For the Commission, pursuant to delegated authority.[10]

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–72017; File No. SR–NYSEMKT–2014–33]**

## Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Exchange Rules Governing Letters of Guarantee and Letters of Authorization

April 25, 2014.

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 April 11, 2014, 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 and II 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange rules governing Letters of Guarantee and Letters of Authorization. The text of the proposed rule change is available on the Exchange's Web site 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 Statutory Basis for, the Proposed Rule Change*

1. Purpose

As further described below, each ATP Holder acting as either a Market Maker or Floor Broker on NYSE Amex Options currently is required to submit to the Exchange a Letter of Guarantee or Letter of Authorization for its trading activities from a Clearing Member.[4] Typically, by a Letter of Guarantee, the Clearing Member accepts financial responsibility for all Exchange transactions made by a Market Maker[5] and, by a Letter of Authorization, a Clearing Member is responsible for the clearance of Exchange transactions of the Floor Broker on the Exchange.[6]

- The purpose of the proposal is to amend various Exchange rules governing Letters of Guarantee and Authorization to: Provide that any written notice of revocation of a Letter of Guarantee or Letter of Authorization will become effective upon processing by the Exchange.
- give the Exchange the ability to prevent access and connectivity if a Market Maker or Floor Broker is subject to written notice of revocation.

Changes to Rule 924NY(c)—Letters of Guarantee

Rule 924NY(c) states that a Letter of Guarantee filed with the Exchange shall remain in effect until a final written notice of revocation has been received by the Exchange. The current rule sets forth a time period for the effectiveness of a notice of revocation to take place. However the Exchange does not believe that a specified timeframe is necessary. Because the Exchange can process such revocations at any time after receipt, the Exchange proposes to amend Rule 924NY(c) to provide that notices of revocation shall become effective as soon as the Exchange is able to process the revocation. The Exchange notes that the proposed rule change is consistent with the rules governing the processing of the revocation of a Letter of Guarantee on the Chicago Board Options Exchange (''CBOE'').[7]

Once a notice of revocation has been processed, a Market Maker no longer has in effect a Letter of Guarantee, as required by Rule 924NY(a). If a Market Maker no longer has a valid Letter of Guarantee, that Market Maker presents risk to the marketplace and the Exchange believes it is appropriate to terminate access and connectivity to the Exchange in these situations. Accordingly, the Exchange proposes to further amend Rule 924NY(c) by stating that upon the effectiveness of a notice of revocation, the Exchange will be permitted to prevent access and connectivity to the Exchange by that Market Maker. Preventing access and connectivity by a Market Maker who does not have a valid Letter of Guarantee is consistent with similar procedures of the CBOE.[8]

Changes to Rule 932NY—Letters of Authorization

Rule 932NY(c) states that a Letter of Authorization filed with the Exchange shall remain in effect until a written notice of revocation has been filed with the Exchange. The current rule sets forth a time period for the effectiveness of a revocation to take place. However the Exchange does not believe that a specified timeframe is necessary. Because the Exchange can process such revocations at any time after receipt, the Exchange proposes to amend Rule 932NY(c) to provide that a notice of revocation shall become effective as soon as the Exchange is able to process the revocation. The Exchange notes that the proposed rules change is consistent with the rules governing the processing of the revocation of a Letter of Authorization on the CBOE.[9]

Once a notice of revocation has been processed, a Floor Broker no longer has in effect a Letter of Authorization, as required by Rule 932NY(a). If a Floor Broker no longer has a valid Letter of Authorization, that Floor Broker presents risk to the marketplace and the Exchange believes it is appropriate to terminate access and connectivity to the Exchange in these situations. Accordingly, the Exchange proposes to further amend Rule 932NY(c) by stating that upon the effectiveness of a notice of revocation, the Exchange will be permitted to prevent access and connectivity to the Exchange by that Floor Broker. Preventing access and connectivity to a Floor Broker who does not have on file an effective Letter of Authorization is consistent with similar procedures of the CBOE.[10]

The Exchange also proposes to adopt an additional provision to Rule 932NY(c) stating that final revocation shall in no way relieve a Clearing

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] A Clearing Member is an Exchange ATP Holder which has been admitted to membership in the Options Clearing Corporation pursuant to the provisions of the Rules of the Options Clearing Corporation.

[5] *See* Rule 924NY(b).

[6] *See* Rule 932NY(b).

[7] *See* CBOE Rule 8.5(c).

[8] *See* CBOE Rule 3.28(b).

[9] *See* CBOE Rule 6.72(c).

[10] *Supra* note 8.

Member of responsibility for clearing Floor Broker transactions that were executed prior to the effectiveness of such final revocation. The Exchange believes that this provision, which currently applies only to Market Makers who have been subject to notices of revocation, is equally appropriate in instances when a Floor Broker is subject to a notice of revocation. The Exchange notes that the proposed rule change is consistent with the rules governing the processing of the revocation of a Letter of Authorization on the CBOE.[11]

The Exchange notes that nothing in existing or proposed rules would prohibit a Market Maker or Floor Broker from seeking to gain access and connectivity to the Exchange once that individual is able to again acquire the required Letter of Guarantee or Letter of Authorization.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Section 6(b)(5),[13] 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, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

Preventing access and connectivity to the Exchange by a Market Maker or Floor Broker subject to a notice of revocation will promote just and equitable principles of trade and serves to protect investors and the public because it prevents trading by a Market Makers or Floor Broker without financial guarantees for its trading. A Market Maker or Floor Broker who no longer has a valid Letter of Guarantee or Letter of Authorization presents risk to the marketplace and the Exchange believes it is appropriate to prevent access and connectivity to the Exchange in these situations. In addition, making a notice of revocation effective upon processing by the Exchange, instead of being encumbered by a specified time frame, will permit the Exchange to act swiftly to take measures aimed at market integrity and investor protection.

The Exchange believes the proposed rule change is also consistent with the requirements that the rules of an exchange provide a fair procedure for the denial or limitation by an exchange of any person with respect to access to services offered by the Exchange because the Exchange would not prohibit or limit a Floor Broker or Market Maker from seeking to gain access and connectivity to the Exchange once that individual is able to again acquire the required Letter of Guarantee or Letter of Authorization.

*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. The proposed rule changes will apply equally to all Floor Brokers and Market Makers and is designed to protect all ATP Holders and public investors effecting transactions on the Exchange. In addition, the proposed changes will not impose any unnecessary burden on the operation of the Exchange because the changes will allow the Exchange to adopt more efficient procedures for the processing notices of revocation.

*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[14] and Rule 19b–4(f)(6) thereunder.[15] 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.

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing, noting that a waiver of the operative delay will allow the Exchange to promptly adopt and implement new procedures aimed at market integrity and investor protection. For this reason, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. As such, the Commission waives the operative delay and designates the proposed rule change to be operative upon filing.[16]

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)[17] 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 (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2014–33 on the subject line.

*Paper Comments*

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

All submissions should refer to File Number SR–NYSEMKT–2014–33. This file number should be included on the subject line if email 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 Web site (*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

[11] *Supra* note 9.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C.78s(b)(3)(A)(iii).

[15] 15 CFR 240.19b–4(f)(6).

[16] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 15 U.S.C. 78s(b)(2)(B).

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room at 100 F Street NE., Washington, DC 20549–1090 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2014–33, and should be submitted on or before May 22, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2014–09917 Filed 4–30–14; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–72033; File No. SR–FINRA–2014–003]**

## Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change To Amend FINRA's Corporate Financing Rules To Simplify and Refine the Scope of the Rules

April 28, 2014.

On January 9, 2014, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change proposing to amend FINRA Rules 5110 (Corporate Financing Rule—Underwriting Terms and Arrangements) and 5121 (Public Offerings of Securities with Conflicts of Interest) in several respects in order to simplify and refine the scope of the rules. The proposed rule change was published for comment in the **Federal Register** on January 29, 2014.[3] The Commission received two comment letters on the proposal.[4] On April 16, 2014, FINRA responded to the comment letters.[5] On March 4, 2014, the Commission extended the time period for Commission action to April 28, 2014.[6] This order approves the proposed rule change.

### I. Description of the Proposed Rule Change[7]

Rule 5110 generally regulates underwriting compensation and prohibits unfair arrangements in connection with the public offering of securities. Among other provisions, Rule 5110 requires members to file with FINRA information about the securities offerings in which they participate and to disclose affiliations and other relationships that may indicate the existence of conflicts of interest. FINRA is proposing amendments to Rule 5110 to: (1) Narrow the scope of the definition of ''participation or participating in a public offering;'' (2) modify the lock-up restrictions to exclude certain securities acquired or converted to prevent dilution; and (3) clarify that the information requirements apply only to relationships with a ''participating'' member. FINRA states that this change preserves the protections of the rule and will enable issuers to seek advice from a member that is not involved in the distribution or sale of the issuer's securities.

*Participation in a Public Offering*

Rule 5110(a)(5) defines ''participating in a public offering'' to include participation in ''any advisory or consulting capacity to the issuer related to the offering.'' FINRA proposes to amend Rule 5110(a)(5) to provide that an ''independent financial adviser'' that provides advisory or consulting services to the issuer would not meet the definition of ''participation in a public offering'' as defined in Rule 5110(a)(5) and would therefore not be subject to the compensation limitations of Rule 5110. The proposal defines an independent financial adviser as ''a member that provides advisory or consulting services to the issuer and is neither engaged in, nor affiliated with any entity that is engaged in, the solicitation or distribution of the offering.''

*Lock-Up Restrictions*

Rule 5110(d)(1) generally includes as underwriting compensation all items of value, which may include unregistered securities, that are acquired (or arranged to be acquired) within the 180 day period prior to the filing of the registration statement (''180-day review period''). Rule 5110(d)(5) (Exceptions from Underwriting Compensation) provides five exceptions that permit participating members to acquire securities of the issuer during the 180-day review period without the securities being deemed to be underwriting compensation, including excluding from underwriting compensation the receipt of additional securities to prevent dilution of the investor's investment (*e.g.,* securities acquired as a result of a stock-split or a pro-rata rights or similar offering) where such additional securities are received during the 180-day review period or subsequent to the filing of the public offering, but where the original securities were acquired before the 180-day review period or otherwise were not deemed by FINRA to be underwriting compensation, as described in Rule 5110(d)(5)(D).

While these acquisitions and conversions to prevent dilution are excepted from underwriting compensation, they currently continue to be subject to the lock-up restrictions of Rule 5110(g)(1). FINRA proposes to eliminate the lock-up restrictions for these securities in order to treat shares received in an acquisition or conversion to prevent dilution during the 180-day review period in a manner consistent with the treatment provided for the securities on which their acquisition or conversion was based.

*Information Requirements*

Subject to certain exceptions, Rule 5110(b)(6)(A)(iii) requires filers to disclose to FINRA information about the affiliation or association with any member of the officers, directors, and certain owners of the issuer. The compensation limitations and other provisions of Rule 5110 and Rule 5121 apply only to members that participate in a public offering. Correspondingly, FINRA is proposing to amend Rule 5110(b)(6)(A)(iii) to narrow the scope of this provision to require disclosure about the affiliation or association of the

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 71372 (January 23, 2014), 79 FR 4793 (SR–FINRA–2014–003) (''Notice'').

[4] *See* Letter from Suzanne Rothwell (''Rothwell''), Managing Member, Rothwell Consulting LLC, to Elizabeth M. Murphy, Secretary, Commission, dated February 10, 2014 (''Rothwell Letter''); Letter from Sean Davy, Managing Director, Corporate Credits Market Division, Securities Industries and Financial Markets Association (''SIFMA''), to Elizabeth M. Murphy, Secretary, Commission, dated February 18, 2014 (''SIFMA Letter'').

[5] *See* Letter from Kathryn M. Moore, Associate General Counsel, FINRA, to Kevin O'Neill, Deputy Secretary, Commission, dated April 16, 2014 (''FINRA Letter'').

[6] *See* Securities Exchange Act Release No. 71642 (March 4, 2014), 79 FR 13364 (SR–FINRA–2014–003).

[7] A more detailed description of the proposal is contained in the Notice. *See supra* note 3.