

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-73024; File No. SR-NYSEMKT-2014-76]

### Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 967NY(b) To Enhance the Functionality of the Limit Order Filter

September 9, 2014.

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 August 28 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 Rule 967NY(b) to enhance the functionality of the Limit Order Filter. 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, 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

The Exchange is proposing to amend Rule 967NY(b) to enhance the functionality of the Limit Order Filter in

use on the Exchange. The Exchange’s enhancement is designed to help maintain a fair and orderly market by providing limit orders received before the opening of trading the same protection those orders are afforded during Core Trading Hours.

As set forth in proposed Rule 967NY(b), the Exchange currently employs a filter for incoming limit orders, pursuant to which the Exchange rejects limit orders priced a specified percentage away from the NBB or NBO. As the Exchange receives limit orders, the Exchange System will check the price of the limit order against the contra-side NBB or NBO at the time of order entry to determine whether the limit order is within the specified percentage.<sup>4</sup> If the limit order is priced outside of the specified percentage, the limit order will be rejected. As this filter relies on an NBBO at the time of Exchange receipt of the order, it is only available after the Exchange has opened a series.

The Exchange proposes to amend Rule 967NY(b) to expand the functionality of the Limit Order Filter to protect limit orders received prior to the opening of trading. As proposed, for limit orders received before the opening of trading, the Limit Order Filter would operate immediately before conducting a Trading Auction (as set forth in Rule 952NY). The enhancement is designed to provide the same level of protection to market participants who enter limit orders before the open as it does for those who enter limit orders during Core Trading. The Exchange believes that using the best bids and offers available immediately before conducting the Trading Auction helps assure an accurate state of the market.

Pursuant to Rule 952NY(a), a Trading Auction is the process by which trading is initiated in a specified options class. Pursuant to 952NY(b)(D), prior to conducting the Auction Process, the Exchange system must have market maker quotes or an NBBO that creates a bid-ask differential that does not exceed those specified under Rules 925NY(b)(4). Immediately, prior to conducting the Auction Process, the Exchange will use the contra-side bid or offer of this bid-ask differential as the parameters for the Limit Order Filter being applied to limit orders received before the open of trading. The Exchange will announce the

implementation date of this change through a Trader Update.

For example, assume the Exchange receives a sell order with a limit of \$2.00 at 9:00:00 a.m. Eastern (which is before the open). If the Exchange is about to open that series at 9:30:02 a.m. where the best available bid is \$4.00, because the \$2.00 sell order is 50% below the bid, that limit order would be rejected immediately before the series opens. Likewise, if the Exchange is about to open a series in which the best available offer at \$0.75, a buy order received pre-open with a limit price at or above \$1.50 (which is 100% above the offer) would be rejected. In both these [sic] scenarios, orders that otherwise may cause price dislocation would be rejected before they could cause such harm to the market.

###### 2. Statutory Basis

The proposed rule change is consistent with Section 6(b)<sup>5</sup> of the Act, in general, and furthers the objectives of Section 6(b)(5),<sup>6</sup> in particular, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that this proposal meets these requirements because it would assist with the maintenance of a fair and orderly market by helping to mitigate the potential risks associated with the entry of limit orders before the opening that ultimately are priced a specified percentage away from the prevailing contra-side market existing at the open. The Exchange believes that a limit order priced a specified percentage away from the prevailing contra-side market existing at the open is evidence of a market participant error. By rejecting such an order, the Exchange believes it is promoting just and equitable principles of trade by preventing potential price dislocation that could result through subsequent executions during Core Trading of the balance of the aggressively priced limit order. The proposed rule change would therefore remove impediments to and perfect the mechanism of a free and open market and national market system by ensuring that an existing price protection, *i.e.*, the Limit Order Filter, would be applicable to all limit orders, regardless of when they are entered.

<sup>4</sup> Pursuant to Rule 967NY(b), unless determined otherwise by the Exchange and announced to ATP Holders via Trader Update, the specified percentage will be 100% for the contra-side NBB or NBO priced at or below \$1.00 and 50% for contra-side NBB or NBO priced above \$1.00.

<sup>5</sup> 15 U.S.C. § 78f(b).

<sup>6</sup> 15 U.S.C. § 78f(b)(5).

<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.

### *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 not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposal will provide market participants with additional protection from anomalous executions. Thus, the Exchange does not believe the proposal creates any significant burden on competition.

### *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) of the Act<sup>7</sup> and Rule 19b-4(f)(6) thereunder.<sup>8</sup> Because the foregoing 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 for 30 days from the date on which it is filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.<sup>9</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>10</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>11</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. In support of its request, the Exchange states that the protections offered by this proposal are designed to contribute to a fair and orderly market and enhance the protection of investors by offering a level of price protection to

pre-open limit orders that is not presently available. The Exchange states that waiving the 30-day delayed operative date will enable all market participants to benefit from the price protection offered by this proposal without delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.<sup>12</sup>

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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule 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-2014-76 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-2014-76. 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 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-2014-76, and should be submitted on or before October 6, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Kevin M. O'Neill,**  
*Deputy Secretary.*

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**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-73022; File No. SR-NYSEArca-2014-79]

### **Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change, as Modified by Amendments No. 1 and No. 2, To List and Trade Shares of InfraCap MLP ETF Under NYSE Arca Equities Rule 8.600**

September 9, 2014.

#### **I. Introduction**

On July 9, 2014, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to list and trade shares ("Shares") of InfraCap MLP ETF ("Fund") under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the **Federal Register** on July 28, 2014.<sup>3</sup> On July 25, 2014, NYSE Arca filed

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(6).

<sup>9</sup> 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its 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 of filing of the proposed rule change.

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

<sup>11</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>12</sup> 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).

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>1</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. 72651 (July 22, 2014), 79 FR 43801 ("Notice").