

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-67569; File No. SR-NYSEMKT-2012-23)

August 1, 2012

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Rule Change Amending the Members' Schedule of NYSE Amex Options LLC in Order to Reflect Changes to the Capital Structure of the Company

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 25, 2012, NYSE MKT LLC ("NYSE MKT" or "Exchange") 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 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 the Members' Schedule (as defined in the Limited Liability Company Agreement of NYSE Amex Options LLC (the "Company") dated as of June 29, 2011 (the "LLC Agreement")) in order to reflect changes to the capital structure of the Company based on three transactions (such amendment, the "Proposed Rule Change"). The first transaction involved the admission of NYSE Market, Inc. ("NYSE Market") as a Member (as defined below) of the Company on September 19, 2011 pursuant to Sections 10.4 and 11.1 of the LLC Agreement and Section 3.2 of that certain Members Agreement, dated as of June 29, 2011, by and among the Company, NYSE MKT, NYSE Euronext, Banc of America Strategic Investments Corporation ("BAML"), Barclays Electronic Commerce Holdings Inc. ("Barclays"), Citadel Securities LLC ("Citadel"), Citigroup Financial Strategies, Inc. ("Citigroup"), Goldman,

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

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

Sachs & Co. (“Goldman Sachs”), Datek Online Management Corp. (“TD Ameritrade”) and UBS Americas Inc. (“UBS”) (collectively, excluding the Company, NYSE MKT and NYSE Euronext, the “Founding Firms”) (the “Members Agreement”). The second transaction involved the issuance of Annual Incentive Shares (as defined in the Members Agreement) to the Founding Firms pursuant to Section 2.1 of the Members Agreement. The third transaction will involve the transfer of Interests (as defined below) by the Founding Firms to NYSE Market on or around September 25, 2012 pursuant to Article XI of the LLC Agreement and Section 3.1 of the Members Agreement. The text of the Proposed Rule Change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, on the Commission's website at [www.sec.gov](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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Members’ Schedule as set forth herein. The amendment reflects changes to the capital structure of the Company due to (i) the admission of NYSE Market as a Member of the Company on September 19, 2011 pursuant to Sections 10.4 and 11.1 of the LLC Agreement and Section 3.2 of the Members Agreement, (ii) the issuance of

Annual Incentive Shares to the Founding Firms on February 29, 2012 pursuant to Section 2.1 of the Members Agreement and (iii) the upcoming transfer of Interests by the Founding Firms to NYSE Market on or around September 25, 2012 pursuant to Article XI of the LLC Agreement and Section 3.1 of the Members Agreement.

#### Admission of NYSE Market

Pursuant to Section 3.2 of the Members Agreement, each Founding Firm has the right, subject to certain conditions and limitations, to cause NYSE MKT (or an affiliate thereof that NYSE MKT designates) to purchase a portion of such Founding Firm's equity interest in the Company (such right, the "Founding Firm Right"). On September 19, 2011, each of the Founding Firms exercised its Founding Firm Right and transferred Common Interests (as defined below) representing an aggregate equity interest of 5.28% in the Company to NYSE Market, an affiliate of NYSE MKT (the "Transaction"). NYSE Market, rather than NYSE MKT, acquired the Common Interests for non-substantive business reasons related to the corporate structure of NYSE MKT. As a result of the Transaction, pursuant to Sections 10.4 and 11.1 of the LLC Agreement, NYSE Market was admitted as a Member of the Company on September 19, 2011. Notwithstanding NYSE Market's acquisition of Common Interests, the governance structure of the Company following the Transaction did not change: the number of directors on the Company's board has not changed; NYSE MKT continues to appoint a majority (7 of 13) of these directors; and, NYSE Market does not have the right to appoint a separate director to the board.

Initially, the Exchange intended to file this amendment to the Members' Schedule as part of a longer, forthcoming technical filing. Due to the Founding Firm Transfer (as defined below),

however, the Exchange deems it appropriate, at present, to amend the Members' Schedule in order to reflect NYSE Market's membership in the Company.

As a limited liability company, ownership of the Company is represented by limited liability company interests in the Company ("Interests"). The holders of Interests are referred to as the members of the Company (the "Members"). The LLC Agreement designates Members as either Class A Members or Class B Members. Currently, the Class A Members are NYSE MKT and NYSE Market, and the Class B Members are Citadel, Goldman Sachs, BAML, Citigroup, TD Ameritrade, UBS and Barclays. Generally, Class A Members and Class B Members are distinguishable in that Class A Members hold Class A Common Interests and Class B Members hold Class B Common Interests.<sup>3</sup> Although both classes of Common Interests entitle Members to some measure of voting and economic entitlements, the two classes of Common Interests are not fungible. In fact, a Member's voting and economic entitlements are determined by reference to both that Member's holdings of Common Interests and the aggregate economic and voting power of the Class A Members relative to the Class B Members. Prior to the Transaction, NYSE MKT owned an equity interest of 47.20% in the Company, while the Founding Firms collectively owned the remaining equity interest of 52.80%. Immediately following the Transaction, NYSE MKT owned an equity interest of 47.20% in the Company, NYSE Market owned an equity interest of 5.28%, and the Founding Firms collectively owned the remaining equity interest of 47.52%.

Because NYSE Market is an Affiliate of NYSE MKT, pursuant to Section 11.2(c) of the LLC Agreement, the Class B Common Interests transferred by the Founding Firms to NYSE Market automatically converted into Class A Common Interests upon their acquisition by NYSE

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<sup>3</sup> Common Interests consist of Class A Common Interests and Class B Common Interests.

Market. In connection with this transfer, NYSE Market became a Member of the Company holding Class A Common Interests representing an equity interest of 5.28% in the Company. As a Member, NYSE Market is bound by all of the provisions of the LLC Agreement (including Article XVI) and the Members Agreement. The Exchange proposes to amend the Members' Schedule as set forth in Exhibit 5-A attached hereto<sup>4</sup> (marked against Schedule A to the LLC Agreement) to reflect NYSE Market's membership and the concomitant reduction in the Interests held by the Founding Firms.

#### Issuance of Annual Incentive Shares

Pursuant to Section 2.1 of the Members Agreement, each year (until 2015, unless extended by the Board) the Company must issue a number of Class B Common Interests equal to thirty percent (30%) of the then-outstanding Class B Common Interests as Annual Incentive Shares. These Annual Incentive Shares are allocated among the Class B Members based on each Class B Member's contribution to the volume of the Exchange relative to such Class B Member's Individual Target. The Annual Incentive Shares may change the relative economic and voting rights among the Class B Members but have no affect on the relative economic and voting rights as between Class A Members and Class B Members.

On February 29, 2012, the Company issued 14.2560 Annual Incentive Shares in the aggregate to the Founding Firms (the "Issuance of Annual Incentive Shares"). Because each Founding Firm achieved or exceeded its Individual Target, the Issuance of Annual Incentive Shares did not result in any change to any Member's economic or voting interest in the Company. The Exchange proposes to amend the Members' Schedule as set forth in Exhibit 5-B

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<sup>4</sup> The Commission notes that the Exhibit 5 is attached to the filing, not to this Notice.

attached hereto<sup>5</sup> (marked against the Members' Schedule following the Transaction) to reflect the Issuance of Annual Incentive Shares.

### Founding Firm Transfer

Pursuant to Article XI of the LLC Agreement and Section 3.1 of the Members Agreement, a Member may transfer Interests to a third party or to another Member in accordance with the conditions and limitations set forth therein. The Exchange is filing this amendment, in part, to provide notice that all of the Founding Firms collectively intend to transfer an aggregate equity interest of 5.28% in the Company to NYSE Market (the "Founding Firm Transfer").

Upon consummation of the Founding Firm Transfer and the acquisition by NYSE Market of the Class B Common Interests transferred by the Founding Firms, such Class B Common Interests will automatically convert into an appropriate number of Class A Common Interests.

Immediately following the Founding Firm Transfer, NYSE MKT will own an equity interest of 47.20% in the Company, NYSE Market will own an equity interest of 10.56%, and the Founding Firms, collectively, will own the remaining equity interest of 42.24%. The Exchange proposes, upon consummation of the Founding Firm Transfer, to amend the Members' Schedule as set forth in Exhibit 5-C attached hereto<sup>6</sup> (marked against the Members' Schedule following the Issuance of Annual Incentive Shares) to reflect the Founding Firm Transfer.

### 2. Statutory Basis

The Proposed Rule Change is consistent with Section 6(b)<sup>7</sup> of the Securities Exchange Act,<sup>8</sup> as amended (the "Act"), in general, and furthers the objectives of Section 6(b)(1)<sup>9</sup> of the

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<sup>5</sup> See supra note 4.

<sup>6</sup> See supra note 4.

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

<sup>8</sup> 15 U.S.C. 78.

Act, which requires a national securities exchange to be so organized and have the capacity to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations promulgated thereunder and the rules of the Exchange. The Proposed Rule Change does not modify the Company's trading or compliance rules and preserves the existing mechanisms for ensuring the Exchange's and the Company's compliance with the Act, the rules and regulations promulgated thereunder and the rules of the Exchange. The proposed amendments do not change the structure of the joint venture which retains NYSE MKT's regulatory control over the Company or the provisions specifically designed to ensure the independence of its self-regulatory function and to ensure that any regulatory determinations by NYSE MKT, as the Company's SRO, are controlling with respect to the actions and decisions of the Company.

Additionally, the Proposed Rule Change continues to require the Company, its Members and its directors to comply with the federal securities laws and the rules and regulations promulgated thereunder and to engage in conduct that fosters and does not interfere with the Exchange's or the Company's ability to carry out its respective responsibilities under the Act.

The Proposed Rule Change is also consistent with, and furthers the objectives of Section 6(b)(5)<sup>10</sup> of the Act, in that it preserves all of NYSE MKT's existing rules and mechanisms 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, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

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<sup>9</sup> 15 U.S.C. 78f(b)(1).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

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 Act.

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 up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission will:

- A. by order approve or disapprove such 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEMKT-2012-23 on the subject line.



Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR- NYSEMKT-2012-23. This file number should be included on the subject line if e-mail 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 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, 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 publicly available. All submissions should refer

to File Number SR- NYSEMKT-2012-23 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.<sup>11</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).