

because doing so will allow the Pilot Program to continue without interruption in a manner that is consistent with the Commission's prior approval of the extension and expansion of the Pilot Program and will allow the Exchange and the Commission additional time to analyze the impact of the Pilot Program.<sup>13</sup> Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.<sup>14</sup>

At any time within 60 days of the filing of the 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2013-22 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-NYSEArca-2013-22. 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

<sup>13</sup> See Securities Exchange Act Release No. 61061 (November 24, 2009), 74 FR 62857 (December 1, 2009) (SR-NYSEArca-2009-44). See also *supra* note 4.

<sup>14</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-NYSEArca-2013-22 and should be submitted on or before April 5, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013-06045 Filed 3-14-13; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69105; File No. SR-NYSEMKT-2013-17]

### Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Commentary .02 to NYSE Amex Options Rule 960NY To Extend the Penny Pilot in Options Classes in Certain Issues Through June 30, 2013

March 11, 2013.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on February 26, 2013, NYSE MKT LLC (the "Exchange" or "NYSE MKT") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I 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.

<sup>15</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

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

The Exchange proposes to amend Commentary .02 to NYSE Amex Options Rule 960NY in order to extend the Penny Pilot in options classes in certain issues ("Pilot Program") previously approved by the Securities and Exchange Commission ("Commission") through June 30, 2013. The text of the proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.com), at the Exchange's principal office 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 hereby proposes to amend Commentary .02 to Exchange Rule 960NY to extend the time period of the Pilot Program,<sup>4</sup> which is currently scheduled to expire on March 31, 2013 through June 30, 2013.

This filing does not propose any substantive changes to the Pilot Program: all classes currently participating will remain the same and all minimum increments will remain unchanged. The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh the increase in quote traffic.

##### 2. Statutory Basis

The proposed rule change is consistent with Section 6(b)<sup>5</sup> of the Securities Exchange Act of 1934 (the "Act"), in general, and furthers the objectives of Section 6(b)(5),<sup>6</sup> in

<sup>4</sup> See Securities Exchange Act Release No. 68427 (December 13, 2012), 77 FR 75227 (December 19, 2012) (SR-NYSEMKT-2012-75).

<sup>5</sup> 15 U.S.C. 78f(b).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

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, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system. The Exchange believes that the Pilot Program promotes just and equitable principles of trade by enabling public customers and other market participants to express their true prices to buy and sell options. The proposal to extend the Pilot Program is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, by allowing the Exchange and the Commission additional time to analyze the impact of the Pilot Program while also allowing the Exchange to continue to compete for order flow with other exchanges in option issues trading as part of the Pilot Program.

#### *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. Specifically, the Exchange believes that, by extending the expiration of the Pilot Program, the proposed rule change will allow for further analysis of the Pilot Program and a determination of how the Program should be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection. The Pilot Program is an industry wide initiative supported by all other option exchanges. The Exchange believes that extending the Pilot Program to coincide with the expiration of the Pilot Program at other exchange will allow for continued competition between NYSE Amex Options market participants trading similar products as their counterparts on other exchanges, while at the same time allowing the Exchange to continue to compete for order flow with other exchanges in option issues trading as part of the Pilot Program.

#### *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<sup>7</sup> and Rule 19b-4(f)(6) thereunder.<sup>8</sup> 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<sup>9</sup> and Rule 19b-4(f)(6)(iii) thereunder.<sup>10</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of the filing.<sup>11</sup> However, pursuant to Rule 19b-4(f)(6)(iii),<sup>12</sup> 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 waiving the 30-day operative delay is consistent with the protection of investors and the public interest because doing so will allow the Pilot Program to continue without interruption in a manner that is consistent with the Commission's prior approval of the extension and expansion of the Pilot Program and will allow the Exchange and the Commission additional time to analyze the impact of the Pilot Program.<sup>13</sup> Accordingly, the

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>8</sup> 17 CFR 240.19b-4(f)(6).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>11</sup> 17 CFR 240.19b-4(f)(6). 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 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. The Exchange has satisfied this pre-filing requirement.

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>13</sup> See Securities Exchange Act Release No. 61061 (November 24, 2009), 74 FR 62857 (December 1,

Commission designates the proposed rule change as operative upon filing with the Commission.<sup>14</sup>

At any time within 60 days of the filing of the 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEMKT-2013-17 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-2013-17. 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

2009) (SR-NYSEArca-2009-44). See also *supra* note 4.

<sup>14</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2013-17 and should be submitted on or before April 5, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69104; File No. SR-NYSEMKT-2013-22]

### Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 107C-Equities To Clarify That a Retail Member Organization May Submit Retail Orders to the Retail Liquidity Program in a Riskless Principal Capacity as Well as in an Agency Capacity

March 11, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 1, 2013, NYSE MKT LLC ("NYSE MKT" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the 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 Rule 107C-Equities to clarify that a Retail Member Organization ("RMO") may submit Retail Orders to the Retail Liquidity Program (the "Program") in a riskless principal capacity as well as in an agency capacity, provided that (i) the

entry of such riskless principal orders meets the requirements of FINRA Rule 5320.03, including that the RMO maintains supervisory systems to reconstruct, in a time-sequenced manner, all Retail Orders that are entered on a riskless principal basis; and (ii) the RMO does not include non-retail orders together with the Retail Orders as part of the riskless principal transaction. The text of the proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://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 Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange is proposing an amendment to Rule 107C-Equities to clarify that an RMO may submit Retail Orders to the Program in a riskless principal capacity as well as in an agency capacity, provided that (i) the entry of such riskless principal orders meets the requirements of FINRA Rule 5320.03, including that the RMO maintains supervisory systems to reconstruct, in a time-sequenced manner, all Retail Orders that are entered on a riskless principal basis; and (ii) the RMO does not include non-retail orders together with the Retail Orders as part of the riskless principal transaction.<sup>3</sup> Under current Rule 107C(a)(3)-Equities, a "Retail Order" is defined as "an agency order that originates from a natural person and is submitted to the Exchange by [an RMO]

<sup>3</sup> Recently, the Exchange proposed to amend the attestation requirement of Rule 107C to allow an RMO to attest that "substantially all" orders submitted to the Program will qualify as "Retail Orders." See Exchange Act Release No. 68747 (Jan. 28, 2013), 78 FR 7824 (Feb. 4, 2013). Riskless principal transactions permitted by this amendment would be considered "Retail Orders" for purposes of the attestation requirement.

provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or other computerized methodology."

The Exchange believes that, for purposes of determining whether an order should qualify as a Retail Order, there is no difference between a riskless principal order that meets the requirements of FINRA Rule 5320.03 and an agency order. A riskless principal transaction is a transaction in which a member, after having received an order to buy (sell) a security, purchases (sells) the security as principal and, contemporaneously, satisfies the original order by selling (buying) as principal at the same price. Generally, a riskless principal transaction involves two orders, the execution of one being dependent upon the receipt or execution of the other; thus, there is no "risk" in the interdependent transactions when completed. Unlike a riskless principal transaction, an agency order is entered directly in exchange systems on behalf of a customer. Ultimately, however, the results of a riskless principal transaction and an agency order are the same: The customer receives an execution while the involved member acts as an intermediary to effect the transaction.<sup>4</sup>

A riskless principal transaction under the Program would occur as follows. Assume an RMO receives a market order to sell 100 shares at \$10.01 of ABC from a retail customer. The RMO then enters a Retail Order into the Program to sell at \$10.01 under the Program, and that order receives a price-improved execution under the Program at \$10.012. When that execution occurs, the RMO contemporaneously executes the order with the retail customer for the same price (\$10.012) that it received within the program, exclusive of any markup or markdown, commission equivalent, or other fee. Thus, the retail customer would receive the same benefit from the Program that it would have if the Retail Order had been entered on an agency basis. Therefore, there is no functional distinction for purposes of the Program between an order entered by an RMO on an agency basis and one entered on a riskless principal basis, and including riskless principal orders improves the ability of RMOs to offer the possibility of price improvement to their customers.

The Exchange believes that the requirement that the entry of such

<sup>4</sup> A principal transaction differs from both a riskless principal transaction and an agency order in that it is an order for the principal account of the entering member.

<sup>15</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.