

eligible to invest in securities (as defined in section 2(a)(36) of the Act) in reliance on rule 12d1-2 under the Act (the “Funds”), to also invest, to the extent consistent with its investment objectives, policies, strategies and limitations, in financial instruments that may not be securities within the meaning of section 2(a)(36) of the Act (“Other Investments”).¹ Applicants also request that the order exempt any entity, including any entity controlled by or under common control with an Adviser, that now or in the future acts as principal underwriter, or broker or dealer (if registered under the Securities Exchange Act of 1934, as amended (the “Exchange Act”)), with respect to the transactions described herein.

3. Consistent with its fiduciary obligations under the Act, each Fund’s board of trustees will review the advisory fees charged by the Fund’s Adviser to ensure that the fees are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to the advisory agreement of any investment company in which the Fund may invest.

Applicants’ Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company (“acquiring company”) may acquire securities of another investment company (“acquired company”) if such securities represent more than 3% of the acquired company’s outstanding voting stock or more than 5% of the acquiring company’s total assets, or if such securities, together with the securities of other investment companies, represent more than 10% of the acquiring company’s total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company’s voting stock, or cause more than 10% of the acquired company’s voting stock to be owned by investment companies and companies controlled by them.

2. Section 12(d)(1)(G) of the Act provides, in part, that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (i) The acquired company and acquiring company are part of the same group of investment companies; (ii) the acquiring company holds only securities of acquired

companies that are part of the same group of investment companies, government securities, and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) of the Act by a securities association registered under section 15A of the Exchange Act or by the Commission; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end investment companies or registered unit investment trusts in reliance on section 12(d)(1)(F) or (G) of the Act.

3. Rule 12d1-2 under the Act permits a registered open-end investment company or a registered unit investment trust that relies on section 12(d)(1)(G) of the Act to acquire, in addition to securities issued by another registered investment company in the same group of investment companies, government securities, and short-term paper: (i) Securities issued by an investment company that is not in the same group of investment companies, when the acquisition is in reliance on section 12(d)(1)(A) or 12(d)(1)(F) of the Act; (ii) securities (other than securities issued by an investment company); and (iii) securities issued by a money market fund, when the investment is in reliance on rule 12d1-1 under the Act. For the purposes of rule 12d1-2, “securities” means any security as defined in section 2(a)(36) of the Act.

4. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of the Act, or from any rule under the Act, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants submit that their request for relief meets this standard.

5. Applicants request an order under section 6(c) of the Act for an exemption from rule 12d1-2(a) to allow the Funds to invest in Other Investments while investing in Underlying Funds. Applicants state that the Funds will comply with rule 12d1-2 under the Act, but for the fact that the Funds may invest a portion of their assets in Other Investments. Applicants assert that permitting the Funds to invest in Other Investments as described in the application would not raise any of the concerns that the requirements of section 12(d)(1) were designed to address.

Applicants’ Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Applicants will comply with all provisions of rule 12d1-2 under the Act, except for paragraph (a)(2) to the extent that it restricts any Fund from investing in Other Investments as described in the application.

For the Commission, by the Division of Investment Management, under delegated authority.

Brent J. Fields,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-74636; File No. SR-NYSEMKT-2015-17]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Rule Change Amending Rule 923NY To Refine the Appointment Process Utilized by the Exchange

April 2, 2015.

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 20, 2015, 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 923NY (Appointment of Market Makers) to refine the appointment process utilized by the Exchange. 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.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

¹ All entities that currently intend to rely on the requested order are named as applicants. Any other entity that relies on the order in the future will comply with the terms and condition of the application.

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

The Exchange proposes to amend Rule 923NY to refine the appointment process utilized by the Exchange. The Exchange believes this proposal, which is consistent with the rules of other option exchanges,⁴ would simplify and enhance the efficiency of the appointment process for both Market Makers and the Exchange and add clarity to Exchange rules.

Current Appointment Process

To register as a Market Maker, an applicant must file an application with the Exchange on a form or forms prescribed by the Exchange.⁵ Once registered, a Market Maker may seek an appointment in one or more option classes pursuant to Rule 923NY. Specifically, this Rule provides that “[o]n a form or forms prescribed by the Exchange, a Market Maker must apply

for an appointment in one or more classes of option contracts.”⁶

In addition to having the authority to appoint one Specialist per option class and to designate e-Specialists to fulfill certain obligations required of Specialists,⁷ “[t]he Exchange may appoint an unlimited number of Market Makers in each class unless the number of Market Makers appointed to a particular option class should be limited” based on the Exchange’s judgment.⁸ Further, the Rule provides that “Market Makers may select from among any option issues traded on the Exchange for inclusion in their appointment, subject to the approval of the Exchange. In considering the approval of the appointment of a Market Maker in each security,” the Exchange will consider the Market Maker’s preference; the financial resources available to the Market Maker; the Market Maker’s experience, expertise and past performance in making markets, including the Market Maker’s performance in other securities; the Market Maker’s operational capability; and the maintenance and enhancement of competition among Market Makers in each security in which they are appointed.⁹ The Rule also states that, in order to have a trading appointment on the Exchange, Market Makers must have the number of Amex Trading Permits (“ATPs”) required under the Amex Options Fee Schedule.¹⁰ In addition, Floor Market Makers¹¹ must also apply for appointment to a Trading Zone¹² on

the floor, subject to approval by the Exchange.¹³

Under the current Rule, “Market Makers may change the option issues in their appointment, subject to the approval of the Exchange” provided requests for changes are “made in a form and manner prescribed by the Exchange.”¹⁴ In addition, “Market Makers may withdraw from trading an option issue that is within their appointment by providing the Exchange with three business days’ written notice of such withdrawal.”¹⁵ If Market Makers fail to provide this notice, they “may be subject to formal disciplinary action pursuant to Section 9A of the Office Rules.”¹⁶ Moreover, the Exchange “may suspend or terminate any appointment of a Market Maker in one or more option issues under this Rule whenever, in the Exchange’s judgment, the interests of a fair and orderly market are best served by such action.”¹⁷ A Market Maker may seek review of any action taken by the Exchange.¹⁸

Finally, under the current Rule, the Exchange periodically conducts evaluations of Market Makers to determine whether they have fulfilled

assigned for the purposes of open outcry trading. See Rule 900.2NY(29).

¹³ See Rule 923NY(d)(1) (also providing that Specialists shall be appointed to the Trading Zone designated for their issues).

¹⁴ See Rule 923NY(e). In considering the change request, the Exchange will consider the factors set forth in Rule 923NY(c).

¹⁵ See Rule 923NY(f).

¹⁶ *Id.* Section 9A of the Office Rules sets forth the procedures for Exchange disciplinary proceedings, including the due process for the formal hearing process and the requirement that any decision by the Exchange must include a statement of findings and conclusions, with the reasons therefore upon all material issues presented in the record. Further, where a penalty is imposed, the Exchange’s decision must include a statement specifying the acts or practices in which the Respondent has been found to have engaged, or which the Respondent has been found to have omitted.

¹⁷ See Rule 923NY(g). The Exchange, however, proposes to correct the possessive form of “Exchange” (from “Exchanges’ judgment” to “Exchange’s judgment”) in this paragraph to correct a typo in the existing rule text, which adds clarity to Exchange rules. See proposed Rule 923NY(g) (“The Exchange may suspend or terminate any appointment of a Market Maker in one or more option issues under this Rule whenever, in the Exchange’s judgment, the interests of a fair and orderly market are best served by such action.”).

¹⁸ See Rule 923NY(h). Per Rule 923NY(i), Market Makers are also subject to a trading requirement, such that “[a]t least 75% of the trading activity of a Market Maker (measured in terms of contract volume per quarter) must be in classes within the Market Maker’s appointment and, in the case of Floor Market Makers, within their designated Trading Zone” and a failure to comply with the 75% contract volume requirement may result in the imposition of a fine per Rule 476A or initiation of formal disciplinary action, pursuant to Section 9A (Disciplinary Rules). The Exchange is not proposing any changes to Rule 923NY(i).

⁶ See Rule 923NY(a).

⁷ A Specialist is “an individual or entity that has been deemed qualified by the Exchange for the purpose of making transactions on the Exchange in accordance with the provisions of Rule 920NY [Market Makers], and who meets the qualification requirements of Rule 927NY(b) [Specialists]. Each Specialist must be registered with the Exchange as a Market Maker. Any ATP Holder registered as a Market Maker with the Exchange is eligible to be qualified as a Specialist. See Rule 900.2(76). Rule 923NY(b) also provides that “[t]he Exchange may designate e-Specialists in an option class in accordance with Rule 927.4NY[e-Specialists].” *Id.* The Exchange is not proposing to change Rule 923NY(b) regarding Specialists and e-Specialists.

⁸ See Rule 923NY(b).

⁹ See Rule 923NY(c).

¹⁰ See Rule 923NY(d)(1). See also NYSE Amex Options Fee Schedule (Section III.A., Monthly ATP Fees) (describing “Number Of Issues Permitted In A Market Makers Quoting Assignment” based on the number of permits held and the associated costs), available here, https://www.nyse.com/publicdocs/nyse/markets/amex-options/NYSE_Amex_Options_Fee_Schedule.pdf.

¹¹ A Floor Market Maker is “a registered Market Maker who makes transactions as a dealer-specialist while on the Floor of the Exchange and provides quotations: (A) Manually, by public outcry, and (B) electronically through an auto-quoting device.” See Rule 900.2NY(29).

¹² A Trading Zone refers to the areas on the Floor designated by the Exchange in which issues are

⁴ See, e.g., BATS Exchange, Inc. (“BATS”) Rules 22.3(a),(b) (Market Maker Registration); NASDAQ OMX PHLX (“PHLX”) Rule 3212(b) (Registration as a Market Maker); NASDAQ Options Market (“NOM”), Chapter VII (Market Participants), Section 3(a),(b) (Continuing Market Maker Registration).

⁵ See Rule 921NY(Registration of Market Makers). See also Rule 920NY(a) (Market Maker Defined) (“A Market Maker is an ATP Holder that is registered with the Exchange for the purpose of submitting quotes electronically and making transactions as a dealer-specialist verbally on the Trading Floor or through the System from on the Trading Floor or remotely from off the Trading Floor, in accordance with the Rules of the Exchange. A Market Maker submitting quotes remotely is not eligible to participate in trades affected in open outcry except to the extent that such Market Maker’s quotation represents the BBO. Market Makers are designated as specialists on the Exchange for all purposes under the Securities Exchange Act of 1934 and the Rules and Regulations thereunder. A Market Maker on the Exchange will be either a Remote Market Maker, a Floor Market Maker, a Specialist or an e-Specialist. Unless specified, or unless the context requires otherwise, the term Market Maker refers to Remote Market Makers, Floor Market Makers, Specialists and e-Specialists.”).

performance standards.¹⁹ If the Exchange finds that a Market Maker has not met the performance standards, the Exchange may take action, including suspending, terminating or restricting a Market Maker's appointment or registration, after providing the Market Maker an opportunity to be heard.²⁰

Proposed Appointment Process

The Exchange proposes to modify Rule 923NY to refine the current appointment process. Presently, Market Makers must apply for an appointment in an options class, which, as discussed further below, is done by submitting an email to the Exchange. The Exchange proposes to modify Rule 923NY(a) to provide that, rather than apply for an appointment, "a Market Maker may register for an appointment in one or more classes of option contracts," in a form and manner prescribed by the Exchange.²¹ The Exchange would continue to have authority to appoint one Specialist per option class and to designate e-Specialists in options classes to fulfill certain obligations required of Specialists. Similarly, there would continue to be an unlimited number of Market Makers appointed to an options class, unless the Exchange restricted such appointments following Commission review and approval. The Exchange is proposing a change to the text in Rule 923NY(b) to reflect the proposed changes in Rule 923NY(a) to provide that "[a]n unlimited number of Market Makers may register in each class," subject to any limits imposed by the Exchange.²²

In addition, to simplify a Market Maker's ability to select and make changes to its appointment, the Exchange proposes to modify Rule 923NY(c) to replace the existing rule

text with text that provides that "[a] Market Maker may select or withdraw option issues included in their appointment by submitting a request via an Exchange-approved electronic interface with the Exchange on a day when the Exchange is open for business."²³ The modified rule would also provide that an appointment would become effective by no later than the following business day, whereas a Market Maker's request to withdraw option issues from its appointment would not become effective until the following business day.²⁴ Thus, as proposed, a Market Maker could be appointed to an options issue on the same day it submits a request to the Exchange, depending on availability of Exchange resources to process the request that day, but such addition to its appointment would be effective no later than the following business day. A Market Maker, however, would not be able to withdraw an options issue from its appointment on the same day that it submits the request; instead, the Exchange will only process such requests on an overnight basis for effectiveness on the following business day. Before any additions to a Market Maker's appointment would become effective, the Exchange would be required to confirm "that the Market Maker's appointment will not exceed that permitted under paragraph (d) of this Rule"²⁵ and confirm receipt of the Market Maker's request.²⁶ Confirmation of receipt is designed to ensure that the request was successfully transmitted to the Exchange (*i.e.*, there was no system failure or human error on either side of the electronic transaction that prevented transmission and receipt of the Market Maker's request). Presently, Market Makers can select issues in their appointment or make changes thereto, pursuant to proposed Rule 923NY(c), by submitting an email [*sic*] the Exchange which is "the Exchange-approved electronic interface" at this time.²⁷

Consistent with this proposed change, the Exchange proposes to delete paragraphs (e) and (f) of Rule 923NY, which describe how Market Makers can change their appointment or withdraw from issues in their appointment because these provisions are rendered

superfluous by the proposed changes to Rule 923NY(c).²⁸

The Exchange believes that the proposed changes to how Market Makers select and modify their appointments would enable Market Makers to manage their appointments with more flexibility and in a timelier manner which, in turn, would reduce the time and resources expended by Market Makers and the Exchange on the appointment process. The Exchange believes this proposal would provide Market Makers with more efficient access to the securities in which they want to make markets and disseminate competitive quotations, which would provide additional liquidity and enhance competition in those securities. The Exchange would retain the ability to suspend or terminate any appointment of a Market Maker if necessary to maintain a fair and orderly market.²⁹ The Exchange also notes that the proposed changes to Rule 923NY(a), (b)³⁰ and (c)³¹ are consistent with the rules of other exchanges and therefore raise no new or novel issues.

The Exchange also proposes to amend Rule 923NY(d)(1) to state that "Market Makers must have the number of ATPs required under the Fee Schedule for its

²⁸ The Exchange proposes to designate subparagraphs (e) and (f) as Reserved.

²⁹ See Rule 923NY(g). The Exchange, however, proposes to correct the possessive form of "Exchange" (from "Exchanges' judgment" to "Exchange's judgment") in this paragraph to correct a typo in the existing rule text, which adds clarity to Exchange rules. See proposed Rule 923NY(g) ("The Exchange may suspend or terminate any appointment of a Market Maker in one or more option issues under this Rule whenever, in the Exchange's judgment, the interests of a fair and orderly market are best served by such action.").

³⁰ See *e.g.*, BATS Rules 22.3(a) ("An Options Member that has qualified as an Options Market Maker may register to make markets in individual series of options"); NOM, Chapter VII, Section 3(a) ("An Options Participant that has qualified as an Options Market Maker may register to make markets in individual options.").

³¹ See *e.g.*, PHLX Rule 3212(b) ("A PSX Market Maker may become registered in an issue by entering a registration request via an Exchange approved electronic interface with PSX's systems or by contacting PSX Market Operations. Registration shall become effective on the day the registration request is entered"); PHLX Rule 3220(a) ("A market maker may voluntarily terminate its registration in a security by withdrawing its two-sided quotation from PSX. A PSX Market Maker that voluntarily terminates its registration in a security may not re-register as a market maker for one (1) business day."). See also BATS Rules 22.3(b) ("An Options Market Maker may become registered in a series by entering a registration request via an Exchange approved electronic interface with the Exchange's systems by 9:00 a.m. Eastern time. Registration shall become effective on the day the registration request is entered"); NOM, Chapter VII, Section 3(b) ("An Options Market Maker may become registered in an option by entering a registration request via a Nasdaq approved electronic interface with Nasdaq's systems. Registration shall become effective on the day the registration request is entered.").

¹⁹ See Rule 923NY(j).

²⁰ See Rule 923NY(j)(1). See also Rule 923NY(j)(2) ("If a Market Maker's appointment in an option issue or issues has been terminated pursuant to this subsection (j), the Market Maker may not be re-appointed as a Market Maker in that option issue or issues for a period not to exceed 6 months.").

²¹ See proposed Rule 923NY(a) ("On a form or forms prescribed by the Exchange, a Market Maker may register for an appointment in one or more classes of option contracts, subject to paragraph (d) of this Rule."). As discussed, paragraph (d) of the Rule provides that Market Makers must have the designated number of ATPs set forth in the Amex Options Fee Schedule in order to have a trading appointment on the Exchange.

²² See proposed Rule 923NY(b) ("The Exchange may appoint one Specialist per option class. The Exchange may designate e-Specialists in an option class in accordance with Rule 927.4NY. An unlimited number of Market Makers may register in each class unless the number of Market Makers appointed to a particular option class should be limited whenever, in the Exchange's judgment, quotation system capacity in an option class or classes is not sufficient to support additional Market Makers in such class or classes.").

²³ See proposed Rule 923NY(c).

²⁴ *Id.*

²⁵ *Id.* Proposed changes to Rule 923NY(d) are discussed below.

²⁶ The Exchange is also required to confirm receipt of requests to withdraw option issues from a Market Maker's appointment. See proposed Rule 923NY(c).

²⁷ The Exchange will announce by Trader Update the email address that Market Makers should utilize to make selections in, or changes to, their appointment pursuant to this Rule.

appointment as a Market Maker in option issues,” which the Exchange believes adds clarity to the Rule.³² In addition, the Exchange proposes to modify Rule 923NY(d)(2) to provide that “Floor Market Makers shall be appointed to a Trading Zone on the Floor,”³³ to conform this provision to other changes proposed herein, which are designed to streamline the Exchange’s appointment process.³⁴

The Exchange also proposes to modify the text in paragraph (h) of the Rule. As proposed, a Market Maker would continue to be permitted to “seek review of any action taken by the Exchange, in accordance with Section 9A of the Office Rules, as applicable.” However, to clarify the rule text, the Exchange proposes to delete the unnecessary clause “including the denial of the appointment for, or the termination or suspension of, a Market Maker’s appointment in an option issue or issues.”³⁵ The Exchange’s denial, termination, or suspension of a Market Maker’s appointment would continue to be reviewable under Section 9A of the Office Rules, as would other applicable actions taken by the Exchange under Rule 923NY.³⁶

Rule 923NY(j) states that the Exchange will conduct periodic evaluations of Market Makers to determine whether they have fulfilled the requisite performance standards. The Exchange proposes to add “the financial resources available to the Market Maker” and “the Market Maker’s operational capability” as factors the Exchange will consider in its evaluations conducted pursuant to Rule 923NY(j).³⁷ The additional considerations the Exchange proposes to include in its periodic evaluations

under Rule 923NY (j) are currently among the considerations of the Exchange in approving a Market Maker’s appointment.³⁸ In connection with the Exchange’s proposed changes to the process for Market Makers’ appointments to options classes, the Exchange proposes to eliminate these approval provisions. Because financial resources and operational capability are important considerations in a Market Maker’s performance, the Exchange proposes to retain these factors for consideration in the Exchange’s periodic evaluation of Market Maker performance.³⁹

Finally, the Exchange proposes to modify Rule 923NY(j)(2) to reflect the proposed changes to the Market Maker appointment process. Specifically, the Exchange proposes to change the reference to a Market Maker being “re-appointed” by the Exchange if an option issue or issues has been terminated pursuant to this subsection (j), and to instead provide that “the Exchange may restrict a Market Maker’s registration as a Market Maker in that option issue or issues for a period not to exceed 6 months.”⁴⁰ This proposal continues to give the Exchange discretion to suspend that Market Maker’s appointment in the affected option issue(s) for a full six months, or to allow that Market Maker to resume that appointment earlier than the prescribed six-month period, based on the Exchange’s evaluation of the facts and circumstances. The Exchange believes the proposed change is necessary so that Rule 923NY(j)(2) is consistent with the proposed changes in paragraphs (a), (b), and (c) of Rule 923NY to the process for Market Makers to register and change their appointments to options classes.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)⁴¹ of the Securities Exchange Act of 1934 (the “Act”), in general, and furthers the

objectives of Section 6(b)(5),⁴² 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.

The Exchange believes that the proposed rule change removes impediments to a free and open market because it would enable Market Makers to manage their appointments with more flexibility and in a timelier manner. The Exchange believes the proposed change would reduce the burden on both Market Makers and Exchange staff, which would result in a fair and reasonable use of resources to the benefit of all market participants. In particular, the proposal to allow Market Makers to select their appointments, and make changes thereto, via an Exchange-approved electronic interface is consistent with [sic] Act because it would provide Market Makers with more efficient access to the securities in which they want to make markets and thus more quickly begin disseminating competitive quotations in those securities, which would provide additional liquidity and enhance competition in those securities. The Exchange also believes that preventing Market Makers from being able to withdraw an option issue from its appointment on the same day that it submits the request (as such requests are processed on an overnight basis for effectiveness on the following business day) would serve to promote just and equitable principles of trade and benefit investors and the public interest.

In addition, the Exchange believes that the proposal to allow Market Makers to make selections or changes to their appointment without first obtaining explicit Exchange approval is likewise consistent with the Act. First, because financial resources and operational capability are important considerations in a Market Maker’s performance, the Exchange proposes to retain these factors for consideration in the Exchange’s periodic evaluation of Market Maker performance. The Exchange believes that adding these factors to the Exchange’s consideration would remove impediments to and perfect the mechanism of a free and open market and would benefit investors and the public interest. In addition, as noted above, the Exchange would continue to have authority to

³² See proposed Rule 923NY(d)(1).

³³ The Exchange also proposes to capitalize “Floor” in the first sentence of Rule 923NY(d)(1) to add clarity and consistency to Exchange rules.

³⁴ This proposed change also conforms to the latter portion of Rule 923NY(d)(2) which provides that “Specialists shall be appointed to the Trading Zone designated for their issues.”

³⁵ See Rule 923NY(h) (“A Market Maker may seek review of any action taken by the Exchange pursuant to this Rule in accordance with Section 9A of the Office Rules, as applicable.”).

³⁶ *Id.*

³⁷ See proposed Rule 923NY(j) (“The Exchange will periodically conduct an evaluation of Market Makers to determine whether they have fulfilled performance standards relating to, among other things, quality of markets, competition among Market Makers, observance of ethical standards, and administrative factors. The Exchange may consider any relevant information including, but not limited to, the results of a Market Maker evaluation, trading data, a Market Maker’s regulatory history, the financial resources available to the Market Maker, the Market Maker’s operational capability, and such other factors and data as may be pertinent in the circumstances.”).

³⁸ See Rule 923NY(c)(2) and (4).

³⁹ The Exchange is not proposing any changes to Rule 923NY(j)(1), which sets forth the actions that the Exchange may take, after affording a Market Maker written notice and an opportunity for hearing pursuant to Section 9A should the Exchange find a Market Maker is failing to meet minimum performance standards. See Rule 923NY(j)(1). The Exchange however proposes to delete the word “primary” from Rule 923NY(j)(1)(A) so that the clause refers simply to the “Market Maker’s appointment,” which change would add clarity and consistency to Exchange rules. See proposed Rule 923NY(j)(1)(A).

⁴⁰ See proposed Rule 923NY(j)(2) (“If a Market Maker’s appointment in an option issue or issues has been terminated pursuant to this subsection (j), the Market Maker may not register as a Market Maker in that option issue or issues for a period not to exceed 6 months.”).

⁴¹ 15 U.S.C. 78f(b).

⁴² 15 U.S.C. 78f(b)(5).

suspend or terminate any Market Maker appointment in the interest of a fair and orderly market, including if necessary to prevent fraudulent and manipulative acts and practices and protect investors, or if a Market Maker does not satisfy its obligations with respect to an appointment.⁴³ The Exchange would also retain the ability to restrict a Market Maker's registration in option issues for up to six months if a Market Maker's appointment in that option issue or issues had been previously terminated under the rule, and continues to give the Exchange discretion to allow the Market Maker to resume that appointment earlier than the prescribed six-month period or to maintain the suspension for the entire period. Finally, the Exchange is not proposing changes to the disciplinary and appeals process for Market Makers that do not meet the minimum performance standards. Accordingly, the Exchange believes this proposal is consistent with Section 6(d) of the Exchange Act.⁴⁴

The proposed rule change would not result in unfair discrimination, as it applies to all Market Makers. Further, the proposed rule change would reduce the burden on Market Makers to manage their appointments and thus provide liquidity to the Exchange. Nevertheless, Market Makers would still be required to comply with certain obligations to maintain their status as a Market Maker, including that they provide continuous, two-sided quotations in their appointed securities.⁴⁵

Finally, as noted above, the proposed modifications to the appointment process would align the rules of the Exchange with the rules of other options exchanges, where Market Makers presently have the ability to select and make changes to their appointment via an Exchange-approved electronic interface.⁴⁶ The Exchange believes this consistency across exchanges would remove impediments to and perfect the mechanism of a free and open market by ensuring that members, regulators and the public can more easily navigate the Exchange's rulebook and better understand the appointment process.

⁴³ See Rule 923NY(g). See also Rule 921NY (regarding the Exchange's ability to suspend or terminate a Market Maker's registration based on "a determination of any substantial or continued failure by such Market Maker to engage in dealings in accordance with Rules 925NY or 923NY", which outline the obligations of Market Makers).

⁴⁴ 15 U.S.C. 78f(d).

⁴⁵ See Rule 925.1NY.

⁴⁶ See *supra* nn. 4, 30, 31.

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 because it provides the same relief to a group of similarly situated market participants—Market Makers. The proposed rule change would reduce the burden on Market Makers to manage their appointments and thus provide liquidity to the Exchange.

The Exchange does not believe the proposed rule change would help Market Makers to the detriment of market participants on other exchanges, particularly because the proposed functionality is similar to functionality already available on other exchanges.⁴⁷ Market Makers would still be subject to the same obligations with respect to its appointments; the proposed rule change would make the appointment process more efficient for Market Makers. The Exchange believes that the proposed rule change would relieve any burden on, or otherwise promote, competition, as it would enable Market Makers to manage their appointments with more flexibility and in a timelier manner. The Exchange believes this would provide Market Makers with more efficient access to the securities in which they want to make markets and thus more quickly begin disseminating competitive quotations in those securities, which would provide additional liquidity and enhance competition in those securities.

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

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. Please include File Number SR-NYSEMKT-2015-17 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-2015-17. 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-NYSEMKT-2015-17, and should be submitted on or before April 29, 2015.

⁴⁷ *Id.*

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁸

Brent J. Fields,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-74639; File No. SR-NSCC-2015-001]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Addendum A (Fee Structure) With Respect to the Alternative Investment Product Services

April 2, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 23, 2015, National Securities Clearing Corporation (“NSCC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by NSCC. NSCC filed the proposed rule change pursuant to Section 19(b)(3)(A)³ of the Act and Rule 19b-4(f)(2)⁴ thereunder. The proposed rule change was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of an amendment to Addendum A (Fee Structure) of NSCC’s Rules & Procedures (“Rules”) to establish certain fees applicable to the Alternative Investment Product services (“AIP” or the “Service”), as more fully described below. The text of the proposed rule change is available on NSCC’s Web site at <http://www.dtcc.com/legal/sec-rule-filings.aspx>, at the principal office of NSCC, and at the Commission’s Public Reference Room.

II. Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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 these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Statement of Purpose

AIP was initially approved by the Commission on May 12, 2008⁵ as a new processing platform for alternative investment products such as hedge funds, funds of hedge funds, commodities pools, managed futures, and real estate investment trusts (collectively, “Eligible AIP Products”). AIP links global market participants, including broker/dealers, fund managers, fund administrators and custodians (collectively, “AIP Members”), to provide one standard end-to-end process for Eligible AIP Products.

As set forth in NSCC’s Rules, “AIP Data transmitted through the AIP Service may include data relating to subscriptions and purchases; redemptions, withdrawals and tender offers; exchange transactions; *transfers*; . . . and such other data as may be established by [NSCC] from time to time.”⁶

NSCC recently enhanced the AIP platform to better process transfer instructions submitted by AIP Members. In connection with these enhancements, NSCC proposes to amend Addendum A to establish the fees applicable to the processing of transfers, such as for example, internal transfers. Internal transfers occur within an AIP Member that is a broker/dealer when such AIP Member re-registers a customer account in the name of a different customer due to, for example, the death of the previously registered customer. NSCC proposes to establish the following fees for AIP transfers:

- \$1.50 per transfer for higher volume Eligible AIP Products.

- \$5.00 per transfer for lower volume Eligible AIP Products.

NSCC will implement the new transfer fees beginning March 26, 2015, or such later date as NSCC may announce through Important Notice.

(2) Statutory Basis

NSCC believes that the proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder applicable to NSCC. In particular, the proposed rule change is consistent with Section 17A(b)(3)(D)⁷ of the Act because it establishes NSCC’s fees for the processing of transfer instructions submitted by AIP Members, which helps to provide for the equitable allocation of reasonable dues, fees and other charges among members in connection with use of the Service.

B. Self-Regulatory Organization’s Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have any impact or impose any burden on competition.

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

Written comments relating to the proposed rule change have not yet been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁸ and paragraph (f) of Rule 19b-4⁹ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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:

⁷ 15 U.S.C. 78q-1(b)(3)(D).

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f).

⁴⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ Securities Exchange Act Release No. 57813 (May 12, 2008), 73 FR 28539 (May 16, 2008) (SR-NSCC-2007-12).

⁶ See, [sic] NSCC Rule 53 (Alternative Investment Product Services and Members), Section 6 (Transmission of AIP Data) [emphasis added].