

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-73280; File No. SR-NYSEMKT-2014-81)

October 1, 2014

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Rule Change Amending Rule 902.1NY to Authorize the Exchange to Share Any User-Designated Risk Settings in Exchange Systems with the Clearing Member that Clears Transactions on Behalf of the User

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 19, 2014, 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, 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 902.1NY (Admission to the System) to authorize the Exchange to share any User-designated risk settings in Exchange systems with the Clearing Member that clears transactions on behalf of the User. 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

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

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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.

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 Rule 902.1NY (Admission to the System) to authorize the Exchange to share any User-designated risk settings in Exchange systems with the Clearing Member that clears transactions on behalf of the User.

Rule 902.1NY states that “[u]nless otherwise provided in the Rules, no one but a User shall effect any transaction on the System.”<sup>4</sup> “System” refers to the Exchange System facility.<sup>5</sup> The Exchange proposes to amend the current rule by adding the following sentence: “The Exchange may share any User-designated risk settings in the System with the Clearing Member that clears transactions on behalf of the User.”<sup>6</sup> A “User” is “any ATP Holder that is authorized to obtain access to the System pursuant to Rule 902.1NY.”<sup>7</sup>

Each User that transacts through a Clearing Member on the Exchange executes a Clearing Letter of Consent, which “shall be deemed a letter of guarantee, letter of authorization, or notice of consent pursuant to NYSE MKT Rules and may be relied upon by NYSE Amex Options, the [National Securities Clearing Corporation], the [Options Clearing Corporation], and

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<sup>4</sup> See Rule 902.1NY.

<sup>5</sup> See Rule 900.1NY.

<sup>6</sup> See proposed Rule 902.1NY.

<sup>7</sup> See Rule 900.2NY(87).

their respective members.”<sup>8</sup> The Exchange believes that because Clearing Members that execute a Clearing Letter of Consent guarantee all transactions of those Users, and therefore bear the risk associated with those transactions, it is appropriate for Clearing Members to have knowledge of what risk settings a User may utilize within Exchange systems.

At this time, the risk settings covered by this proposal are set forth in Rule 6.40 [sic] (Risk Limitation Mechanism).<sup>9</sup> Pursuant to Rule 928NY(b)-(d), Users may set certain risk control thresholds in the Risk Limitation Mechanism, which are designed to mitigate the potential risks of multiple executions against a User’s trading interest that, in today’s highly automated and electronic trading environment, can occur simultaneously across multiple series and multiple option classes. As proposed, the Exchange may share a User’s Risk Limitation Mechanism settings with the Clearing Member that guarantees the User’s transactions on the Exchange, and therefore has a financial interest in understanding the risk tolerance of the User.

Because the Clearing Letter of Consent codifies relationships between each User and Clearing Member, the Exchange is on notice of which Clearing Members have relationships with which Users. The proposed rule change would simply provide the Exchange with authority to directly provide Clearing Members with information that may otherwise be available to such Clearing Members by virtue of their relationship with the respective Users.

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<sup>8</sup> See NYSE Amex Options ATP Application, Section 8 (Clearing Letter of Consent), available here, [https://www.nyse.com/publicdocs/nyse/markets/amex-options/ATP\\_Application.pdf](https://www.nyse.com/publicdocs/nyse/markets/amex-options/ATP_Application.pdf).

<sup>9</sup> The Exchange may adopt additional rules providing for User-enabled risk settings that would be covered under this proposal. The Exchange will announce via Trader Update any additional risk settings (i.e., other than Rule 928NY(b)-(d)) that are adopted and covered by proposed Rule 902.1NY.

## 2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Securities Exchange Act of 1934 (the “Act”), in general, and furthers the objectives of Section 6(b)(5)<sup>10</sup>, which requires the rules of an exchange to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change removes impediments to and perfects the mechanism of a free and open market by codifying that the Exchange can directly furnish to Clearing Members that guarantee that User’s transactions on the Exchange the User-designated risk settings in OX, including Risk Limitation Mechanism settings, which are designed to mitigate the potential risks of multiple executions against a User’s trading interest that, in today’s highly automated and electronic trading environment, can occur simultaneously across multiple series and multiple option classes. The Exchange believes that the proposal is consistent with the protection of investors and the public interests because it will permit Clearing Members with a financial interest in a User’s risk settings to better monitor and manage the potential risks assumed by Users with whom the Clearing Member has entered into a Clearing Letter of Consent, thereby providing Clearing Members with greater control and flexibility over setting their own risk tolerance and exposure.

### 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

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

proposed rule change is not designed to address any competitive issues, but would provide authority for the Exchange to directly share risk settings with Clearing Members regarding the Users with whom the Clearing Member has executed a Clearing Letter of Consent so the Clearing Member can better monitor and manage the potential risks assumed by these Users, thereby providing them with greater control and flexibility over setting their own risk tolerance and exposure. Nonetheless, the proposal does not pose an undue burden on non-Clearing Members because, unlike Clearing Members, non-Clearing Members do not guarantee the execution of the User transactions on the Exchange. The proposal is structured to offer the same enhancement to all Clearing Members, regardless of size, and would not impose a competitive burden on any participant.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEMKT-2014-81 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEMKT-2014-81. 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 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-2014-81, 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>11</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).