). A copy of the proposed Give-Up Change Form is included with this filing in Exhibit 3. Provided that the Exchange is able to process the request prior to the trade input cutoff time established by the OCC (or the applicable later time if the Exchange receives and is able to process a request to extend its time of final trade submission to the OCC) (''Trade Date Cutoff Time''), the Exchange would provide the Designated Give Up or Guarantor the ability to make the change to the give up on the trade to either (1) another Clearing Member or, as applicable, (2) the executing ATP Holder's Guarantor.

Rejection on T+1

The Exchange acknowledges that some clearing firms may not reconcile their trades until after the Trade Date Cutoff Time. A clearing firm, therefore, may not realize that a valid reason exists to not accept a particular trade until after the close of the trading day or until the following morning. Accordingly, the Exchange proposes to establish a procedure for a Designated Give Up or Guarantor of an ATP Holder that is not a Market Maker to reject a trade on the following trade day (''T+1'').[18] The Exchange notes that a separate procedure must be established for T+1 changes because to effectively change the give up on a trade on T+1 an offsetting reversal must occur—as opposed to merely identifying a different Clearing Member on the trade.

Consistent with amended Rule 961(f), a Designated Give Up or Guarantor [19] that wishes to reject a trade on T+1 would have to notify the executing ATP Holder, in writing, to try to attempt and resolve the dispute. In addition, a Designated Give Up or Guarantor may contact the Exchange and request the ability to reject the trade on T+1. Provided that the Exchange is receives the request prior to 12:00 p.m. (ET) on T+1 (''T+1 Cutoff Time''), the Exchange would provide the Designated Give Up or Guarantor the ability to enter trade records into the Exchange's systems that would effect a transfer of the trade to

[14] The Exchange notes that amended Rule 961(f) contains rule text explicitly describing procedures for Guarantors to reject a trade that is not contained in the rule text approved in SR–CBOE–2014–048. *See supra* n. 5. The Exchange, however, believes that this additional description serves only to clarify, as opposed to alter, the procedure approved in SR–CBOE–2014–048.

[15] A copy of the proposed Give-Up Change Form for Accepting Clearing Member is included with this filing in Exhibit 3. Also, as noted above, a New Clearing Member cannot later reject the trade. Requiring the New Clearing Member to provide notice to the Exchange of its intent to accept the trade and prohibiting the New Clearing Member from later rejecting the trade would provide finality to the trade and ensure that the trade is not repeatedly reassigned from one Clearing Member to another.

[16] The Guarantor would not need to notify the Exchange of its intent to accept the trade.

[17] A Guarantor of an ATP Holder that is a Market Maker may not reject a trade for which its name was given up in relation to such Market Maker.

[18] The Exchange proposes that no changes to the give up on trades in expiring options series that take place on the last trading day prior to their expiration may take place on T+1. Rather, a Designated Give Up or Guarantor may only reject these transactions on the trade date until the Trade Date Cutoff Time in accordance with the trade date procedures described above.

[19] The Exchange again notes that, as proposed, only a Guarantor whose name was initially given up is permitted to reject a trade (*i.e.,* a Guarantor cannot reject a trade on T+1 for which it has become the give up as a result of a Designated Give Up not accepting the trade).

another Clearing Member. As noted above, if a New Clearing Member agrees to the give up on a trade, it would be required to inform the Exchange of its acceptance via the Give-Up Change Form for Accepting Clearing Members. A Guarantor that becomes the new give up on T+1 would not need to notify the Exchange of its intent to accept the trade, nor would it need to submit any notification or form. The Designated Give Up however, would be required to provide written notice to the Guarantor that it will be making this change on T+1. The Exchange notes that the ability for either a Designated Give Up or Guarantor to make these changes would end at the T+1 Cutoff Time and would provide finality and certainty as to which Clearing Member will be the give up on the subject trade.

In addition, once any change to the give up has been made, the Designated Give Up or Guarantor making the change would be required to immediately thereafter notify, in writing, the Exchange, the parties to the trade and the Clearing Member given up, of the change.

As discussed above, the Exchange proposes to allow ATP Holders that are not Market Makers to identify any Clearing Member as a Designated Give Up. The Exchange's proposal does not permit a Clearing Member to provide the Exchange instructions to prohibit a particular ATP Holder from giving up the Clearing Member's name. This limitation prevents the Exchange from being placed in the position of arbiter among a Clearing Member, an ATP Holder and a customer. The Exchange recognizes, however, that ATP Holders should not be given the ability to give up any Clearing Member without also providing a method of recourse to those Clearing Members which, for the prescribed reasons discussed above,[20] should not be obligated to clear certain trades for which they are given up. Accordingly, the Exchange is proposing to provide Designated Give Ups and Guarantors the ability to reject a trade, provided each has a good faith basis for doing so. Ultimately, however, the trade must clear with a clearing firm and there must be finality to the trade. The Exchange believes that the executing ATP Holder's Guarantor, absent a Clearing Member that agrees to accept the trade, should become the give up on any trade which a Designated Give Up determines to reject in accordance with these proposed rule provisions, because the Guarantor, by virtue of having issued a Letter of Guarantee or Letter of Authorization, has already accepted financial responsibility for all Exchange transactions made by the executing ATP Holder. The Exchange, however, does not want to prevent a Clearing Member that agrees to accept the trade from being able to do so, and accordingly, the Exchange also provides that a New Clearing Member may become the give up on a trade in accordance with the procedure discussed above.

Other Give Up Changes

The Exchange proposes to modify the text of Rule 954NY(a), related to the give up requirement for ATP Holders, to simply cross reference Rule 961 given the detailed give up process proposed by the Exchange in that Rule.

The Exchange also proposes in paragraph (g) of amended Rule 961 three scenarios in which a give up on a transaction may be changed without Exchange involvement. First, if an executing ATP Holder has the ability through an Exchange system to do so, it could change the give up on a trade to another Designated Give Up or its Guarantor. The Exchange notes that ATP Holders often make these changes when, for example, there is a keypunch error (*i.e.,* an error that involves the erroneous entry of an intended clearing firm's OCC clearing number). The ability of the executing ATP Holder to make any such change would end at the Trade Date Cutoff Time.[21]

Next, the modified rule would provide that, if a Designated Give Up has the ability to do so, it may change the give up on a transaction for which it was given up to (i) another Clearing Member affiliated with the Designated Give Up or (ii) a Clearing Member for which the Designated Give Up is a back office agent. The ability to make such a change would end at the Trade Date Cutoff Time. The procedures to reject a trade, as set forth in proposed subparagraph (f) of Rule 961 and described above, would not apply in these instances. The Exchange notes that often Clearing Members themselves have the ability to change a give up on a trade for which it was given up to another Clearing Member affiliate or Clearing Member for which the Designated Give Up is a back office agent. Therefore, Exchange involvement in these instances is not necessary.

In addition, the proposed rule provides that if both a Designated Give Up or Guarantor and a Clearing Member have the ability through an Exchange system to do so, the Designated Give Up or Guarantor and Clearing Member may each enter trade records into the Exchange's systems on T+1 that would effect a transfer of the trade in a non-expired option series from that Designated Give Up to that Clearing Member. Likewise, if a Guarantor of an ATP Holder trade (that is not a Market Maker trade) and a Clearing Member have the ability through an Exchange system to do so, the Guarantor and Clearing Member may each enter trade records into the Exchange's systems on T+1 that would effect a transfer of the trade in a non-expired option series from that Guarantor to that Clearing Member. The Designated Give Up or Guarantor could not make any such change after the T+1 Cutoff Time. The Exchange notes that a Designated Give Up (or Guarantor) must notify, in writing, the Exchange and all the parties to the trade, of any such change made pursuant to this provision. This notification alerts the parties and the Exchange that a change to the give up has been made. Finally, the Designated Give Up (or Guarantor) would be responsible for monitoring the trade and ensuring that the other Clearing Member has entered its side of the transaction timely and correctly. If either a Designated Give Up (or Guarantor) or Clearing Member cannot themselves enter trade records into the Exchange's systems to effect a transfer of the trade from one to the other, the Designated Give Up (or Guarantor) may request the ability from the Exchange to enter both sides of the transaction in accordance with amended Rule 961 and pursuant to the procedures set forth in subparagraph (f)(3) of that Rule.

Responsibility

The Exchange proposes in paragraph (h) of amended Rule 961 to state that a Clearing Member would be financially responsible for all trades for which it is the give up at the Applicable Cutoff Time (for purposes of the proposed rule, the ''Applicable Cutoff Time'' shall refer to the T+1 Cutoff Time for non-expiring option series and to the Trade Date Cutoff Time for expiring option series). The Exchange notes, however, that nothing in the proposed rule shall preclude a different party from being responsible for the trade outside of the Rules of the Exchange pursuant to OCC Rules, any agreement between the applicable parties, other applicable rules and regulations, arbitration, court proceedings or otherwise.[22] Moreover,

[20] *See supra* n. 13.

[21] After that time, the ATP Holder would no longer have the ability to make this type of change, as the trade will have been submitted to OCC.

[22] *See* proposed Commentary .01 to Rule 691 (''Nothing herein will be deemed to preclude the clearance of Exchange transactions by a non- ATP Holder to the By-Laws of the Options Clearing Corporation so long as a Clearing Member who is

Continued

in processing a request to provide a Designated Give Up the ability to change a give up on a trade, the Exchange would not consider or validate whether the Designated Give Up has satisfied the requirements of this Rule in relation to having a good faith belief that it has a valid reason not to accept a trade or having notified the executing ATP Holder and attempting to resolve the disputed give up prior to changing the give up. Rather, upon request, the Exchange would always provide a Designated Give Up or Guarantor the ability to change the give up or to reject a trade pursuant to the proposed Rule so long as the Designated Give Up or Guarantor, and New Clearing Member, if applicable, have provided a completed set of give up Change Forms within the prescribed time period.

The Exchange notes that given the inherent time constraints in making a change to a give up on a transaction, the Exchange would not be able to adequately consider the above-mentioned requirements and make a determination within the prescribed period of time. Rather, the Exchange would examine trades for which a give up was changed pursuant to subparagraphs (e) and (f) after the fact to ensure compliance with the requirements set forth in amended Rule 961. Particularly, the Exchange notes that the give up Change Forms that Designated Give Ups, Guarantors and New Clearing Members must submit, would help to ensure that the Exchange obtains, in a uniform format, the information that it needs to monitor and regulate this Rule and these give up changes in particular. This information, for example, would better allow the Exchange to determine whether the Designated Give Up had a valid reason to reject the trade, as well as assist the Exchange in cross checking and confirming that what the Designated Give Up or Guarantor said it was going to do is what it actually did (*e.g.,* check that the New Clearing Member identified in the give up Change Form was the Clearing Member that actually was identified on the trade as the give up). Additionally, the proposed Rule does not preclude these factors from being considered in a different forum (*e.g.,* court or arbitration), nor does it preclude any Clearing Member that violates any provision of amended Rule 961 from being subject to discipline in accordance with Exchange rules.

Finally, the Exchange proposes to eliminate as obsolete the reference in Rule 960 requiring that ''[a]ll option transactions involving orders stored in the Opening Automated Report Service shall be cleared and compared in accordance with the provisions of Rule 950(m) and Commentary thereto,'' [23] which the Exchange believes will add clarity and consistency to Exchange rules

Implementation

The Exchange proposes to announce the implementation of the proposed rule change via Trader Update, to be published no later than thirty (30) days following the effectiveness of this proposal. The implementation date will be no sooner than fourteen (14) day and no later than thirty (30) days following publication of the Trader Update. This additional time would afford the Exchange and ATP Holders the time to submit and process the forms required under the proposed rule.

2. Statutory Basis

The Exchange believes that the proposed change is consistent with Section 6(b) of the Act,[24] in general, and furthers the objectives of Section 6(b)(5),[25] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitation transactions in securities, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [26] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

First, detailing in the rules how ATP Holders would give up Clearing Members and how Clearing Members may ''reject'' a trade provides transparency and operational certainty. The Exchange believes additional transparency removes a potential impediment to, and would contribute to perfecting, the mechanism for a free and open market and a national market system, and, in general, would protect investors and the public interest. Moreover, the Exchange notes that amended Rule 961 requires ATP Holders to adhere to a standardized process to ensure a seamless administration of the Rule. For example, all notifications relating to a change in give up must be made in writing. The Exchange believes that these requirements will aid the Exchange's efforts to monitor and regulate ATP Holders and Clearing Members as they relate to amended Rule 961 and changes in give ups, thereby protecting investors and the public interest.

Additionally, the Exchange believes that its proposed give up rule strikes the right balance between the various views and interests of market participants. For example, although the rule allows ATP Holders that are not Market Makers to identify any Clearing Member as a Designated Give Up, it also provides that ATP Holders would receive notice of any ATP Holder that has designated it as a Designated Give Up and provides for a procedure for a Clearing Member to ''reject'' a trade in accordance with the Rules, both on the trade date and T+1.

The Exchange recognizes that ATP Holders should not be given the ability to give up any Clearing Members without also providing a method of recourse to those Clearing Members which, for the prescribed reasons discussed above, should not be obligated to clear certain trades for which they are given up. The Exchange believes that providing Designated Give Ups the ability to reject a trade within a reasonable amount of time is consistent with the Act as, pursuant to the proposed rule, the Designated Give Ups may only do so if they have a valid reason and because ultimately, the trade can always be assigned to the Guarantor of the executing ATP Holder if a New Clearing Firm is not willing to step in and accept the trade. A trade must clear with a clearing firm and there must be finality to the trade. Absent a New Clearing Member that agrees to accept the trade, the Exchange believes that the executing ATP Holder's Guarantor, should become the give up on any trade that a Designated Give Up determines to reject, in accordance with the proposed rule provisions, because the Guarantor, by virtue of having issued a Letter of Guarantee or Letter of Authorization, has already accepted financial responsibility for all Exchange transactions made by the executing ATP Holder. Therefore, amended Rule 961 is reasonable and provides certainty that a Clearing Member will always be responsible for a trade, which protects investors and the public interest.

The Exchange notes that amended Rule 961 does not preclude a different party than the party given up from being

an ATP Holder is also designated as having responsibility under these Rules for the clearance and comparison of such transactions.'').

[23] The Exchange also proposes to capitalize the two references to ''clearing member'' in this rule to signify the defined term, which the Exchange believes would add clarity and consistency to Exchange rules.

[24] 15 U.S.C. 78f(b).

[25] 15 U.S.C. 78f(b)(5).

[26] *Id.*

responsible for the trade outside of the Rules of the Exchange, pursuant to OCC Rules, any agreement between the applicable parties, other applicable rules and regulations, arbitration, court proceedings or otherwise. The Exchange acknowledges that it would not consider whether the Designated Give Up has satisfied the requirements of this Rule in relation to having a good faith belief that it has a valid reason not to accept a trade or having notified the executing ATP Holder and attempting to resolve the disputed give up prior to changing the give up, due to inherent time restrictions. However, the Exchange believes investor and public interest are still protected as the Exchange will still examine trades for which a give up was changed pursuant to subparagraphs (e) and (f) of amended Rule 961 after the fact to ensure compliance with the requirements set forth in the Rule. As noted above, the implementation of a standardized process and the requirement that certain notices be in writing would assist monitoring any give up changes and enforcing amended Rule 961.

Further, the Exchange notes that the Rule does not preclude these factors from being considered in a different forum (*e.g.,* court or arbitration) nor does it preclude any ATP Holder or Clearing Member that violates any provision of amended Rule 961 from being subject to discipline by the Exchange.

Finally, the Exchange believes that making non-substantive, technical corrections to the rule text (*i.e.,* capitalizing the defined term ''clearing member'') and deleting obsolete references in Rule 960 would add clarity and consistency to Exchange rules to the benefit of investors and the general public.

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

The Exchange does not believe that this proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change would impose an unnecessary burden on intramarket competition because it would apply equally to all similarly situated ATP Holders. The Exchange also notes that, should the proposed changes make the Exchange more attractive for trading, market participants trading on other exchanges can always elect to become ATP Holders on the Exchange to take advantage of the trading opportunities. In addition, as noted above, the Exchange believes the proposed rule change is pro-competitive and would allow the Exchange to compete more effectively with other options exchanges that have already adopted changes to their give up process that are substantially identical to the changes proposed by this filing.[27]

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

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[28] and Rule 19b–4(f)(6) thereunder.[29]

A proposed rule change filed under Rule 19b–4(f)(6)[30] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[31] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal is substantially similar to that of another exchange that has been approved by the Commission.[32] Waiver of the 30-day operative delay will allow the Exchange to implement the proposed rule change, which is designed to bring greater operational certainty and efficiency to the give up process, in accordance with the implementation schedule outlined above. Therefore, the Commission designates the proposed rule change to be operative upon filing.[33]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[34] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEMKT–2015–55 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NYSEMKT–2015–55. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE.,

[27] *See supra* n. 5.

[28] 15 U.S.C. 78s(b)(3)(A).

[29] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[30] 17 CFR 240.19b–4(f)(6).

[31] 17 CFR 240.19b–4(f)(6)(iii).

[32] *See supra* n. 5.

[33] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[34] 15 U.S.C. 78s(b)(2)(B).

Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2015–55, and should be submitted on or before September 3, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–19872 Filed 8–12–15; 08:45 am]

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[35] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75650; File No. SR–EDGX–2015–18]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing of Amendment Nos. 1 and 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1, 2, and 3 Thereto, To Establish Rules Governing the Trading of Options on the EDGX Options Market

August 7, 2015.

I. Introduction

On April 30, 2015, EDGX Exchange, Inc. (''EDGX'' or ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt rules to govern the trading of options on the Exchange (referred to herein as ''EDGX Options Exchange'' or ''EDGX Options''). The proposed rule change was published for comment in the **Federal Register** on May 19, 2015.[3] On June 25, 2015, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On August 3, 2015, EDGX filed Amendment No. 1 to the proposed rule change.[6] On August 6, 2015, EDGX filed Amendment No. 2 to the proposed rule change.[7] On August 7, 2015, the Exchange filed Amendment No. 3 to the proposed rule change.[8] The Commission received three comment letters on the proposal.[9] On August 7, 2015, the Exchange responded to the comment letters.[10] The Commission is publishing this notice to solicit comment on Amendment Nos. 1 and 2 to the proposed rule change and is approving the proposed rule change, as modified by Amendment Nos. 1, 2, and 3 thereto, on an accelerated basis.

II. Comment Summary

The Commission received three comments letters regarding the proposal and the Exchange's Response thereto.[11] One commenter opposed the proposal because ''we do not need additional options exchanges.''[12] The commenter stated that additional options exchanges would lead to fragmentation causing ''a thinner order book at all options exchange[s] and allows fast intermediaries to take advantage of retail orders.''[13]

Another commenter stated that it opposes any priority model for an options exchange other than price-time priority.[14] The commenter believed that ''pure price-time priority is the best and fairest model for a healthy and robust market.''[15] The commenter further noted that price-time priority ''is the best and fairest model because it rewards firms who are the first people willing to trade at a better price.''[16] The commenter states that exchanges with pro-rata allocation models adopt rules which allow directed orders and preferences without justification. According to the commenter, ''[p]ro-rata allocation rewards firms that simply quote large size, for no particularly clear benefit to the market.''[17]

In response to the commenters' concerns, EDGX notes that both the ISE Letter and the Hardcastle Letter ''raised concerns with proposed paragraph (f)(2) of proposed [EDGX Options] Rule 21.8, which would have provided a small size order . . . allocation to Directed Market Makers . . . .''[18] The Exchange further notes that it eliminated that subparagraph from the proposed rule change in Amendment No. 1.[19] The Response also states that the ''additional points raised in the Hardcastle Letter and the Shatto Letter are either not responsive to the issues raised in Proposal or are aimed at existing elements of U.S. market structure that have been previously approved by the Commission and are available on other exchanges and in the marketplace generally.''[20] Consequently, EDGX does not believe these comments are ''germane to the proposal.''[21]

III. Discussion and Commission Findings

After careful review of the proposal, as modified by Amendment Nos. 1, 2,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 74949 (May 13, 2015), 80 FR 28745 (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 75297, 80 FR 37672 (July 1, 2015).

[6] Amendment No. 1 deleted proposed EDGX Options Rule 21.8(f)(2), which would have granted participation entitlements to Directed Market Makers trading against small size orders defined as five or fewer contracts. In addition, Amendment No. 1 provided more detailed information regarding participation entitlements for Directed Market Makers. Among other things, the Exchange represented that the proposed rules provide the necessary protections against coordinated action between a Directed Market Maker and order entry firms and that EDGX Options will proactively conduct surveillance for, and enforce against, such violations.

[7] In Amendment No. 2, the Exchange represented that it is a participant in the Plan for the Selection and Reservation of Securities Symbols. Amendment No. 2 also clarified that the Penny Pilot Program (discussed below) is scheduled to expire on June 30, 2016 and the Exchange would be permitted to replace any penny pilot issues that have been delisted with the next most actively traded multiply listed options classes that are not yet included in the penny pilot, based on trading activity in the previous six months. The replacement issues may be added to the penny pilot on the second trading day following July 1, 2015 and January 1, 2016.

[8] Amendment No. 3 made technical changes to Amendments Nos. 1 and 2. Because Amendment No. 3 is technical in nature, the Commission is not required to publish it for public comment.

[9] *See* letters to Brent J. Fields, Secretary, Commission, from Suzanne H. Shatto, dated July 7, 2015 (''Shatto Letter''); from Michael J. Simon, Secretary and General Counsel, International Securities Exchange, LLC (''ISE''), dated July 28, 2015 (''ISE Letter''); and from Mark D. Wilson, Director of Technical Risk Management & Exchange Relations and Brent E. Hippert, President and Chief Compliance Officer, Hardcastle Trading USA, LLC, dated August 3, 2015 (''Hardcastle Letter'').

[10] *See* letter to Brent J. Fields, Secretary, Commission, from Anders Franzon, VP, Associate General Counsel, EDGX, dated August 7, 2015 (''Response'').

[11] *See supra* notes 9 and 10. The ISE Letter focused exclusively on the proposed five lot entitlement for Directed Market Makers and did not address any other aspect of the proposed EDGX Options rules. The Exchange subsequently deleted this provision from the proposed rule change and therefore the Commission has not addressed the ISE Letter in this order.

[12] *See* Shatto Letter, *supra* note 9.

[13] *See id.*

[14] *See* Hardcastle Letter, *supra* note 9, at 1.

[15] *Id.*

[16] *See* Hardcastle Letter, *supra* note 9, at 3.

[17] *See* Hardcastle Letter, *supra* note 9, at 3. The Hardcastle Letter was received after the expiration of the comment period and raises broader market structure policy concerns that are outside of the scope of the present proposal.

[18] *See* Response, supra *note* 10, at 2.

[19] *See id.*

[20] *See id.*

[21] *See id.*