

because the participant did not act with “purpose.” The Exchange further represented that such unintended activity could also give rise to other violations, such as a failure to supervise under Rule 342—Equities or Rule 922, or a violation of just and equitable principles of trade or could otherwise constitute unethical activity under Rule 476(a)(6) or Rule 2010—Equities. Accordingly, the Commission expects the Exchange to continue to surveil for potential wash sale activity and to take necessary action as appropriate.

The Commission believes that the proposed deletion of Rule 476(a)(8) and Rule 4 promotes harmonization, consistency and clarity with respect to the Exchange’s rules<sup>12</sup> by resolving the current inconsistent scienter standards of Exchange Rule 476(a)(8) and Exchange Rule 4,<sup>13</sup> Exchange Rule 6140—Equities, NYSE Rule 6140 and FINRA Rule 6140, as well as extending the breadth of persons covered by Rule 6140—Equities to those persons covered by Rule 476(a)(8). The Commission also believes that the additions to Exchange Rule 995NY to apply the specific provisions of Rule 6140(a) and (b)—Equities to the Exchange’s options market are appropriate because the Exchange’s ATP Holders will be subject to a rule that prohibits wash sales that were designed to create or induce a false or misleading appearance of activity in a designated security. The change will provide clear notice to the ATP Holders of such prohibited activity, as well as make the prohibited activity consistent across both the Exchange’s equities and options markets, as well as across NYSE and FINRA. The Commission believes that the proposed rule change should result in less burdensome and more efficient regulatory compliance for firms that are members of the Exchange, NYSE and FINRA. As such, the Exchange’s rules would continue to protect investors and the public interest.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>14</sup> and the rules and regulations thereunder applicable to a national securities exchange.

<sup>12</sup> The Exchange stated that it can bring disciplinary actions under Rule 476(a)(8) for conduct that occurred prior to the time the rule is deleted. Thus, the proposed rule change would have no impact on ongoing disciplinary actions involving violations of Rule 476(a)(8).

<sup>13</sup> The Exchange noted that Rule 4 is substantially the same as Rule 6140(a)—Equities.

<sup>14</sup> 15 U.S.C. 78f(b)(5).

#### IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,<sup>15</sup> that the proposed rule change (SR–NYSEMKT–2013–88) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Kevin M. O’Neill,**

*Deputy Secretary.*

[FR Doc. 2013–30938 Filed 12–26–13; 8:45 am]

**BILLING CODE 8011–01–P**

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71163; File No. SR–NYSEMKT–2013–104]

#### Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Proposes to Amend Commentary .02 to NYSE Amex Options Rule 960NY in order to Extend the Penny Pilot in Options Classes in Certain Issues Previously Approved by the Securities and Exchange Commission through June 30, 2014

December 20, 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 December 18, 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 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 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, 2014. 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,

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

<sup>16</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.

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 December 31, 2013 through June 30, 2014. The Exchange also proposes that the dates to replace issues in the Pilot Program that have been delisted be revised to the second trading day following January 1, 2014.<sup>5</sup>

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>6</sup> of the Securities Exchange Act of 1934 (the “Act”), in general, and furthers the objectives of Section 6(b)(5),<sup>7</sup> in

<sup>4</sup> See Securities Exchange Act Release No. 69105 (March 11, 2013), 78 FR 16554 (March 15, 2013) (SR–NYSEMKT–2013–17).

<sup>5</sup> The month immediately preceding a replacement class’s addition to the Pilot Program (i.e., December) would not be used for purposes of the analysis for determining the replacement class. Thus, a replacement class to be added on the second trading day following January 1, 2014 would be identified based on The Option Clearing Corporation’s trading volume data from June 1, 2013 through November 30, 2013. The Exchange will announce the replacement issues to the Exchange’s membership through a Trader Update.

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

<sup>7</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 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>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</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>10</sup> and Rule 19b-4(f)(6)(iii) thereunder.<sup>11</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>12</sup> However, pursuant to Rule 19b-4(f)(6)(iii),<sup>13</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>14</sup> Accordingly, the

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

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

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

<sup>12</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>13</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>14</sup> See Securities Exchange Act Release No. 61061 (November 24, 2009), 74 FR 62857 (December 1, 2009) (SR-NYSEArca-2009-44).

Commission designates the proposed rule change as operative upon filing with the Commission.<sup>15</sup>

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. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>16</sup> of the Act to determine whether the proposed rule change 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-NYSEMKT-2013-104 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-2013-104. 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

<sup>15</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).

<sup>16</sup> 15 U.S.C. 78s(b)(2)(B).

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. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at [www.nyse.com](http://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-2013-104 and should be submitted on or before January 17, 2014.

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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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71160; File No. SR-ISE-2013-60]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Rent Cabinet Space to Telecommunication Vendors in the Exchange's Backup Datacenter

December 20, 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 December 13, 2013, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange 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 ISE proposes to provide cabinet space in its backup datacenter to telecommunication vendors to replace substantially similar services currently provided by the Exchange's third party

datacenter operator in connection with the move of this datacenter to an ISE facility, and to adopt a corresponding disaster recovery network fee. The text of the proposed rule change is available on the Exchange's Web site (<http://www.ise.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 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 the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

ISE is in the process of moving its backup datacenter from the current third-party site in New Jersey ("Telx") to the Exchange's headquarters in New York, and, in connection with this move, is proposing to allow telecommunication vendors to rent cabinet space in the ISE facility, and to adopt a corresponding disaster recovery network fee.

Currently, market participants, including members and non-members, may rent cabinet space in the backup datacenter run by Telx in order to maintain connectivity to the Exchange in the event that the ISE's primary datacenter is not operational. As the Exchange is moving its hardware to an ISE-run facility, the Exchange proposes to offer this service itself. In particular, the ISE proposes to facilitate connectivity to the backup datacenter by providing telecommunication vendors with cabinet space,<sup>3</sup> in either half cabinet or full cabinet options, along with power and cooling in a secure, controlled environment.<sup>4</sup> The proposed services are substantially the same as

<sup>3</sup> Cabinet space will be provided in industry standard 19" open air racks, which will be secured in a caged meet-me-room that is controlled by 24x7 access based on a registration process for access.

<sup>4</sup> This service is being provided as a means of establishing connectivity to the backup datacenter. Renting cabinet space does not entitle telecommunication vendors to receive or redistribute market data.

services currently provided through Telx to market participants that wish to connect to the ISE's backup datacenter. The Exchange believes that it is important that it continue to provide these services so that market participants may connect to the backup datacenter in the event that the ISE's primary datacenter is not operational.

Like the ISE's third party datacenter operator, the Exchange intends to charge a fee to telecommunication vendors that wish to rent cabinet space in the ISE's backup datacenter when it is moved to the new facility. Operating the backup datacenter takes a significant amount of ISE resources, and the proposed "disaster recovery network fee" will allow the Exchange to recoup associated expenses. As explained above, the proposed fee will entitle vendors to obtain cabinet space in the datacenter, along with power and cooling. The fees assessed will reflect the amount of cabinet space used by each vendor, and will be \$2,300 per month for a half-cabinet and \$2,800 per month for a full cabinet. The Exchange will not charge any installation or other fees to telecommunication vendors for connecting to the backup datacenter.

As proposed, firms that currently connect to the backup datacenter at Telx will be able to continue to do so through telecommunication vendors who have entered into a contractual agreement with the Exchange to provide these services, and who will be responsible for redistributing connectivity to market participants that desire access. This would include members that currently connect to Telx in order to maintain connectivity in the event that the Exchange must operate using its backup datacenter.<sup>5</sup> It would also include non-members (e.g., extranet providers) that currently connect to Telx in order to redistribute that connectivity to others.<sup>6</sup> For operational reasons, market participants will not be permitted to connect directly to the backup datacenter at the ISE facility, and must go through a telecommunication vendor. The Exchange believes that this provides a more efficient means of managing connectivity to the backup datacenter as the ISE would not need to set up and maintain many separate connections from market participants.

The Exchange expects that initially four telecommunication vendors will provide connectivity to the backup

<sup>5</sup> Members are not required to establish connectivity to the Exchange's backup datacenter, which is purely voluntary.

<sup>6</sup> An "extranet provider" is a technology provider that connects with ISE systems and in turn provides such connectivity to market participants that do not connect directly with the Exchange.

<sup>17</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.