requirements of Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[6] in general, and Section 6(b)(4) of the Act,[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

In particular, the Exchange believes the proposed rule change will provide greater clarity to market participants regarding the Exchange's rules. In addition, the Exchange believes that the proposed rule change will help ensure that the Exchange's rules regarding Exemptions from Position Limits will always be in alignment with FINRA's rules. Accordingly, this proposal is designed to harmonize the exemptions from position limits rules across exchanges and will help protect investors.

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 not necessary or appropriate in furtherance of the purposes of the Act. In this regard and as indicated above, the Exchange notes that the rule change being proposed is substantially similar to BX's and BATS's rules regarding Exemptions from Position Limits.[8]

The Exchange believes this proposed rule change is necessary to establish uniform rules regarding Exemptions from Position Limits. Specifically, the proposed rule change will bring clarity and consistency to Exchange Rules by harmonizing the exemptions from position limits rules across exchanges and will therefore help protect investors. The Exchange does not believe the proposed rule change will impose any burden on any intramarket competition as it applies to all Participants. In addition, the Exchange does not believe the proposed rule filing will bring any unnecessary burden on intermarket competition as it is consistent with the ''Exemption from Position Limits'' rules of BX and BATS.[9]

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] *See supra,* note 3.

[9] *See supra,* note 3.

C. 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 comments on 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 if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–BOX–2013–46 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–BOX–2013–46. 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–BOX–2013–46 and should be submitted on or before November 12, 2013.

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 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.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–24663 Filed 10–21–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70588; File No. SR–NYSEMKT–2013–59]

Self-Regulatory Organizations; NYSE MKT LLC; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change Relating to NDX and RUT Combination Orders

October 1, 2013.

I. Introduction

On June 21, 2013, NYSE MKT LLC (''NYSE MKT'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4

[12] 17 CFR 200.30–3(a)(12).

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

thereunder,[2] a proposed rule change to amend NYSE MKT Rule 965NY to revise the procedures governing the trading of NDX and RUT combination orders. The proposed rule change was published for comment in the **Federal Register** on July 9, 2013.[3] The Commission received two comments regarding the proposal.[4] NYSE MKT responded to the comments on August 19, 2013.[5] On August 20, 2013, the Commission extended to October 7, 2013, the time within which the Commission must approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[6] This order institutes proceedings under Section 19(b)(2)(B) of the Act[7] to determine whether to approve or disapprove the proposed rule change.

II. Description of the Proposal

NYSE MKT Rule 965NY(b) provides procedures for trading Nasdaq 100 Index (''NDX'') and Russell 2000 Index (''RUT'') combination orders.[8] Currently, NYSE MKT Rule 965NY(b) allows an ATP Holder holding an NDX or RUT combination order to execute the order at the best net debit or credit so long as (A) no leg of the order would trade at a price outside the currently displayed bids or offers in the trading crowd or bids or offers in the NDX or RUT Consolidated Book; and (B) at least one leg of the order would trade at a price that is better than the corresponding bid or offer in the NDX or RUT Consolidated Book.[9] An NDX or RUT combination order that is not executed immediately may be executed and printed at the prices originally quoted for each of the component option series within two hours after the time of the original quotes, provided that, at the time of execution, no individual leg of the NDX or RUT combination order may trade ahead of the corresponding bid or offer in the NDX or RUT Consolidated Book.[10]

NYSE MKT proposes to amend NYSE MKT Rule 965NY(b) to implement a one-year pilot program that would revise the procedures for trading NDX and RUT combination orders. NYSE MKT believes that the pilot program's revised trading procedures would make the trading of NDX and RUT combination orders more competitive with the trading of combinations in Nasdaq 100 Index futures and Russell 2000 Index futures on the Chicago Mercantile Exchange (''CME'') and the Intercontinental Exchange (''ICE''), respectively.[11]

NYSE MKT notes that its rules currently preclude trading the legs of an NDX or RUT combination order outside of the prevailing market quotes in the individual component series legs.[12] Further, NYSE MKT states that an NDX or RUT combination order must be executed at the prices originally quoted, with no window to find liquidity.[13] According to NYSE MKT, the rules of the CME and ICE allow spread and combination executions to take place without regard to market prices, and these executions are bound only by the daily price limit.[14] Although NYSE MKT believes that traders prefer to use NDX or RUT combinations, rather than futures, to hedge positions in NDX or RUT options to avoid the execution risk and increased costs involved in trading in the futures markets, NYSE MKT believes that the constraints in NYSE MKT's rules can make it more difficult for an NYSE Amex Options market participant to execute a complex NDX or RUT option trading strategy than it is for a CME or ICE market participant to execute substantially the same strategy using Nasdaq 100 Index futures or Russell 2000 Index futures.[15] NYSE MKT believes that the additional burden associated with trading on the Exchange may discourage trading on NYSE MKT in favor of trading on the CME and ICE.[16] NYSE MKT believes, further, that it may be at a competitive disadvantage because market participants who frequently trade spreads or combinations, or who trade spreads or combinations as a strategy for hedging risk, would tend to utilize a market venue where they can more consistently depend on achieving a net price execution.[17]

To further level the field of competition between market participants trading on NYSE Amex Options and on the CME and ICE, NYSE MKT proposes to revise its NDX and RUT combination order trading procedures.[18] Specifically, NYSE MKT proposes to amend NYSE MKT Rule 965NY(b)(4) to implement a one-year pilot program that would allow an ATP Holder to execute an NDX or RUT combination order at the best net debit or credit price, which may be outside the current derived net market,[19] so long as: (a) The best net debit or credit price would have been at or within the derived net market over the preceding two hours of trading that day; (b) no leg of the order would trade at a price outside the displayed bids or offers in the trading crowd or customer interest in the NDX or RUT Consolidated Book at a point in time over the preceding two-hour period; and (c) at least one leg of the order would trade at a price that is better than the corresponding customer bid or offer in the NDX or RUT Consolidated Book at the same point in time over the preceding two-hour period.[20] The ''derived net market'' is NYSE MKT's best bids and offers displayed in the individual option series for the strategy at any one point in time over the previous two hours, not at separate points in time for each of the series.[21] For example, an ATP Holder could not use the price of the April 2790 puts at 10:20 a.m. and the price of the April 2810 calls and puts at 10:30 a.m. to calculate a derived net market.[22]

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 69919 (July 2, 2013), 78 FR 41168 (''Notice'').

[4] *See* letters to Elizabeth M. Murphy, Secretary, Commission, from Darren Story, CFA, Student Options, LLC, dated July 12, 2013 (''Story Letter''); and from David Spack, Chief Compliance Officer, Casey Securities, LLC, dated August 2, 2013 (''Casey Letter'').

[5] *See* letter from Janet McGinness, Executive Vice President and Corporate Secretary, NYSE Euronext, to Elizabeth M. Murphy, Secretary, Commission, dated August 19, 2013 (''NYSE MKT Response'').

[6] *See* Securities Exchange Act Release No. 70235 (August 20, 2013), 78 FR 52818 (August 26, 2013).

[7] 15 U.S.C. 78s(b)(2)(B).

[8] *See* NYSE MKT Rule 965NY(b)(4)(iii). A ''NDX combination order'' is an order to purchase or sell NDX options and the offsetting number of NDX combinations defined by the delta. An ''NDX Combination'' is a long (short) NDX call and a short (long) NDX put having the same expiration date and strike price. A ''RUT combination order'' is an order to purchase or sell RUT options and the offsetting number of RUT combinations defined by the delta. An ''RUT Combination'' is a long (short) RUT call and a short (long) RUT put having the same expiration date and strike price. A ''delta'' is the positive (negative) number of NDX or RUT combinations that must be sold (bought) to establish a market neutral hedge with the corresponding NDX or RUT option position. *See* NYSE MKT Rule 965NY(b)(1)–(3).

[9] The ATP Holder holding the NDX or RUT combination order must be bidding or offering in a multiple of the minimum price variation on the basis of a total debit or credit for the order, and must determine that the combination order may not be executed by a combination of transactions with the bids and offers displayed in the NDX or RUT Consolidated Book before executing the order at the best net debit or credit. *See* NYSE MKT Rule 965NY(b)(4)(i).

[10] *See* NYSE MKT Rule 965NY(b)(4)(ii).

[11] *See* Notice, 78 FR at 41169.

[12] *See id.* at 41170.

[13] *See id.*

[14] *See id.*

[15] *See id.*

[16] *See id.*

[17] *See id.*

[18] *See* Notice, 78 FR at 41171.

[19] The proposal defines the ''derived net market'' as NYSE MKT's best bids and offers displayed in the individual option series for the strategy at any one point in time. *See* NYSE MKT Rule 965NY(b)(4)(iii).

[20] *See* NYSE MKT Rule 965NY(b)(4)(iii).

[21] *See* NYSE MKT Rule 965NY(b)(4)(iii) and Notice, 78 FR at 41171.

[22] *See* Notice, 78 FR at 41171.

NYSE MKT states that the proposed procedure is generally modeled after CME Rule 542 and ICE Rule 27.11(a)(v), in that it would allow an NDX or RUT combination order to be executed out-of-range from the current market prices in the individual component option series legs, provided that the reported net price and related component series prices were in range within the preceding two hours.[23] According to NYSE MKT, the rules of the CME and ICE require only that the reported price of each component futures contract leg be within the daily price limit, a number that the Exchange believes is generally much wider than the two-hour derived net market range proposed by the Exchange.[24]

Each component leg of an NDX or RUT combination order would continue to be reported to the trading floor and the Options Price Reporting Authority (''OPRA'') with a special indicator identifying the reported price as part of a combination order trade.[25]

NYSE MKT states its belief that the proposed procedure would not lessen the obligation of ATP Holders to obtain best execution of options orders for their customers.[26] If the Commission approves the proposal, NYSE MKT will issue a regulatory bulletin to ATP Holders explaining the operation of Rule 965NY, as amended, and reminding ATP Holders that the new procedure does not lessen the obligation of ATP Holders to obtain best execution of option orders for their customers.[27]

NYSE MKT characterizes the proposed pilot program as a narrowly tailored trading process that does not go as far as existing CME and ICE rules.[28] NYSE MKT believes that its proposed procedure would provide market participants with additional flexibility in achieving desired combination order strategies in NDX and RUT and in determining whether to execute their strategies using options traded on NYSE MKT or with comparable products traded on CME or ICE, respectively.[29]

NYSE MKT believes that the proposed pilot program would facilitate the orderly execution of combination orders in NDX and RUT at all times, including during volatile markets, in a manner that is more competitive with the existing CME and ICE trading procedures.[30] In addition, NYSE MKT believes that the proposal will address customers' desire to show an order to other market participants to seek price improvement or additional liquidity.[31] NYSE MKT believes, further, that the proposal would continue to provide an incentive for market makers to reduce the width of their quotes for an options position that is ''tied'' to a combination because, under the proposed procedure, a market maker would know that its hedge price has been established and that he or she would not have to trade in another market, which would result in tighter and more liquid markets for customers who trade options tied to combinations.[32]

If NYSE MKT were to propose to extend the pilot program or to make it permanent, NYSE MKT would provide the Commission with a pilot report analyzing the pilot program.[33] The pilot report, which NYSE MKT would submit to the Commission on a confidential basis at least two months prior to the expiration of the pilot program, would include information on the number of combination trades in NDX and RUT and best bid or offer trade through/trade at analysis of those trades.[34] The pilot report also would include information on the NDX and RUT options classes and other broad-based index option products, including information on average contract value, average daily volume, open interest, average order size, percentage of complex orders, percentage of volume from complex orders, and average daily notional value traded.[35]

III. Summary of Comments and NYSE MKT's Response

The Commission received two comments regarding the proposal,[36] and NYSE MKT responded to the comments.[37] One commenter opposes the proposal, stating its belief that it would cause ''irreparable harm'' to customers and prohibit competition that might provide improved prices for marketable orders.[38] The commenter believes that the prohibition in the current rule against trading any leg of an NDX or RUT combination order through a contemporaneous resting order for that series does not impede the trading of NDX or RUT combination orders because, in some circumstances, it would be possible to adjust the component legs of an NDX or RUT combination order in response to a change in the markets so that the combination order would achieve its desired net price and each leg of the order would trade within the range of the current quoted market for the series.[39] The commenter states that traders frequently make such adjustments, and that trades should continue to be executed at or within current market prices because current prices reflect available information and represent the best estimate of the true value of an option at a given time.[40] In addition, the commenter states its view that executing a leg of a combination order outside of the current market would result in a worse price for the customer.[41] The commenter also does

[23] *See id.* To be ''in range,'' the net price of the NDX or RUT combination order must have been at or within the derived net market over the preceding two-hour period, each leg of the order must trade at a price that would have been at or inside the best bids and offers displayed in the individual option series legs at a single point in time over the preceding two hours, and a least one leg of the order must trade at a price that would have been better than the corresponding customer orders in the NDX or RUT Consolidated Book at the same point in time. *See id.*

[24] *See id.*

[25] *See id.*

[26] *See id.*

[27] *See id.*

[28] *See* Notice, 78 FR at 41172.

[29] *See id.*

[30] *See id.*

[31] *See id.*

[32] *See id.* As explained more fully in footnote 5 in the Notice, a customer may request a market for the NDX puts that the customer wishes to purchase based on a specified level of the Nasdaq 100 Index. Specifying the index level allows market participants to determine the delta and a theoretical value of the puts. A market participant will then give his or her market for the puts and for the component NDX call and put options that would comprise the combination portion of the order. The combination portion of the order is equivalent to an order to trade futures at the underlying value of the Nasdaq 100 Index that has been specified by the parties. The prices quoted for the combination establish the hedge price for the transaction. When this occurs, market participants say that the puts have been ''tied'' to the combination. *See* Notice, 78 FR at 41169 at footnote 5 and accompanying text. (The Commission notes that footnote 5 in the Notice refers to the position being hedged by the offsetting NDX combination first as NDX calls, then as NDX puts. Example 3 in the Notice, on which footnote 5 is based, refers to a customer that wishes to trade the 35 delta NDX April 2790 puts tied to a combination. Accordingly, the Commission believes that NYSE MKT intends to refer to NDX puts as the position being hedged in footnote 5.)

[33] *See* Notice, 78 FR at 41171–72.

[34] *See* Notice, 78 FR at 41172.

[35] *See id.*

[36] *See* Story Letter and Casey Letter.

[37] *See* NYSE MKT Response.

[38] *See* Story Letter at 1.

[39] *See id.* For example, the commenter states that if a customer seeks to sell 100 RUT April 950 puts at 30.00 tied to a combination based on a Russell 2000 Index level of 975 with a 20 delta, and the market moves so that the combination must be printed at an index level of 980, rather than 975, the price of the April 950 puts can be lowered by a corresponding equivalent amount to account for the increase in the index level. The 5.00-point change in the index level would require a corresponding reduction of 1.00 for the April puts ($5.00 \times .20$ (20 delta) = 1.00). Reducing the April puts to 29.00 to account for the 5.00-point increase in the index level results in a $10,000 reduction for the April puts ($30.00 - 29.00 = 1.00 \times 100 \times 100$ = $10,000) and a corresponding $10,000 increase for the hedging combination ($975 - 980 = -5.00 \times 20 \times 100$ = $10,000), so that, after the adjustments, the net price for the combination order remains the same. *See id.*

[40] *See* Story Letter at 1–2.

[41] *See id.*

not believe that the two-hour look back window would mitigate the potential impact of trade-throughs on market participants that provide liquidity in the underlying leg options.[42]

Another commenter supports implementing the proposal on a pilot basis.[43] The commenter states that its customers consider NDX and RUT spreads and combination orders to be equivalent to Nasdaq 100 Index and Russell 2000 Index futures, respectively, and that its customers find futures contracts to be more attractive than combination orders due to ease of execution.[44] The commenter believes that the restriction in the current rule that prohibits the execution of NDX and RUT combination orders at a price that would result in any underlying option leg trading through a contemporaneous resting order for that option impedes the trading of combinations. In particular, the commenter noted that there are instances when, by the time a customer has been found and both parties are ready to trade, the market has moved in such a way that consummating the trade would create a trade-through of a protected quote, requiring the trade to either be cancelled, adjusted, or moved to the futures market.[45] The commenter believes that the proposed two-hour look back would mitigate an impediment to trading combination orders by permitting an NDX or RUT combination order to trade through resting interest in instances where the combination order was at or within the quoted market at the time of the initial quote, even though quotes for one of the legs may move such that the leg is outside of the market by the time both parties are able to consummate the transaction.[46] Noting that options prices may move quickly and that combination orders in active index derivatives are difficult to complete, the commenter emphasizes that the ''important aspect to consider is that these kinds of combination orders, if they could be executable immediately (when the initial quote was received) *would* be in line with all quotes, and no trade-through issues would exist.'' [47]

The commenter believes, further, that because NDX and RUT combination orders are difficult to complete, they require different rules from options transactions that can be executed almost immediately with the current quotes.[48] In addition, the commenter believes that the trade-throughs that would be permitted under the proposed rule would have a negligible impact on market participants that provide liquidity in the individual leg markets because there are comparable trade-through exceptions in the equity markets for block and contingent trades that do not have a negative impact on liquidity in the equity market.[49] Finally, the commenter believes that the proposed pilot program could tighten spreads because it would lock in hedge prices and eliminate the need for market participants to find their hedge in a different market.[50]

As discussed above, the commenter that opposes the proposal believes that market participants would be able, in some cases, to adjust the prices of the individual legs of a combination order to achieve the order's desired net price so that the order may be executed within the range of the current markets.[51] In addition, the commenter expresses concern that the proposal potentially could result in harm to customers.[52] In its response, NYSE MKT disagrees with the assertion that market participants could adjust the prices of the individual legs of a combination order to achieve the order's desired net price because, in some circumstances, such adjustments would not be feasible or desirable.[53] NYSE MKT also disagrees strongly with the assertion that the proposal would result in harm to customers, and notes that the commenter fails to specify whether the proposal would result in harm to customer orders on the book or to a customer participating in the combination order.[54] NYSE MKT notes that both the proposal and the adjustment process the commenter describes are designed to facilitate the execution of a complex order as a clean cross, to the extent consistent with market conditions and applicable priority rules.[55] NYSE MKT states that, as a complex negotiated trade, participants to combination orders agree on a net debit or credit for a transaction based on current market conditions.[56] In addition, NYSE MKT states that similar practices exist in the equity market, and that its proposed two-hour window is more restrictive than that of marketplaces offering competing products, such as ICE and CME.[57]

NYSE MKT believes that the proposal would provide for additional flexibility in achieving desired combinations and hedging strategies, and would create a transparent and more efficient process.[58] NYSE MKT believes, further, that its proposed two-hour window will enable the completion of combination orders in a manner that provides a reasonable degree of execution certainty, to the benefit of market participants and customers participating in the combination order.[59] NYSE MKT notes that market participants would not be required to use the two-hour look back window and that members may continue to use the current ''adjustment'' approach.[60]

IV. Proceedings To Determine Whether To Approve or Disapprove SR–NYSEMKT–2013–59 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act [61] to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the significant legal and policy issues raised by the proposed rule change, as discussed below. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described in greater detail below, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act, the Commission is providing notice of the grounds for disapproval under consideration. The sections of the Act and the rules thereunder that are applicable to the proposed rule change include Sections 3(a)(1), 6(b)(5), and

[42] *See* Story Letter at 2.

[43] This commenter recommends collecting data concerning the volume of NDX and RUT combination order trades before and after the implementation of the pilot, as well as data regarding the available liquidity and spread sizes in the individual legs of the combinations. *See* Casey Letter at 2.

[44] *See* Casey Letter at 3.

[45] *See* Casey Letter at 1.

[46] *See id.*

[47] *Id.* at 2.

[48] *See id.*

[49] According to the commenter, market participants ''generally understand that these trade-throughs are not indicative of the real market, and thus they do not have an adverse impact on quote size or spread width.'' *See* Casey Letter at 2. The commenter believed, further, that equity market participants have absorbed the alternative rules for large and complex orders and continue to interact in meaningful ways without disruption to the overall market. *See* Casey Letter at 4.

[50] *See* Casey Letter at 4.

[51] *See* Story Letter at 1.

[52] *See id.* at 3.

[53] *See* NYSE MKT Response at 1.

[54] *See* NYSE MKT Response at 1–2.

[55] *See* NYSE MKT Response at 2.

[56] *See id.*

[57] *See* NYSE MKT Response at 1.

[58] *See* NYSE MKT Response at 2.

[59] *See* NYSE MKT Response at 1.

[60] *See* NYSE MKT Response at 2.

[61] 15 U.S.C. 78s(b)(2)(B).

11A(a) of the Act.[62] Section 3(a)(1) of the Act defines an exchange, in part, as any organization, association, or group of persons which constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities. Section 6(b)(5) of the Act requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. In Section 11A(a) of the Act, Congress found, in part, that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the economically efficient execution of securities transactions.[63]

The Commission believes that NYSE MKT's proposal raises questions as to whether the proposed rule change is consistent with these standards. As discussed above, NYSE MKT's proposed pilot program would allow an ATP Holder to execute an NDX or RUT combination order outside the current derived net market so long as: (a) The best net debit or credit price would have been at or within the derived net market over the preceding two hours of trading that day; (b) no leg of the order would trade at a price outside the displayed bids or offers in the trading crowd or customer interest in the NDX or RUT Consolidated Book at a point in time over the preceding two-hour period; and (c) at least one leg of the order would trade at a price that is better than the corresponding customer bid or offer in the NDX or RUT Consolidated Book at the same point in time over the preceding two-hour period.[64] By allowing NDX and RUT combination orders to be executed outside of the current derived net market, the proposed rule change raises concerns about the potential effect of the proposal on the markets for NDX and RUT options, and, in particular, whether or how the potential for trade-throughs of prices on NYSE MKT would impact the incentives of market participants to provide liquidity in the individual series comprising the legs of an NDX or RUT combination order.

NYSE MKT states that practices similar to the trade-throughs that would be permitted under the proposal already exist in the equity markets.[65] The Commission notes that the Qualified Contingent Trade exemption (''QCT Exemption'') to Rule 611(a) of Regulation NMS,[66] permits inter-market trade-throughs of quotations in NMS stocks for qualified contingent trades, but does not provide for the intramarket trade-throughs that the proposal would permit.[67] Thus, the QCT Exemption does not establish a precedent for an exchange seeking to trade through its own market.[68] NYSE MKT does not provide an analysis of the potential impact of trade-throughs on the NYSE MKT NDX and RUT limit order books, nor does it provide a detailed discussion of how it would study the impact on the individual leg markets if the proposed pilot were approved.

In light of these issues and concerns, the Commission believes that questions arise regarding whether the proposal is consistent with the requirements of Sections 3(a)(1), 6(b)(5), and 11A(a) of the Act. As the Commission continues to evaluate the issues presented by the proposal, the Commission solicits comment on whether the proposal is consistent with the Act and whether the Exchange has met its burden in presenting a statutory analysis of how its proposal is consistent with the Act. In particular, the grounds for disapproval under consideration include whether the Exchange's proposal is consistent with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest. In addition, under the Commission's rules of procedure, a self-regulatory organization that proposes to amend its rules bears the burden of demonstrating that its proposal is consistent with the Act.[69] In this regard:

> the description of the proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding. Any failure of the self-regulatory organization to provide the information elicited by Form 19b–4 may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the rules and regulations thereunder that are applicable to the self-regulatory organization.[70]

V. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the concerns identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Sections 3(a)(1), 6(b)(5), 11A(a), or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[71]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by November 12, 2013. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by November 26, 2013.

The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on the following:

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[62] 15 U.S.C. 78c(a)(1), 15 U.S.C. 78f(b)(5), and 15 U.S.C. 78k–1(a)(1)(C).

[63] 15 U.S.C. 78k–1(a)(1)(C)(i).

[64] *See* NYSE MKT Rule 965NY(b)(4)(iii).

[65] *See* NYSE MKT Response at 2. As discussed above, one commenter believed that the trade-throughs permitted in the equity market have not had a negative impact on liquidity or disrupted the overall market. *See* Casey Letter at 2 and 4. *See also* note 49, *supra,* and accompanying text.

[66] 17 CFR 242.611(a).

[67] *See* Securities Exchange Act Release No. 57620 (April 4, 2008), 73 FR 19271 (April 9, 2008), 73 FR 19271 (order modifying the QCT Exemption); and 54389 (August 31, 2006), 71 FR 52829 (September 7, 2006) (order granting the QCT Exemption).

[68] The Commission also notes that under the Options Order Protection and Locked/Crossed Market Plan, only an NDX or RUT combination order that qualifies as a Complex Trade would be permitted to trade through the quotes in the leg markets of another exchange that trades NDX or RUT options. *See* Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39632 (August 6, 2009). The proposal does not address how NYSE MKT would treat an NDX or RUT combination order that is not a Complex Trade and therefore not permitted to trade through the NDX or RUT quotes of another options exchange.

[69] Rule 700(b)(3), 17 CFR 201.700(b)(3).

[70] *See id.*

[71] Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding —either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

1. What, if any, effect do commenters believe the proposal may have on the incentives of market participants to provide liquidity in the series comprising an NDX or RUT combination order? Do commenters believe that permitting NDX and RUT combination orders to trade through interest in the leg market potentially could discourage market participants from placing limit orders in the individual series on the NDX and RUT limit order books? Why or why not?

2. Do commenters believe that NYSE MKT has adequately analyzed the potential effects of the proposal on the markets for NDX and RUT options, including the potential impact on market participants providing liquidity in the series comprising the legs of an NDX or RUT combination order? Why or why not?

3. As noted above, one commenter expresses concern that the flexibility to trade outside of the current derived net market could result in harm to customers.[72] NYSE MKT disagrees, stating in its response that participants to complex negotiated trades agree on a net price for a transaction based on current market conditions.[73] In addition, NYSE MKT notes that market participants would not be required to use the two-hour look back window.[74] What, if any, impact do commenters believe the ability to trade outside of the current derived net market would have on the quality of executions for customers trading NDX and RUT combination orders?

4. NYSE MKT believes that its current combination order rule ''does not come close to leveling the field with the CME and ICE rules for spread and combination trading,'' and that the rules of the CME and ICE require only that the reported price of each component futures contract be within the daily limit price.[75] Do commenters believe that NYSE MKT has fully identified the multi-legged futures strateg(ies) with which it believes NDX and RUT combination orders compete?

5. Do commenters believe that there are characteristics associated with the trading of NDX and RUT options that potentially could help the Commission assess the concerns discussed above regarding the potential to impact the quality of executions or the incentives of liquidity providers in the individual series? If so, please explain. Do commenters believe that these characteristics, if any, are unique to NDX and RUT options, or are they also shared by other broad-based index options? If so, the Commission is interested in statistics or other data concerning the trading of NDX and RUT options that would help the Commission to assess these characteristics.

6. As discussed more fully above, one commenter believes that the proposal is unnecessary because market participants would be able to adjust the prices of the legs of an NDX or RUT combination order so that they are at or within the current market. Another commenter states that the proposal would remove an impediment to the trading of NDX and RUT combination orders by allowing the orders to trade through the current market, provided that the conditions in the rule are satisfied. Do commenters agree or disagree with these views and why?

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–2013–59 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–2013–59. 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–NYSEMKT–2013–59 and should be submitted on or before November 12, 2013. Rebuttal comments should be submitted by November 26, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[76]

Kevin M. O'Neill,

Deputy Secretary.

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[72] *See* Story Letter at 3.

[73] *See* NYSE MKT Response at 2.

[74] *See id.*

[75] *See* Notice, 78 FR at 441170 and 41171.

[76] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70668; File No. SR–BOX–2013–48]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Interpretive Material to Rule 5050 and Rule 6090

October 11, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on October 4, 2013, BOX Options Exchange LLC (''BOX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend interpretive material to Rule 5050 (Series of Options Contracts Open for Trading) and Rule 6090 (Terms of Index Options Contracts) to give the Exchange the ability to initiate strike prices in more granular intervals for Short Term Options (''STOs'') in the same manner as on other options exchanges. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public

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

[2] 17 CFR 240.19b–4.