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SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-73882; File No. SR-NYSEMKT-2014-101)

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 342 – Equities to Remove the Three Years’ Experience Requirement for Supervisory Personnel and to Add Supplementary Material to Rule 3110 – Equities Stating that Supervisors Must Reasonably Discharge their Supervisory Duties and Obligations

December 18, 2014

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 8, 2014, NYSE MKT LLC (“NYSE MKT” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. The Exchange has designated the proposed rule change as constituting a “non-controversial” rule change under Exchange Act Rule 19b-4(f)(6), which renders the proposal effective upon receipt of this filing by the Commission.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE MKT Rule 342 – Equities (“Rule 342”) to remove the three years’ experience requirement for supervisory personnel and to add supplementary material to NYSE MKT Rule 3110 – Equities (“Rule 3110”) stating that supervisors must reasonably discharge their supervisory duties and obligations. The text of the

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

<sup>2</sup> 17 CFR 240.19b-4.

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 Exchange 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 proposes to amend Rule 342 to remove the three years’ experience requirement for supervisory personnel. The Exchange also proposes to add supplementary material to Rule 3110 to further clarify that supervisors must reasonably discharge their supervisory duties and obligations.

Rule 342 (Compliance Supervisors)

As part of the Exchange’s efforts to harmonize its rules concerning supervision with those of the Financial Industry Regulatory Authority (“FINRA”), the Exchange recently amended Rule 342 by deleting elements of the rule relating to general supervision and focusing the rule on requirements regarding qualifications and exam requirements for individuals with supervisory responsibilities.<sup>3</sup> As part of those amendments, the Exchange incorporated the following requirements for supervisory personnel into Rule 342(a) contained in the Interpretation

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<sup>3</sup> See Exchange Act Release No. 73640 (Nov. 19, 2014), 79 FR 70237 (Nov. 25, 2014) (SR-NYSEMKT-2014-93) (“Supervision Filing”).

to New York Stock Exchange (“NYSE”) Rule 342:

- Every branch office or sales manager must have at least three years’ experience as a registered representative or substantial experience in a related sales or managerial position (the new rule provided examples of roles that would qualify as a related sales or managerial position); and
- In order to qualify as a supervisory person, a principal executive should have at least three years’ experience as a registered representative unless granted an exception.

The Exchange proposes to delete these requirements from Rule 342(a) as inconsistent with prior amendments to NYSE Rule 342 on which the Exchange’s rule is based.<sup>4</sup> Specifically, effective September 12, 2008, the NYSE amended its Rule 342 and its related Interpretation to eliminate the prescribed three-year record requirement for supervisory personnel and conform NYSE Rule 342.13(a) to the standard outlined in NASD Rule 1014(a)(10)(D).<sup>5</sup> In the Supervision Filing, the Exchange inadvertently re-introduced the standards from the formerly deleted NYSE Interpretation to its Rule 342. Because the re-introduction of the three-year experience requirement for supervisory personnel was inadvertent and inconsistent with the harmonization effectuated in 2008, the Exchange proposes to delete this text from Rule 342(a).

#### Rule 3110 (Supervision)

In the Supervision Filing, the Exchange also adopted new Rule 3110, which is based on

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<sup>4</sup> The Exchange’s NYSE affiliate has also submitted a proposed rule change to amend NYSE Rule 342 to delete the requirements incorporated from the related NYSE Interpretation that every branch office or sales manager must have at least three years’ experience as a registered representative or substantial experience in a related sales or managerial position and must pass the Series 9/10. See SR-NYSE-2014-66.

<sup>5</sup> See Exchange Act Release No. 58549 (Sept. 15, 2008), 73 FR 54444 (Sept. 19, 2008) (SR-NYSE-2008-80).

FINRA Rule 3110.<sup>6</sup> New Rule 3110(a) covers supervisory systems and requires member organizations to establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable Exchange rules. Under Rule 3110, final responsibility for proper supervision rests with the member organization. While the Exchange believes that under Rule 3110 both member organizations and individual supervisors at member organizations may be liable for failing to reasonably discharge their duties and obligations with supervision and control of those employees under their supervision, for the avoidance of doubt, the Exchange proposes to add Supplementary Material .16 to Rule 3110 providing that individuals in charge of a group of employees must reasonably discharge their duties and obligations with respect to supervision and control of those employees related to the business of their employer and compliance with securities laws and regulations and Exchange rules.<sup>7</sup>

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>9</sup> in particular, because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove

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<sup>6</sup> See Supervision Filing, *supra*, n. 4.

<sup>7</sup> FINRA Rule 0140 provides that FINRA's rules apply to all members and persons associated with a member, and that persons associated with a member have the same duties and obligations as a member under FINRA's rules. Under FINRA Rule 0140, supervisors associated with a member are subject to the requirements of FINRA Rule 3110. The Exchange does not have a rule comparable to FINRA Rule 0140. The proposed amendment further clarifies that Rule 3110 applies to individual supervisors and thus promotes harmonization of the rule with Exchange rules and FINRA rules of similar purpose.

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

impediments to and perfect the mechanism of a free and open market and a national market system. Specifically, the Exchange believes that the proposed rule change supports the objectives of the Act by providing greater harmonization between Exchange rules and FINRA rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance. In particular, the Exchange believes that removing the three-year experience requirement for supervisors, which was previously deleted from NYSE Rule 342 on which the Exchange's rule is based and inadvertently re-introduced, would remove impediments to and perfect the mechanism of a free and open market by eliminating a regulatory disparity between the supervisory rules of the Exchange and FINRA, thereby also further harmonizing those rules. Further, the Exchange believes that adding the proposed supplementary material to Rule 3110 emphasizing that individual supervisors shall reasonably discharge their supervisory duties and obligations would remove impediments to and perfect the mechanism of a free and open market because it would reduce potential confusion and provide transparency regarding the duties and obligations of individual supervisors under the Exchange's harmonized supervision rules. The Exchange also believes that the proposed rule change would update and add specificity to the requirements governing supervision, which would promote just and equitable principles of trade and help to protect investors.

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

In accordance with Section 6(b)(8) of the Act,<sup>10</sup> 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 proposed rule change is not intended to address competitive issues but rather to achieve greater transparency and consistency between the

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<sup>10</sup> 15 U.S.C. 78f(b)(8).

Exchange's rules and FINRA's rules concerning supervision.

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

A proposed rule change filed under Exchange Act Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of the filing.<sup>11</sup> However, pursuant to Rule 19b-4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.<sup>12</sup> The Exchange believes that the proposal qualifies for immediate effectiveness upon filing because it is a "non-controversial" rule change in accordance with Section 19(b)(3)(A) of the Act<sup>13</sup> and Rule 19b-4(f)(6) thereunder.<sup>14</sup>

Accordingly, the Exchange has asked that the Commission waive the 30-day operative delay so that the proposal becomes operative immediately upon filing.

The Exchange believes that the proposal is non-controversial because it raises no novel issues and is consistent with rules previously approved by the Commission. The Exchange states that the purpose of the proposed rule change is to eliminate requirements in the Exchange's rules previously deleted by the Exchange and to further conform the Exchange's supervision rules to those of FINRA. The Exchange believes that updating and adding transparency to the requirements governing individual supervisors would help to protect investors and would not significantly burden competition. More specifically, the Exchange believes that: (1) members of

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<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

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

both FINRA and the Exchange (“Dual Members”) are already subject to the requirement that individual supervisors reasonably discharge their supervisory duties and obligations; and (2) the proposed clarification does not represent a new standard for Exchange-only members, who were subject to the same standard under former Rule 342. Accordingly, the Exchange believes that these proposed rule changes are eligible for immediately effective treatment under the Commission’s current procedures for processing rule filings.<sup>15</sup>

The Commission believes that 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 and Rule 19b-4(f)(6)(iii) thereunder. More specifically, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because enhanced transparency to the supervision obligations of individual supervisors will help members improve compliance with applicable securities laws, including rules governing sale practices. In addition, granting the waiver would allow the Exchange to immediately eliminate requirements in the Exchange’s rules that were mistakenly reinserted after being previously deleted. For these reasons, the Commission designates the proposed rule change as operative upon filing.<sup>16</sup>

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<sup>15</sup> See Exchange Act Release No. 58092 (Jul. 3, 2008), 73 FR 40144 (Jul. 11, 2008) (concerning 17 CFR 200 and 241).

<sup>16</sup> For purposes 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).

In addition, the Exchange has given the Commission written notice of its intent to file the

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the 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>17</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-2014-101 on the subject line.

##### Paper comments:

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

All submissions should refer to File Number SR-NYSEMKT-2014-101. 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

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proposed rule change, along with a brief description and text of the proposed rule change, at least five (5) business days prior to the date of the filing of the proposed rule change, or such shorter time as designated by the Commission. See 17 CFR 240.19b-4(f)(6)(iii). 15 U.S.C. 78s(b)(2)(B).

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 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. 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-2014-101 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>18</sup>

Kevin M. O'Neill,  
Deputy Secretary.

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<sup>18</sup> 17 CFR 200.30-3(a)(12).