

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-72680; File No. SR-NYSEMKT-2014-63)

July 28, 2014

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Rule Change Removing Building Access and Other Restrictions on Traders Conducting Certain Futures and Options Trading on ICE Futures U.S., Inc. in Space Rented from the Exchange

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 July 15, 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, 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 remove building access and other restrictions on traders conducting certain futures and options trading on ICE Futures U.S., Inc. (“IFUS”)<sup>4</sup> in space rented from the Exchange (the “IFUS Trading Floor”). 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, and at the Commission’s Public Reference Room.

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<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.

<sup>4</sup> IFUS is a Designated Contract Market pursuant to the Commodity Exchange Act, as amended, and is regulated by the U.S. Commodity Futures Trading Commission (“CFTC”).

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 remove the building access and other restrictions on the IFUS traders conducting certain futures and options trading on the IFUS Trading Floor, currently located in Exchange facilities at 20 Broad Street (the “IFUS Traders”).<sup>5</sup>

Background

On February 13, 2013, the Exchange filed a proposed rule change to relocate trading of certain futures and options contracts conducted on IFUS from rented space at the New York Mercantile Exchange (“NYMEX”) to trading space at 20 Broad Street, New York, New York, commonly known as the “Blue Room”, and to amend NYSE MKT Rule 6A - Equities, which

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<sup>5</sup> On November 13, 2013, pursuant to the Amended and Restated Agreement and Plan of Merger, dated as of March 19, 2013, by and among IntercontinentalExchange, Inc. (“ICE”), IntercontinentalExchange Group, Inc. (the “Company”), NYSE Euronext, Braves Merger Sub, Inc. (“Braves Merger Sub”) and NYSE Euronext Holdings LLC (formerly known as Baseball Merger Sub, LLC), Braves Merger Sub was merged with and into ICE and NYSE Euronext was merged with and into NYSE Euronext Holdings (the “Mergers”). As a result of the Mergers, NYSE Euronext and ICE are wholly-owned subsidiaries of the Company. NYSE Euronext owns 100% of the equity interest of NYSE Group, Inc., a Delaware corporation (“NYSE Group”), which in turn directly or indirectly owns, among other things, 100% of the equity interest of the Exchange. IFUS is a wholly-owned subsidiary of ICE.

defines the terms “Trading Floor” and “NYSE Amex Options Trading Floor” (the “Original Filing”).<sup>6</sup> The Original Filing stated that the IFUS Traders relocating to 20 Broad Street and their clerical employees<sup>7</sup> would only utilize the 18 Broad Street entrance to access the Blue Room<sup>8</sup> and, once inside, be prohibited from entering the Main Room, where most of the NYSE MKT and New York Stock Exchange LLC (“NYSE”) Equities Floor brokers and all NYSE MKT and NYSE Designated Market Makers (“DMMs”) are located, as well as the NYSE Amex Options trading floor. In addition, the Original Filing represented that the IFUS Traders would sit together in dedicated booth space approximately 40 feet long by 10 feet wide with privacy barriers consisting of eight foot walls on both sides except for the two gated and badge access entry and exit security doors at the front and back of the booth, which are four feet high. A compliance officer from IFUS Market Regulation is also present in the Blue Room performing on-site surveillance on a regular basis.

On June 3, 2013, the Exchange filed a proposed rule change to clarify that the IFUS Traders may, on an as needed basis and only prior to 7 a.m., access the Blue Room via the

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<sup>6</sup> See Securities Exchange Act Release Nos. 68997 (February 27, 2013), 78 FR 14378 (March 5, 2013) (SR-NYSEMKT-2013-13).

<sup>7</sup> Currently, there are 24 IFUS Traders and 13 clerical staff on the IFUS Trading Floor. At the time of the Original Filing, there were 40 IFUS Traders.

<sup>8</sup> Specifically, the IFUS Traders must use the 18 Broad Street entrance elevator and enter the Trading Floor using the turnstile nearest the Blue Room. The Exchange has been monitoring badge swipes at other locations to identify instances where the IFUS Traders utilize a different entrance and referring those findings to IFUS Compliance for appropriate action. Last year, there were approximately 22 instances in which individual IFUS Traders or their clerical staff used an entrance or turnstile other than 18 Broad entrance and turnstiles authorized for their use. However, IFUS Compliance found that all of these were inadvertent use of either of a wrong turnstile for the 18 Broad St. entrance, another entrance necessitated for use when gaining visitor access or when the 18 Broad St. entrance was temporarily inaccessible, or to access a bathroom, and therefore, chose not to take any disciplinary action.

Exchange's 11 Wall Street facilities, which would entail walking through the Main Room to access the Blue Room, and that the IFUS Traders may access the Blue Room via the Exchange's 11 Wall Street facilities on days that the Exchange is closed (the "Supplemental Filing").<sup>9</sup>

#### Proposed Rule Change

The Exchange now proposes to remove certain restrictions on the IFUS Traders set forth in the Original and Supplemental Filings. In particular, the Exchange proposes to eliminate the building access restrictions, which would allow the IFUS Traders to enter the Exchange's facilities from either the 11 Wall Street or 18 Broad Street entrances. The Exchange further proposes to eliminate the restriction on the IFUS Traders entering or crossing the Main Room in order to access the IFUS Trading Floor. Finally, the Exchange proposes to remove the gated and badge access entry and exit security doors at the front and back of the IFUS Traders' booth (the "Proposal").

The Exchange does not believe that removing the restrictions on the IFUS Traders entering or crossing the Main Room would provide the IFUS Traders with an unfair competitive advantage over other market participants. As set forth in the previous filings, IFUS trades its products exclusively on an electronic trading platform. Notwithstanding that there is still a physical IFUS Trading Floor, there is no open outcry trading on that floor. IFUS lists and trades futures and options on futures on cotton, frozen concentrated orange juice, coffee, sugar, cocoa, energy, foreign currencies, and certain Russell Indices<sup>10</sup> (the "IFUS Contracts"). The 24 IFUS

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<sup>9</sup> Certain of the IFUS Traders conduct business on foreign markets on Exchange holidays. See Securities Exchange Act Release Nos. 69764 (June 13, 2013), 78 FR 37259 (June 20, 2013) (SR-NYSEMKT-2013-49).

<sup>10</sup> These include the Russell 2000, Russell 1000, and Russell Value and Growth, all of which qualify as broad-based indices. The Exchange understands, however, that the IFUS Traders trade only a small volume of the Russell products and, of that small volume, most is in the Russell 2000 mini-contracts.

Traders (down from 40 last year)<sup>11</sup> utilize the IFUS Trading Floor as a place from which they may accept customer orders for IFUS Contracts by telephone or electronically and enter such orders electronically to the IFUS trading platform. IFUS Traders are prohibited by IFUS rules from orally discussing orders or transactions with each other while on the IFUS Trading Floor. Instead, communications between IFUS Traders on the IFUS Trading Floor must be made via instant message, email, or recorded telephone line. Order tickets are prepared and time-stamped for each customer order. IFUS Traders may also enter orders electronically for their own proprietary account. Four of the 24 IFUS Traders engage in proprietary-only trading, while the rest enter customer orders for execution and engage in proprietary trading on IFUS. While IFUS Traders effect transactions in all IFUS Contracts, they predominantly trade options on cotton futures.<sup>12</sup>

IFUS traders can only conduct trading in IFUS products from within IFUS Trading Floor space via terminals located in the IFUS Trading Floor; they do not have wireless hand-held devices. Accordingly, the IFUS Traders could not conduct any trading in futures from any other location, for example, at an equities trading post in the Main Room. In addition, none of the IFUS Traders are registered to trade any of the securities traded on the Exchange, nor does any have the capability to enter orders in Exchange-traded securities from the IFUS Trading Floor via the IFUS electronic trading system.

The Exchange further notes that there is a limited nexus between products that trade on IFUS and those that trade on the Exchange. The only IFUS Contracts that are related to Exchange-traded products are futures and options on futures on certain Russell indexes, all of

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<sup>11</sup> No IFUS Traders are members of the Exchange, NYSE or NYSE Amex Options.

<sup>12</sup> See Securities Exchange Act Release Nos. 68997 (February 27, 2013), 78 FR 14378 (March 5, 2013) (SR-NYSEMKT-2013-13).

which are broad-based indexes as defined in Section 3(a)(55)(C)(vi) of the Securities Exchange Act of 1934.<sup>13</sup> As the Commission previously found, a market participant's ability to manipulate the price of broad-based ETFs, Trust Issued Receipts or related options is limited.<sup>14</sup>

Moreover, given that IFUS Traders represent only a small proportion of IFUS's total trading volume, the Exchange does not believe IFUS Traders would be in possession of any non-public information that could be used by Exchange members to their advantage or to gain an unfair competitive advantage over other market participants. As noted in the previous filings, approximately 83% of IFUS's total daily contract volume is in IFUS energy contracts. The IFUS Traders transact less than 5% of the 17% of IFUS's average daily volume that is not related to energy contracts and a fraction of 1% of the total average daily IFUS volume (which includes the energy contracts transacted on IFUS). Further, pricing information about the products traded on the IFUS Trading Floor – cotton, frozen concentrated orange juice, coffee, sugar, cocoa, energy, broad-based equity indices and foreign currencies – is contemporaneously and publicly available on Bloomberg and other quotation reporting systems. To the extent there is any correlation between the price movements of the products traded on the IFUS Trading Floor and Exchange-listed companies with exposure to those commodity-based products, the Exchange notes that such information is publicly available and IFUS Traders are not in possession of any non-public information regarding pricing of such products that could be used improperly by the IFUS Traders or Exchange members.

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<sup>13</sup> 15 U.S.C. 78c(a)(55)(A). IFUS product offerings have historically been benchmark futures and options contracts relating to agricultural products, currencies, and broad-based market indexes. There are no plans to offer single stock futures on IFUS.

<sup>14</sup> See Exchange Act Release No. 46213 (July 16, 2002) (SR-Amex 2002-21).

Finally, the Exchange's experience with the IFUS Trading Floor the past year has not given the Exchange reason to believe that there is an increased likelihood of potentially collusive trading. To date, the Financial Industry Regulatory Authority, Inc. ("FINRA") has not identified any regulatory or other concerns about the IFUS Traders, identified suspicious activity or behavior, or identified instances where confidential order information was compromised or inappropriately used.

The Exchange further notes that important safeguards will remain in place. The IFUS Traders will continue to sit together in segregated booth space with privacy barriers to reduce the likelihood that trading screens can be viewed or conversations overheard between firms and traders. An IFUS Market Regulation compliance officer will continue to be present performing on-site surveillance on a regular basis. The Exchange's equities and options on-Floor surveillance staff will also continue to be located near the IFUS Trading Floor. Moreover, FINRA has been provided with the names of the IFUS Traders to assist in identifying any potentially violative trading involving the IFUS Traders.<sup>15</sup> The Exchange has reminded its members and member organizations to protect the confidentiality of nonpublic order and trade information, and that members and employees of member organizations should not engage in any trading, order or market related communications with the IFUS Traders or their clerical staff.<sup>16</sup>

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<sup>15</sup> Providing the names of the IFUS Traders to FINRA was for the purpose of regulatory information sharing. Neither the Exchange nor FINRA will be responsible for regulating or surveilling the IFUS Traders' activity, and the IFUS Traders are not subject to the Exchange's jurisdiction. Rather, the IFUS Traders will continue to be regulated by IFUS.

<sup>16</sup> See Member Education Bulletin 2013-5 (March 20, 2013), available at [http://www.nyse.com/nyse/education-bulletins/pdf.action?memo\\_id=2013-5](http://www.nyse.com/nyse/education-bulletins/pdf.action?memo_id=2013-5).

In short, based on the limited trading conducted by the IFUS Traders, the extremely negligible trading in related products, the experience with the IFUS Trading Floor during the past year and the significant controls that will remain in place, the Exchange does not believe that prescribing the manner in which the IFUS Traders enter the Exchange's facilities or prohibiting the IFUS Traders from entering or crossing the Main Room on the way to the IFUS Trading Floor serves a necessary regulatory purpose.

2. Statutory Basis

The Exchange believes that the Proposal is consistent with the provisions of Section 6 of the Act,<sup>17</sup> in general, and Section 6(b)(5) of the Act,<sup>18</sup> 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, and, in general, to protect investors and the public interest. The Exchange believes that the Proposal is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system because it would eliminate restrictions on the manner that IFUS Traders may access the IFUS Trading Floor that are not necessary for the protection of investors or the public interest given that the only securities related to IFUS Contracts are securities based on broad-based indexes.. The Exchange further believes that eliminating the building access and other restrictions will enable IFUS Traders to efficiently and effectively conduct business on the IFUS Trading Floor.

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

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<sup>17</sup> 15 U.S.C. 78f(b).

<sup>18</sup> 15 U.S.C. 78f(b)(4) and (5).

The Exchange does not believe that the Proposal will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposal is designed to promote competition by providing the Exchange additional flexibility to maximize the use of its trading floor space.

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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEMKT-2014-63 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-2014-63. 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 the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet website at [www.nyse.com](http://www.nyse.com). 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-2014-63 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>19</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>19</sup> 17 CFR 200.30-3(a)(12).