

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-68162; File No. SR-NYSEMKT-2012-62)

November 5, 2012

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend the Temporary Suspension of Those Aspects of Rules 36.20 – Equities, 36.21 - Equities, and 36.30 - Equities That Would Not Permit Designated Market Makers and Floor Brokers to Use Personal Portable Phone Devices on the Trading Floor Following the Aftermath of Hurricane Sandy From November 5, 2012 Until the Earlier of When Phone Service is Fully Restored or Friday, November 9, 2012

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 5, 2012, NYSE MKT LLC (“NYSE MKT” or “Exchange”) 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 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 temporary suspension of those aspects of Rules 36.20 – Equities, 36.21 - Equities, and 36.30 - Equities that would not permit Designated Market Makers (“DMMs”) and Floor brokers to use personal portable phone devices on the Trading Floor following the aftermath of Hurricane Sandy from November 5, 2012 until the earlier of when phone service is fully restored or Friday, November 9, 2012. 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.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</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

On Thursday, November 1, 2012, the Exchange filed a rule proposal to temporarily suspend those aspects of Rules 36.20 - Equities, 36.21 - Equities, and 36.30 – Equities that would not permit Floor brokers and Designated Market Makers (“DMMs”) to use personal portable phone devices on the Trading Floor<sup>3</sup> following the aftermath of Hurricane Sandy and during the period that phone service was not fully functional.<sup>4</sup> Pursuant to that filing, all other aspects of those rules remained applicable and the temporary suspensions of Rule 36 requirements were in effect beginning the first day trading resumed following Hurricane Sandy until Friday, November 2, 2012.

As of Monday, November 5, 2012, although power has been restored to the downtown Manhattan vicinity, other services are not yet fully operational. Among other things, the telephone services provided by third-party carriers to the Exchange are still not fully operational

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<sup>3</sup> Pursuant to Rule 6A - Equities, the Trading Floor is defined as the restricted-access physical areas designated by the Exchange for the trading of securities, but does not include the physical locations where NYSE Amex Options are traded.

<sup>4</sup> See Securities Exchange Act Release No. 68138 (Nov. 1, 2012) (SR-NYSEMKT-2012-59).

on the Trading Floor, which impacts the ability of Floor members to communicate from the Trading Floor as permitted by Rule 36 - Equities.

Because of intermittent cell phone service, many Exchange authorized and provided portable phones continue to not be functional and therefore Floor brokers still cannot use the Exchange authorized and provided portable phones, pursuant to Rules 36.20 - Equities and 36.21 - Equities. In certain instances, however, the personal cell phones of Floor brokers are operational on the Trading Floor. The Exchange believes that because communications with customers is a vital part of a Floor broker's role as agent and therefore contributes to maintaining a fair and orderly market, during the period when phone service continues to be intermittent, Floor brokers should be permitted to use personal portable phone devices in lieu of the non-operational Exchange authorized and provided portable phones.

Similarly, the Exchange continues to experience problems with the DMM unit wired telephone lines, which are permitted pursuant to Rule 36.30 – Equities. In some circumstances, the DMM unit location at the Trading Floor post may receive incoming calls, but the phones are not capable of making outgoing calls. The continued inability of a DMM unit to use its telephone lines could impact the ability of a DMM unit to comply with its obligations in securities registered to the DMM unit. For example, if a DMM unit experiences connectivity issues or problems with its algorithms and needs to speak with one of its back-office support teams, with the current phone limitations, the DMM would not be able to do so.

Accordingly, the Exchange proposes to extend the temporary suspension of those aspects of Rules 36.20 - Equities, 36.21 - Equities, and 36.30 - Equities that would not permit Floor brokers and DMMs to use personal portable phone devices on the Trading Floor. The Exchange proposes that the extension of the temporary suspension of those aspects of Rules 36.20 -

Equities, 36.21 – Equities, and 36.30 - Equities to permit use of the personal portable phones on the Trading Floor be pursuant to the same terms and conditions of the temporary suspension filed for October 31, 2012 through November 2, 2012, including the record retention requirements related to any use of personal portable phones.<sup>5</sup>

In particular, as set forth in the prior filing, Floor brokers and DMMs that use a portable personal phone must provide the Exchange with the names of all Floor-based personnel who used personal portable phones during this temporary suspension period, together with the phone number and applicable carrier for each number. Floor broker and DMM member organizations must maintain in their books and records all cell phone records that show both incoming and outgoing calls that were made during the period that a personal portable phone was used on the Trading Floor. To the extent the records are unavailable from the third-party carrier, the Floor broker and DMM member organizations must maintain contemporaneous records of all calls made or received on a personal portable phone while on the Trading Floor. As with all member organization records, such cell phone records must be provided to Exchange regulatory staff, including without limitation staff of the Financial Industry Regulatory Authority (“FINRA”), on request.

In addition, the Exchange further notes that DMM units and their Floor-based personnel would remain subject to both the Rule 36.30 - Equities and 98 - Equities limitations of whom they may contact directly from the Trading Floor.<sup>6</sup> However, because of the extensive, ongoing issues with power and phone lines in the New York City area and vicinity, the persons with

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<sup>5</sup> See *id.* (notice that describes the terms and conditions of the temporary suspension).

<sup>6</sup> Rule 36.30 - Equities restricts a DMM unit from using the post telephone lines to transmit to the Floor orders for the purchase or sale of securities. In addition, Rule 98 sets forth restrictions on communications between the Floor-based personnel of a DMM unit and off-Floor personnel. See, e.g., Rules 98(c)(2)(A) - Equities, (d)(2)(B)(iii) - Equities, (f)(1)(A)(ii) - Equities, and (f)(2)(A) - Equities.

whom a DMM may be permitted to communicate from the Trading Floor may not be at their regular physical location. Accordingly, the Exchange proposes to continue to temporarily permit DMMs to use their personal portable phones to contact the off-Floor persons that they are permitted to contact by rule, even if such off-Floor personnel are not located in their regular office locations. The Exchange believes that this relief is consistent with guidance issued by FINRA, which recognizes that in the aftermath of Hurricane Sandy, a FINRA member may relocate displaced office personnel to temporary locations.<sup>7</sup>

As noted above, because the Exchange is dependent on third-party carriers for both wired and wireless phone service on the Trading Floor, the Exchange does not know how long the proposed temporary suspension will be required. However, based on current estimates, the Exchange understands that phone service may not be fully restored until at least Wednesday, November 7, 2012, and most likely later than that date. Accordingly, the Exchange proposes that the extension of the temporary suspensions of those aspects of Rule 36 - Equities that do not permit DMMs or Floor brokers to use personal portable phones on the Trading Floor continue until the earlier of when phone service is fully restored or Friday, November 9, 2012.<sup>8</sup>

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<sup>7</sup> See FINRA Regulatory Notice 12-45. The Exchange notes that all member organizations operating a DMM unit are also FINRA members, and therefore subject to the guidance set forth in FINRA Regulatory Notice 12-45.

<sup>8</sup> The Exchange will provide notice of this rule filing to the DMMs and Floor brokers, including the applicable recordkeeping and other requirements. If telephone service is fully restored prior to November 9, 2012, the Exchange will notify DMMs and Floor brokers that the temporary suspension of those aspects of Rule 36 that do not permit the use of personal portable phones on the Trading Floor has expired as of the time that phone service is fully restored.

## 2. Statutory Basis

The Exchange believes that 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, 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 to remove impediments to and perfect the mechanism of a free and open market and a national market system.

In particular, in the aftermath of Hurricane Sandy, while the Exchange was able to open for trading, many of the services that the Exchange depends on from third-party carriers, such as wired and wireless telephone connections, are not fully restored. The Exchange believes that the proposed extension of the temporary suspensions from those aspects of Rule 36 - Equities that restrict the use of personal portable phones on the Trading Floor removes impediments to and perfects the mechanism of a free and open market and national market system because the proposed relief will enable both Floor brokers and DMMs to conduct their regular business, notwithstanding the ongoing issues with telephone service. The Exchange further believes that without the requested relief, both Floor brokers and DMMs would be compromised in their ability to conduct their regular course of business on the Trading Floor, which could adversely impact the market generally and investor confidence during this time of unprecedented weather disruptions. In particular, for Floor brokers, because they operate as agents for customers, their inability to communicate with customers could compromise their ability to represent public orders on the Trading Floor. For DMM units, any inability to communicate with personnel from their off-Floor offices, clearing firms, or non-trading related support staff, regardless of where

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

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

such off-Floor personnel may be located in the aftermath of Hurricane Sandy, could compromise the DMM unit's ability to meet their obligations, particularly if the DMM unit experiences issues with connectivity or its algorithms.

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.

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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, 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) thereunder.<sup>12</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>13</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)<sup>14</sup> permits the Commission to 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

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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). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its 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.

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that doing so will allow the Exchange to continue uninterrupted the emergency temporary relief necessitated by Hurricane Sandy's disruption of telephone service, as described herein and in the Exchange's prior filing seeking such relief, until the earlier of when phone service is fully restored or Friday, November 9, 2012. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.<sup>15</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 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEMKT-2012-62 on the subject line.

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<sup>15</sup> 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).

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-2012-62. 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-2012-62 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>16</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).