

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-79232; File No. SR-NYSEMKT-2016-96)

November 3, 2016

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Add to the Rules of the Exchange the Eleventh Amended and Restated Operating Agreement of the New York Stock Exchange LLC

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 October 24, 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 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 add to the rules of the Exchange the Eleventh Amended and Restated Operating Agreement of the New York Stock Exchange LLC (“NYSE LLC”). The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 add to the rules of the Exchange the Eleventh Amended and Restated Operating Agreement of NYSE LLC (the “Eleventh NYSE Operating Agreement”).

In September 2015, the Exchange filed the Eighth Amended and Restated Operating Agreement of NYSE LLC (the “Eighth NYSE Operating Agreement”) as a “rule of the exchange” under Section 3(a)(27) of the Act because NYSE LLC has a wholly-owned subsidiary, NYSE Market (DE), Inc., which owns a majority interest in NYSE Amex Options LLC (“NYSE Amex Options”), a facility of the Exchange.⁴ The Exchange subsequently removed the obsolete Eighth NYSE Operating Agreement and replaced it with the Ninth Amended and Restated Operating Agreement of NYSE LLC as a “rule of the exchange” under Section 3(a)(27) of the Act.⁵ In turn, when the Ninth Amended and Restated Operating Agreement of NYSE LLC was amended, the Exchange removed it and replaced it with the Tenth Amended and Restated Operating Agreement of NYSE LLC (the “Tenth NYSE Operating Agreement”) as a “rule of the exchange” under Section 3(a)(27) of the Act.⁶

⁴ See 15 U.S.C. 78c(a)(27); Securities Exchange Act Release No. 75984 (September 25, 2015), 80 FR 59213, 59214 (October 1, 2015) (SR-NYSEMKT-2015-71).

⁵ See 15 U.S.C. 78c(a)(27); Securities Exchange Act Release No. 76637 (December 14, 2015), 80 FR 79124 (December 18, 2015) (SR-NYSEMKT-2015-102).

⁶ See Securities Exchange Act Release No. 78436 (July 28, 2016), 81 FR 51249 (August 3, 2016) (SR-NYSE-2016-51).

On October 6, 2016, NYSE LLC filed on an immediately effective basis to amend Section 4.05 of the Tenth NYSE Operating Agreement regarding the use of regulatory assets, fees, fines and penalties, and to make additional, non-substantive edits.⁷ On October 18, 2016, NYSE LLC's rule filing amending the Tenth NYSE Operating Agreement was noticed.⁸ Such rule change will become operative 30 days from the date on which it was filed, or such shorter time as the Commission may designate.⁹

The Exchange is accordingly filing to remove the obsolete Tenth NYSE Operating Agreement as a "rule of the exchange" under Section 3(a)(27) of the Act, and replace it with the Eleventh NYSE Operating Agreement as a "rule of the exchange" under Section 3(a)(27) of the Act.¹⁰ The Exchange proposes that the rule change become effective on the date that the rule change amending the Tenth NYSE Operating Agreement becomes operative.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act¹¹ in general, and with Section 6(b)(1)¹² in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange.

⁷ See Securities Exchange Act Release No. 79115 (October 18, 2016), 81 FR 73187 (October 24, 2016) (SR-NYSE-2016-66).

⁸ Id.

⁹ Id. at 73189.

¹⁰ See 15 U.S.C. 78c(a)(27).

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(1).

The Exchange believes that the proposed rule change would contribute to the orderly operation of the Exchange and would enable the Exchange to be so organized as to have the capacity to carry out the purposes of the Act and comply and enforce compliance by its members and persons associated with its members, with the provisions of the Act because, by removing the obsolete Tenth NYSE Operating Agreement and making the Eleventh NYSE Operating Agreement a rule of the Exchange, the Exchange would be ensuring that its rules remain consistent with the NYSE LLC operating agreement in effect.

The Exchange notes that, as with the Tenth NYSE Operating Agreement, it would be required to file any changes to the Eleventh NYSE Operating Agreement with the Commission as a proposed rule change.¹³ In addition, the Exchange believes that the proposed changes are consistent with and will facilitate an ownership structure of the Exchange's facility NYSE Amex Options that will provide the Commission with appropriate oversight tools to ensure that the Commission will have the ability to enforce the Act with respect to NYSE Amex Options and its direct and indirect parent entities.

The Exchange also believes that this filing furthers the objectives of Section 6(b)(5) of the Act¹⁴ because the proposed rule change would be consistent with and facilitate a governance and regulatory structure that 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, to protect

¹³ The Exchange notes that any amendment to the NYSE LLC Operating Agreement would also require that NYSE LLC file a proposed rule change with the Commission.

¹⁴ 15 U.S.C. 78f(b)(5).

investors and the public interest. The Exchange believes that removing the obsolete Tenth NYSE Operating Agreement and making the Eleventh NYSE Operating Agreement a rule of the Exchange will remove impediments to the operation of the Exchange by ensuring that its rules remain consistent with the NYSE LLC operating agreement in effect. The Exchange notes that, as with the Tenth NYSE Operating Agreement, no amendment to the Eleventh NYSE Operating Agreement could be made without the Exchange filing a proposed rule change with the Commission. For the same reasons, the proposed rule change is also designed to protect investors as well as the public interest.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The proposed rule change is not intended to address competitive issues but rather is concerned solely with ensuring that the Commission will have the ability to enforce the Act with respect to NYSE Amex Options and its direct and indirect parent entities.

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 Act¹⁵ and Rule 19b-4(f)(6) thereunder.¹⁶ 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 for 30 days from the date on which it was

¹⁵ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁶ 17 CFR 240.19b-4(f)(6).

filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.¹⁷

A proposed rule change filed under Rule 19b-4(f)(6)¹⁸ normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b-4(f)(6)(iii) 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 on November 5, 2016, the same date that the proposed rule change to amend the Tenth NYSE Operating Agreement and to renumber it as the Eleventh NYSE Operating Agreement becomes operative.¹⁹ The Commission believes that waiver of the 30-day operative delay is appropriate because it would permit the Eleventh NYSE Operating Agreement to become “rules of an exchange” of NYSE MKT without delay.²⁰ Based on the foregoing, the Commission believes that the waiver of the operative delay is consistent with the protection of investors and the public interest.²¹ The Commission hereby grants the waiver and designates the proposal operative upon November 5, 2016, the same date that the rule change amending the Tenth NYSE

¹⁷ 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 text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹⁸ 17 CFR 240.19b-4(f)(6).

¹⁹ See supra note 7.

²⁰ See 15 U.S.C. 78c(a)(27).

²¹ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Operating Agreement and renumbering it as the Eleventh NYSE Operating Agreement becomes operative.²²

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)²³ 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 e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEMKT-2016-96 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NYSEMKT-2016-96. This file number should be included on the subject line if e-mail is used. To help the Commission process and

²² See supra note 7.

²³ 15 U.S.C. 78s(b)(2)(B).

review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<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 website 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-2016-96 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

Brent J. Fields
Secretary

²⁴ 17 CFR 200.30-3(a)(12).