

ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(5) For initial and/or continued listing, the Fund will be in compliance with Rule 10A-3 under the Exchange Act,<sup>29</sup> as provided by NYSE Arca Equities Rule 5.3.

(6) The options contracts held by the Fund will be U.S. exchange-listed. Except for Underlying ETPs that may hold non-U.S. issues, the Fund will not otherwise invest in non-U.S.-registered issues. The Exchange may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, the Exchange is able to obtain information from the U.S. exchanges, all of which are ISG members, on which the Underlying ETPs and options are listed and traded.

(7) The Fund does not intend to invest in leveraged, inverse, or inverse leveraged Underlying ETPs. The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage.

(8) While the Fund is permitted to invest up to 40% of its total assets in call options on Underlying ETPs, the Adviser expects that, under normal market conditions, the Fund will invest no more than 15% in such call options on a daily basis.

(9) The Fund may invest up to 10% of its total assets in futures contracts and related options on futures contracts. While the Fund may invest in put and call options on securities other than Underlying ETPs, the Adviser expects that, under normal market conditions, the Fund will invest from 0% to up to 10% in such put and call options on a daily basis. While the Fund currently does not intend to invest in swaps, it may invest up to 10% of its total assets in swaps.

(10) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including Rule 144A securities and loan participation interests.

(11) A minimum of 100,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange.

This approval order is based on all of the Exchange's representations, including those set forth above and in the Notice, and the Exchange's description of the Fund.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>30</sup> and the rules and regulations thereunder applicable to a national securities exchange.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>31</sup> that the proposed rule change (SR-NYSEArca-2012-55) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>32</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67567; File No. SR-NYSEMKT-2012-28]

#### Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 128—Equities, Which Governs Clearly Erroneous Executions, To Extend the Effective Date of the Pilot by Which Portions of Such Rule Operate Until February 4, 2013

August 1, 2012.

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 July 20, 2012, NYSE MKT LLC (the "Exchange" or "NYSE MKT") 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 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 128—Equities, which governs clearly erroneous executions, to extend the effective date of the pilot by which portions of such Rule operate until February 4, 2013. The pilot is currently scheduled to expire on July 31, 2012. The text of the proposed rule change is

<sup>30</sup> 15 U.S.C. 78f(b)(5).

<sup>31</sup> 15 U.S.C. 78s(b)(2).

<sup>32</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.

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 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 self-regulatory organization 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 proposes to amend Rule 128—Equities, which governs clearly erroneous executions, to extend the effective date of the pilot by which portions of such Rule operate, until February 4, 2013. The pilot is currently scheduled to expire on July 31, 2012.<sup>3</sup>

On September 10, 2010, the Commission approved, on a pilot basis, market-wide amendments to exchanges' rules for clearly erroneous executions to set forth clearer standards and curtail discretion with respect to breaking erroneous trades. In connection with this pilot initiative, the Exchange amended Rule 128(c), (e)(2), (f), and (g). The amendments provide for uniform treatment of clearly erroneous execution reviews (1) in Multi-Stock Events<sup>4</sup> involving twenty or more securities, and (2) in the event transactions occur that result in the issuance of an individual security trading pause by the primary market and subsequent transactions that occur before the trading pause is in effect on the Exchange.<sup>5</sup> The

<sup>3</sup> See Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010) (SR-NYSEAmex-2010-60). See also Securities Exchange Act Release Nos. 63480 (December 9, 2010), 75 FR 78333 (December 15, 2010) (SR-NYSEAmex-2010-116); 64233 (April 7, 2011), 76 FR 20736 (April 13, 2011) (SR-NYSEAmex-2011-24); 65066 (August 9, 2011), 76 FR 50506 (August 15, 2011) (SR-NYSEAmex-2011-58) and 66137 (January 11, 2012), 77 FR 2587 (January 18, 2012) (SR-NYSEAmex-2011-106).

<sup>4</sup> Terms not defined herein are defined in Rule 128—Equities.

<sup>5</sup> Separately, the Exchange has proposed extend the effective date of the trading pause pilot under Rule 80C—Equities, which requires to the Exchange to pause trading in an individual security listed on

<sup>29</sup> 17 CFR 240.10A-3.

amendments also eliminated appeals of certain rulings made in conjunction with other exchanges with respect to clearly erroneous transactions and limited the Exchange's discretion to deviate from Numerical Guidelines set forth in the Rule in the event of system disruptions or malfunctions.

If the pilot were not extended, the prior versions of paragraphs (c), (e)(2), (f), and (g) of Rule 128—Equities would be in effect, and the Exchange would have different rules than other exchanges and greater discretion in connection with breaking clearly erroneous transactions. The Exchange proposes to extend the pilot amendments to Rule 128—Equities until February 4, 2013 in order to maintain uniform rules across markets and allow the pilot to continue to operate without interruption during the same period that the Rule 80C trading pause rule pilot is also in effect. Extension of the pilot would permit the Exchange, other national securities exchanges and the Commission to further assess the effect of the pilot on the marketplace, including whether additional measures should be added, whether the parameters of the rule should be modified or whether other initiatives should be adopted in lieu of the current pilot.<sup>6</sup>

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b)<sup>7</sup> of the Act, in general, and furthers the objectives of Section 6(b)(5)<sup>8</sup> 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

the Exchange if the price moves by a specified percentage as compared to prices of that security in the preceding five-minute period during a trading day. See SR-NYSEMKT-2012-27.

<sup>6</sup> This proposed extension would also permit the pilot to operate until the National Market System Plan to Address Extraordinary Market Volatility is implemented, which will occur on February 4, 2013. See Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (File No. 4-631) (Order Approving, on a Pilot Basis, the National Market System Plan To Address Extraordinary Market Volatility by BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, The Nasdaq Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc.).

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

and a national market system and, in general, to protect investors and the public interest. More specifically, the Exchange believes that the extension of the pilot would promote just and equitable principles of trade because it would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria. Additionally, resolution of the incident will occur promptly through a transparent process, which the Exchange believes would protect investors and the public interest. The proposed rule change would also foster cooperation and coordination with persons engaged in facilitating transactions in securities and to remove impediments to, and perfect the mechanism of, a free and open market and a national market system because it would help assure consistent results in handling erroneous trades across the U.S. markets, thus furthering fair and orderly markets, the protection of investors and the public interest. Finally, the proposed rule change would permit the pilot to operate until the National Market System Plan to Address Extraordinary Market Volatility is implemented, which will occur on February 4, 2013.<sup>9</sup>

### 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<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</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

<sup>9</sup> See *supra* note 7.

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

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>12</sup> and Rule 19b-4(f)(6)(iii) thereunder.<sup>13</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>14</sup> normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii)<sup>15</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, as it will allow the pilot program to continue uninterrupted, thereby avoiding the investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.<sup>16</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

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</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>14</sup> 17 CFR 240.19b-4(f)(6).

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

<sup>16</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

• Send an Email to *rule-comments@sec.gov*. Please include File No. SR-NYSEMKT-2012-28 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-2012-28. 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. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEMKT-2012-28 and should be submitted by August 28, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67569; File No. SR-NYSEMKT-2012-23]

### Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Rule Change Amending the Members' Schedule of NYSE Amex Options LLC in Order To Reflect Changes to the Capital Structure of the Company

August 1, 2012.

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 July 25, 2012, NYSE MKT LLC ("NYSE MKT" or "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 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 the Members' Schedule (as defined in the Limited Liability Company Agreement of NYSE Amex Options LLC (the "Company") dated as of June 29, 2011 (the "LLC Agreement")) in order to reflect changes to the capital structure of the Company based on three transactions (such amendment, the "Proposed Rule Change"). The first transaction involved the admission of NYSE Market, Inc. ("NYSE Market") as a Member (as defined below) of the Company on September 19, 2011 pursuant to Sections 10.4 and 11.1 of the LLC Agreement and Section 3.2 of that certain Members Agreement, dated as of June 29, 2011, by and among the Company, NYSE MKT, NYSE Euronext, Banc of America Strategic Investments Corporation ("BAML"), Barclays Electronic Commerce Holdings Inc. ("Barclays"), Citadel Securities LLC ("Citadel"), Citigroup Financial Strategies, Inc. ("Citigroup"), Goldman, Sachs & Co. ("Goldman Sachs"), Datek Online Management Corp. ("TD Ameritrade") and UBS Americas Inc. ("UBS") (collectively, excluding the Company, NYSE MKT and NYSE Euronext, the "Founding Firms") (the "Members Agreement"). The second transaction involved the issuance of Annual Incentive Shares (as defined in the Members Agreement) to the

Founding Firms pursuant to Section 2.1 of the Members Agreement. The third transaction will involve the transfer of Interests (as defined below) by the Founding Firms to NYSE Market on or around September 25, 2012 pursuant to Article XI of the LLC Agreement and Section 3.1 of the Members Agreement. 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, on the Commission's Web site at [www.sec.gov](http://www.sec.gov), 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 proposes to amend the Members' Schedule as set forth herein. The amendment reflects changes to the capital structure of the Company due to (i) The admission of NYSE Market as a Member of the Company on September 19, 2011 pursuant to Sections 10.4 and 11.1 of the LLC Agreement and Section 3.2 of the Members Agreement, (ii) the issuance of Annual Incentive Shares to the Founding Firms on February 29, 2012 pursuant to Section 2.1 of the Members Agreement and (iii) the upcoming transfer of Interests by the Founding Firms to NYSE Market on or around September 25, 2012 pursuant to Article XI of the LLC Agreement and Section 3.1 of the Members Agreement.

###### Admission of NYSE Market

Pursuant to Section 3.2 of the Members Agreement, each Founding Firm has the right, subject to certain conditions and limitations, to cause NYSE MKT (or an affiliate thereof that NYSE MKT designates) to purchase a portion of such Founding Firm's equity interest in the Company (such right, the "Founding Firm Right"). On September 19, 2011, each of the Founding Firms exercised its Founding Firm Right and

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

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

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