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Page 1 of * 19			SECURITIES AND EXCHANGE COMMISSION File No.* SR - 2013 - * 22 WASHINGTON, D.C. 20549 Form 19b-4 Amendment No. (req. for Amendments *)							
Filing by NYSE MKT LLC.										
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934										
Initial *	ŧ	Amendment *	Withdrawal	Section 19(t)(2) *		on 19(b)(3)(A) *	Section 19(b)(3)(B) *		
\checkmark						\checkmark	Rule			
Pilot		ension of Time Period Commission Action *	Date Expires *]]]	19b-4(f) 19b-4(f) 19b-4(f))(2) 19b-4(f)(5)			
Notice	of pro	posed change pursuant	to the Payment, Clear	ing, and Settler	ment Act	of 2010	Security-Based Swa to the Securities Exch	p Submission pursuant		
Section 806(e)(1)			Section 806(e)(2)			Section 3C(b)(2				
Exhibit 2	2 Sent A		exhibit 3 Sent As Paper Do	ocument						
Descr	iption									
Provide a brief description of the action (limit 250 characters, required when lattice is checked *)										
Provide a brief description of the action (limit 250 characters, required when Initial is checked *).										
Proposal to amend Rule 107C Equities to clarify that a Retail Member Organization may submit Retail Orders to the										
Retail Liquidity Program in a riskless principal capacity as well as in an agency capacity provided that the entry of such riskless principal orders meets the requirements of FINRA Rule 5320.03										
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 N	lame '	Brendon		Last Name *	Weiss					
Title * Vice Presid		Vice President								
E-mail * bweiss@nyx.com										
Teleph	none *	(202) 661-8979	Fax (202) 347-4372	2						
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		/2013		Corporate Sed	лекату					
Ву	Jane	(Name *)								
this form	n. A dig	the button at right will digit lital signature is as legally b once signed, this form canno	inding as a physical	Janet McGinness, jmcginness@nyx.com						

SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 For complete Form 19b-4 instructions please refer to the EFFS website. The self-regulatory organization must provide all required information, presented in a Form 19b-4 Information * clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal Remove is consistent with the Act and applicable rules and regulations under the Act. The Notice section of this Form 19b-4 must comply with the guidelines for publication Exhibit 1 - Notice of Proposed Rule Change * 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 Add Remove View 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** The Notice section of this Form 19b-4 must comply with the guidelines for publication Change, Security-Based Swap Submission, 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 or Advance Notice by Clearing Agencies 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, Copies of notices, written comments, transcripts, other communications. If such Transcripts, Other Communications documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G. Remove View Add Exhibit Sent As Paper Document П Exhibit 3 - Form, Report, or Questionnaire 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 Add Remove View referred to by the proposed rule change. Exhibit Sent As Paper Document The full text shall be marked, in any convenient manner, to indicate additions to and **Exhibit 4 - Marked Copies** deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit Add Remove View 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** 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 Add Remove View of the proposed rule change. If the self-regulatory organization is amending only part of the text of a lengthy **Partial Amendment** 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. <u>Text of the Proposed Rule Change</u>

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² NYSE MKT LLC ("NYSE MKT" or the "Exchange") is proposing to amend Rule 107C-Equities to clarify that a Retail Member Organization ("RMO") may submit Retail Orders to the Retail Liquidity Program (the "Program") in a riskless principal capacity as well as in an agency capacity, provided that (i) the entry of such riskless principal orders meets the requirements of FINRA Rule 5320.03, including that the RMO maintains supervisory systems to reconstruct, in a time-sequenced manner, all Retail Orders that are entered on a riskless principal basis; and (ii) the RMO does not include non-retail orders together with the Retail Orders as part of the riskless principal transaction.

A notice of the proposed rule change for publication in the <u>Federal</u> <u>Register</u> 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 <u>www.nyse.com</u>, at the Exchange's principal office and at the Commission's Public Reference Room.

- (b) The Exchange does not believe that the proposed rule change will have any direct effect, or any significant indirect effect, on any other Exchange rule in effect at the time of this filing.
- (c) Not applicable.

2. Procedures of the Self-Regulatory Organization

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

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

Brendon Weiss Vice President NYSE Euronext (202) 661-8979

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

(a) <u>Purpose</u>

The Exchange is proposing an amendment to Rule 107C-Equities to clarify that an RMO may submit Retail Orders to the Program in a riskless principal capacity as well as in an agency capacity, provided that (i) the entry of such riskless principal orders meets the requirements of FINRA Rule 5320.03, including that the RMO maintains supervisory systems to reconstruct, in a time-sequenced manner, all Retail Orders that are entered on a riskless principal basis; and (ii) the RMO does not include non-retail orders together with the Retail Orders as part of the riskless principal transaction.³ Under current Rule 107C (a)(3)-Equities, a "Retail Order" is defined as "an agency order that originates from a natural person and is submitted to the Exchange by [an RMO] provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or other computerized methodology."

The Exchange believes that, for purposes of determining whether an order should qualify as a Retail Order, there is no difference between a riskless principal order that meets the requirements of FINRA Rule 5320.03 and an agency order. A riskless principal transaction is a transaction in which a member, after having received an order to buy (sell) a security, purchases (sells) the security as principal and, contemporaneously, satisfies the original order by selling (buying) as principal at the same price. Generally, a riskless principal transaction involves two orders, the execution of one being dependent upon the receipt or execution of the other; thus, there is no "risk" in the interdependent transactions when completed. Unlike a riskless principal transaction, an agency order is entered directly in exchange systems on behalf of a customer. Ultimately, however, the results of a riskless principal transaction and an agency order are the same: the customer receives an execution while the involved member acts as an intermediary to effect the transaction.

A riskless principal transaction under the Program would occur as follows. Assume an RMO receives a market order to sell 100 shares at \$10.01 of ABC

Recently, the Exchange proposed to amend the attestation requirement of Rule 107C to allow an RMO to attest that "substantially all" orders submitted to the Program will qualify as "Retail Orders." See Exchange Act Release No. 68747 (Jan. 28, 2013), 78 FR 7824 (Feb. 4, 2013). Riskless principal transactions permitted by this amendment would be considered "Retail Orders" for purposes of the attestation requirement.

A principal transaction differs from both a riskless principal transaction and an agency order in that it is an order for the principal account of the entering member.

from a retail customer. The RMO then enters a Retail Order into the Program to sell at \$10.01 under the Program, and that order receives a price-improved execution under the Program at \$10.012. When that execution occurs, the RMO contemporaneously executes the order with the retail customer for the same price (\$10.012) that it received within the program, exclusive of any markup or markdown, commission equivalent, or other fee. Thus, the retail customer would receive the same benefit from the Program that it would have if the Retail Order had been entered on an agency basis. Therefore, there is no functional distinction for purposes of the Program between an order entered by an RMO on an agency basis and one entered on a riskless principal basis, and including riskless principal orders improves the ability of RMOs to offer the possibility of price improvement to their customers.

The Exchange believes that the requirement that the entry of such riskless principal orders satisfy FINRA Rule 5320.03 provides sufficient protection against RMOs submitting orders for their own account to the Program. An RMO entering a riskless principal transaction will have to, contemporaneously with the execution of the customer's order, submit a report identifying the trade as riskless principal to FINRA. Additionally, the RMO will need to have written policies and procedures to ensure that riskless principal transactions comply with applicable FINRA rules. The policies and procedures, at a minimum, must require that the customer order be received prior to the offsetting principal transaction, and that the offsetting principal transaction is at the same price as the customer order exclusive of any markup or markdown, commission equivalent, or other fee, and is allocated to a riskless principal or customer account in a consistent manner and within 60 seconds of execution. Additionally, the RMO must have supervisory systems in place that produce records that enable the RMO and FINRA to reconstruct accurately, readily, and in a time-sequenced manner all Retail Orders that are entered on a riskless principal basis. The RMO must also ensure that non-Retail Orders are not included with the Retail Orders as part of a riskless principal transaction. The above requirements ensure that despite the procedural differences between the execution of a riskless principal transaction and an agency order, the *only* difference will be the procedure in which the transactions are effected and not the result.

The Exchange further believes that clarifying that riskless principal orders that meet the requirements of FINRA Rule 5320.03 are able to participate in the Program on the same basis as agency orders will enable more retail customers to benefit from the enhanced price competition and transparency of the Program.

(b) **Statutory Basis**

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"), 5 in general, and furthers the objectives of

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Section 6(b)(5),⁶ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change promotes just and equitable principles of trade because it will ensure that riskless principal orders that meet the requirements of FINRA Rule 5320.03 will have the same opportunity to participate in the Program as agency orders. As discussed above, there is no functional distinction for purposes of the Program between an order entered by an RMO on an agency basis and one entered on a riskless principal basis. The Exchange believes that the proposed change would tend to reduce any potential discrimination between similarly situated customers or brokers by ensuring that the ability of retail customers to benefit from the Program does not depend on a distinction in capacity that is not meaningful for purposes of the Program. As a result of the change, a retail customer will be able to benefit from the price improvement offered by the Program without regards to whether the RMO enters the order on a riskless principal or agency basis.

The Exchange believes that the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system because it will clarify that riskless principal orders that meet the requirements of FINRA Rule 5320.03 are eligible to participate in the Program on the same basis as agency orders. By allowing all orders that are functionally equivalent to agency orders to participate in the Program, the proposed change would potentially stimulate further price competition for retail orders.

Finally, the Exchange believes that the proposed change would protect investors and public interest by expanding the access of retail customers to the price improvement and transparency offered by the Program and the access of the public to an exchange-sponsored alternative to broker-operated internalization venues.

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. The Exchange believes that the amendment, by increasing the eligible level of participation in the program, will burdens on competition around retail executions such that retail investors would receive better prices than they currently do on the Exchange and potentially through bilateral internalization arrangements. The Exchange believes that the transparency and competitiveness of operating a program such as the Retail Liquidity Program on an exchange market would result in better prices for retail investors, and benefits retail

⁶ 15 U.S.C. 78f(b)(5).

investors by expanding the capabilities of Exchanges to encompass practices currently allowed on non-Exchange venues.

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

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

6. Extension of Time Period for Commission Action

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

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

The proposed rule change is effective upon filing pursuant to Section $19(b)(3)(A)^7$ of the Act and Rule $19b-4(f)(6)^8$ thereunder.

The Exchange asserts that the proposed rule change will 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. 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. The Exchange respectively requests waiver of the five day pre-filing period so that the filing may be immediately effective upon filing.

The Exchange believes the proposed rule change will not significantly affect the protection of investors or the public interest because the rule proposal is intended to clarify that an RMO may submit Retail Orders to the Program in a riskless principal capacity as well as in an agency capacity, provided that the entry of such riskless principal orders meets the requirements of FINRA Rule 5320.03. This clarification will, as previously stated, increase liquidity and competition within the Program, thus benefiting retail investors with more opportunities for price improvement.

⁷ 15 U.S.C. 78s(b)(3)(A)(iii).

^{8 17} C.F.R. 240.19b-4(f)(6)

The Exchange further believes that the proposed rule change will not impose a burden on competition because the proposed amendment will actually increase competition within the program, thus providing more retail investors with an opportunity to receive better prices than they currently do on the Exchange and potentially through bilateral internalization arrangements.

For the foregoing reasons, this rule filing qualifies for immediate effectiveness as a "non-controversial" rule change under (f) (6) of Rule 19b-4. At any time within 60 days of such 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.

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

Not applicable.

9. <u>Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act</u>

Not applicable.

10. Advance 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 Federal Register

Exhibit 5 –Text of Proposed Changes

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EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION (Release No. 34- ; File No. SR-NYSEMKT-2013-22)

[Date]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 107C-Equities to Clarify That a Retail Member Organization May Submit Retail Orders to the Retail Liquidity Program in a Riskless Principal Capacity as well as in an Agency Capacity, Provided that the Entry of Such Riskless Principal Orders Meets the Requirements of FINRA Rule 5320.03, Including that the RMO Maintains Supervisory Systems to Reconstruct, in a Time-Sequenced Manner, All Retail Orders that are Entered on a Riskless Principal Basis; and the RMO Does Not Include Non-Retail Orders Together with the Retail Orders As Part of the Riskless Principal Transaction

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 March 1, 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. <u>Self-Regulatory Organization's Statement of the Terms of Substance of the</u> Proposed Rule Change

The Exchange proposes to amend Rule 107C-Equities to clarify that a Retail

Member Organization ("RMO") may submit Retail Orders to the Retail Liquidity

Program (the "Program") in a riskless principal capacity as well as in an agency capacity,

provided that (i) the entry of such riskless principal orders meets the requirements of

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

FINRA Rule 5320.03, including that the RMO maintains supervisory systems to reconstruct, in a time-sequenced manner, all Retail Orders that are entered on a riskless principal basis; and (ii) the RMO does not include non-retail orders together with the Retail Orders as part of the riskless principal transaction. 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. <u>Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis</u> 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. <u>Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change</u>

1. <u>Purpose</u>

The Exchange is proposing an amendment to Rule 107C-Equities to clarify that an RMO may submit Retail Orders to the Program in a riskless principal capacity as well as in an agency capacity, provided that (i) the entry of such riskless principal orders meets the requirements of FINRA Rule 5320.03, including that the RMO maintains supervisory systems to reconstruct, in a time-sequenced manner, all Retail Orders that are entered on a riskless principal basis; and (ii) the RMO does not include non-retail orders

together with the Retail Orders as part of the riskless principal transaction.⁴ Under current Rule 107C (a)(3)-Equities, a "Retail Order" is defined as "an agency order that originates from a natural person and is submitted to the Exchange by [an RMO] provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or other computerized methodology."

The Exchange believes that, for purposes of determining whether an order should qualify as a Retail Order, there is no difference between a riskless principal order that meets the requirements of FINRA Rule 5320.03 and an agency order. A riskless principal transaction is a transaction in which a member, after having received an order to buy (sell) a security, purchases (sells) the security as principal and, contemporaneously, satisfies the original order by selling (buying) as principal at the same price. Generally, a riskless principal transaction involves two orders, the execution of one being dependent upon the receipt or execution of the other; thus, there is no "risk" in the interdependent transactions when completed. Unlike a riskless principal transaction, an agency order is entered directly in exchange systems on behalf of a customer. Ultimately, however, the results of a riskless principal transaction and an agency order are the same: the customer receives an execution while the involved member acts as an intermediary to effect the transaction. ⁵

Recently, the Exchange proposed to amend the attestation requirement of Rule 107C to allow an RMO to attest that "substantially all" orders submitted to the Program will qualify as "Retail Orders." See Exchange Act Release No. 68747 (Jan. 28, 2013), 78 FR 7824 (Feb. 4, 2013). Riskless principal transactions permitted by this amendment would be considered "Retail Orders" for purposes of the attestation requirement.

⁵ A principal transaction differs from both a riskless principal transaction and an

A riskless principal transaction under the Program would occur as follows.

Assume an RMO receives a market order to sell 100 shares at \$10.01 of ABC from a retail customer. The RMO then enters a Retail Order into the Program to sell at \$10.01 under the Program, and that order receives a price-improved execution under the Program at \$10.012. When that execution occurs, the RMO contemporaneously executes the order with the retail customer for the same price (\$10.012) that it received within the program, exclusive of any markup or markdown, commission equivalent, or other fee. Thus, the retail customer would receive the same benefit from the Program that it would have if the Retail Order had been entered on an agency basis. Therefore, there is no functional distinction for purposes of the Program between an order entered by an RMO on an agency basis and one entered on a riskless principal basis, and including riskless principal orders improves the ability of RMOs to offer the possibility of price improvement to their customers.

The Exchange believes that the requirement that the entry of such riskless principal orders satisfy FINRA Rule 5320.03 provides sufficient protection against RMOs submitting orders for their own account to the Program. An RMO entering a riskless principal transaction will have to, contemporaneously with the execution of the customer's order, submit a report identifying the trade as riskless principal to FINRA. Additionally, the RMO will need to have written policies and procedures to ensure that riskless principal transactions comply with applicable FINRA rules. The policies and procedures, at a minimum, must require that the customer order be received prior to the offsetting principal transaction, and that the offsetting principal transaction is at the same

agency order in that it is an order for the principal account of the entering member.

price as the customer order exclusive of any markup or markdown, commission equivalent, or other fee, and is allocated to a riskless principal or customer account in a consistent manner and within 60 seconds of execution. Additionally, the RMO must have supervisory systems in place that produce records that enable the RMO and FINRA to reconstruct accurately, readily, and in a time-sequenced manner all Retail Orders that are entered on a riskless principal basis. The RMO must also ensure that non-Retail Orders are not included with the Retail Orders as part of a riskless principal transaction. The above requirements ensure that despite the procedural differences between the execution of a riskless principal transaction and an agency order, the *only* difference will be the procedure in which the transactions are effected and not the result.

The Exchange further believes that clarifying that riskless principal orders that meet the requirements of FINRA Rule 5320.03 are able to participate in the Program on the same basis as agency orders will enable more retail customers to benefit from the enhanced price competition and transparency of the Program.

2. <u>Statutory Basis</u>

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),⁶ in general, and furthers the objectives of Section 6(b)(5),⁷ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change promotes just and equitable

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

principles of trade because it will ensure that riskless principal orders that meet the requirements of FINRA Rule 5320.03 will have the same opportunity to participate in the Program as agency orders. As discussed above, there is no functional distinction for purposes of the Program between an order entered by an RMO on an agency basis and one entered on a riskless principal basis. The Exchange believes that the proposed change would tend to reduce any potential discrimination between similarly situated customers or brokers by ensuring that the ability of retail customers to benefit from the Program does not depend on a distinction in capacity that is not meaningful for purposes of the Program. As a result of the change, a retail customer will be able to benefit from the price improvement offered by the Program without regards to whether the RMO enters the order on a riskless principal or agency basis.

The Exchange believes that the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system because it will clarify that riskless principal orders that meet the requirements of FINRA Rule 5320.03 are eligible to participate in the Program on the same basis as agency orders. By allowing all orders that are functionally equivalent to agency orders to participate in the Program, the proposed change would potentially stimulate further price competition for retail orders.

Finally, the Exchange believes that the proposed change would protect investors and public interest by expanding the access of retail customers to the price improvement and transparency offered by the Program and the access of the public to an exchange-sponsored alternative to broker-operated internalization venues.

B. <u>Self-Regulatory Organization's Statement on Burden on Competition</u>

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the amendment, by increasing the eligible level of participation in the program, will burdens on competition around retail executions such that retail investors would receive better prices than they currently do on the Exchange and potentially through bilateral internalization arrangements. The Exchange believes that the transparency and competitiveness of operating a program such as the Retail Liquidity Program on an exchange market would result in better prices for retail investors, and benefits retail investors by expanding the capabilities of Exchanges to encompass practices currently allowed on non-Exchange venues.

C. <u>Self-Regulatory Organization's Statement on Comments on the Proposed</u> <u>Rule Change Received from Members, Participants, or Others</u>

No written comments were solicited or received with respect to the proposed rule change.

III. <u>Date of Effectiveness of the Proposed Rule Change and Timing for Commission</u>
Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act⁸ and Rule 19b-4(f)(6) thereunder. 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

⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

^{9 17} CFR 240.19b-4(f)(6).

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)¹⁰ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),¹¹ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

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 $19(b)(2)(B)^{12}$ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

• Use the Commission's Internet comment form

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 17 CFR 240.19b-4(f)(6)(iii).

¹² 15 U.S.C. 78s(b)(2)(B).

(http://www.sec.gov/rules/sro.shtml); or

 Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEMKT-2013-22 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-2013-22. 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-2013-22 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. 13

Kevin M. O'Neill Deputy Secretary

¹³

EXHIBIT 5

Additions <u>underlined</u> Deletions [bracketed]

Rule 107C-Equities. Retail Liquidity Program

(a) Definitions.

(3) Retail Order. A "Retail Order" is an agency order or a riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person and is submitted to the Exchange by a Retail Member Organization, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology.

A Retail Order is an Immediate or Cancel Order and shall operate in accordance with Rule 107C(k)-Equities. A Retail Order may be an odd lot, round lot, or PRL.