

Required fields are shown with yellow backgrounds and asterisks.

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

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

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) <input type="checkbox"/>	Section 3C(b)(2) <input type="checkbox"/>
Section 806(e)(2) <input 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 action (limit 250 characters, required when Initial is checked *).

Proposal to amend Rule 128 Equities clearly erroneous executions to extend the effective date of the pilot until September 30 2013 and to adopt new paragraph i in connection with the upcoming operation of the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act

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 action.

First Name * Brian	Last Name * O'Neill
Title * Chief Counsel NYSE Regulation Inc	
E-mail * boneill@nyx.com	
Telephone * (212) 656-2373	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.

(Title *)

Date 01/30/2013	Vice President
By Sudhir Bhattacharyya	
(Name *)	Sudhir Bhattacharyya,

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.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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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 *

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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 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies

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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, security-based swap submission, or advance notice 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) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² NYSE MKT LLC (“NYSE MKT” or the “Exchange”) proposes to amend Rule 128 - Equities, which governs clearly erroneous executions, to extend the effective date of the pilot by which portions of such Rule operate until September 30, 2013. The pilot is currently scheduled to expire on February 4, 2013. The Exchange also proposes to adopt new paragraph (i) to Rule 128 - Equities in connection with the upcoming operation of the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the “Limit Up-Limit Down Plan” or “Plan”).³

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1 and the text of the proposed rule change is attached as Exhibit 5. A copy of this filing is available on the Exchange’s website at www.nyse.com, at the Exchange’s principal office, and at the Public Reference Room of the 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 NYSE MKT 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 by the Board of Directors or the membership of the Exchange is required. Therefore, the Exchange’s internal procedures with respect to the proposed change are complete.

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

Brian O’Neill
Chief Counsel
NYSE Regulation, Inc.
(212) 656-2373

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the “Limit Up-Limit Down Release”).

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 128 - Equities, which governs clearly erroneous executions, to extend the effective date of the pilot by which portions of such Rule operate, until September 30, 2013. The pilot is currently scheduled to expire on February 4, 2013.⁴ The Exchange also proposes to add new paragraph (i) to Rule 128 - Equities in connection with the upcoming implementation of the Limit Up-Limit Down Plan.

On September 10, 2010, the Commission approved, on a pilot basis, market-wide amendments to exchanges' rules for clearly erroneous executions to set forth clearer standards and curtail discretion with respect to breaking erroneous trades. In connection with this pilot initiative, the Exchange amended Rule 128(c), (e)(2), (f), and (g) - Equities. The amendments provide for uniform treatment of clearly erroneous execution reviews (1) in Multi-Stock Events⁵ involving twenty or more securities, and (2) in the event transactions occur that result in the issuance of an individual security trading pause by the primary market and subsequent transactions that occur before the trading pause is in effect on the Exchange.⁶ The amendments also eliminated appeals of certain rulings made in conjunction with other exchanges with respect to clearly erroneous transactions and limited the Exchange's discretion to deviate from Numerical Guidelines set forth in the Rule in the event of system disruptions or malfunctions.

If the pilot were not extended, the prior versions of paragraphs (c), (e)(2), (f), and (g) of Rule 128 - Equities would be in effect, and the Exchange would have

⁴ See Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010) (SR-NYSEAmex-2010-60). See also Securities Exchange Act Release Nos. 63480 (December 9, 2010), 75 FR 78333 (December 15, 2010) (SR-NYSEAmex-2010-116); 64233 (April 7, 2011), 76 FR 20736 (April 13, 2011) (SR-NYSEAmex-2011-24); 65066 (August 9, 2011), 76 FR 50506 (August 15, 2011) (SR-NYSEAmex-2011-58); 66137 (January 11, 2012), 77 FR 2587 (January 18, 2012) (SR-NYSEAmex-2011-106); and 67567 (August 1, 2012), 77 FR 47136 (August 7, 2012) (SR-NYSEMKT-2012-28).

⁵ Terms not defined herein are defined in Rule 128 - Equities.

⁶ Separately, the Exchange has proposed to extend the effective date of the trading pause pilot under Rule 80C - Equities, which requires to the Exchange to pause trading in an individual security listed on the Exchange if the price moves by a specified percentage as compared to prices of that security in the preceding five-minute period during a trading day. See Securities Exchange Act Release No. 68744 (January 28, 2013) (SR-NYSEMKT-2012-04).

different rules than other exchanges and greater discretion in connection with breaking clearly erroneous transactions. The Exchange believes the benefits to market participants from the more objective clearly erroneous executions rule should continue on a pilot basis through September 30, 2013, which is the date that the Exchange anticipates that the phased implementation of the Limit Up-Limit Down Plan will be complete. As explained in further detail below, although the Limit Up-Limit Down Plan is intended to prevent executions that would need to be nullified as clearly erroneous, the Exchange believes that certain protections should be maintained while the industry gains initial experience operating with the Limit Up-Limit Down Plan, including the provisions of Rule 128 – Equities that currently operate as a pilot.

Proposed Limit Up-Limit Down Provision to Rule 128 - Equities

The Exchange proposes to adopt new paragraph (i) to Rule 128 - Equities, to provide that the existing provisions of Rule 128 - Equities will continue to apply to all Exchange transactions, including transactions in securities subject to the Plan, other than as set forth in proposed paragraph (i). Accordingly, other than as proposed below, the Exchange proposes to maintain and continue to apply the Clearly Erroneous Execution standards in the same way that it does today. Notably, this means that the Exchange might nullify transactions that occur within the price bands disseminated pursuant to the Limit Up-Limit Down Plan to the extent such transactions qualify as clearly erroneous under existing criteria. As an example, assume that a Tier 1 security pursuant to the Plan has a reference price pursuant to both the Plan and Rule 128 - Equities of \$100.00. The lower pricing band under the Plan would be \$95.00 and the upper pricing band under the Plan would be \$105.00. An execution could occur on the Exchange in this security at \$96.00, as this is within the Plan's pricing bands. However, if subjected to review as potentially clearly erroneous, the Exchange would nullify an execution at \$96.00 as clearly erroneous because it exceeds the 3% threshold that is in place pursuant to Rule 128(c)(1) - Equities for securities priced above \$50.00 (i.e., with a reference price of \$100.00, any transactions at or below \$97.00 or above \$103.00 could be nullified as clearly erroneous). Accordingly, this proposal maintains the status quo with respect to reviews of Clearly Erroneous Executions and the application of objective numerical guidelines by the Exchange. The proposal does not increase the discretion afforded to the Exchange in connection with reviews of Clearly Erroneous Executions.

The Limit Up-Limit Down Plan is designed to prevent executions from occurring outside of dynamic price bands disseminated to the public by a single plan processor as defined in the Limit Up-Limit Down Plan.⁷ The possibility remains that the Exchange could experience a technology or systems problem with respect to the implementation of the price bands disseminated pursuant to the Plan. To address such possibilities, the Exchange proposes to adopt language to make clear

⁷ See Limit Up-Limit Down Release, supra note 3.

that if an Exchange technology or systems issue results in any transaction occurring outside of the price bands disseminated pursuant to the Plan, an Officer of the Exchange or senior level employee designee, acting on his or her own motion or at the request of a third party, shall review and declare any such trades null and void. Absent extraordinary circumstances, any such action of the Officer of the Exchange or other senior level employee designee shall be taken in a timely fashion, generally within thirty (30) minutes of the detection of the erroneous transaction. When extraordinary circumstances exist, any such action of the Officer of the Exchange or other senior level employee designee must be taken by no later than the start of regular trading hours⁸ on the trading day following the date on which the execution(s) under review occurred. Although the Exchange will act as promptly as possible and the proposed objective standard (*i.e.*, whether an execution occurred outside the band) should make it feasible to quickly make a determination, there may be circumstances in which additional time may be needed for verification of facts or coordination with outside parties, including the single plan processor responsible for disseminating the price bands and other market centers. Accordingly, the Exchange believes it necessary to maintain some flexibility to make a determination outside of the thirty (30) minute guideline. In addition, the Exchange proposes that a transaction that is nullified pursuant to new paragraph (i) would be appealable in accordance with the provisions of Rule 128(e)(2) - Equities. In addition, the Exchange proposes to make clear that in the event that a single plan processor experiences a technology or systems problem that prevents the dissemination of price bands, the Exchange would make the determination of whether to nullify transactions based on Rule 128(a)-(h) - Equities.

The Exchange believes that cancelling trades that occur outside of the price bands disseminated pursuant to the Plan is consistent with the purpose and intent of the Plan, as such transactions are not intended to occur in the first place. If transactions do occur outside of the price bands and no exception applies - which necessarily would be caused by a technology or systems issue - then the Exchange believes the appropriate result is to nullify such transactions.

(b) Statutory Basis

The proposed rule change is consistent with Section 6(b)⁹ of the Act, in general, and furthers the objectives of Section 6(b)(5)¹⁰ 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

⁸ Regular trading hours commence at 9:30 a.m. Eastern Time. See Rule 51(a) – Equities.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the pilot program promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning review of transactions as clearly erroneous. More specifically, the Exchange believes that the extension of the pilot would promote just and equitable principles of trade because it would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria. Additionally, resolution of the incident will occur promptly through a transparent process, which the Exchange believes would protect investors and the public interest. The proposed rule change would also foster cooperation and coordination with persons engaged in facilitating transactions in securities and to remove impediments to, and perfect the mechanism of, a free and open market and a national market system because it would help assure consistent results in handling erroneous trades across the U.S. markets, thus furthering fair and orderly markets, the protection of investors and the public interest.

Although the Limit Up-Limit Down Plan will be operational during the same time period as the proposed extended pilot, the Exchange believes that maintaining the pilot for at least through the phased implementation of the Plan is operational will help to protect against unanticipated consequences. To that end, the extension will allow the Exchange to determine whether Rule 128 – Equities is necessary once the Plan is operational and, if so, whether improvements can be made. Further, the Exchange believes it consistent with the protection of investors and the public interest to adopt objective criteria to nullify transactions that occur outside of the Plan's price bands when such transactions should not have been executed but were due to a systems or technology issue.

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. To the contrary, the Exchange believes that the Financial Industry Regulatory Authority and other national securities exchanges are also filing similar proposals, and thus, that the proposal will help to ensure consistent rules across market centers.

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 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 Act¹¹ and Rule 19b-4(f)(6) thereunder.¹²

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 changes, along with a brief description and text of the proposed rule changes, at least five business days prior to the date of filing, or such short time as the Commission may designate. In addition, because all transactions on the Exchange are currently subject to Rule 128 – Equities and the Exchange is proposing to have transactions in securities subject to the Limit Up-Limit Down Plan remain governed by Rule 128 - Equities, the proposal to extend the pilot merely acts to maintain the status quo. Furthermore, because executions outside of the bands when the Exchange is experiencing a technology or systems issue would be executions that, by definition, should have not occurred, the Exchange believes that the proposed addition of language permitting the Exchange to nullify transactions in such an event is non-controversial. For the foregoing reasons, this rule filing qualifies for immediate effectiveness as a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4.¹³ The Exchange respectfully requests that the Commission waive the 30-day operative delay period for “non-controversial” proposals to allow the pilot to continue to operate without interruption for the benefit of the marketplace and the investing public. The Exchange believes that the Financial Industry Regulatory Authority and other national securities exchanges are also extending the pilot program and thus, to ensure consistent rules across market centers, that the extension should not be delayed. Accordingly, waiver of the operative delay is consistent with the protection of investors and the public interest. Furthermore, although not yet operational, the Exchange believes that waiver of the operative delay will provide clarity to market participants that are preparing for the operation of the Limit Up-Limit Down Plan.

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

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6).

¹³ Id.

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. Security-Based Swap Submissions Files Pursuant to Section 3C of the Act

Not applicable.

10. Advanced Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. 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-2013-11)

[Date]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 128 - Equities, Which Governs Clearly Erroneous Executions, Extending the Effective Date of the Pilot Until September 30, 2013 and Adopt New Paragraph (i) to Rule 128-Equities In Connection With the Upcoming Operation of the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the “Limit Up-Limit Down Plan” or “Plan”)

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that on January 30, 2013, NYSE MKT LLC (the “Exchange” or “NYSE MKT”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, 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 128 - Equities, which governs clearly erroneous executions, to extend the effective date of the pilot by which portions of such Rule operate until September 30, 2013. The pilot is currently scheduled to expire on February 4, 2013. The Exchange also proposes to adopt new paragraph (i) to Rule 128 - Equities in connection with the upcoming operation of the Plan to Address Extraordinary

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the “Limit Up-Limit Down Plan” or “Plan”).⁴ The text of the proposed rule change is available on the Exchange’s website at 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 to amend Rule 128 - Equities, which governs clearly erroneous executions, to extend the effective date of the pilot by which portions of such Rule operate, until September 30, 2013. The pilot is currently scheduled to expire on February 4, 2013.⁵ The Exchange also proposes to add new paragraph (i) to Rule 128 -

⁴ See Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the “Limit Up-Limit Down Release”).

⁵ See Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010) (SR-NYSEAmex-2010-60). See also Securities Exchange Act Release Nos. 63480 (December 9, 2010), 75 FR 78333 (December 15, 2010) (SR-NYSEAmex-2010-116); 64233 (April 7, 2011), 76 FR 20736 (April 13, 2011) (SR-NYSEAmex-2011-24); 65066 (August 9, 2011), 76 FR 50506 (August 15, 2011) (SR-NYSEAmex-2011-58); 66137 (January 11, 2012), 77 FR 2587 (January 18, 2012) (SR-NYSEAmex-2011-106); and 67567 (August

Equities in connection with the upcoming implementation of the Limit Up-Limit Down Plan.

On September 10, 2010, the Commission approved, on a pilot basis, market-wide amendments to exchanges' rules for clearly erroneous executions to set forth clearer standards and curtail discretion with respect to breaking erroneous trades. In connection with this pilot initiative, the Exchange amended Rule 128(c), (e)(2), (f), and (g) - Equities. The amendments provide for uniform treatment of clearly erroneous execution reviews (1) in Multi-Stock Events⁶ involving twenty or more securities, and (2) in the event transactions occur that result in the issuance of an individual security trading pause by the primary market and subsequent transactions that occur before the trading pause is in effect on the Exchange.⁷ The amendments also eliminated appeals of certain rulings made in conjunction with other exchanges with respect to clearly erroneous transactions and limited the Exchange's discretion to deviate from Numerical Guidelines set forth in the Rule in the event of system disruptions or malfunctions.

If the pilot were not extended, the prior versions of paragraphs (c), (e)(2), (f), and (g) of Rule 128 - Equities would be in effect, and the Exchange would have different rules than other exchanges and greater discretion in connection with breaking clearly erroneous transactions. The Exchange believes the benefits to market participants from

1, 2012), 77 FR 47136 (August 7, 2012) (SR-NYSEMKT-2012-28).

⁶ Terms not defined herein are defined in Rule 128 - Equities.

⁷ Separately, the Exchange has proposed to extend the effective date of the trading pause pilot under Rule 80C - Equities, which requires to the Exchange to pause trading in an individual security listed on the Exchange if the price moves by a specified percentage as compared to prices of that security in the preceding five-minute period during a trading day. See Securities Exchange Act Release No. 68744 (January 28, 2013) (SR-NYSEMKT-2012-04).

the more objective clearly erroneous executions rule should continue on a pilot basis through September 30, 2013, which is the date that the Exchange anticipates that the phased implementation of the Limit Up-Limit Down Plan will be complete. As explained in further detail below, although the Limit Up-Limit Down Plan is intended to prevent executions that would need to be nullified as clearly erroneous, the Exchange believes that certain protections should be maintained while the industry gains initial experience operating with the Limit Up-Limit Down Plan, including the provisions of Rule 128 – Equities that currently operate as a pilot.

Proposed Limit Up-Limit Down Provision to Rule 128 - Equities

The Exchange proposes to adopt new paragraph (i) to Rule 128 - Equities, to provide that the existing provisions of Rule 128 - Equities will continue to apply to all Exchange transactions, including transactions in securities subject to the Plan, other than as set forth in proposed paragraph (i). Accordingly, other than as proposed below, the Exchange proposes to maintain and continue to apply the Clearly Erroneous Execution standards in the same way that it does today. Notably, this means that the Exchange might nullify transactions that occur within the price bands disseminated pursuant to the Limit Up-Limit Down Plan to the extent such transactions qualify as clearly erroneous under existing criteria. As an example, assume that a Tier 1 security pursuant to the Plan has a reference price pursuant to both the Plan and Rule 128 - Equities of \$100.00. The lower pricing band under the Plan would be \$95.00 and the upper pricing band under the Plan would be \$105.00. An execution could occur on the Exchange in this security at \$96.00, as this is within the Plan's pricing bands. However, if subjected to review as potentially clearly erroneous, the Exchange would nullify an execution at \$96.00 as

clearly erroneous because it exceeds the 3% threshold that is in place pursuant to Rule 128(c)(1) - Equities for securities priced above \$50.00 (i.e., with a reference price of \$100.00, any transactions at or below \$97.00 or above \$103.00 could be nullified as clearly erroneous). Accordingly, this proposal maintains the status quo with respect to reviews of Clearly Erroneous Executions and the application of objective numerical guidelines by the Exchange. The proposal does not increase the discretion afforded to the Exchange in connection with reviews of Clearly Erroneous Executions.

The Limit Up-Limit Down Plan is designed to prevent executions from occurring outside of dynamic price bands disseminated to the public by a single plan processor as defined in the Limit Up-Limit Down Plan.⁸ The possibility remains that the Exchange could experience a technology or systems problem with respect to the implementation of the price bands disseminated pursuant to the Plan. To address such possibilities, the Exchange proposes to adopt language to make clear that if an Exchange technology or systems issue results in any transaction occurring outside of the price bands disseminated pursuant to the Plan, an Officer of the Exchange or senior level employee designee, acting on his or her own motion or at the request of a third party, shall review and declare any such trades null and void. Absent extraordinary circumstances, any such action of the Officer of the Exchange or other senior level employee designee shall be taken in a timely fashion, generally within thirty (30) minutes of the detection of the erroneous transaction. When extraordinary circumstances exist, any such action of the Officer of the Exchange or other senior level employee designee must be taken by no later than the

⁸ See Limit Up-Limit Down Release, *supra* note 4.

start of regular trading hours⁹ on the trading day following the date on which the execution(s) under review occurred. Although the Exchange will act as promptly as possible and the proposed objective standard (i.e., whether an execution occurred outside the band) should make it feasible to quickly make a determination, there may be circumstances in which additional time may be needed for verification of facts or coordination with outside parties, including the single plan processor responsible for disseminating the price bands and other market centers. Accordingly, the Exchange believes it necessary to maintain some flexibility to make a determination outside of the thirty (30) minute guideline. In addition, the Exchange proposes that a transaction that is nullified pursuant to new paragraph (i) would be appealable in accordance with the provisions of Rule 128(e)(2) - Equities. In addition, the Exchange proposes to make clear that in the event that a single plan processor experiences a technology or systems problem that prevents the dissemination of price bands, the Exchange would make the determination of whether to nullify transactions based on Rule 128(a)-(h) - Equities.

The Exchange believes that cancelling trades that occur outside of the price bands disseminated pursuant to the Plan is consistent with the purpose and intent of the Plan, as such transactions are not intended to occur in the first place. If transactions do occur outside of the price bands and no exception applies - which necessarily would be caused by a technology or systems issue - then the Exchange believes the appropriate result is to nullify such transactions.

2. Statutory Basis

⁹ Regular trading hours commence at 9:30 a.m. Eastern Time. See Rule 51(a) – Equities.

The proposed rule change is consistent with Section 6(b)¹⁰ of the Act, in general, and furthers the objectives of Section 6(b)(5)¹¹ 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. The Exchange believes that the pilot program promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning review of transactions as clearly erroneous. More specifically, the Exchange believes that the extension of the pilot would promote just and equitable principles of trade because it would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria. Additionally, resolution of the incident will occur promptly through a transparent process, which the Exchange believes would protect investors and the public interest. The proposed rule change would also foster cooperation and coordination with persons engaged in facilitating transactions in securities and to remove impediments to, and perfect the mechanism of, a free and open market and a national market system because it would help assure consistent results in handling erroneous trades across the U.S. markets, thus furthering fair and orderly markets, the protection of investors and the public interest.

Although the Limit Up-Limit Down Plan will be operational during the same time

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

period as the proposed extended pilot, the Exchange believes that maintaining the pilot for at least through the phased implementation of the Plan is operational will help to protect against unanticipated consequences. To that end, the extension will allow the Exchange to determine whether Rule 128 – Equities is necessary once the Plan is operational and, if so, whether improvements can be made. Further, the Exchange believes it consistent with the protection of investors and the public interest to adopt objective criteria to nullify transactions that occur outside of the Plan’s price bands when such transactions should not have been executed but were due to a systems or technology issue.

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. To the contrary, the Exchange believes that the Financial Industry Regulatory Authority and other national securities exchanges are also filing similar proposals, and thus, that the proposal will help to ensure consistent rules across market centers.

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 Act¹² and Rule 19b-4(f)(6) thereunder.¹³ Because the proposed

¹² 15 U.S.C. 78s(b)(3)(A)(iii).

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)¹⁴ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁵ 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. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)¹⁶ of the Act to determine whether the proposed rule change should be approved or disapproved.

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ 17 CFR 240.19b-4(f)(6)(iii).

¹⁶ 15 U.S.C. 78s(b)(2)(B).

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. Please include File Number SR-NYSEMKT-2013-11 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEMKT-2013-11. 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. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEMKT-2013-11 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.¹⁷

Kevin M. O'Neill
Deputy Secretary

¹⁷ 17 CFR 200.30-3(a)(12).

Additions are underlined;
 deletions are [bracketed].

NYSE MKT RULES

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Equities Rules

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Rule 128 - Equities. Clearly Erroneous Executions For Equities

The provisions of [sections]paragraphs (c), (e)(2), (f), and (g) of this Rule, as amended on September 10, 2010, and the provisions of paragraph (i), shall be in effect during a pilot period until [February 4]September 30, 2013. If the pilot is not either extended or approved permanent by [February 4]September 30, 2013, the prior versions of sections (c), (e)(2), (f), and (g) shall be in effect, and the provisions of paragraph (i) shall be null and void.

(a) – (h) (No changes.)

(i) Securities Subject to Limit Up-Limit Down Plan. For purposes of this paragraph, the phrase “Limit Up-Limit Down Plan” or “Plan” shall mean the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act. The provisions of paragraphs (a) through (h) above shall govern all Exchange transactions, including transactions in securities subject to the Plan, other than as set forth in this paragraph (i). If as a result of an Exchange technology or systems issue any transaction occurs outside of the applicable price bands disseminated pursuant to the Plan, an Officer of the Exchange or senior level employee designee, acting on his or her own motion or at the request of a third party, shall review and declare any such trades null and void. Absent extraordinary circumstances, any such action of the Officer of the Exchange or other senior level employee designee shall be taken in a timely fashion, generally within thirty (30) minutes of the detection of the erroneous transaction. When extraordinary circumstances exist, any such action of the Officer of the Exchange or other senior level employee designee must be taken by no later than the start of regular trading hours on the trading day following the date on which the execution(s) under review occurred. Each Member involved in the transaction shall be notified as soon as practicable by the Exchange, and the party aggrieved by the action may appeal such action in accordance with the provisions of paragraph (e)(2) above. In the event that a single plan processor experiences a technology or systems issue that prevents the dissemination of price bands, the Exchange will make the determination of whether to nullify transactions based on paragraphs (a) through (h) above.

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