

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-70517; File No. SR-NYSEMKT-2013-78)

September 26, 2013

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Pilot Program for Certain Clearly Erroneous Executions Under Rule 128 - Equities and Removing References to Individual Security Trading Pauses Contained in Rule 128(c)(4) - Equities

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 September 24, 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 extend the pilot program for certain clearly erroneous executions under Rule 128 - Equities and remove references to individual security trading pauses contained in Rule 128(c)(4) - Equities. The text of the proposed rule change is available on the Exchange’s website 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

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<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.

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 extend the pilot program for certain clearly erroneous executions under Rule 128 - Equities and remove references to individual security trading pauses contained in Rule 128(c)(4) - Equities. Portions of Rule 128 - Equities, explained in further detail below, are currently operating as a pilot program set to expire on September 30, 2013.<sup>4</sup> The Exchange proposes to extend the pilot program to April 8, 2014.

On September 10, 2010, the Securities and Exchange Commission ("Commission") approved, on a pilot basis, changes to Rule 128 - Equities to provide for uniform treatment: (1) of clearly erroneous execution reviews in multi-stock events 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 listing market and subsequent transactions that occur before the trading pause is in effect on the Exchange.<sup>5</sup>

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<sup>4</sup> See Securities Exchange Act Release No. 68801 (February 1, 2013), 78 FR 8630 (February 6, 2013) (SR-NYSEMKT-2013-11).

<sup>5</sup> See Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010) (SR-NYSEAmex-2010-60).

The Exchange also adopted additional changes to Rule 128 - Equities that reduced the ability of the Exchange to deviate from the objective standards set forth in Rule 128 - Equities,<sup>6</sup> and in 2013, adopted a provision designed to address the operation of the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the “Limit Up-Limit Down Plan” or the “Plan”).<sup>7</sup> The Exchange believes the benefits to market participants from the more objective clearly erroneous executions rule should continue on a pilot basis through April 8, 2014, which is one year following the commencement of operations of the Plan. The Exchange believes that continuing the pilot during this time will protect against any unanticipated consequences. Thus, the Exchange believes that the protections of Rule 128 - Equities should continue while the industry gains further experience operating the Limit Up-Limit Down Plan.

The Exchange also proposes to eliminate all references in Rule 128 - Equities to individual security trading pauses issued by a primary listing market. Specifically, Rule 128(c)(4) - Equities provides specific rules to follow with respect to review of an execution as potentially clearly erroneous when there is an individual security trading pause pursuant to Rule 80C - Equities. The individual security trading pauses described in Rule 128(c)(4) - Equities, which apply to the securities included in the S&P 500 and Russell 1000 indexes as well as to a pilot list of Exchange Traded Products (the “subject securities”), are being phased out as securities become subject to the Plan pursuant to a phased implementation schedule. The Plan is already operational with respect to all

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<sup>6</sup> Id.

<sup>7</sup> See Securities Exchange Act Release No. 68801 (February 1, 2013), 78 FR 8630 (February 6, 2013) (SR-NYSEMKT-2013-11); Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the “Limit Up-Limit Down Release”); see also Rule 128(i) - Equities.

subject securities, and thus, the Exchange believes that all references to individual security trading pauses should be removed, including all cross-references to Rule 128(c)(4) - Equities contained in other portions of Rule 128 - Equities.<sup>8</sup>

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>10</sup> in particular, because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism 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 in that it promotes transparency and uniformity across markets concerning review of transactions as clearly erroneous. More specifically, the Exchange believes that the extension of the pilot would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria, and that the resolution of the incident will occur promptly through a transparent process. The proposed rule change would also help ensure consistent results in handling erroneous trades across the U.S.

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<sup>8</sup> The Exchange notes that certain Exchange Traded Products (“ETPs”) are not yet subject to the Limit Up-Limit Down Plan. Because such ETPs are not on the pilot list of securities, such ETPs are not subject to Rule 128(c)(4) - Equities. See Securities Exchange Act Release No. 65102 (August 11, 2011), 76 FR 51111 (August 17, 2011) (SR-NYSEAmex-2011-60) (notice of filing and immediate effectiveness to amend Rule 128 - Equities so that clearly erroneous executions involving securities recently added to the individual security trading pause pilot under Rule 80C - Equities continue to be resolved in the same manner before being added to the pilot). Accordingly, the proposed rule change does not change the status quo with respect to such ETPs. As amended, all securities, including ETPs not subject to the Limit Up-Limit Down Plan, will continue to be subject to Rule 128(c)(1) through (3) - Equities.

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

markets, thus furthering fair and orderly markets, the protection of investors and the public interest. Although the Limit Up-Limit Down Plan will become fully operational during the same time period as the proposed extended pilot, the Exchange believes that maintaining the pilot will help to protect against unanticipated consequences. To that end, the extension will allow the Exchange to determine whether Rule 128 - Equities is necessary once the Plan is fully operational and, if so, whether improvements can be made. Finally, the elimination of references to individual security trading pauses will help to avoid confusion among market participants, which is consistent with the protection of investors and the public interest and therefore consistent with the Act. As described above, individual security trading pauses have been replaced by the Limit Up-Limit Down Plan with respect to securities that are subject to Rule 80C - Equities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change implicates any competitive issues. To the contrary, the Exchange believes that the Financial Industry Regulatory Authority ("FINRA") and other national securities exchanges are also filing similar proposals, and thus, the proposal will help to ensure consistency across market centers.

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 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 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>11</sup> and Rule 19b-4(f)(6)(iii) thereunder.<sup>12</sup>

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 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>13</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

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its 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.

<sup>13</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).

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 proposal 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEMKT-2013-78 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-2013-78. 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 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-2013-78 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.<sup>14</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).