

Required fields are shown with yellow backgrounds and asterisks.

Proposed Rule Change by NYSE MKT LLC.  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>			
Pilot <input type="checkbox"/>			Rule					
Extension of Time Period for Commission Action * <input type="checkbox"/>		Date Expires * <input type="text"/>	19b-4(f)(1) <input type="checkbox"/>	19b-4(f)(2) <input type="checkbox"/>	19b-4(f)(3) <input type="checkbox"/>	19b-4(f)(4) <input type="checkbox"/>	19b-4(f)(5) <input type="checkbox"/>	19b-4(f)(6) <input checked="" type="checkbox"/>

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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**Description**  
Provide a brief description of the proposed rule change (limit 250 characters, required when Initial is checked \*).  
Proposes to temporarily suspend 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

**Contact Information**  
Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name \* Theodore R. Last Name \* Lazo  
Title \* General Counsel  
E-mail \* tlazo@nyx.com  
Telephone \* (202) 661-8949 Fax

**Signature**  
Pursuant to the requirements of the Securities Exchange Act of 1934,  
  
has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date 06/05/2012  
By Janet McGinness  
(Name \*)  
Corporate Secretary  
(Title \*)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

NYX Janet McGinness,

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

**Form 19b-4 Information (required)**

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change (required)**

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

- (a) NYSE MKT LLC (“NYSE MKT” or the “Exchange”) is proposing 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 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. A copy of this filing is available on the Exchange’s Web site at [www.nyse.com](http://www.nyse.com), at the Exchange’s principal office, and at the Commission’s Public Reference Room.
- (b) The Exchange does not believe that the proposed rule change will have any direct effect, or any significant indirect effect, on any other Exchange rule in effect at the time of this filing.
- (c) Not applicable.

2. Procedures of the Self-Regulatory Organization

Senior management has approved the proposed rule change pursuant to authority delegated to it by the Board of the Exchange. No further action is required under the Exchange’s governing documents. Therefore, the Exchange’s internal procedures with respect to the proposed rule change are complete.

The persons on the Exchange staff prepared to respond to questions and comments on the proposed rule change are:

Theodore R. Lazo  
General Counsel  
NYSE Regulation  
(202) 661-8949

Clare F. Saperstein  
Vice President  
NYSE Regulation  
(212) 656-2355

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) 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.<sup>1</sup> 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”).<sup>2</sup>

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 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.

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<sup>1</sup> 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.

<sup>2</sup> See, Penson Worldwide, Inc. Form 8-K dated May 31, 2012.

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, 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.<sup>3</sup> 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.

(b) Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)<sup>4</sup> of the Securities Exchange Act of 1934 (the "Act"), in general, and furthers the objectives of Section 6(b)(5)<sup>5</sup> 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.

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

The Exchange does not believe that the proposed rule change will impose any

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<sup>3</sup> See Exchange 954NY.

<sup>4</sup> 15 U.S.C. 78f(b).

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

burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

6. Extension of Time Period for Commission Action

The Exchange does not consent at this time to an extension of any time period for Commission action.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The Exchange believes that the proposal qualifies for immediate effectiveness upon filing as a "non-controversial" rule change in accordance with Section 19(b)(3)(A) of the Act<sup>6</sup> and Rule 19b-4(f)(6) thereunder.<sup>7</sup>

The Exchange asserts that the proposed rule change (i) will not significantly affect the protection of investors or the public interest, (ii) will not impose any significant burden on competition, and (iii) by its terms, will not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest. In addition, the Exchange provided the Commission with 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, or such shorter time as the Commission may designate.

A proposed rule change filed under Rule 19b-4(f)(6) becomes effective upon filing but does not become operative prior to 30 days after the date of filing. 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 public interest.

In view of the immediate nature of the relief requested, the Exchange seeks to have the proposed amendments become operative immediately. The Exchange requests that the Commission waive the 5 business day notice of the Exchange's intent to file this proposed rule change, as well as the 30-day delayed operative date, so that the proposed rule change may become immediately operative pursuant to Section 19(b)(3)(A) and Rule 19b-4(f)(6) thereunder. Waiver of these periods will allow the Exchange to immediately implement the proposed rule change.

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<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(f)(6).

As outlined more fully above, the Exchange believes that the proposed relief is limited in nature, and that the benefits of the proposed relief outweigh the potential harms. In particular, the Exchange proposes this relief for one applicant to be provisionally approved as an Exchange Equities member organization and an ATP Holder. The Exchange proposes this relief to ensure that PFSI operations can continue at Apex Clearing with as little interruption as possible. Moreover, the proposed relief does not exempt Apex Clearing from Exchange rule requirements governing member organizations and ATP Holders. Apex Clearing simply would have a 30 calendar day grace period within which to comply with all relevant Exchange rules, including, but not limited to, Exchange Rule 304 - Equities, concerning approved persons, and Exchange Rules 311-313 - Equities, relating to the formation and operation of partnerships or corporations as well as Exchange Rules 353, 355 and 356.

Moreover, given the rapidity with which events have developed, the Exchange believes that immediate effectiveness is required in order to avoid significant disruption to PFSI's existing customers and the market generally. Time is of the essence as PFSI may be unable to continue its clearing operations beginning on June 6, 2012. The Exchange believes that this need satisfies the standards set out in the Exchange Act and related rules regarding immediate effectiveness filings.

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.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Exhibits

Exhibit 1 – Form of Notice of Proposed Rule Change for Federal Register

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

[Date]

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)<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 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, 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 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

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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.

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 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](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 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 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.<sup>4</sup> 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”).<sup>5</sup>

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<sup>4</sup> 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.

<sup>5</sup> See, Penson Worldwide, Inc. Form 8-K dated May 31, 2012.

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 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, 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.<sup>6</sup> 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.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)<sup>7</sup> of the Securities Exchange Act of 1934 (the "Act"), in general, and furthers the objectives of Section 6(b)(5)<sup>8</sup> in particular in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments

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<sup>6</sup> See Exchange 954NY.

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

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.

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>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</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 and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>11</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>12</sup> 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 proposal may become operative immediately upon filing.

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.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments

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<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

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

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

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-2012-06 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 Section, 100 F Street, NE, Washington, DC 20549-1090. 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-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.<sup>13</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).