

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-67129; File No. SR-NYSEMKT-2012-06)

June 5, 2012

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Temporarily suspending the Requirements of Exchange Rule 311 - Equities and Related Exchange Equities Rules Concerning the Approval of New Member Organizations and Exchange Rule 353 and Related Exchange Rules Concerning the Approval of New ATP Holders in Order to Approve Apex Clearing Corporation, f/k/a Ridge Clearing and Outsourcing Solutions, Inc. as an Exchange Equities Member Organization and ATP Holder, Subject to Apex Clearing Complying with Exchange Rules for a New Member Organization and ATP Holder Within 30 Calendar Days of the Date that Apex Clearing is Provisionally Approved as an Exchange Equities Member Organization and ATP Holder

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that on June 5, 2012, 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 temporarily suspend the requirements of (1) Exchange Rule 311 - Equities and related Exchange Equities rules concerning the approval of new member organizations and (2) Exchange Rule 353 and related Exchange rules concerning the approval of new ATP Holders in order to approve Apex Clearing Corporation, f/k/a Ridge Clearing and Outsourcing Solutions, Inc. (“Apex Clearing”) as an Exchange Equities member organization and ATP Holder, subject to Apex Clearing complying with Exchange rules for a new member

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

organization and ATP Holder within 30 calendar days of the date that Apex Clearing is provisionally approved as an Exchange Equities member organization and ATP Holder. The Exchange is also proposing to accept Apex Clearing's assumption of all of the existing clearing agreements and arrangements currently in effect between Penson Financial Services Inc. ("PFSI") and various other Exchange Equities member organizations and ATP Holders by execution of a global agreement thereto. 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 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 this rule filing to temporarily suspend the requirements of (1) Exchange Rule 311 - Equities and related rules regarding the approval of member organizations and (2) Exchange Rule 353 and related rules regarding the approval of ATP Holders in order to immediately approve Apex Clearing as an Exchange Equities member organization and ATP Holder. The Exchange proposes this temporary suspension on an emergency basis to ensure that Apex Clearing can continue the clearing operations of PFSI without unnecessary disruption, which could have a significant collateral impact to a number of other Exchange Equities member

organizations and ATP Holders. The proposed temporary suspension is contingent upon Apex Clearing having complied with all new member organization and ATP Holder Exchange rules within 30 calendar days of the date Apex Clearing is provisionally approved as an Exchange Equities member organization and ATP Holder pursuant to this filing.

On May 31, 2012, Apex Clearing Holdings, LLC (“Apex Holdings”), Apex Clearing Solutions, LLC, Broadridge Financial Solutions, Inc. (“Broadridge”), PFSI and Penson Worldwide, Inc. (“PWI”) (together, the “Parties”) consummated a transaction resulting in a change in ownership of Apex Clearing.⁴ Broadridge, Apex Holdings, PWI and PFSI each made capital investments in Apex Holdings, the holding company parent of Apex Clearing. PFSI also assigned all of its U.S. clearing contracts and all customer and introducing broker proprietary accounts along with key personnel to Apex Clearing (the “Transferring Accounts”).⁵

As a result of the transaction, Apex Clearing, which is not an Exchange Equities member organization or an ATP Holder, will provide the clearing and execution services currently provided to the Transferring Accounts by PFSI. On May 31, 2012, Apex Clearing submitted an application for approval as an Exchange Equities member organization and as an ATP Holder. However because of the expedited nature of the transaction, Apex Clearing was unable to fully comply with Exchange Rule 311 - Equities and related new member organization rules and Exchange Rule 353 and related new ATP Holder rules. Because of the need for seamless continuity with respect to the Transferring Accounts, Apex Clearing has requested that the

⁴ Prior to the Transaction, Apex Clearing’s name was Ridge Clearing & Outsourcing Solutions, Inc. Prior to the transaction, Ridge Clearing & Outsourcing Solutions, Inc. contributed its outsourcing operations and all associated personnel and systems to its affiliated entity, Broadridge Securities Processing Solutions, LLC (“BSPS”) where it will continue to provide operations support and outsourcing services to a number of broker-dealers, including Apex Clearing.

⁵ See Penson Worldwide, Inc. Form 8-K dated May 31, 2012.

Exchange temporarily suspend its new membership organization and ATP Holder rules in order to enable Apex Clearing's approval as a member organization on an expedited basis. Pursuant to its request, Apex Clearing will fully comply with the Exchange's new member organization and ATP Holder requirements within 30 calendar days after provisional approval.

Exchange Rules 311 - Equities and 353 require any person who proposes to form a member organization or an ATP Holder to notify the Exchange in writing and submit such information as may be required by Exchange rules. When a corporate acquisition concerns an asset transfer only, and not an acquisition of the corporate entity, Exchange Equities member organization or ATP Holder status cannot be transferred to the acquiring entity. The entity that proposes to continue the acquired business operations of a member organization must be separately approved as an Exchange Equities member organization or ATP Holder.

Equities

Among other things, to be approved as an Exchange Equities member organization, the applicant must:

- Provide the Exchange with a written application with the name and address of the applicant as well as a list of all proposed parties required to be approved or identified pursuant to Exchange Rules 304 - Equities and 311 - Equities (Rule 311.11 - Equities).
- Ensure that all persons associated with the applicant who meet the requirements of approved persons under Exchange Rule 304 - Equities, consent to Exchange Equities jurisdiction as a member or approved person (Exchange Rules 304 - Equities and 311(b) - Equities).

- Submit to the Exchange partnership or corporate documents as may be applicable including certificate of incorporation, by-laws, and other corporate documents (Exchange Rule 313.10 - Equities and .20 - Equities).
- Provide the Exchange with an opinion of counsel that, among other things, the corporation is duly organized and its existing stock is validly issued and outstanding, and that the restrictions and provisions required by the Exchange on the transfer, issuance, conversion and redemption of its stock have been made legally effective (Exchange Rule 313.20 - Equities).

In addition, the Exchange reviews whether the applicant meets federal and Exchange capital requirements and whether it has adopted controls and procedures to comply with Exchange rules.

Options

Among other things, to be approved as an ATP Holder, the applicant must:

- Provide the Exchange with a written application with the name and address of the applicant as well as a list of all proposed parties required to be approved or identified pursuant to Exchange Rules 353 and 356.
- Ensure that all persons associated with the applicant who meet the requirements of allied members and approved persons be approved (Exchange Rules 353, 355 and 356).
- Submit to the Exchange partnership or corporate documents as may be applicable including certificate of incorporation, by-laws, and other corporate documents (Exchange Rules 353 and 356).

In addition, the Exchange reviews whether the applicant meets federal and Exchange capital requirements and whether it has adopted controls and procedures to comply with Exchange rules.

Due to the amount of information an applicant is required to provide and have completed prior to being approved as a member organization or ATP Holder, the member organization and ATP Holder approval process generally takes several months to complete. The length of time varies based on the timing of the applicant's response to requests for information and documentation.

As proposed, Apex Clearing will continue the clearing and certain other operations of PFSI as of June 6, 2012. In order to avoid interruption of the services PFSI currently provides to other Exchange Equities member organizations and ATP Holders, the Exchange believes that Apex Clearing should be approved immediately as an Exchange Equities member organization and ATP Holder. The Exchange notes that Apex Clearing is already a registered broker dealer and FINRA member, which are prerequisites for becoming an Exchange Equities member organization. See Exchange Rule 2(b) - Equities.

The Exchange therefore proposes providing Apex Clearing with a temporary suspension of Exchange Rule 311 – Equities and related membership rules as they relate to approval to operate an Exchange Equities member organization and approval of a proposed member organization's approved persons, and immediately approve Apex Clearing as a member organization. Similarly, the Exchange proposes providing Apex Clearing with a temporary suspension of Exchange Rule 353 and related ATP Holder rules as they relate to approval to operate as an ATP Holder and approval of a proposed ATP Holder's approved persons, and immediately approve Apex Clearing as an ATP Holder. As proposed this temporary suspension

is contingent upon:

- Apex Clearing providing the Exchange with sufficient information to confirm that Apex Clearing will meet its capital requirements as an Exchange Equities member organization and ATP Holder; and
- Within 30 calendar days of Apex Clearing's approval as an Exchange Equities member organization and ATP Holder under this proposed filing, Apex Clearing and its approved persons will have complied with the Exchange's new member organization and ATP Holder requirements as set forth in Exchange Rules 304 – Equities,⁶ 311- Equities through 313 – Equities, 353, 355 and 356.

As proposed, if Apex Clearing does not comply with all applicable Exchange Equities member organization application requirements and ATP Holder requirements within 30 calendar days of the effective date of this filing, its status as an approved Exchange Equities member organization and ATP Holder will no longer be effective.

In addition, the Exchange proposes to accept Apex Clearing to assume all existing clearing agreements and arrangements currently in effect with other Exchange Equities member organizations and ATP Holders by execution of global agreements thereto.⁶ Notice of such assumption will be provided to impacted member organizations through issuance of Trader and/or Information Notices prior to the effective date thereof.

⁶ See Exchange 954NY.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)⁷ of the Securities Exchange Act of 1934 (the “Act”), in general, and furthers the objectives of Section 6(b)(5)⁸ in particular in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that permitting the expeditious approval of Apex Clearing as an Exchange Equities member organization and an ATP Holder will avoid interruption of the services PFSI currently provides to other Exchange member organizations and ATP Holders. Based on information and representations provided by Apex Clearing, a temporary suspension of certain Exchange membership rules is needed based on the expedited nature of the transaction to enable seamless continuity with respect to the transferring accounts. Consequently, the Exchange believes that temporary suspension of its member organization and ATP Holder requirements so that Apex Clearing can be approved immediately as an Exchange Equities member organization and an ATP Holder will help to foster cooperation and coordination with persons engaged in facilitating transactions in securities and is consistent with the Act.

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.

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.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

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 Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰ 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 Act¹¹ and Rule 19b-4(f)(6)(iii) thereunder.¹²

A proposed rule change filed under Rule 19b-4(f)(6)¹³ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁴ 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 proposed rule change may become operative immediately upon filing. The Commission notes that the Exchange is proposing that certain of its rules relating to membership requirements be temporarily suspended so that Apex Clearing can be provisionally approved as an Exchange Equities member organization and ATP Holder. The proposed relief does not exempt Apex

⁹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give 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 Commission is waiving this five-day pre-filing requirement.

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ 17 CFR 240.19b-4(f)(6)(iii).

Clearing from Exchange rule requirements governing Exchange Equities member organizations and ATP Holders. Apex Clearing would have a 30 calendar day grace period within which to apply for and be approved under relevant Exchange rules. Moreover, the Commission believes that waiver of the 30-day operative delay is appropriate to ensure a smooth transition of PFSI operations to Apex Clearing. In particular, given the rapidity with which events have developed, waiver of the 30-day operative delay is necessary to avoid significant disruption to PFSI's existing customers and the market generally. Therefore, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and designates the proposed rule change as operative upon filing.¹⁵

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 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 to determine whether the proposed rule 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

¹⁵ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEMKT-2012-06 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-2012-06. 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-2012-06 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.¹⁶

Kevin M. O'Neill
Deputy Secretary

¹⁶ 17 CFR 200.30-3(a)(12).