SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67713; File No. SR–NYSEMKT–2012–39]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 928NY To Expand the Existing Market Maker Risk Limitation Mechanism Making It Available for Orders From Market Makers as Well as Non-Market Maker ATP Holders, and To Provide for Two Additional Risk Limitation Mechanisms

August 22, 2012.

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 August 10, 2012, 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 Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 928NY to expand the existing Market Maker Risk Limitation Mechanism to make it available for orders from Market Makers as well as non-Market Maker ATP Holders, and to provide for two additional risk limitation mechanisms. 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.

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

1. Purpose

The Exchange adopted the existing Market Maker Risk Limitation Mechanism to provide a transaction-based mechanism for limiting a Market Maker's risk during periods of increased and significant trading activity on the Exchange in the Market Maker's appointment.[4] The Exchange now proposes to expand the existing Market Maker Risk Limitation Mechanism to make it available for orders from Market Makers as well as orders from non-Market Maker ATP Holders (''non-Market Makers''),[5] and to provide for two additional risk limitation mechanisms (collectively, the ''Risk Limitation Mechanisms''). The Exchange is proposing these changes to permit Market Makers and non-Market Makers to better manage the risk of multiple, nearly simultaneous executions against their proprietary interest that, in today's highly automated and electronic trading environment, can occur across multiple series of different option classes. Consistent with the ability to better manage risk, the Exchange anticipates that these changes could enhance the Exchange's overall market quality as a result of narrowed quote widths and increased liquidity for series traded on the Exchange.

As noted above, the Exchange is proposing to make the three Risk Limitation Mechanisms available to non-Market Makers. The Exchange is proposing this change to respond to requests from non-Market Makers that engage in rapid, proprietary trading. In this regard, non-Market Makers can have risk exposure similar to that of Market Makers, and have similarly sought ways to mitigate this risk. The Exchange believes that making the Risk Limitation Mechanisms available to non-Market Makers will assist them in these efforts.

As is the case today with the Market Maker Risk Limitation Mechanism, the trade counters, and therefore the Risk Limitation Mechanisms themselves, would be based on trading permit identification (''TPID'').[6] As is also the case today with respect to the existing Market Maker Risk Limitation Mechanism, Market Makers would be required to activate one of the three Risk Limitation Mechanisms at all times for their quotes for each class in their appointment. However, the Risk Limitation Mechanisms would be entirely voluntary with respect to orders, both for those of Market Makers and non-Market Makers. Market Makers and non-Market Makers would only be permitted to activate one of the three Risk Limitation Mechanisms for a particular class at any given time for their orders. However, a Market Maker could activate one Risk Limitation Mechanism for its quotes and a different Risk Limitation Mechanism for its orders, even if both are activated for the same class.[7] The three mechanisms are described in greater detail below.

(1) Transaction-Based Risk Limitation Mechanism

The existing Market Maker Risk Limitation Mechanism is transaction-based and automatically cancels all quotes posted by a Market Maker in an appointed class if the trade counter determines that ''n'' executions within one second have occurred against the quotes of the Market Maker in the particular appointed class.

The Exchange proposes to amend Rule 928NY(b) to apply the existing Market Maker Risk Limitation Mechanism not only to Market Maker quotes, but also to non-Market Maker and Market Maker orders. As proposed, and similar to the existing process for Market Maker quotes,[8] the Transaction-

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

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

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 59472 (February 27, 2009), 74 FR 9843 (March 6, 2009) (SR–NYSEALTR–2008–14).

[5] The Exchange proposes to specify within Rule 928NY(a) that non-Market Maker ATP Holders will be referred to as ''non-Market Makers'' for purposes of Rule 928NY.

[6] TPIDs are assigned to Market Makers and non-Market Makers to identify them in the Exchange's systems.

[7] Market Makers on the Exchange are not able to submit orders on an agency basis. Therefore, a Market Maker within a firm that conducts both an agency and a market making business would have a unique TPID that could only be used for that Market Maker's quotes and orders. The proposed rule change would not prevent the use of the Risk Limitation Mechanisms for a non-Market Maker's agency order flow.

[8] The existing Market Maker quote aspect of the mechanism would be renumbered as Rule 928NY(b)(3) and would be triggered when a trade counter has reached ''n'' executions within a time period specified by the Exchange against the Market Maker's quotes in an appointed class. As proposed under new Commentary .03 to Rule 928NY, the Exchange would announce via Regulatory Bulletin the applicable time period(s) for the Risk Limitation Mechanisms proposed under Rule 928NY. The Exchange also proposes to specify under Commentary .03 that the Exchange will not specify a time period of less than 100 milliseconds. Additionally, the Exchange anticipates announcing via Regulatory Bulletin, as described in proposed Commentary .03, that the minimum, maximum and default settings for ''n,'' as well as the potential range for such settings, that are in effect at the time

Based Risk Limitation Mechanism would be triggered for a non-Market Maker whenever a trade counter has reached ''n'' executions within a time period specified by the Exchange via Regulatory Bulletin, as discussed further below, against the non-Market Maker's orders in a specified class. For Market Maker orders, the Transaction-Based Risk Limitation Mechanism would be triggered when a trade counter has reached ''n'' executions within a time period specified by the Exchange against the Market Maker's orders in a specified class. Accordingly, ''Market Maker'' would be deleted from the title of Rule 928NY, as would any other references that would limit Rule 928NY only to Market Makers. Additionally, references to ''Transaction-Based'' would be added to Rule 928NY(b) to differentiate the existing mechanism from the newly-proposed Risk Limitation Mechanisms, as discussed in greater detail below. Additionally, much of the existing text of Rule 928NY(b) through (f) would be relocated as new Commentary to Rule 928NY, as discussed in greater detail below.

(2) Volume-Based Risk Limitation Mechanism

The Exchange proposes to provide for a new Volume-Based Risk Limitation Mechanism under Rule 928NY(c). The proposed Volume-Based Risk Limitation Mechanism would be triggered whenever one of the following conditions is met: (1) For a non-Market Maker, when a trade counter has reached ''k'' contracts traded within a time period specified by the Exchange against the non-Market Maker's orders in a specified class; (2) for a Market Maker, when a trade counter has reached ''k'' contracts traded within a time period specified by the Exchange against the Market Maker's orders in a specified class; or (3) for a Market Maker, when a trade counter has reached ''k'' contracts traded within a time period specified by the Exchange against the Market Maker's quotes in an appointed class.[9]

(3) Percentage-Based Risk Limitation Mechanism

The Exchange proposes to provide for a new Percentage-Based Risk Limitation Mechanism under Rule 928NY(d).[10] The proposed Percentage-Based Risk Limitation Mechanism would be triggered whenever one of the following conditions is met: (1) For a non-Market Maker, when a trade counter has calculated that the non-Market Maker has traded ''p'' percentage within a time period specified by the Exchange against the non-Market Maker's orders in a specified class; (2) for a Market Maker, when a trade counter has calculated that the Market Maker has traded ''p'' percentage within a time period specified by the Exchange against the Market Maker's orders in a specified class; or (3) for a Market Maker, when a trade counter has calculated that the Market Maker has traded ''p'' percentage within a time period specified by the Exchange against the Market Maker's quotes in an appointed class.[11] The ''p'' percentage specified by the non-Market Maker or Market Maker would be calculated as follows (and as shown in the examples below):[12] (1) A trade counter would first calculate, for each series of an option class, the percentage of a non-Market Maker's or Market Maker's order size or a Market Maker's quote size that is executed on each side of the market, including both displayed and non-displayed size, and (2) a trade counter would then sum the overall series percentages for the entire option class to calculate the ''p'' percentage.

Example 1

For Examples 1 and 2, if a Market Maker is quoting at the National Best Bid or Offer (''NBBO'') in four series of an appointed class, and specifies its ''p'' percentage at 100%, a trade counter would calculate such percentage as follows:

Series	Quote size	Number of contracts executed	Series percentage
Series 1	100	40	40
Series 2	50	20	40
Series 3	200	20	10
Series 4	150	15	10
Total	500	95	100

In Example 1, the aggregate number of contracts executed among all series during the time period specified by the Exchange that equals the specified percentage of 100% is 95 contracts, at which point the Percentage-Based Risk Limitation Mechanism would be triggered and the Market Maker's remaining quotes in the appointed class would be cancelled.

Example 2

Series	Quote size	Number of contracts executed	Series percentage
Series 1	100	0	0
Series 2	50	0	0
Series 3	200	0	0

the Exchange implements this proposed change, will continue to apply to the Transaction-Based Risk Limitation Mechanism in the future. In this regard, the Exchange notes that it recently amended current Rule 928NY(b)(1) to specify that the potential range for the settings applicable to the existing Market Maker Risk Limitation Mechanism will be between one and 100 executions per second, to eliminate the current reference to the default setting, and, in the future, to specify the applicable minimum, maximum and default settings via Regulatory Bulletin. *See* Securities Exchange Act Release No. 67314 (June 29, 2012), 77 FR 40139 (July 6, 2012) (SR–NYSEAmex–2012–23).

[9] The Exchange anticipates announcing via Regulatory Bulletin that the applicable minimum and maximum settings for ''k'' (as well as the potential range for the settings applicable to the Volume-Based Risk Limitation Mechanism) will be 20 and 5,000, respectively.

[10] The proposed Percentage-Based Risk Limitation Mechanism is partially based on NASDAQ OMX PHLX (''PHLX'') Rule 1093. *See* Securities Exchange Act Release No. 53166 (January 23, 2006), 71 FR 4625 (January 27, 2006) (SR–Phlx–2006–05).

[11] The Exchange anticipates announcing via Regulatory Bulletin that the applicable minimum and maximum settings for ''p'' (as well as the potential range for the settings applicable to the Percentage-Based Risk Limitation Mechanism) will be 100 and 2,000, respectively.

[12] The examples provided below are for Market Maker quotes, but would similarly apply to non-Market Maker and Market Maker orders.

Series	Quote size	Number of contracts executed	Series percentage
Series 4	150	150	100
Total	500	150	100

In Example 2, the aggregate number of contracts executed among all series during the time period specified by the Exchange that equals the specified percentage of 100% is 150 contracts, at which point the Percentage-Based Risk Limitation Mechanism would be triggered and the Market Maker's remaining quotes in the appointed class would be cancelled.

Example 3

For Example 3, if a Market Maker is quoting at the NBBO in four series of a particular option class, and specifies its ''p'' percentage at 200%, a trade counter would calculate such percentage as follows:

Series	Quote size	Number of contracts executed	Series percentage
Series 1	100	80	80
Series 2	50	40	80
Series 3	200	40	20
Series 4	150	30	20
Total	500	190	200

In Example 3, the aggregate number of contracts executed among all series during the time period specified by the Exchange that equals the specified percentage of 200% is 190 contracts, at which point the Percentage-Based Risk Limitation Mechanism would be triggered and the Market Maker's remaining quotes in the appointed class would be cancelled.

Trade Counter

The trade counters serve as the basis for determining whether a Risk Limitation Mechanism is triggered. Rule 928NY(a) currently describes the existing trade counter, which is incremented every time a Market Maker executes a trade against its quote in any series in an appointed class. The Exchange proposes to amend Rule 928NY(a) to reflect that the existing trade counter will be replaced by separate trade counters that the System will maintain for each of the following scenarios: (1) When a non-Market Maker order is executed in any series in a specified class; [13] (2) when a Market Maker order is executed in any series in a specified class; and (3) when a Market Maker quote is executed in any series in an appointed class. The Exchange also proposes to reflect that for each of these scenarios the trade counters will be incremented by one every time a trade is executed and will also aggregate the number of contracts traded during each such execution. The trade counters will also calculate applicable percentages for Market Makers and non-Market Makers using the proposed Percentage-Based Risk Limitation Mechanism. These proposed changes to Rule 928NY(a) are necessary due to the changes proposed below.

General

As proposed under new Commentary .01 to Rule 928NY, and similar to the current description in existing Rule 928NY(b), the System would automatically cancel electronic orders or quotes pursuant to proposed paragraph (e) of Rule 928NY [14] by generating a ''bulk cancel'' message.[15] Similar to the current description in existing Rule 928NY(c), the bulk cancel message would be processed by the System in time priority with any other quote or order message received by the System.[16] Additionally, any orders or quotes that matched with a Market Maker's quote or a Market Maker's or non-Market Maker's order and were received by the System prior to the receipt of the bulk cancel message would be automatically executed. However, orders or quotes received by the System after receipt of the bulk cancel message would not be executed. In this regard, the proposed rule change would not relieve a non-Market Maker or Market Maker of its ''firm quote'' obligation under Rule 602 of Regulation NMS [17] or Rule 970NY. Furthermore, the proposed rule change would not relieve Market Makers on the Exchange of their quoting obligations under the Exchange's Rules.[18]

As proposed under new Commentary .02 to Rule 928NY, and similar to the current description in Rule 928NY(d), if one of the Risk Limitation Mechanisms is triggered pursuant to proposed paragraph (b)(1) or (2), (c)(1) or (2), or (d)(1) or (2) of Rule 928NY, any orders sent by the non-Market Maker or Market Maker, respectively, in the specified class would be rejected until the non-Market Maker or Market Maker submits a message to the System to enable the entry of new orders. Similarly, if one of the Risk Limitation Mechanisms is triggered pursuant to proposed paragraph (b)(3), (c)(3), or (d)(3) of Rule 928NY, any quotes sent by the Market Maker in the appointed class would be rejected until the Market Maker submits a message to the System to enable the entry of new quotes.

[13] The Exchange proposes to include the concept of a ''specified class'' to reflect that Market Makers and non-Market Makers must specify the class(es) for which a Risk Limitation Mechanism is activated for orders or none of the Risk Limitation Mechanisms will be activated.

[14] As proposed under Rule 928NY(e), the System would take the following action if one of the Risk Limitation Mechanisms described herein is triggered: (1) If triggered pursuant to proposed paragraph (b)(1), (c)(1) or (d)(1) of Rule 928NY, the System would automatically cancel all of the non-Market Maker's orders in the specified class; (2) if triggered pursuant to proposed paragraph (b)(2), (c)(2) or (d)(2) of Rule 928NY, the System would automatically cancel all of the Market Maker's orders in the specified class; or (3) if triggered pursuant to proposed paragraph (b)(3), (c)(3) or (d)(3) of Rule 928NY, the System would automatically cancel all of the Market Maker's quotes in the appointed class.

[15] As is the case today for the existing Market Maker Risk Limitation Mechanism, the Risk Limitation Mechanisms provided under Rule 928NY would only be applicable to electronic trading on the Exchange.

[16] As is the case today for the existing Market Maker Risk Limitation Mechanism, Public Customer orders cancelled pursuant to a Risk Limitation Mechanism bulk cancel message would not be counted for purposes of calculating the Exchange's Cancellation Fee.

[17] 17 CFR 242.602.

[18] *See, e.g.,* Rule 925NY.

As proposed under new Commentary .03 to Rule 928NY, the Exchange would specify via Regulatory Bulletin any applicable minimum, maximum and/or default settings for the Risk Limitation Mechanisms proposed under Rule 928NY.[19] This would include those settings that are applicable for the existing Market Maker Risk Limitation Mechanism at the time the Exchange implements this proposed change, which, as discussed above, would be renamed as the Transaction-Based Risk Limitation Mechanism, as well as for the proposed new Volume-Based and Percentage-Based Risk Limitation Mechanisms.[20] Accordingly, the text proposed within Commentary .03 is designed to conform to the text that is currently provided under Rule 928NY(b)(1).[21] The Exchange also proposes to specify under Commentary .03 that the Exchange will not (i) specify a minimum setting of less than one or a maximum setting of more than 100 for the Transaction-Based Risk Limitation Mechanism; (ii) specify a minimum setting of less than 20 or a maximum setting of more than 5,000 for the Volume-Based Risk Limitation Mechanism; or (iii) specify a minimum setting of less than 100 or a maximum setting of more than 2,000 for the Percentage-Based Risk Limitation Mechanism. Similarly, as proposed under new Commentary .03 to Rule 928NY, the Exchange would specify via Regulatory Bulletin the applicable time period(s) for the Risk Limitation Mechanisms proposed under Rule 928NY. The Exchange also proposes to provide under Commentary .03 that the Exchange will not specify a time period of less than 100 milliseconds.

As proposed under new Commentary .04 to Rule 928NY, once a Market Maker activates a Risk Limitation Mechanism provided under Rule 928NY for its quotes in an appointed class, the mechanism, and the settings established by the Market Maker, would remain active unless, and until, the Market Maker deactivates the mechanism or changes the settings.[22] A non-Market Maker or Market Maker must activate a Risk Limitation Mechanism provided under Rule 928NY for its orders in a specified class, and any corresponding settings, on a daily basis, if at all, or the Risk Limitation Mechanism would not be active. As is the case today for the existing Market Maker Risk Limitation Mechanism, the Risk Limitation Mechanisms provided under Rule 928NY would be in effect, if activated by a non-Market Maker or Market Maker, during Core Trading Hours,[23] including during Trading Auctions (*i.e.,* executions during a Trading Auction would be counted by the trade counters).[24]

As proposed under new Commentary .05 to Rule 928NY, and similar to the current description under Rule 928NY(f), in the event that there are no Market Makers quoting in a class, the best bids and offers of those orders residing in the Consolidated Book in the class shall be disseminated as the Exchange's best bid or best offer. If there are no Market Makers quoting in the class and there are no orders in the Consolidated Book in the class, the System would disseminate a bid of zero and an offer of zero.

As proposed under new Commentary .06 to Rule 928NY, the trade counters would automatically reset and commence a new count (1) when a time period specified by the Exchange elapses or, (2) if one of the Risk Limitation Mechanisms provided under Rule 928NY is triggered for a particular class, when the non-Market Maker or Market Maker submits a message to the System to enable the entry of new orders or quotes, as provided in proposed Commentary .02 to Rule 928NY.

As proposed under new Commentary .07 to Rule 928NY, only executions against order types specified by the Exchange via Regulatory Bulletin and against quotes of Market Makers would be considered by a trade counter.[25] Executions against Market Maker orders would not be considered by a trade counter in connection with a Market Maker's quoting activity. Likewise, executions against Market Maker quotes would not be considered by a trade counter in connection with a Market Maker's order activity. The Exchange believes that specifying applicable order types via Regulatory Bulletin, including any changes thereto in the future, (i) would be consistent with the manner in which the Exchange currently announces the applicable minimum, maximum and default settings for the Risk Limitation Mechanisms; [26] (ii) would be consistent with the manner in which the Exchange proposes to announce the applicable time period(s) for the Risk Limitation Mechanisms; and (iii) would also be consistent with the manner in which the Commission currently permits other option exchanges to communicate settings or parameters for various exchange mechanisms to their members other than through the rule filing process, *i.e.,* via notices, bulletins or circulars.[27]

[19] The Exchange will issue the Regulatory Bulletin at least one trading day in advance of the settings becoming effective. All such Regulatory Bulletins will contain information regarding changes to the settings in the Risk Limitation Mechanisms, the effective date of such changes and contact information of Exchange staff who can provide additional information. The Exchange distributes Regulatory Bulletins simultaneously to all ATP Holders via email and posts the Regulatory Bulletins to the Exchange's Web site.

Upon receiving notification of a change to the settings for the Risk Limitation Mechanisms by the Exchange, ATP Holders will be able to make adjustments they deem necessary to their own risk settings for the Risk Limitation Mechanisms using the same electronic interface that they use to send quotes and orders to the Exchange. In addition, ATP Holders may elect to adjust risk settings in their own proprietary systems in reaction to any changes initiated by the Exchange. When adjusting risk parameters for the Risk Limitation Mechanisms and/or a proprietary system, in reaction to a change to the risk settings by the Exchange, ATP Holders are able to utilize functionality that is both readily available and user controlled.

Accordingly, the Exchange believes that providing ATP Holders with at least one day's advance notice prior to making adjustments to the settings of the Risk Limitation Mechanisms will afford ATP Holders sufficient time to review their risk settings and make operational and/or technological changes, to either the user controlled risk settings for the Risk Limitation Mechanisms or to their own proprietary systems, necessary to accommodate any such changes made by the Exchange.

[20] *See supra* notes 8, 9, and 11. The default settings would apply only to Market Makers using the Transaction-Based Risk Limitation Mechanism, and further would apply only with respect to a Market Maker's quotes, not its orders.

[21] *See* Securities Exchange Act Release No. 67314 (June 29, 2012), 77 FR 40139 (July 6, 2012) (SR–NYSEAmex–2012–23).

[22] As noted above, a Market Maker must have one of the three Risk Limitation Mechanisms active for its quotes at all times for each class in its appointment. Therefore, if a Market Maker deactivates a Risk Limitation Mechanism, it must then activate another Risk Limitation Mechanism for a particular class.

[23] *See* Rule 900.2NY(15).

[24] *See* Rule 952NY. For example, and as discussed above with respect to the bulk cancel message, an order or quote that matches with a non-Market Maker's or Market Maker's order or a Market Maker's quote during a Trading Auction, but prior to the receipt of the bulk cancel message by the System, would be executed. However, an order or quote received by the System during a Trading Auction, but after receipt of the bulk cancel message, would not be eligible for execution against the non-Market Maker's or Market Maker's orders or the Market Maker's quotes.

[25] Due to technology considerations, the Exchange plans to initially apply the Risk Limitation Mechanisms only to the following order types: "PNP Orders," "PNP—Blind Orders," and "PNP—Light Orders." The Exchange has selected these particular order types because they are the most commonly used order types of non-Market Makers engaged in proprietary trading. In this respect, non-Market Makers use these order types because they are non-routable Limit Orders that are only executed on the Exchange. In the future, the Exchange may determine to expand the Risk Limitation Mechanisms to other order types used by such firms, and it would announce any such changes via Regulatory Bulletin pursuant to proposed Commentary .07 to Rule 928NY.

[26] *See supra* notes 8, 9 and 11.

[27] *See, e.g.,* BOX Options Exchange LLC ("BOX") Rule 8140, which provides that, related to BOX's

Continued

As proposed under new Commentary .08 to Rule 928NY, a determination of whether the conditions of proposed paragraph (b), (c) or (d) of Rule 928NY have been met, and any resulting cancellation of orders or quotes pursuant to proposed paragraph (e) of Rule 928NY, shall be made on the basis of TPID.[28] For example,[29] a non-Market Maker that submits orders to the Exchange under separate TPIDs would not have the orders from each TPID aggregated for purposes of the Risk Limitation Mechanisms. Instead, the orders attributable to each TPID would be counted by the trade counters separately, and the triggering of a Risk Limitation Mechanism for one of the non-Market Maker's TPIDs would not result in a trigger of a Risk Limitation Mechanism for the other TPID of the non-Market Maker. Also, as noted above, a non-Market Maker or a Market Maker could activate no more than one of the three Risk Limitation Mechanisms for a particular class for its orders and a Market Maker would be required to have exactly one of the three Risk Limitation Mechanisms activated at all times for its quotes for each class in its appointment. However, a Market Maker could activate one Risk Limitation Mechanism for its quotes and a different Risk Limitation Mechanism for its orders, even if both are activated for the same class.

Finally, as proposed under new Commentary .09 to Rule 928NY the terms ''class'' and ''classes'' include all option series, both puts and calls, overlying the same underlying security. The purpose of Commentary .09 is to eliminate any potential confusion as to the scope of the proposed Risk Limitation Mechanisms.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[30] in general, and furthers the objectives of Section 6(b)(5) of the Act,[31] in particular, because 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposed rule change would prevent fraudulent and manipulative acts and practices and promote just and equitable principles of trade because it would provide non-Market Makers and Market Makers with greater control and flexibility with respect to managing risk and the manner in which they enter orders and quotes. This would be accomplished by expanding the existing Market Maker Risk Limitation Mechanism to Market Maker orders and the orders of non-Market Makers as well as through the creation of the proposed new Volume-Based and Percentage-Based Risk Limitation Mechanisms. Increased control and flexibility would also be accomplished by lowering the minimum time period applicable to the Risk Limitation Mechanisms, as compared to the existing Market Maker Risk Limitation Mechanism, from one second to no less than 100 milliseconds. In this regard, the Exchange believes that a lower minimum time period would be more consistent with the rapid trading that occurs in today's highly automated and electronic trading environment. The Exchange also believes that the increased control and flexibility that would result from this proposal would foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in, securities.

The Exchange further believes that the proposed rule change would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system because it would promote consistency, fairness, and objectivity by making the Risk Limitation Mechanisms available to all non-Market Makers and Market Makers, which therefore may enhance the Exchange's overall market quality. The Exchange believes that the potential increase in the Exchange's overall market quality that could result from the Risk Limitation Mechanisms could therefore contribute to the protection of investors and the public interest.

The Exchange further believes that the proposed rule change would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system because it would permit the Exchange to announce the minimum, maximum and default settings for the Risk Limitation Mechanisms, as well as any applicable time period(s) and order types, via Regulatory Bulletin. The Exchange believes that the flexibility of announcing these details via Regulatory Bulletin is necessary because it would permit the Exchange to reasonably ensure that, for example, the applicable settings are at a level that is consistent with existing market conditions, such that the Risk Limitation Mechanisms are able to operate in the manner intended. Use of Regulatory Bulletins would also be consistent with the manner in which the Exchange currently announces the minimum, maximum and default settings for the existing Market Maker Risk Limitation Mechanism as well as the manner in which the Commission currently permits other option exchanges to communicate settings or parameters for various exchange mechanisms to their members other than through the rule filing process, *i.e.,* via notices, bulletins or circulars.[32] Utilizing Regulatory Bulletins in this manner would, for example, permit the Exchange to increase or decrease the time period applicable to the Risk

Quote Removal Mechanism Upon Technical Disconnect, BOX Market Makers will be notified of the value that ''n'' seconds represents via Regulatory Circular. *See also* Securities Exchange Act Release No. 58140 (July 10, 2008), 73 FR 41384 (July 18, 2008) (SR–BSE–2008–40), in which the Commission noted that ''n'' seconds would be configurable by BOX and any subsequent re-configurations will be announced to Market Makers via Regulatory Circular. *See also* Interpretation and Policy .05 to Chicago Board Options Exchange (''CBOE'') Rule 6.74A, which provides that any determinations made by CBOE regarding CBOE's Automated Improvement Mechanism, such as eligible classes, order size parameters and the minimum price increment for certain responses, shall be communicated in a Regulatory Circular. *See also* CBOE Rule 6.13(b)(i)(C)(2)(a), which provides that CBOE may establish certain maximum order size eligibility requirements with respect to automatic executions and announce such determinations via Regulatory Circular. *See also* CBOE Rules 6.45A and 6.45B, which provide that CBOE will issue a Regulatory Circular to specify certain priority-related information, including specifying which priority rules will govern which classes of options any time CBOE changes the priority. *See also* CBOE Rule 6.25(a)(4)(i), which provides that, for purposes of nullifying a trade due to an erroneous print in an underlying or related instrument, CBOE may announce such underlying or related instrument via Regulatory Circular. *See also* C2 Options Exchange (''C2'') Rule 6.13, which provides that C2 may make certain determinations regarding the price check parameter feature and announce such determinations via Regulatory Circular. *See also* Securities Exchange Act Release No. 65311 (September 9, 2011), 76 FR 57094 (September 15, 2011) (SR–C2–2011–018).

[28] *See supra* notes 6 and 7.

[29] This example would similarly be applicable to Market Makers.

[30] 15 U.S.C. 78f(b).

[31] 15 U.S.C. 78f(b)(5).

[32] *See supra* note 27. For example, NASDAQ OMX Options Technical Update #2012–9 was recently distributed to notify participants on NASDAQ Options Market (''NOM''), PHLX and NASDAQ OMX BX Options (''BX'') that, effective as of the date of the Technical Update (*i.e.,* July 20, 2012), those markets would decrease the allowable time interval setting for the ''Rapid Fire Risk Protection,'' from increments of one second to increments as small as 100 milliseconds.

Limitation Mechanisms, should the Exchange choose to do so, to accommodate systems capacity concerns, changes in market conditions or the technology needs and considerations of Market Makers and non-Market Makers.

The Exchange also believes that the use of Regulatory Bulletins in this manner would further remove impediments to, and perfect the mechanisms of, a free and open market by reducing the resources that would otherwise be expended, by both the Exchange and the Commission, if the Exchange is required to propose a rule change with the Commission each time it wishes to change these settings. However, while the Exchange would have certain discretion with respect to the levels at which it could adjust these settings, the Exchange would not be permitted to adjust the settings below the minimum levels proposed herein. The Exchange believes that this would reasonably ensure that the settings are at all times within a reasonable range.

The Exchange notes that the proposed rule change would not relieve a non-Market Maker or Market Maker of its ''firm quote'' obligation under Rule 602 of Regulation NMS [33] or Rule 970NY, thereby contributing to the protection of investors and the public interest. In this regard, and as discussed above, the bulk cancel message generated pursuant to the Risk Limitation Mechanisms would be processed in time priority with any other quote or order message received by the System. Additionally, any orders or quotes that matched with a Market Maker's quote or a Market Maker's or non-Market Maker's order and were received by the System prior to the receipt of the bulk cancel message would be automatically executed. However, orders or quotes received by the System after receipt of the bulk cancel message would not be executed. The Exchange further notes that the proposed rule change would not relieve Market Makers on the Exchange of their quoting obligations under the Exchange's Rules.[34] In this regard, and as is the case today, a Market Maker quote that is cancelled or rejected would no longer count toward satisfying the Market Maker's percentage quoting obligation under Rule 925NY. Additionally, the proposed rule change is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers because it would be applicable to, and available for, all market participants on the Exchange, including non-Market Makers and Market Makers.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [35] and Rule 19b–4(f)(6) thereunder.[36] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [37] and Rule 19b–4(f)(6)(iii) thereunder.[38]

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–NYSEMKT–2012–39 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–2012–39. 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 Section, 100 F Street NE., Washington, DC 20549–1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the Exchange's principal office and on its Internet Web site at *www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2012–39 and should be submitted on or before September 18, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[39]

Kevin M. O'Neill,

Deputy Secretary.

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[33] 17 CFR 242.602.

[34] *See supra* note 18.

[35] 15 U.S.C. 78s(b)(3)(A)(iii).

[36] 17 CFR 240.19b–4(f)(6).

[37] 15 U.S.C. 78s(b)(3)(A).

[38] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[39] 17 CFR 200.30–3(a)(12).