

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>13</sup> and Rule 19b-4(f)(6) thereunder.<sup>14</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>15</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),<sup>16</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 proposed rule change may become operative before the current expiration of the pilot period. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, because waiver would allow the pilot period to continue uninterrupted after its current expiration date of March 31, 2016, thereby avoiding any potential investor confusion that could result from temporary interruption in the pilot program. For this reason, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.<sup>17</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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</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 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.

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

<sup>16</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>17</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

#### 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-2016-47 on the subject line.

##### *Paper Comments*

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

All submissions should refer to File Number SR-NYSEArca-2016-47. 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-NYSEArca-2016-47 and should be submitted on or before April 19, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**Brent J. Fields,**

*Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77428; File No. SR-NASDAQ-2016-038]

#### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Chapter XI (Doing Business With the Public), Section 8 (Supervision of Accounts) of the Exchange's Rulebook

March 23, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 14, 2016, The NASDAQ Stock Market LLC ("Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been substantially 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 Chapter XI (Doing Business with the Public), Section 8 (Supervision of Accounts) of the Exchange's rulebook to remove outdated references to three National Association of Securities Dealers, Inc. ("NASD") rules and to replace those references with references to four successor Financial Industry Regulatory Authority, Inc. ("FINRA") rules which have replaced them.

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaq.cchwallstreet.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

<sup>18</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.

## 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 Exchange 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 these 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 aspects 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 to amend Chapter XI (Doing Business with the Public), Section 8 (Supervision of Accounts) of the Exchange's rulebook (the "Options Supervision Rules") to remove outdated references to three NASD rules and to replace those references with references to four successor FINRA rules which have replaced them.<sup>3</sup>

Currently, the Options Supervision Rules provide in Section 8(a) that each member that conducts a public customer options business shall ensure that its written supervisory system policies and procedures pursuant to NASD Rules 3010, 3012, and 3013 (the "Old NASD Rules") adequately address the member's public customer options business. Since the adoption by the Exchange of the Options Supervision Rules, FINRA has updated its own rulebook and deleted the Old NASD Rules, adopting in their place FINRA Rules 3110, 3120, 3130 and 3170.<sup>4</sup> The

<sup>3</sup> The current FINRA rulebook consists of: (1) FINRA rules; (2) NASD rules; and (3) rules incorporated from NYSE (Incorporated NYSE Rules) (together, the NASD rules and Incorporated NYSE Rules are referred to as the "Transitional Rulebook"). As part of the process of developing a new consolidated rulebook (the "Consolidated FINRA Rulebook"), FINRA adopted FINRA Rules 3110, 3120, 3130 and 3170, which the Exchange seeks to incorporate in the Options Supervision Rules.

<sup>4</sup> FINRA Rules 3110 (Supervision) and 3120 (Supervisory Control System) were adopted by FINRA to replace NASD Rules 3010 (Supervision) and 3012 (Supervisory Control System). In addition, new FINRA Rule 3170 (Tape Recording of Registered Persons by Certain Firms) replaced NASD Rule 3010(b)(2). The new rules became effective on December 1, 2014. See Securities Exchange Act Release No. 71179 (Dec. 23, 2013), 78 FR 79542 (Dec. 30, 2013) (Order Approving Proposed Rule Change as Modified by Amendment No. 1) (File No. SR-FINRA-2013-025); see also FINRA Regulatory Notice 08-24 (May 2008)

Exchange therefore proposes to make a conforming change to the Options Supervision Rules by deleting references to the Old NASD Rules and replacing them with references to FINRA Rules 3110, 3120, 3130 and 3170.

#### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>5</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>6</sup> in particular, in that it is designed 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, by removing references to outdated NASD rules, thus minimizing any potential confusion on the part of members and other market participants regarding the standards and rules to which Exchange members are subject.

### 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. As the amendments merely correct the Exchange rules to refer to the current FINRA rules discussed above, it has no impact on competition.

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

No written comments were either solicited or received.

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

Because the foregoing 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, it has become effective pursuant to Section

(Proposed Consolidated FINRA Rules Governing Supervision and Supervisory Controls), FINRA Rule 3130 (Annual Certification of Compliance and Supervisory Processes) replaced NASD Rule 3013 (Annual Certification of Compliance and Supervisory Processes) in 2008. See Securities Exchange Act Release No. 58661 (Sept. 26, 2008), 73 FR 57395 (Oct. 2, 2008) (SR-FINRA-2008-030).

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

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

19(b)(3)(A)(iii) of the Act<sup>7</sup> and Rule 19b-4(f)(6) thereunder.<sup>8</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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

## IV. Solicitation of Comments

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

### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2016-038 on the subject line.

### Paper Comments

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

All submissions should refer to File Number SR-NASDAQ-2016-038. 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

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

<sup>8</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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.

printing in the Commission's Public Reference Room, 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 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-NASDAQ-2016-038 and should be submitted on or before April 19, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Brent J. Fields,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77435; File No. SR-NYSEMKT-2016-41]

### Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Rule 964.2NY Regarding the Participation Entitlement Formula for Specialists and e-Specialists

March 23, 2016.

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 March 21, 2016, 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 Rule 964.2NY regarding the participation entitlement formula for Specialists and e-Specialists. 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 the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange is proposing changes to Rule 964.2NY regarding the participation entitlement formula for Specialists and e-Specialists as described below.<sup>4</sup>

Rule 964NY sets forth the priority for the allocation of incoming orders to resting interest at a particular price in the System,<sup>5</sup> which includes the allocation to the Specialist Pool.<sup>6</sup> Rule 964.2NY sets forth the participant entitlement formula applicable to the Specialist Pool and provides that, on a quarterly basis, the Exchange will determine a Primary Specialist in each option class.

To select the Primary Specialist, the Exchange objectively evaluates the relative quote performance of each Specialist and e-Specialist focusing on one or more of the following optional factors: time and size at the NBBO, average quote width, average quote size,

<sup>4</sup> A Specialist is "an individual or entity that has been deemed qualified by the Exchange for the purpose of making transactions on the Exchange in accordance with the provisions of Rule 920NY [Market Makers], and who meets the qualification requirements of Rule 927NY(b) [Specialists]. Each Specialist must be registered with the Exchange as a Market Maker. Any ATP Holder registered as a Market Maker with the Exchange is eligible to be qualified as a Specialist. See Rule 900.2NY(76). Rule 923NY(b) also provides that "[t]he Exchange may designate e-Specialists in an option class in accordance with Rule 927.4NY[e-Specialists]." *Id.*

<sup>5</sup> The term "System" refers to the Exchange's electronic order delivery, execution and reporting system through which orders and quotes for listed options are consolidated for execution and/or display. See Rule 900.2NY(48) (defining "Exchange System" or "System").

<sup>6</sup> The Specialist Pool refers to the aggregated size of the best bid and best offer, in a given series, amongst the Specialist and e-Specialists that match in price. See Rule 900.2NY(75).

and the relative share of electronic volume in a given class of options (the Primary Specialist Criteria<sup>7</sup>).<sup>7</sup> Per current Rule 964.2NY(a), the Exchange will publish the Primary Specialist Criteria, including the relative weighting of each factor, by Regulatory Bulletin at least 5 business days prior to an evaluation period. The Exchange adopted the quarterly contest for Primary Specialist in 2012 to enhance quote competition among the Specialist Pool participants.<sup>8</sup>

The Exchange proposes to modify the Primary Specialist Criteria to include the electronic volumes from resting quotes and orders in the Consolidated Book<sup>9</sup> for each Specialist and e-Specialist. While the current Primary Specialist Criteria includes "electronic volume," this can be composed of liquidity-taking volume. The Exchange believes the new criterion would enable the Exchange to better account for the liquidity-making volume of each Specialist and e-Specialist. The Exchange believes this proposal also provides the Exchange the ability to reward Specialists and e-Specialists that contribute significant volumes through market making activity. The Exchange believes that having the ability to reward such participants would incentivize Specialist Pool Participants to increase their posted volume on the Exchange, which benefits other market participants through the improvement of the price and size of the displayed market.

The Exchange also proposes at this time to make a procedural change for announcements regarding the Primary Specialist Criteria and any additional weighting to the Primary Specialist amongst the Specialist Pool. Presently the Exchange issues Regulatory Bulletins when making such announcements. Going forward, the Exchange proposes to issue a Trader Update in lieu of a Regulatory Bulletin. Regulatory Bulletins generally contain information regarding legal and regulatory matters while Trader Updates deal with issues such as trading, systems changes and real-time market

<sup>7</sup> See Rule 964.2NY(a). The Primary Specialist's size pro-rata participation in the Specialist Pool also receives additional weighting amongst Specialist Pool participants, which is determined by the Exchange and announced via Regulatory Bulletin. See Rule 964.2NY(b)(3)(A).

<sup>8</sup> See Securities Exchange Release No. 34-67421 (July 12, 2012), 77 FR 42349 (July 18, 2012) (SR-NYSEAmex-2012-31) (approval order).

<sup>9</sup> The Consolidated Book is "the Exchange's electronic book of limit orders for the accounts of Customers and broker-dealers, and Quotes with Size. All orders and Quotes with Size that are entered into the Book will be ranked and maintained in accordance with the rules of priority as provided in Rule 964NY." See Rule 900.2NY(14).

<sup>9</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.