

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 30	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - 2012 - * 46 Amendment No. (req. for Amendments *)
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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 amend Rule 993NY by adding a new paragraph that addresses the authority of the Exchange or Archipelago Securities LLC to cancel orders when a technical or systems issue occurs

**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 \* Clare Last Name \* Saperstein  
Title \* Vice President  
E-mail \* csaperstein@nyx.com  
Telephone \* (212) 656-2355 Fax (212) 656-2223

**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 08/31/2012  
By Janet McGinness Corporate Secretary  
(Name \*) (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 EFFS 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”), through NYSE Amex Options LLC (“NYSE Amex Options”), proposes to amend Rule 993NY by adding a new paragraph (c) that addresses the authority of the Exchange or Archipelago Securities LLC (“Arca Securities”) to cancel orders when a technical or systems issue occurs and to describe the operation of an error account for Arca Securities. The text of the proposed rule change is attached as Exhibit 5 and is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at the Exchange’s principal office and in the Public Reference Room of the Securities and Exchange Commission (“Commission”).
- (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 Directors of the Exchange (the “Board”). No further action by the Board or the membership of the Exchange is required. Therefore, the Exchange’s internal procedures with respect to the proposed change are complete.

The person on the Exchange staff prepared to respond to questions and comments on the proposed rule change is:

Clare F. Saperstein  
Vice President  
NYSE Regulation Inc.  
(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 to amend Rule 993NY by adding a new paragraph (c) that addresses the authority of the Exchange or Arca Securities to cancel orders when a technical or systems issue occurs and to describe the operation of an error

account for Arca Securities.<sup>1</sup>

Arca Securities is an approved routing broker of the Exchange, subject to the conditions listed in Rule 993NY.<sup>2</sup> When necessary, the Exchange may utilize Arca Securities to provide outbound routing services from itself to routing destinations of Arca Securities (“routing destinations”).<sup>3</sup> When Arca Securities routes orders to a routing destination, it does so by sending a corresponding order in its own name to the routing destination. In the normal course, routed orders that are executed at routing destinations are submitted for clearance and settlement in the name of Arca Securities, and Arca Securities arranges for any resulting securities positions to be delivered to the ATP Holder that submitted the corresponding order to the Exchange. However, from time to time, the Exchange and Arca Securities encounter situations in which it becomes necessary to cancel orders and resolve error positions.<sup>4</sup>

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<sup>1</sup> Arca Securities is a facility of the Exchange. Accordingly, under Rule 993NY, the Exchange is responsible for filing with the Commission rule changes and fees relating to Arca Securities’ functions. In addition, the Exchange is using the phrase “Arca Securities or the Exchange” in this rule filing to reflect the fact that a decision to take action with respect to orders affected by a technical or systems issue may be made in the capacity of Arca Securities or the Exchange depending on where those orders are located at the time of that decision.

<sup>2</sup> The Exchange currently relies on non-affiliate third-party broker-dealers to provide outbound routing services (i.e., third-party Routing Brokers). In those cases, orders are submitted to the third-party Routing Broker through Arca Securities, the third-party Routing Broker routes the orders to the routing destination in its name, and any executions are submitted for clearance and settlement in the name of Arca Securities so that any resulting positions are delivered to Arca Securities upon settlement. As described above, Arca Securities normally arranges for any resulting positions to be delivered to the ATP Holder that submitted the corresponding order to the Exchange. If error positions (as defined in proposed Rule 993NY(c)(2)) result in connection with the Exchange’s use of a third-party Routing Broker for outbound routing, and those positions are delivered to Arca Securities through the clearance and settlement process, Arca Securities would be permitted to resolve those positions in accordance with proposed Rule 993NY(c). If the third-party Routing Broker received error positions in connection with its role as a routing broker for the Exchange, and the error positions were not delivered to Arca Securities through the clearance and settlement process, then the third-party Routing Broker would resolve the error positions itself, and Arca Securities would not be permitted to accept the error positions, as set forth in proposed Rule 993NY(c)(2)(B).

<sup>3</sup> The Exchange has also been approved to receive inbound routes of option orders by Arca Securities from NYSE Arca, Inc. (“NYSE Arca”). *See* Rule 993NY(b).

<sup>4</sup> The examples described in this filing are not intended to be exclusive. Proposed Rule 993NY(c) would provide general authority for the Exchange or Arca

### **Examples of Circumstances That May Lead to Canceled Orders**

A technical or systems issue may arise at Arca Securities, a routing destination, or the Exchange that may cause the Exchange or Arca Securities to take steps to cancel orders if the Exchange or Arca Securities determines that such action is necessary to maintain a fair and orderly market. The examples set forth below describe some of the circumstances in which the Exchange or Arca Securities may decide to cancel orders.

**Example 1.** If Arca Securities or a routing destination experiences a technical or systems issue that results in Arca Securities not receiving responses to immediate or cancel (“IOC”) orders that it sent to the routing destination, and that issue is not resolved in a timely manner, Arca Securities or the Exchange would seek to cancel the routed orders affected by the issue.<sup>5</sup> For instance, if Arca Securities experiences a connectivity issue affecting the manner in which it sends or receives order messages to or from routing destinations, it may be unable to receive timely execution or cancellation reports from the routing destinations, and Arca Securities or the Exchange may consequently seek to cancel the affected routed orders. Once the decision is made to cancel those routed orders, any cancellation that an ATP Holder submitted to the Exchange on its initial order during such a situation would be honored.<sup>6</sup>

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Securities to cancel orders in order to maintain fair and orderly markets when technical and systems issues are occurring, and Rule 993NY(c) also would set forth the manner in which error positions may be handled by the Exchange or Arca Securities. The proposed rule change is not limited to addressing order cancellation or error positions resulting only from the specific examples described in this filing.

<sup>5</sup> In a normal situation (i.e., one in which a technical or systems issue does not exist), Arca Securities should receive an immediate response to an IOC order from a routing destination, and would pass the resulting fill or cancellation on to the ATP Holder. After submitting an order that is routed to a routing destination, if an ATP Holder sends an instruction to cancel that order, the cancellation is held by the Exchange until a response is received from the routing destination. For instance, if the routing destination executes that order, the execution would be passed on to the ATP Holder and the cancellation instruction would be disregarded.

<sup>6</sup> If an ATP Holder did not submit a cancellation to the Exchange, however, that initial order would remain “live” and thus be eligible for execution or posting on the Exchange, and neither the Exchange nor Arca Securities would treat any execution of that initial order or any subsequent routed order related to that initial order as an error.

**Example 2.** If the Exchange experiences a systems issue, the Exchange may take steps to cancel all outstanding orders affected by that issue and notify affected ATP Holders of the cancellations. In those cases, the Exchange would seek to cancel any routed orders related to the ATP Holders' initial orders.

### **Examples of Circumstances That May Lead to Error Positions**

In some instances, the technical or systems issue at Arca Securities, a routing destination, the Exchange, or a non-affiliate third-party Routing Broker may also result in Arca Securities acquiring an error position that it must resolve. The examples set forth below describe some of the circumstances in which error positions may arise.

**Example A.** Error positions may result from routed orders that the Exchange or Arca Securities attempts to cancel but that are executed before the routing destination receives the cancellation message or that are executed because the routing destination is unable to process the cancellation message. Using the situation described in Example 1 above, assume that the Exchange seeks to cancel orders routed to a routing destination because it is not receiving timely execution or cancellation reports from the routing destination. In such a situation, Arca Securities may still receive executions from the routing destination after connectivity is restored, which it would not then allocate to ATP Holders because of the earlier decision to cancel the affected routed orders. Instead, Arca Securities would post those positions into its error account and resolve the positions in the manner described below.

**Example B.** Error positions may result from an order processing issue at a routing destination. For instance, if a routing destination experienced a systems problem that affects its order processing, it may transmit back a message purporting to cancel a routed order, but then subsequently submit an execution of that same order to the OCC for clearance and settlement. In such a situation, the Exchange would not then allocate the execution to the ATP Holder because of the earlier cancellation message from the routing destination. Instead, Arca Securities would post those positions into its error account and resolve the positions in the manner described below.

**Example C.** Error positions may result if Arca Securities receives an execution report from a routing destination but does not receive clearing instructions for the execution from the routing destination. For instance, assume that an ATP Holder sends the Exchange an order to buy 100 contracts overlying ABC stock, which causes Arca Securities to send an order to a routing destination that is subsequently executed, cleared and closed out by that routing destination, and the execution is ultimately communicated back to that ATP Holder. If the routing destination does not provide clearing instructions for that execution, Arca Securities would still be responsible for settling that ATP Holder's purchase, but

would be left with a short position in its error account.<sup>7</sup> Arca Securities would resolve the position in the manner described below.

**Example D.** Error positions may result from a technical or systems issue that causes orders to be executed in the name of Arca Securities and are not related to any corresponding orders of ATP Holders. As a result, Arca Securities would not be able to assign any positions resulting from such an issue to ATP Holders. Instead, Arca Securities would post those positions into its error account and resolve the positions in the manner described below.

**Example E.** Error positions may result from a technical or systems issue through which the Exchange does not receive sufficient notice that an ATP Holder that has executed trades on the Exchange has lost the ability to clear trades through OCC. In such a situation, the Exchange would not have valid clearing information, which would prevent the trade from being processed pursuant to Rule 960. Accordingly, Arca Securities would assume that ATP Holder's side of the trades so that the counterparties can settle the trades. Arca Securities would post those positions into its error account and resolve the positions in the manner described below.

In the circumstances described above, Arca Securities may not learn about an error position until T+1, either: (1) during the clearing process when a routing destination has submitted to OCC a transaction for clearance and settlement for which Arca Securities never received an execution confirmation; or (2) when a routing destination does not recognize a transaction submitted on behalf of Arca Securities to OCC for clearance and settlement. Moreover, the affected ATP Holders' trade may not be nullified absent express authority under Exchange rules.<sup>8</sup>

### **Proposed Amendments to Rule 993NY**

The Exchange proposes to amend Rule 993NY to add new paragraph (c) to address the cancellation of orders due to technical or systems issues and the use of an error account by Arca Securities.

Specifically, under paragraph (c)(1) of the proposed rule, the Exchange or Arca Securities would be expressly authorized to cancel orders as may be necessary to maintain fair and orderly markets if a technical or systems issue occurred at the Exchange, Arca Securities, or a routing destination.<sup>9</sup> The Exchange or Arca

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<sup>7</sup> To the extent that Arca Securities incurred a loss in covering its position, it may submit a reimbursement claim to that routing destination.

<sup>8</sup> See, e.g., Rule 975NY (regarding obvious and catastrophic errors).

<sup>9</sup> Such a situation may not cause the Exchange to declare self-help against the routing destination pursuant to Rule 991NY(b)(1). If the Exchange or Arca Securities determines to cancel orders routed to a routing destination under

Securities would be required to provide notice of the cancellation to affected ATP Holders as soon as practicable.

Paragraph (c)(2) of the proposed rule would permit Arca Securities to maintain an error account for the purpose of addressing positions that result from a technical or systems issue at Arca Securities, the Exchange, a routing destination, or a non-affiliate third-party Routing Broker that affects one or more orders (“error positions”). By definition, an error position would not include any position that results from an order submitted by an ATP Holder to the Exchange that is executed on the Exchange and processed pursuant to Rule 960.<sup>10</sup> Arca Securities also would not be permitted to accept any positions in its error account from an account of an ATP Holder and could not permit any ATP Holder to transfer any positions from the ATP Holder’s account to Arca Securities’ error account under the proposed rule.<sup>11</sup> However, if a technical or systems issue results in the Exchange not having valid clearing instructions for an ATP Holder to a trade, Arca Securities may assume that ATP Holder’s side of the trade so that the trade can be processed pursuant to Rule 960.<sup>12</sup>

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proposed Rule 993NY(c), but does not declare self-help against that routing destination, the Exchange would continue to be subject to the trade-through requirements in the Options Order Protection and Locked/Crossed Markets Plan and Rule 991NY with respect to that routing destination.

<sup>10</sup> As provided in Rule 960, “[a]ll Exchange option transactions shall be submitted to the Exchange for comparison of trade information, and all compared transactions shall be cleared through the [OCC] and shall be subject to the rules of the [OCC].”

<sup>11</sup> The purpose of this provision is to clarify that Arca Securities may address error positions under the proposed rule that are caused by a technical or systems issue, but that Arca Securities may not accept from an ATP Holder positions that are delivered to the ATP Holder through the clearance and settlement process, even if those positions may have been related to a technical or systems issue at Arca Securities, the Exchange, a routing destination of Arca Securities, or a non-affiliate third-party Routing Broker. This provision would not apply, however, to situations like the one described above in which Arca Securities incurred a short position to settle an ATP Holder purchase, as the ATP Holder did not yet have a position in its account as a result of the purchase at the time of Arca Securities’ action (i.e., Arca Securities’ action was necessary for the purchase to settle into the ATP Holder’s account). Moreover, to the extent an ATP Holder receives positions pursuant to Rule 960 in connection with a technical or systems issue, that ATP Holder may seek to rely on Rule 905NY if it experiences a loss. That rule provides ATP Holders with the ability to file claims against the Exchange “for the failure of its systems or facilities.”

<sup>12</sup> See Example E above.

Under paragraph (c)(3), in connection with a particular technical or systems issue, Arca Securities or the Exchange would be permitted to either (i) assign all resulting error positions to ATP Holders, or (ii) have all resulting error positions liquidated, as described below. Any determination to assign or liquidate error positions, as well as any resulting assignments, would be required to be made in a nondiscriminatory fashion.

Arca Securities or the Exchange would be required to assign all error positions resulting from a particular technical or systems issue to the applicable ATP Holders affected by that technical or systems issue if Arca Securities or the Exchange:

- determined that it has accurate and sufficient information (including valid clearing information) to assign the positions to all of the applicable ATP Holders affected by that technical or systems issue;
- determined that it has sufficient time pursuant to normal clearance and settlement deadlines to evaluate the information necessary to assign the positions to all of the applicable ATP Holders affected by that technical or systems issue; and
- had not determined to cancel all orders affected by that technical or systems issue.

For example, a technical or systems issue of limited scope or duration may occur at a routing destination, and the resulting trades may be submitted for clearance and settlement by such routing destination to OCC. If there were a small number of trades, there may be sufficient time to match positions with ATP Holder or orders and avoid using the error account.

There may be scenarios, however, where Arca Securities determines that it is unable to assign all error positions resulting from a particular technical or systems issue to all of the affected ATP Holders, or determines to cancel all affected routed orders. For example, in some cases, the volume of questionable executions and positions resulting from a technical or systems issue might be such that the research necessary to determine which ATP Holder to assign those executions to could be expected to extend past the normal settlement cycle for such executions. Furthermore, if a routing destination experiences a technical or systems issue after Arca Securities has transmitted IOC orders to it that prevents Arca Securities from receiving responses to those orders, Arca Securities or the Exchange may determine to cancel all routed orders affected by that issue. In such a situation, Arca Securities or the Exchange would not pass on to the ATP Holders any executions on the routed orders received from the routing destination.

The proposed rule also would require Arca Securities to liquidate error positions

as soon as practicable.<sup>13</sup> In liquidating error positions, Arca Securities would be required to provide complete time and price discretion for the trading to liquidate the error positions to a third-party broker-dealer and could not attempt to exercise any influence or control over the timing or methods of trading to liquidate the error positions. Arca Securities also would be required to establish and enforce policies and procedures reasonably designed to restrict the flow of confidential and proprietary information between the third-party broker-dealer and Arca Securities/the Exchange associated with the liquidation of the error positions.

Under proposed paragraph (c)(4), Arca Securities and the Exchange would be required to make and keep records to document all determinations to treat positions as error positions and all determinations for the assignment of error positions to ATP Holders or the liquidation of error positions, as well as records associated with the liquidation of error positions through the third-party broker-dealer.

(b) Statutory Basis

The proposed rule change is consistent with Section 6(b)<sup>14</sup> of the Securities Exchange Act of 1934 (the “Act”), in general, and furthers the objectives of Section 6(b)(5),<sup>15</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, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and it is not designed to permit unfair discrimination among customers, brokers, or dealers. The Exchange believes that this proposal is in keeping with those principles since Arca Securities’ or the Exchange’s ability to cancel orders during a technical and systems issue and to maintain an error account facilitates the smooth and efficient operations of the market. Specifically, the Exchange believes that allowing Arca Securities or the Exchange to cancel orders during a technical or systems issue would allow the Exchange to maintain fair and orderly markets. Moreover, the Exchange believes that allowing Arca Securities to assume error positions in an error account and to liquidate those positions, subject to the conditions set forth in the proposed amendments to Rule 993NY, would be the least disruptive means to correct these errors, except in cases where Arca Securities can assign all such error positions to

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<sup>13</sup> If Arca Securities determines in connection with a particular technical or systems issue that some error positions can be assigned to some affected ATP Holders but other error positions cannot be assigned, Arca Securities would be required under the proposed rule to liquidate all such error positions (including those positions that could be assigned to the affected ATP Holders).

<sup>14</sup> 15 U.S.C. 78f(b).

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

all affected ATP Holders of the Exchange. Overall, the proposed amendments are designed to ensure full trade certainty for market participants and to avoid disrupting the clearance and settlement process. The proposed amendments are also designed to provide a consistent methodology for handling error positions in a manner that does not discriminate among ATP Holders. The proposed amendments are also consistent with Section 6 of the Act insofar as they would require Arca Securities to establish controls to restrict the flow of any confidential information between the third-party broker and Arca Securities/the Exchange associated with the liquidation of error positions.

4. 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.

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

Not applicable.

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

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Act<sup>16</sup> and Rule 19b-4(f)(6) thereunder.<sup>17</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. Additionally, 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 the filing, or such shorter time as designated by the Commission.

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<sup>16</sup> 15 U.S.C. 78s(b)(3)(A).

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

The Exchange believes that the proposed rule change will not significantly affect the protection of investors or the public interest, but rather that Arca Securities' or the Exchange's ability to cancel orders during a technical and systems issue and to maintain an error account facilitates the smooth and efficient operations of the market. Specifically, the Exchange believes that allowing Arca Securities or the Exchange to cancel orders during a technical or systems issue would allow the Exchange to maintain fair and orderly markets.

The Exchange further believes that the proposed rule change will not impose a burden on competition because the proposed amendments are designed to ensure full trade certainty for market participants and to avoid disrupting the clearance and settlement process. The proposed amendments are also consistent with Section 6 of the Act insofar as they would require Arca Securities to establish controls to restrict the flow of any confidential information between the third-party broker and Arca Securities/the Exchange associated with the liquidation of error positions.

The Exchange respectfully requests a waiver of the 30-day operative delay. Such a waiver would permit the Exchange to implement the proposed rule change, which is designed to provide a consistent methodology for handling error positions in a manner that does not discriminate among ATP Holders, without undue delay. A waiver of the 30-day operative delay would also enable the Exchange to implement the proposed change as part of a planned implementation of similar rules on the Exchange's affiliate exchanges.

For the foregoing reasons, this rule filing qualifies for immediate effectiveness as a "non-controversial" rule change under paragraph (f)(6) of Rule 19b-4.<sup>18</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.

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

The proposed rule change is based on NYSE Arca Equities Rule 7.45(d).<sup>19</sup>

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

<sup>19</sup> See Securities Exchange Act Release No. 66963 (May 10, 2012), 77 FR 28919 (May 16, 2012) (SR-NYSEArca-2012-22).

9. Exhibits

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

Exhibit 5 – Text of Proposed Rule Change

SECURITIES AND EXCHANGE COMMISSION  
 (Release No. 34- ; File No. SR-NYSEMKT-2012-46)

[Date]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 993NY by Adding a New Paragraph (c) That Addresses the Authority of the Exchange or Archipelago Securities LLC (“Arca Securities”) To Cancel Orders When a Technical or Systems Issue Occurs and To Describe the Operation of an Error Account for Arca Securities.

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 August 31, 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 amend Rule 993NY by adding a new paragraph (c) that addresses the authority of the Exchange or Archipelago Securities LLC (“Arca Securities”) to cancel orders when a technical or systems issue occurs and to describe the operation of an error account for Arca Securities. 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> 15 U.S.C. 78a.

<sup>3</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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 993NY by adding a new paragraph (c) that addresses the authority of the Exchange or Arca Securities to cancel orders when a technical or systems issue occurs and to describe the operation of an error account for Arca Securities.<sup>4</sup>

Arca Securities is an approved routing broker of the Exchange, subject to the conditions listed in Rule 993NY.<sup>5</sup> When necessary, the Exchange may utilize Arca

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<sup>4</sup> Arca Securities is a facility of the Exchange. Accordingly, under Rule 993NY, the Exchange is responsible for filing with the Commission rule changes and fees relating to Arca Securities’ functions. In addition, the Exchange is using the phrase “Arca Securities or the Exchange” in this rule filing to reflect the fact that a decision to take action with respect to orders affected by a technical or systems issue may be made in the capacity of Arca Securities or the Exchange depending on where those orders are located at the time of that decision.

<sup>5</sup> The Exchange currently relies on non-affiliate third-party broker-dealers to provide outbound routing services (i.e., third-party Routing Brokers). In those cases, orders are submitted to the third-party Routing Broker through Arca Securities, the third-party Routing Broker routes the orders to the routing destination in its name, and any executions are submitted for clearance and settlement in the name of Arca Securities so that any resulting positions are

Securities to provide outbound routing services from itself to routing destinations of Arca Securities (“routing destinations”).<sup>6</sup> When Arca Securities routes orders to a routing destination, it does so by sending a corresponding order in its own name to the routing destination. In the normal course, routed orders that are executed at routing destinations are submitted for clearance and settlement in the name of Arca Securities, and Arca Securities arranges for any resulting securities positions to be delivered to the ATP Holder that submitted the corresponding order to the Exchange. However, from time to time, the Exchange and Arca Securities encounter situations in which it becomes necessary to cancel orders and resolve error positions.<sup>7</sup>

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delivered to Arca Securities upon settlement. As described above, Arca Securities normally arranges for any resulting positions to be delivered to the ATP Holder that submitted the corresponding order to the Exchange. If error positions (as defined in proposed Rule 993NY(c)(2)) result in connection with the Exchange’s use of a third-party Routing Broker for outbound routing, and those positions are delivered to Arca Securities through the clearance and settlement process, Arca Securities would be permitted to resolve those positions in accordance with proposed Rule 993NY(c). If the third-party Routing Broker received error positions in connection with its role as a routing broker for the Exchange, and the error positions were not delivered to Arca Securities through the clearance and settlement process, then the third-party Routing Broker would resolve the error positions itself, and Arca Securities would not be permitted to accept the error positions, as set forth in proposed Rule 993NY(c)(2)(B).

<sup>6</sup> The Exchange has also been approved to receive inbound routes of option orders by Arca Securities from NYSE Arca, Inc. (“NYSE Arca”). *See* Rule 993NY(b).

<sup>7</sup> The examples described in this filing are not intended to be exclusive. Proposed Rule 993NY(c) would provide general authority for the Exchange or Arca Securities to cancel orders in order to maintain fair and orderly markets when technical and systems issues are occurring, and Rule 993NY(c) also would set forth the manner in which error positions may be handled by the Exchange or Arca Securities. The proposed rule change is not limited to addressing order cancellation or error positions resulting only from the specific examples described in this filing.

### **Examples of Circumstances That May Lead to Canceled Orders**

A technical or systems issue may arise at Arca Securities, a routing destination, or the Exchange that may cause the Exchange or Arca Securities to take steps to cancel orders if the Exchange or Arca Securities determines that such action is necessary to maintain a fair and orderly market. The examples set forth below describe some of the circumstances in which the Exchange or Arca Securities may decide to cancel orders.

*Example 1.* If Arca Securities or a routing destination experiences a technical or systems issue that results in Arca Securities not receiving responses to immediate or cancel (“IOC”) orders that it sent to the routing destination, and that issue is not resolved in a timely manner, Arca Securities or the Exchange would seek to cancel the routed orders affected by the issue.<sup>8</sup> For instance, if Arca Securities experiences a connectivity issue affecting the manner in which it sends or receives order messages to or from routing destinations, it may be unable to receive timely execution or cancellation reports from the routing destinations, and Arca Securities or the Exchange may consequently seek to cancel the affected routed orders. Once the decision is made to cancel those routed orders, any cancellation that an ATP Holder submitted to the Exchange on its initial order during such a situation would be honored.<sup>9</sup>

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<sup>8</sup> In a normal situation (i.e., one in which a technical or systems issue does not exist), Arca Securities should receive an immediate response to an IOC order from a routing destination, and would pass the resulting fill or cancellation on to the ATP Holder. After submitting an order that is routed to a routing destination, if an ATP Holder sends an instruction to cancel that order, the cancellation is held by the Exchange until a response is received from the routing destination. For instance, if the routing destination executes that order, the execution would be passed on to the ATP Holder and the cancellation instruction would be disregarded.

<sup>9</sup> If an ATP Holder did not submit a cancellation to the Exchange, however, that initial order would remain “live” and thus be eligible for execution or posting on

*Example 2.* If the Exchange experiences a systems issue, the Exchange may take steps to cancel all outstanding orders affected by that issue and notify affected ATP Holders of the cancellations. In those cases, the Exchange would seek to cancel any routed orders related to the ATP Holders' initial orders.

**Examples of Circumstances That May Lead to Error Positions**

In some instances, the technical or systems issue at Arca Securities, a routing destination, the Exchange, or a non-affiliate third-party Routing Broker may also result in Arca Securities acquiring an error position that it must resolve. The examples set forth below describe some of the circumstances in which error positions may arise.

*Example A.* Error positions may result from routed orders that the Exchange or Arca Securities attempts to cancel but that are executed before the routing destination receives the cancellation message or that are executed because the routing destination is unable to process the cancellation message. Using the situation described in Example 1 above, assume that the Exchange seeks to cancel orders routed to a routing destination because it is not receiving timely execution or cancellation reports from the routing destination. In such a situation, Arca Securities may still receive executions from the routing destination after connectivity is restored, which it would not then allocate to ATP Holders because of the earlier decision to cancel the affected routed orders. Instead, Arca Securities would post those positions into its error account and resolve the positions in the manner described below.

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the Exchange, and neither the Exchange nor Arca Securities would treat any execution of that initial order or any subsequent routed order related to that initial order as an error.

**Example B.** Error positions may result from an order processing issue at a routing destination. For instance, if a routing destination experienced a systems problem that affects its order processing, it may transmit back a message purporting to cancel a routed order, but then subsequently submit an execution of that same order to the OCC for clearance and settlement. In such a situation, the Exchange would not then allocate the execution to the ATP Holder because of the earlier cancellation message from the routing destination. Instead, Arca Securities would post those positions into its error account and resolve the positions in the manner described below.

**Example C.** Error positions may result if Arca Securities receives an execution report from a routing destination but does not receive clearing instructions for the execution from the routing destination. For instance, assume that an ATP Holder sends the Exchange an order to buy 100 contracts overlying ABC stock, which causes Arca Securities to send an order to a routing destination that is subsequently executed, cleared and closed out by that routing destination, and the execution is ultimately communicated back to that ATP Holder. If the routing destination does not provide clearing instructions for that execution, Arca Securities would still be responsible for settling that ATP Holder's purchase, but would be left with a short position in its error account.<sup>10</sup> Arca Securities would resolve the position in the manner described below.

**Example D.** Error positions may result from a technical or systems issue that causes orders to be executed in the name of Arca Securities and are not related to any corresponding orders of ATP Holders. As a result, Arca Securities would not be able to assign any positions resulting from such an issue to ATP Holders. Instead, Arca

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<sup>10</sup> To the extent that Arca Securities incurred a loss in covering its position, it may submit a reimbursement claim to that routing destination.

Securities would post those positions into its error account and resolve the positions in the manner described below.

*Example E.* Error positions may result from a technical or systems issue through which the Exchange does not receive sufficient notice that an ATP Holder that has executed trades on the Exchange has lost the ability to clear trades through OCC. In such a situation, the Exchange would not have valid clearing information, which would prevent the trade from being processed pursuant to Rule 960. Accordingly, Arca Securities would assume that ATP Holder's side of the trades so that the counterparties can settle the trades. Arca Securities would post those positions into its error account and resolve the positions in the manner described below.

In the circumstances described above, Arca Securities may not learn about an error position until T+1, either: (1) during the clearing process when a routing destination has submitted to OCC a transaction for clearance and settlement for which Arca Securities never received an execution confirmation; or (2) when a routing destination does not recognize a transaction submitted on behalf of Arca Securities to OCC for clearance and settlement. Moreover, the affected ATP Holders' trade may not be nullified absent express authority under Exchange rules.<sup>11</sup>

#### **Proposed Amendments to Rule 993NY**

The Exchange proposes to amend Rule 993NY to add new paragraph (c) to address the cancellation of orders due to technical or systems issues and the use of an error account by Arca Securities.

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<sup>11</sup> See, e.g., Rule 975NY (regarding obvious and catastrophic errors).

Specifically, under paragraph (c)(1) of the proposed rule, the Exchange or Arca Securities would be expressly authorized to cancel orders as may be necessary to maintain fair and orderly markets if a technical or systems issue occurred at the Exchange, Arca Securities, or a routing destination.<sup>12</sup> The Exchange or Arca Securities would be required to provide notice of the cancellation to affected ATP Holders as soon as practicable.

Paragraph (c)(2) of the proposed rule would permit Arca Securities to maintain an error account for the purpose of addressing positions that result from a technical or systems issue at Arca Securities, the Exchange, a routing destination, or a non-affiliate third-party Routing Broker that affects one or more orders (“error positions”). By definition, an error position would not include any position that results from an order submitted by an ATP Holder to the Exchange that is executed on the Exchange and processed pursuant to Rule 960.<sup>13</sup> Arca Securities also would not be permitted to accept any positions in its error account from an account of an ATP Holder and could not permit any ATP Holder to transfer any positions from the ATP Holder’s account to Arca Securities’ error account under the proposed rule.<sup>14</sup> However, if a technical or systems

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<sup>12</sup> Such a situation may not cause the Exchange to declare self-help against the routing destination pursuant to Rule 991NY(b)(1). If the Exchange or Arca Securities determines to cancel orders routed to a routing destination under proposed Rule 993NY(c), but does not declare self-help against that routing destination, the Exchange would continue to be subject to the trade-through requirements in the Options Order Protection and Locked/Crossed Markets Plan and Rule 991NY with respect to that routing destination.

<sup>13</sup> As provided in Rule 960, “[a]ll Exchange option transactions shall be submitted to the Exchange for comparison of trade information, and all compared transactions shall be cleared through the [OCC] and shall be subject to the rules of the [OCC].”

<sup>14</sup> The purpose of this provision is to clarify that Arca Securities may address error positions under the proposed rule that are caused by a technical or systems issue,

issue results in the Exchange not having valid clearing instructions for an ATP Holder to a trade, Arca Securities may assume that ATP Holder's side of the trade so that the trade can be processed pursuant to Rule 960.<sup>15</sup>

Under paragraph (c)(3), in connection with a particular technical or systems issue, Arca Securities or the Exchange would be permitted to either (i) assign all resulting error positions to ATP Holders, or (ii) have all resulting error positions liquidated, as described below. Any determination to assign or liquidate error positions, as well as any resulting assignments, would be required to be made in a nondiscriminatory fashion.

Arca Securities or the Exchange would be required to assign all error positions resulting from a particular technical or systems issue to the applicable ATP Holders affected by that technical or systems issue if Arca Securities or the Exchange:

- determined that it has accurate and sufficient information (including valid clearing information) to assign the positions to all of the applicable ATP Holders affected by that technical or systems issue;
- determined that it has sufficient time pursuant to normal clearance and settlement deadlines to evaluate the information necessary to assign the

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but that Arca Securities may not accept from an ATP Holder positions that are delivered to the ATP Holder through the clearance and settlement process, even if those positions may have been related to a technical or systems issue at Arca Securities, the Exchange, a routing destination of Arca Securities, or a non-affiliate third-party Routing Broker. This provision would not apply, however, to situations like the one described above in which Arca Securities incurred a short position to settle an ATP Holder purchase, as the ATP Holder did not yet have a position in its account as a result of the purchase at the time of Arca Securities' action (i.e., Arca Securities' action was necessary for the purchase to settle into the ATP Holder's account). Moreover, to the extent an ATP Holder receives positions pursuant to Rule 960 in connection with a technical or systems issue, that ATP Holder may seek to rely on Rule 905NY if it experiences a loss. That rule provides ATP Holders with the ability to file claims against the Exchange "for the failure of its systems or facilities."

<sup>15</sup> See Example E above.

positions to all of the applicable ATP Holders affected by that technical or systems issue; and

- had not determined to cancel all orders affected by that technical or systems issue.

For example, a technical or systems issue of limited scope or duration may occur at a routing destination, and the resulting trades may be submitted for clearance and settlement by such routing destination to OCC. If there were a small number of trades, there may be sufficient time to match positions with ATP Holder or orders and avoid using the error account.

There may be scenarios, however, where Arca Securities determines that it is unable to assign all error positions resulting from a particular technical or systems issue to all of the affected ATP Holders, or determines to cancel all affected routed orders. For example, in some cases, the volume of questionable executions and positions resulting from a technical or systems issue might be such that the research necessary to determine which ATP Holder to assign those executions to could be expected to extend past the normal settlement cycle for such executions. Furthermore, if a routing destination experiences a technical or systems issue after Arca Securities has transmitted IOC orders to it that prevents Arca Securities from receiving responses to those orders, Arca Securities or the Exchange may determine to cancel all routed orders affected by that issue. In such a situation, Arca Securities or the Exchange would not pass on to the ATP Holders any executions on the routed orders received from the routing destination.

The proposed rule also would require Arca Securities to liquidate error positions as soon as practicable.<sup>16</sup> In liquidating error positions, Arca Securities would be required

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<sup>16</sup> If Arca Securities determines in connection with a particular technical or systems

to provide complete time and price discretion for the trading to liquidate the error positions to a third-party broker-dealer and could not attempt to exercise any influence or control over the timing or methods of trading to liquidate the error positions. Arca Securities also would be required to establish and enforce policies and procedures reasonably designed to restrict the flow of confidential and proprietary information between the third-party broker-dealer and Arca Securities/the Exchange associated with the liquidation of the error positions.

Under proposed paragraph (c)(4), Arca Securities and the Exchange would be required to make and keep records to document all determinations to treat positions as error positions and all determinations for the assignment of error positions to ATP Holders or the liquidation of error positions, as well as records associated with the liquidation of error positions through the third-party broker-dealer.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b)<sup>17</sup> of the Securities Exchange Act of 1934 (the “Act”), in general, and furthers the objectives of Section 6(b)(5),<sup>18</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, to remove impediments to and perfect the mechanism of a free and open market and a national

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issue that some error positions can be assigned to some affected ATP Holders but other error positions cannot be assigned, Arca Securities would be required under the proposed rule to liquidate all such error positions (including those positions that could be assigned to the affected ATP Holders).

<sup>17</sup> 15 U.S.C. 78f(b).

<sup>18</sup> 15 U.S.C. 78f(b)(5).

market system and, in general, to protect investors and the public interest, and it is not designed to permit unfair discrimination among customers, brokers, or dealers. The Exchange believes that this proposal is in keeping with those principles since Arca Securities' or the Exchange's ability to cancel orders during a technical and systems issue and to maintain an error account facilitates the smooth and efficient operations of the market. Specifically, the Exchange believes that allowing Arca Securities or the Exchange to cancel orders during a technical or systems issue would allow the Exchange to maintain fair and orderly markets. Moreover, the Exchange believes that allowing Arca Securities to assume error positions in an error account and to liquidate those positions, subject to the conditions set forth in the proposed amendments to Rule 993NY, would be the least disruptive means to correct these errors, except in cases where Arca Securities can assign all such error positions to all affected ATP Holders of the Exchange. Overall, the proposed amendments are designed to ensure full trade certainty for market participants and to avoid disrupting the clearance and settlement process. The proposed amendments are also designed to provide a consistent methodology for handling error positions in a manner that does not discriminate among ATP Holders. The proposed amendments are also consistent with Section 6 of the Act insofar as they would require Arca Securities to establish controls to restrict the flow of any confidential information between the third-party broker and Arca Securities/the Exchange associated with the liquidation of error positions.

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>19</sup> and Rule 19b-4(f)(6) thereunder.<sup>20</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>21</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule

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<sup>19</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

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

<sup>21</sup> 17 CFR 240.19b-4(f)(6).

19b4(f)(6)(iii),<sup>22</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 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-2012-46 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-2012-46. This file number should be included on the subject line if e-mail is used. To help the Commission

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<sup>22</sup> 17 CFR 240.19b-4(f)(6)(iii).

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-2012-46 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>23</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>23</sup> 17 CFR 200.30-3(a)(12).

Additions underlined  
Deletions [bracketed]

### Rules of NYSE MKT LLC

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#### Rule 993NY. Operation of Routing Broker

(a) – (b) No change.

#### (c) Cancellation of Orders and Error Account

(1) The Exchange or Arca Securities may cancel orders as either deems to be necessary to maintain fair and orderly markets if a technical or systems issue occurs at the Exchange, Arca Securities, or a routing destination. The Exchange or Arca Securities shall provide notice of the cancellation to affected ATP Holders as soon as practicable.

(2) Arca Securities shall maintain an error account for the purpose of addressing positions that result from a technical or systems issue at Arca Securities, the Exchange, a routing destination, or a non-affiliate third-party Routing Broker that affects one or more orders (“error positions”).

(A) For purposes of this Rule 993NY(c), an error position shall not include any position that results from an order submitted by an ATP Holder to the Exchange that is executed on the Exchange and processed pursuant to Rule 960.

(B) Except as provided in Rule 993NY(c)(2)(C), Arca Securities shall not (i) accept any positions in its error account from an account of an ATP Holder, or (ii) permit any ATP Holder to transfer any positions from the ATP Holder’s account to Arca Securities’ error account.

(C) If a technical or systems issue results in the Exchange not having valid clearing instructions for an ATP Holder to a trade, Arca Securities may assume that ATP Holder’s side of the trade so that the trade can be processed pursuant to Rule 960.

(3) In connection with a particular technical or systems issue, Arca Securities or the Exchange shall either (i) assign all resulting error positions to ATP Holders in accordance with subparagraph (A) below, or (ii) have all resulting error positions liquidated in accordance with subparagraph (B) below. Any determination to assign or liquidate error positions, as well as any resulting assignments, shall be

made in a nondiscriminatory fashion.

(A) Arca Securities or the Exchange shall assign all error positions resulting from a particular technical or systems issue to the ATP Holders affected by that technical or systems issue if Arca Securities or the Exchange:

(i) determines that it has accurate and sufficient information (including valid clearing information) to assign the positions to all of the ATP Holders affected by that technical or systems issue;

(ii) determines that it has sufficient time pursuant to normal clearance and settlement deadlines to evaluate the information necessary to assign the positions to all of the ATP Holders affected by that technical or systems issue; and

(iii) has not determined to cancel all orders affected by that technical or systems issue in accordance with subparagraph (c)(1) above.

(B) If Arca Securities or the Exchange is unable to assign all error positions resulting from a particular technical or systems issue to all of the affected ATP Holders in accordance with subparagraph (A) above, or if Arca Securities or the Exchange determines to cancel all orders affected by the technical or systems issue in accordance with subparagraph (c)(1) above, then Arca Securities shall liquidate the error positions as soon as practicable. Arca Securities shall:

(i) provide complete time and price discretion for the trading to liquidate the error positions to a third-party broker-dealer and shall not attempt to exercise any influence or control over the timing or methods of such trading; and

(ii) establish and enforce policies and procedures that are reasonably designed to restrict the flow of confidential and proprietary information between the third-party broker-dealer and Arca Securities/the Exchange associated with the liquidation of the error positions.

(4) Arca Securities and the Exchange shall make and keep records to document all determinations to treat positions as error positions and all determinations for the assignment of error positions to ATP Holders or the liquidation of error positions, as well as records associated with the liquidation of error positions through the third-party broker-dealer.