

14. The Trustees of each Fund, including a majority of the Independent Trustees, will:

(a) Review, no less frequently than quarterly, the Fund's participation in the proposed credit facility during the preceding quarter for compliance with the conditions of any order permitting such transactions;

(b) establish the Bank Loan Rate formula used to determine the interest rate on Interfund Loans and review, no less frequently than annually, the continuing appropriateness of the Bank Loan Rate formula; and

(c) review, no less frequently than annually, the continuing appropriateness of the Fund's participation in the proposed credit facility.

15. In the event an Interfund Loan is not paid according to its terms and such default is not cured within two business days from its maturity or from the time the lending Fund makes a demand for payment under the provisions of the Interfund Lending Agreement, the Adviser will promptly refer such loan for arbitration to an independent arbitrator selected by the Trustees of each Fund involved in the loan who will serve as arbitrator of disputes concerning Interfund Loans.<sup>2</sup> The arbitrator will resolve any problem promptly, and the arbitrator's decision will be binding on both Funds. The arbitrator will submit, at least annually, a written report to the Trustees setting forth a description of the nature of any dispute and the actions taken by the Funds to resolve the dispute.

16. Each Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any transaction by it under the proposed credit facility occurred, the first two years in an easily accessible place, written records of all such transactions setting forth a description of the terms of the transactions, including the amount, the maturity and the Interfund Loan Rate, the rate of interest available at the time each Interfund Loan is made on overnight repurchase agreements and commercial bank borrowings, the yield of any money market fund in which the lending Fund could otherwise invest, and such other information presented to the Fund's Trustees in connection with the review required by conditions 13 and 14.

17. The Adviser will prepare and submit to the Trustees for review an

initial report describing the operations of the proposed credit facility and the procedures to be implemented to ensure that all Funds are treated fairly. After the commencement of the proposed credit facility, the Adviser will report on the operations of the proposed credit facility at the Trustees' quarterly meetings.

Each Fund's chief compliance officer, as defined in rule 38a-1(a)(4) under the Act, shall prepare an annual report for its Trustees each year that the Fund participates in the proposed credit facility, that evaluates the Fund's compliance with the terms and conditions of the application and the procedures established to achieve such compliance. Each Fund's chief compliance officer will also annually file a certification pursuant to Item 77Q3 of Form N-SAR as such Form may be revised, amended or superseded from time to time, for each year that the Fund participates in the proposed credit facility, that certifies that the Fund and the Adviser have established procedures reasonably designed to achieve compliance with the terms and conditions of the order. In particular, such certification will address procedures designed to achieve the following objectives:

(a) That the Interfund Loan Rate will be higher than the Repo Rate, and, if applicable, the yield of any money market fund in which the lending Fund could otherwise invest, but lower than the Bank Loan Rate;

(b) compliance with the collateral requirements as set forth in the application;

(c) compliance with the percentage limitations on interfund borrowing and lending;

(d) allocation of interfund borrowing and lending demand in an equitable manner and in accordance with procedures established by the Trustees; and

(e) that the Interfund Loan Rate does not exceed the interest rate on any third party borrowings of a borrowing Fund at the time of the Interfund Loan.

Additionally, each Fund's independent public accountants, in connection with their audit examination of the Fund, will review the operation of the proposed credit facility for compliance with the conditions of the application and their review will form the basis, in part, of the auditor's report on internal accounting controls in Form N-SAR.

18. No Fund will participate in the proposed credit facility upon receipt of requisite regulatory approval unless it has fully disclosed in its prospectus and/or statement of additional

information all material facts about its intended participation.

For the Commission, by the Division of Investment Management, under delegated authority.

**Robert W. Errett,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

*Upon Written Request; Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549-2736

#### *Extension:*

Industry Guides, SEC File No. 270-069, OMB Control No. 3235-0069.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget this requests for extension of the previously approved collections of information discussed below.

Industries Guides are used by registrants in certain industries as disclosure guidelines to be followed in presenting information to investors in registration statements and reports under the Securities Act (15 U.S.C. 77a *et seq.*) and Exchange Act (15 U.S.C. 78a *et seq.*). The paperwork burden from the Industry Guides is imposed through the forms that are subject to the disclosure requirements in the Industry Guides and is reflected in the analysis of these documents. To avoid a Paperwork Reduction Act inventory reflecting duplicative burdens and for administrative convenience, the Commission estimates the total annual burden imposed by the Industry Guides to be one hour. The information required by the Industry Guides is filed on occasion and is mandatory. All information is provided to the public. The Industry Guides do not directly impose any disclosure burden.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following Web site, [www.reginfo.gov](http://www.reginfo.gov). Comments should be directed to: (i) Desk Officer for the

<sup>2</sup> If the dispute involves Funds with different Trustees, the respective Trustees of each Fund will select an independent arbitrator that is satisfactory to each Fund.

Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta Ahmed@omb.eop.gov*; and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA\_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: May 16, 2016.

**Robert W. Errett,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77836; File No. SR-NYSEMKT-2016-53]

### Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Definition of Professional Customer in Rule 900.2NY(18A)

May 16, 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 May 3, 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend the definition of Professional Customer in Rule 900.2NY(18A) to specify the manner in which the Exchange calculates average daily order submissions for purposes of counting Professional Customer orders. 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.

<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.

#### 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 definition of Professional Customer in Rule 900.2NY(18A) to adopt a methodology for counting average daily order submissions in listed options to determine whether a person or entity meets the definition of a Professional Customer (“Professional Customer order counting”). The proposed rule change is designed to harmonize Professional Customer order counting with the recently adopted rules of competing options exchanges—specifically the Chicago Board of Options Exchange, Inc. (“CBOE”) and NASDAQ OMX PHLX LLC (“PHLX”).<sup>4</sup>

Rule 900.2NY(18A) defines Professional Customer “as an individual or organization that (i) is not a Broker/Dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).” The Exchange believes that identifying Professional Customer accounts based upon the average number of orders entered in qualified accounts is an appropriate, objective approach that will reasonably distinguish such persons and entities from non-professional, retail investors or market participants.<sup>5</sup> In order to properly

<sup>4</sup> See Securities Exchange Act Release Nos. 77450 (March 25, 2016), 81 FR 18668, (March 31, 2016) (SR-CBOE-2016-005); 77449 (March 25, 2016), 81 FR 18665, (March 31, 2016) (SR-Phlx-2016-10) (approval orders). The Exchange notes that it recently issued guidance regarding Professional Customer order counting. See e.g., NYSE Arca, Inc.’s and NYSE MKT LLC’s Joint Regulatory Bulletin (RBO-15-03 and RBO-15-06, respectively) dated September 9, 2015. This proposal codifies that guidance in a manner that is consistent with CBOE and PHLX’s approved rules.

<sup>5</sup> See, e.g., Securities Exchange Act Release No. 73665 (November 21, 2014), 79 FR 70907, 70908 (November 21, 2014) (SR-NYSEArca-2014-133) (adopting professional customer definition on

represent orders entered on the Exchange, ATP Holders are required to indicate whether Customer orders are “Professional Customer” orders.<sup>6</sup> To comply with this requirement, member organizations are required to review their Customers’ activity on at least a quarterly basis to determine whether orders that are not for the account of a broker-dealer should be represented as Customer orders or Professional Customer orders.<sup>7</sup>

The advent of new multi-leg spread products and the proliferation of the use of complex orders and algorithmic execution strategies by both institutional and retail market participants has raised questions as to what should be counted as an “order” for Professional Customer order counting purposes. The proposed changes would specifically address the counting of multi-leg spread products, algorithm generated orders, and complex orders for purposes of determining Professional Customer status. In addition, the proposal is intended to provide guidance regarding the methodology used by the Exchange when calculating average daily orders for Professional order counting purposes.<sup>8</sup>

As proposed, the rule would provide that an order would count as one order for Professional Customer counting purposes, unless one of the exceptions enumerated in the proposed rule stipulates otherwise (each an “Exception”). The first Exception relates to the treatment of complex orders for purposes of computing orders for Professional order counting purposes. Specifically, the proposed rule provides that a complex order of eight legs or less would count as one order, whereas a complex order comprised of nine (9) option legs or more counts as multiple orders with each option leg counting as

immediately effective basis, citing rules of various exchanges, including Rule 900.2NY(18A)).

<sup>6</sup> See e.g., Rule 957NY (Reporting Duties), Commentary .02 (requiring that manual orders submitted be marked with an origin code “PC.”).

<sup>7</sup> Orders for any customer that had an average of more than 390 orders per day during any month of a calendar quarter must be represented as Professional Customer orders for the next calendar quarter. ATP Holders would be required to conduct a quarterly review and make any appropriate changes to the way in which they are representing orders within five business days after the end of each calendar quarter. While members only would be required to review their accounts on a quarterly basis, if during a quarter the Exchange identifies a customer for which orders are being represented as Customer orders but that has averaged more than 390 orders per day during a month, the Exchange would notify the ATP Holder would be required to change the manner in which it is representing the customer’s orders within five business days.

<sup>8</sup> This proposal is consistent with CBOE and PHLX’s approved rules. See *supra* n. 4.