SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-69098; File No. SR-NYSEMKT-2013-21)

March 11, 2013

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 13 - Equities to Add Two Self-Trade Prevention Modifiers That May Be Used by Certain Market Participants

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] notice is hereby given that, on February 26, 2013, 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 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 13 - Equities to add two self-trade prevention ("STP") modifiers that may be used by certain market participants. The text of the proposed rule change is available on the Exchange's website at 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

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[1]   15 U.S.C. 78s(b)(1).

[2]   17 CFR 240.19b-4.

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 Rule 13 - Equities to add two STP modifiers that may be used by certain market participants. The proposed STP modifiers are designed to prevent two orders from the same market participant identifier ("MPID") assigned to a member organization from executing against each other. Use of the STP modifiers is optional and would not be automatically implemented by the Exchange. Rather, a member organization can choose to add a STP modifier on eligible orders. The STP modifier on the incoming order would determine the interaction between two orders marked with STP modifiers and whether the incoming or the resting order would cancel. Both the buy and the sell order would have to include an STP modifier in order to prevent a trade from occurring and to effect a cancel instruction. The Exchange notes that an incoming order with an STP modifier will execute against all available opposite-side interest in Exchange systems, displayed or non-displayed, pursuant to Rule 72 - Equities, and will be evaluated for cancellation by Exchange systems only to the extent that it would execute against opposite-side interest with an STP modifier with the same MPID.

The Exchange proposes to add two types of STP modifiers, STP Cancel Newest ("STPN") and STP Cancel Oldest ("STPO"), as discussed in detail below. As proposed, the STP modifiers would be available for limit orders sent to the matching engine by off-Floor participants, except limit orders marked GTC or MTS-IOC.[3] Market orders, stop orders, GTCs

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[3] The STP modifiers would be available for orders entered in either an agency or principal capacity, though the Exchange anticipates that the STP modifiers would be used primarily by member organizations trading on a proprietary basis as a tool to prevent potential inadvertent "wash sales."

and MTS-IOC, and orders sent to Floor brokers from off Floor participants with STP modifiers will be rejected.[4] In addition, because of the manual nature of opening, reopening, and closing single-priced auctions, STP modifiers would not be active during these transactions. The Exchange will not reject orders with STP modifiers sent specifically for execution on the opening or closing auction,[5] but such modifiers will be ignored. Moreover, limit orders accepted prior to the opening or during the trading day with valid STP modifiers could be executed during a single-priced auction transaction irrespective of such modifiers. The STP modifiers will not be active for Retail Price Improvement Orders ("RPI") and will also be ignored. Specifically, STP modifiers will not be active for Type 1 designated Retail Orders in all situations and will be ignored. In addition, STP modifiers will not be active for Type 2 and Type 3 designated Retail Orders when they first interact with contra-side RPIs, however once they enter the Exchange's system to be executed as an Immediate or Cancel Order - normal processing of the STP modifier will occur. Finally, since Exchange systems currently monitor to ensure that DMM interest, which is all proprietary, does not trade with itself - STP modifiers will not be made available for DMM interest.

Proposed STPN Modifier

As proposed, an incoming order marked with the STPN modifier would not execute against opposite-side resting interest marked with either an STPN or STPO modifier with the same MPID.[6] Such incoming order marked with the STPN modifier would be cancelled back to

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[4]   The Exchange notes that it intends to expand availability of STP modifiers to a wider range of order types. The Exchange will file a subsequent 19b-4 rule filing at that time.

[5]   I.e., Market on Open, Limit on Open, Market on Close, Limit on Close and Closing Only orders.

[6]   Incoming order refers to: 1) orders that have arrived at the Exchange, including those orders that have been routed to an away market and returned to the Exchange unexecuted,

the originating member organization. The resting order marked with one of the STP modifiers, which otherwise would have interacted with the incoming order, would remain in Exchange systems. After executing with any non-STP opposite-side interest, Exchange systems would cancel the remaining balance of the incoming STPN order that would execute against the opposite-side resting order with the same MPID with an STP modifier. If an STPN could execute at multiple price points, the incoming STPN would execute at the multiple prices until it reaches a price point where there is resting opposite-side STP interest. At the price point where there is opposite-side STP interest, the incoming STPN order would execute against any available non-STP interest, displayed or undisplayed, and the balance, if any, of the incoming STPN order would cancel.

For purposes of these examples, assume that the orders are always with the same MPID and that the Exchange best bid and offer is $22.00 - $22.03.

> STPN Example 1: An STPO order to buy 500 shares at $22.00 is resting interest in Exchange systems. Subsequently, an STPN order to sell 500 shares at $22.00 is entered into Exchange systems.
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> STPN Result 1: The incoming STPN sell order for 500 shares at $22.00 would cancel back to the originating member organization. The resting STPO buy order for 500 shares at $22.00 would remain in Exchange systems.
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> STPN Example 2: Exchange systems have the following resting interest: a Non-Displayed Reserve Order[7] to buy 100 shares at $22.01 (B1), an STPN order to buy 100 shares at $22.00 (B2) with priority at the quote, an order to buy 200 shares at $22.00 (B3), a non-displayed reserve eQuote to buy 200 shares (B4), for a total of 500 shares (300 quoted, 200 in reserve) to buy at $22.00. Subsequently, an incoming STPN order to sell 700 shares at $22.00 is entered (S).
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> STPN Result 2: S would execute against B1 for 100 shares at $22.01, leaving 600 shares

and 2) orders that are repriced because of tick sensitive instructions, or the operation of Limit Up/Limit Down price bands or Short Sale Restrictions.

[7]   A Non-Displayed Reserve Order is a limit order that is not displayed, but remains available for potential execution against all incoming automatically executing orders until executed in full or cancelled. See NYSE MKT Rule 13 - Equities.

of S. Although B2 has priority at the bid, it would be bypassed because it has an STP modifier with the same MPID. S would then execute against B3 for 200 shares at $22.00, leaving 400 shares of S. S would then execute against B4 for 200 shares at $22.00. Because the remaining 200 shares of S has an STP modifier from a matching MPID of B2's 100 shares, those remaining 200 shares of S would be cancelled back to the originating member organization. B2 for 100 shares at $22.00 would not execute and would remain on Exchange systems.

Proposed STPO Modifier

As proposed, an incoming order marked with the STPO modifier would not execute against opposite-side resting interest marked with either an STPN or STPO modifier with the same MPID. Such resting order marked with either of the STP modifiers, which otherwise would have interacted with the incoming order, would be cancelled back to the originating member organization. The incoming order marked with the STPO modifier would remain on Exchange systems. Exchange systems would cancel all opposite-side resting interest with the same MPID having an STP modifier at each price point that the incoming STPO order is eligible to execute. If the incoming STPO order is an immediate or cancel ("IOC") order, and if there is any unfilled balance of the incoming STPO IOC, both the resting STP interest and the remainder of the STPO IOC at that price point would cancel.

For purposes of these examples, assume that the orders are always contain the same MPID and that the Exchange best bid and offer is $22.00 - $22.03.

STPO Example 1: An STPO order to buy 500 shares at $22.00 is resting interest in Exchange systems. Subsequently, an STPO order to sell 500 shares at $22.00 is entered into Exchange systems.

STPO Result 1: The resting STPO buy order for 500 shares at $22.00 would cancel back to the originating member organization. The incoming STPO sell order for 500 shares at $22.00 would be entered in Exchange systems.

STPO Example 2: Exchange systems have the following resting interest: a Non-Display Reserve Order to buy 100 shares at $22.02 (B1); a Non-Display Reserve Order to buy 100 shares at $22.01 (B2) and a Non-Display Reserve Order STPN order to buy 100 shares at $22.01(B3), for a total of 200 shares to buy at $22.01; an STPN order to buy

500 shares at $22.00 (B4) and an order to buy 200 shares at $22.00 (B5), for a total of 700 shares to buy at $22.00. Subsequently, an STPO order to sell 500 shares at $22.00 is entered into Exchange systems (S).

STPO Result 2: S would execute against B1 for 100 shares at $22.02, leaving 400 shares of S. S would then execute against B2 for 100 shares at $22.01, leaving 300 shares of S. At $22.01, because it has an STP modifier from a matching MPID, B3 would cancel back to the originating member organization. S would next execute against B5, leaving 100 shares of the STPO sell order. Because the remaining 100 shares of the S has an STP modifier from a matching MPID of B4, the entire 500 shares of B4 would be cancelled back to the originating member organization. The 100 unexecuted shares of the incoming S would be entered in Exchange systems as resting interest.

STPO Example 3: Assume the same trading scenario as STPO Example 2, except that the incoming S order to sell 500 shares at $22.00 is also an IOC order.

STPO Result 3: The same executions and cancellations as in STPO Result 2 would occur. After executing against B5, the remaining balance of S would cancel because there is no more opposite-side non-STP interest. Accordingly, at the $22.00 price point, both the entire amount of B4 and the remaining balance of S (100 shares) would cancel.

Because of the technology changes associated with this rule proposal, the Exchange will announce the implementation date of the STP modifiers in a Trader Update to be published no later than 90 days after the publication of the notice in the Federal Register. The implementation date will be no later than 90 days following publication of the Trader Update announcing publication of the notice in the Federal Register.

    2.   <u>Statutory Basis</u>

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)[8] of the Securities Exchange Act of 1934 (the "Act"), in general, and furthers the objectives of Section 6(b)(5)[9] 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, and

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[8]   15 U.S.C. 78f(b).

[9]   15 U.S.C. 78f(b)(5).

to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that adding STP functionality would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would allow firms to better manage order flow and prevent unintended executions with themselves or the potential for "wash sales" that may occur as a result of the velocity of trading in today's high-speed marketplace. Commonly, member organizations have multiple connections into the Exchange due to capacity and speed-related demands. Orders routed by member organizations via different connections may, in certain circumstances, inadvertently trade against each other. The new STP modifiers would provide member organizations with the opportunity to prevent these unintended trades from occurring. The Exchange notes that the STP modifiers would not alleviate, or otherwise exempt, broker-dealers from their best execution obligations.

At this time, the Exchange proposes to offer the STP modifiers for orders entered by off-Floor participants only. The Exchange believes that the proposal to not make available STP modifiers to DMM interest is consistent with just and equitable principles of trade and not unfairly discriminatory because there is no need for the STP modifier for DMM interest in that Exchange systems already monitor to ensure that DMM interest, which is all proprietary, does not trade with itself. In addition, the Exchange notes that the technology supporting the proposed STP modifiers is not currently compatible with the Floor broker systems, but is actively working to develop the technology to extend STP modifiers to Floor brokers. The Exchange does not believe it should delay the deployment of the STP modifiers for other market participants while it performs the technical modifications required for the use of STP modifiers for Floor brokers.

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. The Exchange believes that the proposal will would provide member organizations with the opportunity to prevent unintended self-trades from occurring. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues who offer similar functionality. Many competing venues offer similar functionality to market participants. To this end, the Exchange is proposing a market enhancement to provide greater protections from inadvertent executions, and encourage market participants to trade on the Exchange. The Exchange believes the proposed rule change is pro-competitive because it would enable the Exchange to provide member organizations with functionality that is similar to that of other exchanges.

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

Because the foregoing proposed rule 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 if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given 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 proposed rule change has

become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b-4(f)(6) thereunder.[11]

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.

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 e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEMKT-2013-21 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-2013-21. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all

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[10]   15 U.S.C. 78s(b)(3)(A).

[11]   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.

comments on the Commission's Internet website (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 website 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-NYSEMKT-2013-21 and should be submitted on or before [insert date

21 days from publication in the Federal Register].

     For the Commission, by the Division of Trading and Markets, pursuant to delegated

authority.[12]

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Kevin M. O'Neill
Deputy Secretary

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[12]   17 CFR 200.30-3(a)(12).