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SECURITIES AND EXCHANGE COMMISSION  
[Release No. 34-70717; File No. SR-NYSEMKY-2013-81]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 975NY

October 18, 2013.

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 October 7, 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 amend Rule 975NY to specify that options transactions that involve Obvious Error or Catastrophic Error will (1) if the parties to the transaction are not Customers, be automatically adjusted by the Exchange, unless the parties agree to their own adjustments or to bust the transactions; or (2) if at least one of the parties to the transaction determined to be a Catastrophic Error is a Customer, be adjusted if the adjustment price would be within the Customer’s limit price; otherwise, the transaction will be busted by the Exchange, unless the Customer accepts the Exchange’s adjustment price or the parties to the transaction

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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.

agree to an adjustment price. 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, at the Commission's Public Reference Room, and on the Commission's website at <http://www.sec.gov>.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend Rules 975NY(a)(3)(A) – (B), (d)(1), and (d)(3)(B), add a [sic] new paragraphs (d)(3)(D) and (d)(3)(F), re-designate previous (d)(3)(D) as (d)(3)(C) and make revisions to that paragraph, and re-designate previous (d)(3)(C) as (d)(3)(E) and make revisions to that paragraph. Current Rule 975NY adjusts the price of or busts transactions with respect to which there are Obvious or Catastrophic Errors, as those terms are defined in the rule. Whether an Obvious Error transaction is automatically adjusted or automatically busted depends on whether both parties to the transaction are Market Makers.<sup>4</sup> Specifically, if each party to an Obvious Error transaction is a Market Maker, the Exchange adjusts the transaction to a price determined in accordance with current Rule 975NY(a)(3)(A)(i) – (ii), unless the parties agree to

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<sup>4</sup> For the purposes of Rule 975NY, the term "Market Maker" means an ATP Holder acting as a Market Maker on the Exchange pursuant to Rule 920NY. See Rule 975NY, Commentary .05.

adjust the transaction to a different price or to bust the trade within 10 minutes of being notified of the Obvious Error by the Exchange. Under current Rule 975NY(a)(3)(B), if at least one party to the Obvious Error is not a Market Maker, the Exchange busts the trade, unless both parties agree to an adjustment price for the transaction within 30 minutes of being notified by the Exchange of the Obvious Error.

Under current Rule 975NY(d)(3)(B), a Catastrophic Error Review Panel (the “Panel”), upon notification from a Market Maker or an ATP Holder, determines if a Catastrophic Error has occurred. If so, the Panel instructs the Exchange to adjust the execution price(s) of the transaction(s) as set out in Rule 975NY(d)(3)(D), unless the parties agree to adjust the transaction to a different price. The remedies available to the parties to a Catastrophic Error under current Rule 975NY transaction [sic] do not depend on their status as Market Makers or non-Market Makers. Rather, if the Panel determines that a Catastrophic Error has occurred, the parties to the transaction, irrespective of their status, are obligated to take a price adjustment; the rule does not provide for busting a trade. The Panel’s determination on Catastrophic Error constitutes final Exchange action on the issue.

In summary, under the current rule, the Exchange nullifies Obvious Error transactions unless all parties to the trade are Market Makers, in which case the Exchange adjusts the price of the transaction. With respect to Catastrophic Errors, the Exchange currently adjusts all transactions even if they involve non-Market Makers. The Exchange notes that while market professionals generally would prefer that all transactions be adjusted rather than nullified, there is an equally valid opposing view because adjustments can result in Customer orders being adjusted to prices that may be greater (less) than their limit order price, potentially by a large amount, which Customers would not expect.

To better balance the expectations of both market professionals and Customers, the Exchange is proposing to amend Rules 975NY(a)(3)(A) – (B), (d)(1), and (d)(3)(B), add a [sic] new paragraphs (d)(3)(D) and (d)(3)(F), re-designate previous (d)(3)(D) as (d)(3)(C) and make revisions to that paragraph, and re-designate previous (d)(3)(C) as (d)(3)(E) and make revisions to that paragraph. The Exchange is amending Rule 975NY to (1) provide that whether an Obvious Error or Catastrophic Error transaction is automatically adjusted or automatically busted depends on whether at least one of the parties to the transaction is a “Customer,” as that term is defined in Rule 900.2NY(18),<sup>5</sup> rather than a Market Maker; (2) generally conform the remedies available for both Obvious Error and Catastrophic Error transactions; (3) adjust the Theoretical Prices and the minimum amounts away from those Theoretical Prices at which transactions are deemed to be Catastrophic Errors; and (4) provide that a Trading Official,<sup>6</sup> rather than the Panel, will determine if a Catastrophic Error has occurred, subject to an appeal to the Panel, which would be renamed the CER Panel to distinguish it from the Obvious Error Panel (“OE Panel”).

If no party to an Obvious Error transaction is a Customer, the Exchange will adjust the execution price of the transaction as set out in the proposed amendments to Rule 975NY(a)(3)(A). Alternatively, the parties to the transaction could agree to adjust the transaction to a different price or to bust the trade within 10 minutes of being notified of the Obvious Error by the Exchange. This amendment is consistent with current Rule

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<sup>5</sup> Rule 900.2NY(18) defines “Customer” as “an individual or organization that is not a Broker/Dealer; when not capitalized, ‘customer’ refers to any individual or organization whose order is being represented, including a Broker/Dealer.”

<sup>6</sup> Rule 900.2NY(83) [sic] defines “Trading Official” as “an Exchange employee or officer, who is designated by the Chief Executive Officer, or its designee or by the Chief Regulatory Officer or its designee. Any Exchange employee or officer designated as a Trading Official will from time to time as provided in these rules have the ability to recommend and enforce rules and regulations relating to trading access, order, decorum, safety and welfare on the Exchange.”

975NY(a)(3)(A), but rather than apply to transactions that involve only Market Makers, it applies more broadly to transactions that do not involve Customers.

If at least one party to an Obvious Error transaction is a Customer, the Exchange will bust the trade under the proposed amendments to Rule 975NY(a)(3)(B), unless the parties agree to an adjustment price for the transaction within 30 minutes of being notified of the Obvious Error by the Exchange, consistent with how Obvious Errors involving Customers are handled today. The Exchange believes that this approach provides a means of addressing an Obvious Error trade that involves Customers while allowing trades involving non-Customers or market professionals to stand, albeit at adjusted prices. These adjusted prices potentially could be through the non-Customers' limit order price (in other words, the adjusted price could be higher than the limit price if it is a buy and lower than the limit price if it is a sell order). This approach, moreover, is consistent with that taken by the International Securities Exchange ("ISE") in its Rule 720.<sup>7</sup>

The Exchange is also amending the procedures for addressing transactions involving Catastrophic Errors. Consistent with the proposed amendments to the Obvious Error provisions, if no party to a Catastrophic Error transaction is a Customer, the Exchange will adjust the execution price of the transaction as set out in the proposed amendments to Rule 975NY(d)(3)(B) and new paragraph (d)(3)(C). Alternatively, the parties to the transaction can agree to adjust the transaction to a different price or to bust the trade within 10 minutes of being notified of the Catastrophic Error by the Exchange. If at least one party to a Catastrophic Error transaction is a Customer, the Exchange will adjust the trade under the proposed amendments to Rule 975NY(d)(3)(B), and such trades will be adjusted in accordance with new paragraph (d)(3)(C). If the adjustment price will violate the Customer's limit price, the Customer will have

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<sup>7</sup> See Exchange Act Release No. 69467 (Apr. 26, 2013), 78 FR 25777, 25778 (May 2, 2013) (SR-ISE-2013-15).

30 minutes from the time the Exchange notifies the Customer of the adjusted price to accept it; otherwise, the Exchange will bust the trade. Notwithstanding the foregoing, both parties may agree to an adjustment price for the transaction within 30 minutes of being notified of the Catastrophic Error by the Exchange. As with Obvious Error transactions, the Exchange's approach to Catastrophic Errors as described above is generally consistent with ISE's approach in ISE Rule 720. In addition the Exchanges [sic] proposal to adjust, rather than bust, the trade when such adjustment price is within the Customer's limit price is consistent with the manner in which NASDAQ OMX PHLX ("PHLX") handles Customer trades that involve a Catastrophic Error.<sup>8</sup> The Exchange believes such treatment is reasonable because the adjustment price will still be within the Customer's expectations for the price of the trade – the limit price set by the Customer.

The Exchange also is proposing to amend the minimum amounts away from the Theoretical Prices at which transactions will be deemed to have been executed in Catastrophic Error and the adjustment amount by which Theoretical Prices will be adjusted to determine execution prices. The revised Theoretical Prices, minimum amounts, and adjustment amounts will be set out in amended Rule 975NY(d)(1) and (d)(3)(E) so that the threshold for determining whether a Catastrophic Error has occurred will also be the same amount used to adjust any trades deemed to be Catastrophic Errors. The Theoretical Price category of "Above \$10 to \$50" will change to "Above \$10 to \$20," and a new category of "Above \$20 to \$50" will be added. Moreover, the minimum amount away from the Theoretical Prices at which transactions will be deemed to have been executed in Catastrophic Error and the corresponding adjustment amounts will increase at Theoretical Prices above \$50 as compared to the minimum amounts set out in

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<sup>8</sup> See NASDAQ PHLX Rule 1092(f)(ii).

current Rule 975NY. This is consistent with the approach that the Chicago Board Options Exchange takes in its CBOE Rule 6.25(d)(4).<sup>9</sup>

The Exchange is also proposing to amend Rule 975NY(d)(3)(B) and add new paragraph (d)(3)(D) to provide that a Trading Official, rather than the Panel, will determine if a Catastrophic Error has occurred, subject to an appeal to the Panel, which will be renamed the CER Panel to distinguish it from the Obvious Error Panel (“OE Panel”). The ISE similarly uses its exchange personnel to determine if a Catastrophic Error has occurred.<sup>10</sup> If a party disagrees with the Trading Official’s Catastrophic Error determination with respect to a transaction, the party can appeal that determination to the CER Panel within 30 minutes of receiving notification of the determination. As noted above, all determinations by the CER Panel constitute final Exchange action on the matter at issue.

Pursuant to existing Rule 975NY(d)(3)(B), if upon review a CER Panel determines that a Catastrophic Error has not occurred, the ATP Holder requesting the review is subject to a charge of \$5,000. Pursuant to this proposal, there will be no fee assessed if an ATP Holder requests that the Exchange review a transaction and make a determination as to whether a Catastrophic Error occurred. However, if an ATP Holder appeals the determination made by the Trading Official to a CER Panel and the CER Panel confirms the determination made by the Trading Official, a \$5,000 fee will apply. The Exchange is proposing to move existing text regarding the \$5,000 fee from subsection (d)(3)(B) to proposed subsection (d)(3)(F) to make clear when the fee applies. Assessing the \$5,000 only in the event of an appeal to the CER Panel, but not for initial determinations made by the Trading Official, is consistent with the application of a similar

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<sup>9</sup> See Securities Exchange Act Release No. 59981 (May 27, 2009), 74 FR 26447 (June 2, 2009) (SR-CBOE-2009-024).

<sup>10</sup> ISE Rule 720; see 78 FR at 25778.

\$5,000 fee by ISE<sup>11</sup>.

Finally, in order to make the definition of Professional Customer found in Rule 900.2NY(18A) consistent with the proposed treatment of Professional Customers, the Exchange is amending the text to indicate that Professional Customers are to be treated the same as broker-dealers for purposes of Rule 975NY.

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,<sup>12</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>13</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

In particular, regarding Obvious Errors, the Exchange believes the proposed rule change relating to busting trades involving Customers and adjusting trade prices if none of the parties is a Customer will help market participants better manage risk associated with potential erroneous trades. In addition, regarding Catastrophic Errors, the Exchange believes that the proposal provides a fair process that will ensure that Customers are not forced to accept a trade that was executed in violation of the Customer's limit order price.

The automatic remedies applicable to Obvious or Catastrophic Error transactions involving only non-Customers differ from those applicable to such transactions involving at least one party that is a Customer, but the Exchange does not believe that the proposal is unfairly discriminatory. As discussed above, an Obvious or Catastrophic Error transaction involving only

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<sup>11</sup> See ISE Rule 720(d)(4).

<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

non-Customer parties is subject to an automatic price adjustment in accordance with terms set out in Rule 975NY, unless the parties agree to a different price adjustment or to bust the transaction within the applicable timeframe. Obvious or Catastrophic Error Transactions involving at least one party that is a Customer, by contrast, are subject to being adjusted automatically only if the adjustment price is within the Customer's limit price. Otherwise, the transaction is busted, unless the Customer accepts an adjustment price from the Exchange, or the parties to the transaction agree to adjust the price of the trade within the applicable timeframe, which is longer than the applicable timeframe for non-Customer transactions. The different treatment accorded Customers versus non-Customers recognizes that Customers are not necessarily immersed in the day-to-day trading of the markets, are less likely to be watching trading activity in a particular option throughout the day, and may have limited funds in their trading accounts. Automatically busting a Customer trade involving a Catastrophic Error to protect the Customer's limit order price, while giving the Customer a longer period of time than a non-Customer to choose a different remedy, i.e., price adjustment, is not unfairly discriminatory because it is reasonable and fair to provide Customers, who are typically less sophisticated in trading matters than non-Customers, with additional options to protect themselves against the consequences of Catastrophic Errors.

The Exchange acknowledges that the proposal contains some uncertainty regarding whether a trade will be adjusted or busted, depending on whether one of the parties is a Customer, because a party would not know, when entering into the trade, whether the other party is a Customer. The Exchange believes that the proposal nevertheless promotes just and equitable principles of trade and protects investors and the public interest, because it eliminates a more serious uncertainty in the rule's operation today, which is price uncertainty. Today, a

Customer's order can be adjusted to a significantly different price in the case of a Catastrophic Error, which is potentially more impactful than the possibility of busting the trade.

Furthermore, there is uncertainty in the current Obvious Error portion of Rule 975NY that market participants have dealt with for a number of years. Specifically, Rule 975NY(a)(3)(A) provides that if it is determined that an Obvious Error has occurred where each party to the transaction is a Market Maker on the Exchange, the execution price of the transaction will be adjusted by the Exchange (in accordance with subsection (i) and (ii) of the rule), unless both parties agree to adjust to a different price or to nullify the transaction within 10 minutes of being notified by the Exchange of the Obvious Error. Additionally, Rule 975NY(a)(3)(B) provides that if it is determined that an Obvious Error has occurred where at least one party to the transaction to the Obvious Error is not an Exchange Market Maker, the trade will be busted by the Exchange, unless both parties agree to adjust the price of the transaction within 30 minutes of being notified by the Exchange of the Obvious Error. Therefore, a Market Maker who prefers price adjustments over busting a trade cannot guarantee that outcome because, if he trades with a non-Market Maker, a resulting Obvious Error would only be adjusted if the party on the other side of the trade agrees to an adjustment. This uncertainty has been embedded in the rule and accepted by market participants. The Exchange believes that this proposal, despite the uncertainty based on whether a Customer is involved in a trade, is nevertheless consistent with the Act because the ability to nullify a Customer's trade involving an Obvious or a Catastrophic Error should prevent the price uncertainty that mandatory adjustment with respect Catastrophic Error creates under the current rule. The Exchange believes that the benefits afforded to Customers by knowing with certainty what the adjustment price of a Catastrophic Error will be, and being able to nullify the trade if they choose

to do so, far outweighs any uncertainty that might arise by not knowing whether a Customer was involved as the contra-side on a given trade. A [sic] The Exchange believes that affording Customers this heightened degree of certainty which [sic] should promote just and equitable principles of trade and protect investors and the public interest.

The Exchange has also weighed carefully the need to assure that one market participant is not permitted to receive a windfall at the expense of another market participant that made an Obvious or a Catastrophic error against the need to assure that market participants are not simply being given an opportunity to reconsider poor trading decisions.

Further, the Exchange believes that the proposed rule change relating to a Trading Official making the determination of whether a Catastrophic Error has occurred will promote just and equitable principles of trade because the Exchange believes such determinations will be made in a more timely manner than is the case today. As the determinations will likely be more timely, the proposed change will reduce the length of time before participants gain certainty as to the outcome of Catastrophic Error review. The Exchange's Obvious and Catastrophic Error rule and the procedures that carry out the rule have consistently been based on specific and objective criteria. The Exchange believes this proposed rule change furthers that principle by adopting objective guidelines for the determination of which trades may be busted or adjusted and for the determination of whether or not a trade is deemed to be a Catastrophic Error.

In addition, the Exchange believes that the proposed changes to the pricing tables used in determining theoretical and adjustment values for transactions subject to Catastrophic Error reviews will remove impediments to and perfect the mechanism of a free and open market

because the proposed changes will conform the theoretical and adjustment values applicable to Catastrophic Errors on other market venues.<sup>14</sup>

Finally, the Exchange believes that moving existing text regarding the \$5,000 fee, as described above, will promote just and equitable principles of trade because the amendment will make clear when the fee is applicable. The amendment will clarify that the \$5,000 fee will not be applicable when the Trading Official makes the initial determination as to whether a Catastrophic Error occurred, but will be applicable if, upon appeal, the CER Panel confirms the determinations made by the Trading Official. Further, the Exchange believes that the amendment will remove impediments to and perfect the mechanism of a free and open market because the amendment will conform the Exchange's application of the \$5,000 fee to similar fees on other market venues. The Exchange also believes that assessing such a fee ensures the proper balance between allowing ATP Holders to seek review of determinations made by the Exchange and recovering the costs associated with requiring an additional layer of review by the CER Panel.

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

The Exchange believes the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is intended to help market participants better manage the risk associated with erroneous options trades, and therefore, does not impose any burden on competition. Moreover, the Exchange believes the proposed rule change will enhance competition by conforming the Exchange's rules governing Obvious and Catastrophic Errors more closely to those of other exchanges. The treatment of Customers differently from non-Customers under the

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<sup>14</sup> Supra Footnote No. 11 [sic]

proposed rule amendments may result in market participants choosing to route orders to the Exchange, and therefore, attract order flow to the Exchange, rather than a competing exchange.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>15</sup> and Rule 19b-4(f)(6) thereunder.<sup>16</sup> 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 Act<sup>17</sup> and Rule 19b-4(f)(6)(iii) thereunder.<sup>18</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>19</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>20</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

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

<sup>16</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) 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.

<sup>17</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>18</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>19</sup> 17 CFR 240.19b-4(f)(6).

<sup>20</sup> 17 CFR 240.19b-4(f)(6)(iii).

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. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) of the Act<sup>21</sup> to determine whether the proposed rule change 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
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEMKT-2013-81 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-2013-81. 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

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<sup>21</sup> 15 U.S.C. 78s(b)(2)(B).

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 Section, 100 F Street, NE, Washington, DC 20549-1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet website at [www.nyse.com](http://www.nyse.com). 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-2013-81 and should be submitted on or before [INSERT DATE 21 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>22</sup>

Kevin M. O'Neill,  
Deputy Secretary.

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<sup>22</sup> 17 CFR 200.30-3(a)(12).