

all market participants and improve competition on the Exchange.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

*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 foregoing rule change is effective upon filing pursuant to section 19(b)(3)(A)<sup>20</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>21</sup> thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

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>22</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-2016-35 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-2016-35. 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 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-2016-35, and should be submitted on or before April 11, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>23</sup>

**Robert W. Errett,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

**Submission for OMB Review; Comment Request**

*Upon Written Request, Copies Available From:* US Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549-2736.

*Extension:*

Order Granting Conditional Exemptions Under the Securities Exchange Act of 1934 in Connection with Portfolio Margining of Swaps and Security-Based Swaps; SEC File No. S7-13-12, OMB Control No. 3235-0698.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 ("PRA") (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for approval of extension of the existing collection of information provided for in the Order Granting Conditional Exemptions Under the Securities Exchange Act of 1934 ("Exchange Act") in Connection with Portfolio Margining of Swaps and Security-Based Swaps, Exchange Act Release No. 68433 (Dec. 14, 2012), 77 FR 75211 (Dec. 19, 2012) ("Order").

On December 14, 2012, the Commission found it necessary or appropriate in the public interest and consistent with the protection of investors to grant the conditional exemptions discussed in the Order. Among other things, the Order requires dually-registered broker-dealer and futures commission merchants ("BD/FCMs") that elect to offer a program to commingle and portfolio margin customer positions in credit default swaps ("CDS") in customer accounts maintained in accordance with Section 4d(f) of the Commodity Exchange Act ("CEA") and rules thereunder, to obtain certain agreements and opinions from its customers regarding the applicable regulatory regime, and to make certain disclosures to its customers before receiving any money, securities, or property of a customer to margin, guarantee, or secure positions consisting of cleared CDS, which include both swaps and security-based swaps, under a program to commingle and portfolio margin CDS. The Order also requires BD/FCMs that elect to offer a program to commingle and portfolio margin CDS positions in customer accounts maintained in accordance with Section 4d(f) of the CEA and rules thereunder, to maintain minimum margin levels using a margin methodology approved by the Commission or the Commission staff.

When it adopted the Order, the Commission discussed the burden hours and costs associated with complying with certain provisions of the Order that contain "collection of information requirements" within the meaning of the PRA.<sup>1</sup> The collection of information requirements are designed, among other things, to provide appropriate

<sup>20</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>21</sup> 17 CFR 240.19b-4(f)(2).

<sup>22</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>23</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> See Order, 77 FR at 75221-23.

agreements, disclosures, and opinions to BD/FCM customers to clarify key aspects of the regulatory framework that will govern their participation in a program to commingle and portfolio margin CDS positions and to ensure that appropriate levels of margin are collected. Because the Order is still in effect, the Commission believes it is prudent to extend this collection of information.

The Commission estimates that 45 firms may seek to avail themselves of the conditional exemptive relief provided by the Order and therefore would be subject to the information collection.<sup>2</sup> The Commission estimates that each of the 45 firms that may seek to avail themselves of the conditional exemptive relief provided by the Order would spend a total of 3,430 burden hours to comply with the existing collection of information, calculated as follows: (20 hours to develop a subordination agreement for each non-affiliate cleared credit default swap customers in accordance with paragraph IV(b)(1)(ii) of the Order)  $\times$  (109 non-affiliate credit default swap customers)<sup>3</sup> + ((20 hours to develop a subordination agreement for each affiliate cleared credit default swap customers in accordance with paragraph IV(b)(2)(ii) of the Order) + (2 hours developing and reviewing the opinion required by paragraph IV(b)(2)(iii) of the Order))  $\times$  (11 affiliate credit default swap customers) + (1,000 hours to seek the Commission's approval of margin methodologies under paragraph IV(b)(3) of the Order) + (8 hours to disclose information to customers under paragraph IV(b)(6) of the Order) = 3,430 burden hours, or approximately 154,350 burden hours in the aggregate, calculated as follows: (3,430 burden hours per firm)  $\times$  (45 firms) = 154,350 burden hours. Amortized over three years, the annualized burden hours would be 1,143 hours per firm, or a total of 51,450 for all 45 firms.

The Commission further estimates that each respondent will incur a one-time cost of \$8,000 in outside legal cost

expenses per firm, calculated as follows: (200 hours to obtain opinions of counsel from affiliate cleared credit default swap customers under paragraph IV(b)(2)(iii) of the Order)  $\times$  (\$400 per hour for outside legal counsel) = \$8,000, for an aggregate burden of \$360,000, calculated as follows: (\$8,000 in external legal costs per firm)  $\times$  (45 firms) = \$360,000. Amortized over three years, the annualized capital external cost would be \$2,667 per firm, or a total of \$120,000 for all 45 firms.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following Web site: [www.reginfo.gov](http://www.reginfo.gov). Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: [ShaguftaAhmed@omb.eop.gov](mailto:ShaguftaAhmed@omb.eop.gov); and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549, or by sending an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov). Comments must be submitted to OMB within 30 days of this notice.

Dated: March 15, 2016.

**Robert W. Errett,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77371; File No. SR-NYSEMKY-2016-33]

### Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Amend Its Price List Effective March 1, 2016

March 15, 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 March 1, 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 its Price List to exclude from its average daily volume and certain other calculations any trading day on which the Exchange is not open for the entire trading day and/or a disruption affects an Exchange system that lasts for more than 60 minutes during regular trading hours. The Exchange proposes to implement the fee change effective March 1, 2016. The text of 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, on the Commission's Web site at <http://www.sec.gov>, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

###### 1. Purpose

The Exchange proposes to amend its Price List to exclude from its average daily volume ("ADV") and certain other calculations any trading day on which the Exchange is not open for the entire trading day and/or a disruption affects an Exchange system that lasts for more than 60 minutes during regular trading hours. The Exchange proposes to implement the fee change effective March 1, 2016.

As provided in the Exchange's Price List, many of the Exchange's transaction fees and credits are based on trading, quoting and liquidity thresholds that member organizations, including

<sup>2</sup> The Commission bases this estimate on the total number of entities that are dually registered as broker-dealers and futures commission merchants. See Financial Data for FCMs as of July 31, 2015, Commodity Futures Trading Commission, available at <http://www.cftc.gov/MarketReports/FinancialDataforFCMs/index.htm>.

<sup>3</sup> Based on information that the Commission receives on a monthly basis, as well as current projections regarding the estimated increase in the number of customers per respondent, the Commission anticipates an average number of credit default swap customers to be 120 per respondent, 109 of which would be non-affiliates and 11 of which would be affiliates. The Commission notes that these estimates are based on current data and the current regulatory framework.

<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.