

Permanent approval of the Pilot Programs would continue to provide investors with real and significant price improvement regardless of the size of the order. The Exchange believes that allowing price improvement to any size order removes impediments to a free and open market and national market system, therefore creating more competition for the best execution of all orders. The Exchange also believes that making the Pilot Programs permanent does not raise any unique regulatory concerns.

Lastly, the Exchange also believes that the proposed rule change, which provides all market participants, including public investors, with opportunity to trade with small customer orders of less than 50 contracts in the PIP and COPIP, is appropriate in the public interest and for the protection of investors

#### *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 either among BOX Participants, or among the various options exchanges, which is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the PIP and COPIP mechanisms are offered to all BOX Participants and making the Pilot Programs permanent will not impose a competitive burden on any participant. Additionally, the Exchange believes that the proposed change will not have impact on intermarket competition, as noted above many other exchanges have similar pilot programs in place in their auction mechanisms and are free to file to make these permanent as well.

#### *C. 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 comments on the proposed rule change.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be 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](mailto:rule-comments@sec.gov). Please include File Number SR-BOX-2016-58 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-BOX-2016-58. 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 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, 100 F Street NE., Washington, DC 20549 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-BOX-2016-58 and should be submitted on or before January 6, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>22</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-79525; File No. SR-NYSEMKT-2016-111]

### **Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Commentary .02 to Rule 960NY in Order To Extend the Penny Pilot in Options Classes in Certain Issues**

December 12, 2016.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on November 28, 2016, 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 Commentary .02 to Rule 960NY in order to extend the Penny Pilot in options classes in certain issues ("Pilot Program" or "Pilot") previously approved by the Securities and Exchange Commission ("Commission") through June 30, 2017. The Pilot Program is currently scheduled to expire on December 31, 2016. The proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included

<sup>22</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s (b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

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 extend the Pilot Program,<sup>4</sup> which is currently scheduled to expire on December 31, 2016, until June 30, 2017.<sup>5</sup> The Exchange believes that extending the Pilot would allow for further analysis of the Pilot Program and a determination of how the Pilot Program should be structured in the future.

During this extension of the Pilot, as is the case today, the Exchange may replace any option class that is currently included in the Pilot Program and that has been delisted with the next most actively traded, multiply listed option class that is not yet participating in the Pilot Program ("replacement class"). In light of the extension, the Exchange also proposes that any replacement class would be determined based on national average daily volume in the preceding six months, and would be added on the second trading day following January 1, 2017.<sup>6</sup>

This filing does not propose any substantive changes to the Pilot Program: All classes currently participating will remain the same and all minimum increments will remain unchanged. The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell

options have been demonstrated to outweigh the increase in quote traffic.

**2. Statutory Basis**

The proposed rule change is consistent with Section 6(b)<sup>7</sup> of the Securities Exchange Act of 1934 (the "Act"), in general, and furthers the objectives of Section 6(b)(5),<sup>8</sup> in particular, in that it is designed to 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 mechanisms of a free and open market and a national market system.

In particular, the proposed rule change, which extends the Penny Pilot Program for six months, allows the Exchange to continue to participate in a program that has been viewed as beneficial to traders, investors and public customers and viewed as successful by the other options exchanges participating in it. Accordingly, the Exchange believes that the proposal is consistent with the Act because it would allow the Exchange to extend the Pilot Program prior to its expiration on December 31, 2016. The Exchange notes that this proposal does not propose any new policies or provisions that are unique or unproven, but instead relates to the continuation of an existing program that operates on a pilot basis.

The Exchange believes that the Pilot Program promotes just and equitable principles of trade by enabling public customers and other market participants to express their true prices to buy and sell options to the benefit of all market participants.

The proposal to extend the Pilot Program is designed 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 mechanisms of a free and open market and a national market system, by allowing the Exchange and the Commission additional time to analyze the impact of the Pilot Program while also allowing the Exchange to continue to compete for order flow with other exchanges in option issues trading as part of the Pilot Program.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that, by extending the expiration of the Pilot Program, the proposed rule change would allow for further analysis of the Pilot Program and a determination of how the Program should be structured in the future. In doing so, the proposed rule change would also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection. The Pilot Program is an industry-wide initiative supported by all other option exchanges. The Exchange believes that extending the Pilot Program would allow for continued competition between Exchange market participants trading similar products as their counterparts on other exchanges, while at the same time allowing the Exchange to continue to compete for order flow with other exchanges in option issues trading as part of the Pilot Program.

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

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

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup> Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(6)(iii) thereunder.<sup>12</sup>

<sup>4</sup> See Securities Exchange Act Release No. 55162 (January 24, 2007), 72 FR 4738 (February 1, 2007) (original approval of Pilot). The Pilot has been extended several times since the original approval, the most recent extension was obtained in earlier this year. See Securities Exchange Act Release No. 78176 (June 28, 2016), 81 FR 43320 (July 1, 2016) (SR-NYSEMKT-2016-61) (most recent extension of the Pilot until December 31, 2016).

<sup>5</sup> See proposed Commentary .02 to Rule 960NY.

<sup>6</sup> See *id.* The month immediately preceding a replacement class's addition to the Pilot Program (*i.e.*, December) would not be used for purposes of the analysis for determining the replacement class. Thus, a replacement class to be added on the second trading day following January 1, 2017 would be identified based on The Option Clearing Corporation's trading volume data from June 1, 2016 through November 30, 2016. The Exchange will announce the replacement issues to the Exchange's membership through a Trader Update.

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

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

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

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

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and the text of the proposed rule change, at least five business days prior to the date

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)<sup>13</sup> 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEMKT-2016-111 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-2016-111. 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 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, 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 the 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-2016-111 and should be submitted on or before January 6, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Eduardo A. Aleman,**  
*Assistant Secretary.*

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**BILLING CODE 8011-01-P**

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79528; File Nos. SR-DTC-2016-007; SR-FICC-2016-005; SR-NSCC-2016-003]

#### **Self-Regulatory Organizations; The Depository Trust Company; Fixed Income Clearing Corporation; National Securities Clearing Corporation; Notice of Filing of Amendments No. 1 and Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments No. 1, Relating to Clearing Agency Investment Policy**

December 12, 2016.

On August 25, 2016, The Depository Trust Company ("DTC"), Fixed Income Clearing Corporation ("FICC"), and National Securities Clearing Corporation ("NSCC," and together with DTC and FICC, the "Clearing Agencies") filed with the Securities and Exchange Commission ("Commission") proposed rule changes SR-DTC-2016-007, SR-FICC-2016-005, and SR-NSCC-2016-003 ("Proposed Rule Changes") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> to adopt the Clearing Agency Investment Policy, which governs the investment of funds of the Clearing Agencies.

The Proposed Rule Changes were published for comment in the **Federal Register** on September 13, 2016.<sup>3</sup> The

Commission did not receive any comments on the Proposed Rule Changes. Pursuant to Section 19(b)(2) of the Act,<sup>4</sup> on October 26, 2016, the Commission designated a longer period within which to approve the Proposed Rule Changes, disapprove the Proposed Rule Changes, or institute proceedings to determine whether to approve or disapprove the Proposed Rule Changes.<sup>5</sup> On December 7, 2016, DTC, FICC, and NSCC each filed Amendment No. 1 to their respective Proposed Rule Changes ("Amendments No. 1"), as discussed below. The Commission is publishing this notice to solicit comments on Amendments No. 1 from interested persons and is approving on an accelerated basis the Proposed Rule Changes, as modified by Amendments No. 1.<sup>6</sup>

#### **I. Description of the Proposed Rule Changes and Notice of Filing of Amendments No. 1**

As described by the Clearing Agencies, the Proposed Rule Changes, as modified by Amendments No. 1, would adopt the Clearing Agency Investment Policy, which would govern the management, custody, and investment of cash deposited to the respective NSCC and FICC Clearing Funds and the DTC Participants Fund,<sup>7</sup> the proprietary liquid net assets (cash and cash equivalents) of the Clearing Agencies, and other funds held by the Clearing Agencies pursuant to their respective rules. Investment of these funds was previously governed by the investment policy of The Depository Trust & Clearing Corporation ("DTCC"), which is the parent company of the Clearing Agencies.

The Clearing Agency Investment Policy would include, generally, a glossary of key terms, the roles and

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> See Securities Exchange Act Release No. 79165 (October 26, 2016), 81 FR 75865 (November 1, 2016). The Commission designated December 12, 2016, as the date by which it should approve, disapprove, or institute proceedings to determine whether to approve or disapprove the Proposed Rule Changes.

<sup>6</sup> Capitalized terms not defined herein are defined in the NSCC's Rules & Procedures ("NSCC Rules"), DTC's Rules, By-laws and Organizational Certificate ("DTC Rules"), FICC's Mortgage-Backed Securities Division Clearing Rules ("MBSD Rules"), or FICC's Government Securities Division Rulebook ("GSD Rules"), as applicable, available at <http://dtcc.com/legal/rules-and-procedures>.

<sup>7</sup> The NSCC and FICC Clearing Funds, and the DTC Participants Fund are described further in the rules of each of the Clearing Agencies. See Rule 4 (Clearing Fund) of the NSCC Rules, Rule 4 (Participants Fund and Participants Investment) of the DTC Rules, Rule 4 (Clearing Fund and Loss Allocation) of the GSD Rules and Rule 4 (Clearing Fund and Loss Allocation) of the MBSD Rules. *Supra*, note 6.

of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this pre-filing requirement.

<sup>13</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>14</sup> 17 CFR 200.30-3(a)(12).

<sup>15</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 78778 (September 7, 2016), 81 FR 62963 (September 13, 2016) (SR-DTC-2016-007; SR-FICC-2016-005; SR-NSCC-2016-003).