

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-76638; File No. SR-NYSEMKT-2015-106)

December 14, 2015

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Rule Change Amending the Seventh Amended and Restated Operating Agreement of the Exchange to Establish a Committee for Review as a Sub-Committee of the ROC and Make Conforming Changes to Rules and the NYSE MKT Company Guide

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 December 11, 2015, 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 (1) amending the Seventh Amended and Restated Operating Agreement of the Exchange (“Operating Agreement”) to establish a Committee for Review as a sub-committee of the ROC and make conforming changes to Rules 475, 476, 476A, 20 – Equities, 308 – Equities and Sections 1201, 1204, 1205, 1206, 1211, and 1212T of the NYSE MKT Company Guide (the “Company Guide”); (2) deleting references to “NYSE Regulation, Inc.” and “NYSE Regulation” in Section 4.05 of the Operating Agreement and Rules 0, 1 – Equities, 22 – Equities, 36 – Equities, 48 – Equities, 49 – Equities, 54 – Equities, 70 – Equities, 103 – Equities, 103A – Equities, 103B – Equities, 422 – Equities, 497 – Equities, and 902NY;

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

(3) replacing references to the Chief Executive Officer of NYSE Regulation, Inc. in Rules 48–Equities, 49 – Equities and 86 – Equities with references to the Chief Regulatory Officer of the Exchange; and (4) making certain technical and non-substantive changes. The text of 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 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 the following changes:

- amending the Operating Agreement to establish a Committee for Review (“CFR”) as a sub-committee of the ROC and make conforming changes to Rules 475, 476, 476A, 20 – Equities, 308 – Equities and Sections 1201, 1204, 1205, 1206, 1211, and 1212T of the Company Guide;
- deleting references to “NYSE Regulation, Inc.” and “NYSE Regulation”⁴

⁴ NYSE Regulation, Inc. (“NYSE Regulation”), a not-for-profit subsidiary of the Exchange’s affiliate New York Stock Exchange LLC (“NYSE”), performs regulatory functions for the Exchange pursuant to an intercompany Regulatory Services Agreement (“RSA”) that gives the Exchange the contractual right to review NYSE Regulation’s performance. See Securities Exchange Act Release No. 75991 (September 28, 2015), 80 FR 59837 (October 2, 2015) (SR-NYSE-2015-27) (“NYSE Approval Order”). As noted

in Section 4.05 of the Operating Agreement and Rules 0, 1 – Equities, 22 – Equities, 36 – Equities, 48 – Equities, 49 – Equities, 54 – Equities, 70 – Equities, 103 – Equities, 103A – Equities, 103B – Equities, 422 – Equities, 497 – Equities, and 902NY;

- replacing references to the Chief Executive Officer of NYSE Regulation, Inc. in Rules 48– Equities, 49 – Equities and 86 – Equities with references to the Chief Regulatory Officer of the Exchange; and
- making certain technical and non-substantive changes.

The Exchange proposes that the above rule changes would be operative simultaneously with the termination of the RSA. The Exchange would effect the changes described herein no later than June 30, 2016, on a date determined by its Board.

Amend Operating Agreement to Establish CFR as a Sub-Committee of the ROC

The Exchange proposes to establish a CFR as a sub-committee of the ROC by adding a new section (h)(iii) to Section 2.03 of the Operating Agreement and making conforming changes to Rules 475, 476, 476A, 20 – Equities, 308 – Equities and Sections 1201, 1204, 1205, 1206, 1211, and 1212T of the Company Guide.

The proposed CFR would be the successor to the current CFR,⁵ which is a committee of the NYSE Regulation board of directors that reviews appeals of Exchange disciplinary actions,

below, these proposed changes would be appropriate once the RSA terminates because NYSE Regulation would cease providing regulatory services to the Exchange, which would re-integrate its regulatory functions.

⁵ The current CFR was created in connection with the merger of the New York Stock Exchange, Inc. (now NYSE), with Archipelago Holdings, Inc. in 2006. See Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11251, 11259 (March 6, 2006) (SR-NYSE-2005-77). Proposed Section 2.03(h)(iii) of the Operating Agreement would incorporate the salient requirements of the current CFR as set forth in Article III, Section 5 of the NYSE Regulation Bylaws. See id. & 11266.

and the Committee on Securities, a committee of the Exchange board of directors that reviews determinations to limit or prohibit the continued listing of an issuer's securities on the Exchange. By establishing a new CFR, the Exchange proposes to make its appellate process more consistent with that of its affiliate NYSE, whose proposed rule change to establish a CFR as a subcommittee of its ROC has been approved by the SEC.⁶ The proposed CFR would incorporate the salient requirements of the current CFR, which was a model for the current proposal and for the CFR adopted by the Exchange's affiliate,⁷ and the Committee on Securities.

Section 2.03(h)(iii) of the Operating Agreement would provide that the Board shall annually appoint a CFR as a sub-committee of the ROC. As is currently the case, proposed Section 2.03(h)(iii) would provide that the CFR would be comprised of both Exchange directors that satisfy the independence requirements⁸ as well as persons who are not directors. Like the current CFR, the Exchange also proposes that a majority of the members of the CFR voting on a matter subject to a vote of the CFR must be directors of the Exchange.

Further, proposed Section 2.03(h)(iii) would provide that among the persons on the CFR who are not directors would be included representatives of member organizations that engage in a business involving substantial direct contact with securities customers (commonly referred to

⁶ See NYSE Approval Order, 80 FR at 59840.

⁷ The salient requirements of the NYSE Regulation CFR are set forth in Article III, Section 5 of the NYSE Regulation Bylaws. See Securities Exchange Act Release No. 53382, 71 FR 11251, 11259 & 11266 (February 27, 2006) (SR-NYSE-2005-77). See NYSE Approval Order, 80 FR at 59840.

⁸ The Exchange's independence requirements are set forth in the Independence Policy of the Board of Directors of the Exchange available at https://www.nyse.com/publicdocs/nyse/regulation/nyse-mkt/nyse_mkt_llc_independence_policy.pdf. Because the majority of the Exchange Board must be independent, as a functional matter if the Exchange has a five person Board, at least three of the five directors would qualify for CFR membership. See Operating Agreement Article II, Section 2.03(a).

as “upstairs firms”), Designated Market Makers (“DMM”) or specialists, and floor brokers.⁹

Once again, this is the way the current CFR is structured.¹⁰

Like the current CFR, proposed Section 2.03(h)(iii) would provide that the CFR would be

⁹ Market makers on the Exchange’s equity market are called DMMs and on NYSE Amex Options are called specialists. See Rule 2 – Equities (i) & (j) (defining DMM); Rule 927NY (defining specialist). The three proposed categories of CFR members mirror categories (1) through (3) in Article III, Section 5 of the NYSE Regulation Bylaws for the composition of the NYSE MKT CFR.

The Exchange does not propose to carry over the requirement that the CFR also have an individual representing the fourth category specified in Article III, Section 5 of the NYSE Regulation Bylaws, which is an individual associated with an NYSE MKT member organization that spends a majority of their time on the trading Floor and has as a substantial part of their business the execution of transactions on the trading Floor for their own account or the account of their member organization but is not registered as a specialist. This category describes a class of proprietary traders known as Registered Equity Market Makers (“REMM”) on the former American Stock Exchange LLC, a predecessor of the Exchange, and as Registered Competitive Market Makers (“RCMM”) on the NYSE.

REMMs, like RCMMs, were floor traders who engaged in on-floor proprietary trading, subject to certain requirements intended to have these members effectively function like market makers, pursuant to the exemption for market makers in Section 11(a)(1)(A) of the Exchange Act. See 17 CFR 240.11a1-5; Division of Market Regulation, United States Securities and Exchange Commission, Market 2000: An Examination of Current Equity Market Developments (January 1994) (“Market 2000”), at A V – 7, available at <https://www.sec.gov/divisions/marketreg/market2000.pdf>. The rules relating to this category of proprietary floor trader were not adopted when the American Stock Exchange LLC was acquired by the NYSE. See Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995, 58996 (October 8, 2008) (SR-Amex-2008-63). The NYSE eliminated RCMMs shortly thereafter. See Securities Exchange Act Release No. 60356 (July 21, 2009), 74 FR 37281 (July 28, 2009) (SR-NYSE-2009-08). In addition, NYSE MKT Rule 114, which governed REMMs, was deleted as obsolete in 2012. See Securities Exchange Act Release No. 68306 (November 28, 2012), 77 FR 71846 (December 4, 2012) (SR-NYSEMKT-2012-68). There are thus no Exchange members or member organizations that fall under the fourth category specified in Article III, Section 5 of the NYSE Regulation Bylaws. The only three active membership categories are upstairs firms, DMMs or specialists, and Floor brokers (applicable to both equities and options markets), and each would be represented on the proposed CFR.

¹⁰ The Exchange notes that Section (h)(i) of the Operating Agreement governing the Director Candidate Recommendation Committee (“DCRC”) utilizes the term “specialist” for both markets. See note 9, *supra*. The Exchange will be seeking approval from its board of directors to amend Section (h)(i) of the Operating Agreement to refer to “DMM or specialist,” which would conform it to proposed Section 2.03(h)(iii).

responsible for reviewing the disciplinary decisions on behalf of the Board.¹¹ Like the current Committee on Securities, the proposed CFR would review determinations to limit or prohibit the continued listing of an issuer's securities on the Exchange.¹²

In connection with creation of the proposed CFR, the Exchange also proposes to delete Rule 20, which provides that the Exchange establish a Market Performance Committee and that NYSE Regulation establish a Regulatory Advisory Committee to act in an advisory capacity regarding trading rules and disciplinary matters and regulatory rules other than trading rules, respectively. Historically, these advisory committees have been composed of persons associated with member organizations and representatives of both those member organizations doing business on the Exchange's trading floor and those who do not do business on the Floor.

The Exchange notes that the same categories of members would be represented on the proposed CFR, whose mandate as set forth in proposed Section 2.03(h)(iii) would include acting in an advisory capacity to the Board with respect to disciplinary matters, the listing and delisting of securities, regulatory programs, rulemaking and regulatory rules, including trading rules. The proposed CFR would therefore serve in the same advisory capacity as the Market Performance and Regulatory Advisory Committees. The Exchange accordingly believes that retaining the Market Performance Committee or Regulatory Advisory Committee would be redundant and

¹¹ Currently, these powers are set forth in the charter of the NYSE Regulation CFR. The charter for the NYSE Regulation CFR also states that the CFR may provide general advice to the NYSE Regulation board of directors in connection with disciplinary, listing and other regulatory matters. The Exchange proposes to state that the CFR can provide such general advice to the Exchange board and to delineate the appellate and advisory powers of the proposed CFR in Section 2.03(h)(iii) of the Operating Agreement. Further, as discussed below, the Exchange proposes to conform Rules 475, 476, 476A, 20 – Equities, 308 – Equities and Sections 1201, 1204, 1205, 1206, 1211, and 1212T of the Company Guide governing review of disciplinary and delisting appeals to the proposal.

¹² These powers are currently set forth in the charter of the Committee on Securities and reflected in Section 1205 of the Company Guide.

unnecessary. Moreover, the Exchange believes that member participation on the proposed CFR would be sufficient to provide for the fair representation of members in the administration of the affairs of the Exchange, including rulemaking and the disciplinary process, consistent with Section 6(b)(3) of the Exchange Act.¹³

Finally, the Exchange proposes to make conforming amendments to 475, 476, 476A and 308 – Equities and Sections 1201, 1204, 1205, 1206, 1211, and 1212T of the Company Guide to replace references to the current NYSE Regulation CFR¹⁴ and the current Committee on Securities, with references to the “Committee for Review.” Rule 476(f) would also be amended to provide that the CFR may, but is not required to, appoint an appeals panel to conduct a review thereunder and make a recommendation to the CFR regarding the disposition of the appeal. As proposed, appeals panels would have no other role in the appellate process. An appeals panel appointed by the CFR would consist of at least three and no more than five individuals. This is the same composition of appeals panels constituted under the rules of the Exchange’s affiliate NYSE Arca, Inc.¹⁵ An appeals panel appointed by the CFR for equity matters would be composed of at least one director and one member or individual associated with an equities member organization. An appeals panel appointed by the CFR for options matters would be composed of at least one director and one member or individual associated with an options member organization. The Exchange also proposes to describe the CFR as a subcommittee of the Exchange’s ROC in Sections 1205 and 1212T(g) of the Company Guide.

¹³ See 15 U.S.C. 78f(b)(3).

¹⁴ The current CFR is referred to in the Rules as the “committee of NYSE Regulation which is authorized to review disciplinary decisions on behalf of the Exchange Board of Directors and advise the Exchange Board of Directors thereon.” The term CFR is used in NYSE Regulation’s bylaws. See note 5, supra.

¹⁵ See NYSE Arca, Inc. Rule 3.3(a)(1)(B).

The Exchange believes that the proposed rule change is consistent with the approach approved for the Exchange's affiliate, NYSE.¹⁶ The proposed rule change is also consistent with the fair representation requirement of Section 6(b)(3) of the Exchange Act,¹⁷ which is intended to give members a voice in the selection of an exchange's directors and the administration of its affairs. In particular, as is the case with the current CFR, the proposed CFR would be composed of persons associated with Exchange members and selected after appropriate consultation with those members. The proposal would therefore continue to provide for the fair representation of members in the "administration of the affairs of the exchange", including the disciplinary process, consistent with Section 6(b)(3) of the Exchange Act.¹⁸

Deletion of References to NYSE Regulation, Inc.

In connection with the Exchange's termination of the intercompany RSA pursuant to which NYSE Regulation provides regulatory services to the Exchange,¹⁹ the Exchange proposes the following changes:

Operating Agreement

- The Exchange proposes to amend Section 4.05 of the Operating Agreement to remove references to "NYSE Regulation, Inc." and replace one reference with "Exchange regulatory staff." The Exchange also proposes to replace references to NYSE Regulation "assets" to reflect the proposed reintegration of the regulatory function. The crux of the provision would continue to require the Exchange to ensure that any fees,

¹⁶ See NYSE Approval Order, 80 FR at 59840.

¹⁷ See 15 U.S.C. 78f(b)(3).

¹⁸ See Securities Exchange Act Release No. 53382, 71 FR 11251 (February 27, 2006) (SR-NYSE-2005-77).

¹⁹ See note 4, *supra*.

finances or penalties collected by Exchange regulatory staff would not be used for commercial purposes or distributed to NYSE Group, Inc. (which is the “Member” for purposes of the Operating Agreement) or any other entity. The proposed revision does not in any way alter previous commitments with respect to the use of fine income;²⁰

General Rules

- The Exchange proposes to amend Rule 0 (Definitions of Terms), which describes the regulatory services agreement between the NYSE and FINRA, to remove references to “NYSE Regulation, Inc., NYSE Regulation staff or departments”, retaining the existing reference in Rule 0 to Exchange staff, which reference would encompass the Exchange’s regulatory staff.

Office Rules

- The Exchange proposes to amend Rule 476A (Imposition of Fines for Minor Violation(s) of Rules), which sets forth the Exchange’s Minor Rule Violation Plan, to replace the reference to “NYSE Regulation” with “Exchange regulatory staff” in subpart (d) identifying the parties that can contest a fine imposed under the Rule.

²⁰ See Securities Exchange Act Release No. 58673 (September 29, 2008), 73 FR 57707, 57717 (October 3, 2008) (SR-NYSE-2008-60 and SR-Amex-2008-62) (approving merger whereby the Exchange’s predecessor, the American Stock Exchange LLC, a subsidiary of The Amex Membership Corporation, became a subsidiary of NYSE Euronext). In particular, the Exchange reiterates its previous commitment, reflected in Section 4.05 of the Operating Agreement, that it would not use any regulatory fees, fines or penalties collected by NYSE Regulation for commercial purposes. See id. The Exchange also undertakes, consistent with the commitment made by its affiliate NYSE and as reflected by the proposed language to Section 4.05 of the Operating Agreement, not to distribute such assets, fees, fines or penalties to the member or any other entity.

Equities Rules

- The Exchange proposes to amend Rule 1 – Equities, which defines the term the “Exchange”, to replace references to “officer of NYSE” and “employee of NYSE” with “Exchange officer” and “Exchange employee”, respectively. The Exchange also proposes to delete the definitions of NYSE Market, Inc.²¹ and NYSE Regulation as well as the references to NYSE Regulation’s market surveillance division.
- The Exchange proposes to amend Rule 22 – Equities (Disqualification Because of Personal Interest), which disqualifies members of certain Exchange boards and committees from considering a matter if there are certain types of indebtedness between the board or committee member and a member organization’s affiliate or other related parties, to remove references to the “NYSE Regulation” board of directors.
- The Exchange proposes to amend Supplementary Material .30 of Rule 36 – Equities (Communications Between Exchange and Members’ Offices), which governs communications between the Exchange and member offices and requires records to “be maintained in the format prescribed by NYSE Regulation” to remove the reference to “NYSE Regulation” and replace it with “the Exchange.”
- The Exchange proposes to amend Supplementary Material .10 of Rule 46 – Equities (Floor Officials—Appointment) to replace the reference to

²¹ NYSE Market (DE) was formerly known as “NYSE Market, Inc.” Accordingly, references to “NYSE Market” in the Exchange Rules are references to NYSE Market (DE).

“employees of NYSE Regulation, Inc.” with a reference to “Exchange regulatory employees.”

- The Exchange proposes to amend Rule 48 – Equities (Exemptive Relief — Extreme Market Volatility Condition), which sets forth the procedures for invoking an extreme market volatility condition, to replace the reference to “officers of NYSE Market and NYSE Regulation” with “Exchange regulatory and market operational employees that are officers of the Exchange.”
- The Exchange proposes to amend Rule 49 – Equities (Emergency Powers), which addresses the Exchange’s emergency powers, to replace “NYSE Regulation, Inc.” with “the Exchange” in the definition of “qualified Exchange officer.” The Exchange also proposes to replace the outdated reference to “NYSE Euronext” with “ICE.”
- The Exchange proposes to amend subpart (b) of Rule 54 – Equities (Dealings on Floor—Persons) to replace “NYSE Regulation, Inc. (“NYSER”)” with “Exchange regulatory staff.” Rule 54(b) – Equities permits approval of appropriately registered and supervised booth staff of member organizations who are not “members” to process orders sent to the booth in the same manner that a sales trader in an “upstairs office” is allowed to process orders.
- The Exchange proposes to amend the title and subparts (1) & (7) of Supplementary Material .40 of Rule 70 – Equities (Execution of Floor Broker Interest), which provides that a member organization will be

permitted to operate a booth premise similar to the member organization's "upstairs" office, to refer to "Exchange regulatory staff" instead of "NYSE Regulation, Inc. ("NYSER")" and "NYSER."

- The Exchange proposes to amend Rule 103 – Equities (Registration and Capital Requirements of DMMs and DMM Units), which governs registration and capital requirements for DMMs, to refer to "the Exchange" instead of "NYSE Regulation" and "Divisions of Market Surveillance and Member Firm Regulation."
- The Exchange proposes to amend Rule 103A – Equities (Member Education), which governs the continuing education requirement for members active on the Exchange trading Floor, to replace "NYSE Regulation, Inc." with "the Exchange."
- The Exchange proposes to amend Rule 103B – Equities (Security Allocation and Reallocation), which governs the security allocation and reallocation process, to replace "staff of NYSE Regulation" with "Exchange regulatory" staff in Policy Note (G) and to replace "NYSE Regulation, Inc. ("NYSER")" and "NYSER" in Supplementary Material .10 with "Exchange regulatory staff" and "the Exchange", as appropriate.
- The Exchange proposes to amend Rule 422 – Equities (Loans of and to Directors, etc.), which prohibits unsecured loans between members of the board of directors or any committee of ICE, ICE Holdings, NYSE Holdings, the NYSE, NYSE Market, the Exchange and NYSE Regulation or an officer or employee the foregoing without the prior consent of the

NYSE Board, to remove references to “NYSE Regulation.”

- The Exchange proposes to amend Rule 497 – Equities (Additional Requirements for Listed Securities Issued by Intercontinental Exchange, Inc. or its Affiliates), which imposes certain pre-listing approvals and post-listing monitoring requirements on Affiliated Securities (as defined therein) listed on the Exchange, to remove the definition of NYSE Market in Rule 497(a)(4) and the definition of NYSE Regulation in Rule 497(a)(5) and replace references to each with “Exchange regulatory staff” or “the Exchange.”

Trading of Options Contracts Rules

- The Exchange proposes to amend Rule 902NY, governing admission and conduct on the Exchange options Trading Floor, to remove the reference to an Officer of “NYSE Regulation.”

Amendments to Rules 48 – Equities, 49 – Equities, and 86 – Equities

The Exchange also proposes to amend Rule 48 – Equities (Exemptive Relief — Extreme Market Volatility Condition), Rule 49 – Equities (Emergency Powers) and Rule 86 – Equities (NYSE Bonds) to replace references to the Chief Executive Officer of NYSE Regulation with references to the CRO of the Exchange.

Rule 48 – Equities currently provides that, for purposes of the rule,²² a “qualified

²² Rule 48 – Equities provides that the Exchange can invoke an extreme market volatility condition at the open (or reopen of trading following a market-wide halt of securities) during which time the Exchange can suspend Rules 15 – Equities and 123D(1) – Equities regarding obtaining certain prior Floor Official approvals and requirements for mandatory indications.

Exchange officer” means the NYSE Euronext Chief Executive Officer,²³ or his or her designee, or the Chief Executive Officer of NYSE Regulation, Inc., or his or her designee. Rule 49 – Equities addresses the Exchange’s emergency powers and defines the term “qualified Exchange officer” as, inter alia, the “NYSE Regulation, Inc. Chief Executive Officer” or his or her designee. Rule 86 – Equities currently provides that Clearly Erroneous Execution panels in connection with trades on NYSE MKT Bonds²⁴ be comprised of the Chief Executive Officer of NYSE Regulation or a designee and representatives from two members or member organizations that are users of NYSE Bonds.

“Chief Executive Officer” of NYSE Regulation is used in these four rules but CRO is used throughout the Exchange’s rules to designate the same position.²⁵ In particular, CRO is used in Rule 128 – Equities (Clearly Erroneous Executions for NYSE Equities) to designate the individual who can participate or designate participants on a CEE panel. CRO is also used to identify the participant in various panels adjudicating Exchange decisions affecting member organizations, including panels convoked under Rule 13 – Equities (Orders and Modifiers) for member organizations to dispute an Exchange decision to disqualify it from submitting “retail” orders; Rule 107B – Equities (Supplemental Liquidity Providers) for member organizations to dispute a determination by the Supplemental Liquidity Provider Liaison Committee to impose a non-regulatory penalty under the Rule; and Rule 107C – Equities (Retail Liquidity Program) for

²³ The Exchange also proposes to replace this outdated reference to “NYSE Euronext” with “ICE.”

²⁴ NYSE MKT Bonds is the Exchange’s electronic bond trading platform. Rule 86 – Equities prescribes what bonds are eligible to trade on the NYSE Bonds platform and how bonds are traded on the platform, including the receipt, execution and reporting of bond transactions.

²⁵ See, e.g., Rules 1– Equities, 13– Equities, 107B– Equities, 107C– Equities, and 128– Equities.

member organizations to dispute an Exchange decision to disapprove or disqualify it from the participating in the Retail Liquidity Program. Accordingly, the Exchange proposes to replace references to “Chief Executive Officer” of NYSE Regulation in Rules 48 – Equities, 49 – Equities and 86 – Equities with either the term “Chief Regulatory Officer” or “CRO”, as appropriate.

Technical and Conforming Changes

The Exchange proposes the following technical and conforming changes.

Equities Rules

Rule 1– Equities, which defines the term the “Exchange”, would be amended to replace single quotation marks with double quotation marks in the heading and the first paragraph.

Rules 48 – Equities, which sets forth the procedures for invoking an extreme market volatility condition, would be amended to replace single quotation marks with double quotation marks around the term “qualified Exchange officer.”

Rule 103B – Equities, which governs the security allocation and reallocation process, would be amended to replace single quotation marks with double quotation marks around the term “Allocation Prohibition” and to remove the comma from “New York Stock Exchange, LLC.”

Company Guide

Section 350 of the Company Guide provides that a company no longer intending to issue all or some securities for listing should cancel the listing authority by notifying the Exchange by letter, and provides a sample letter for use by listed companies. The Exchange proposes to update the sample letter by changing the addressee from “Office of General Counsel” to “Legal Department”, updating the address to “11 Wall Street”, and the salutation from “Dear Sirs” to

“Ladies and Gentlemen.” Similarly, the Exchange proposes to make conforming changes in Sections 1204, 1205, 1206 and 1212T to replace references to the “Office of General Counsel” with “Legal Department.”

The Exchange also proposes to amend Section 1212T(c) to replace the outdated reference to “American Stock Exchange” with “Exchange.”

Finally, the Exchange proposes to update the Listing Forms Appendix to update the address from “30 Broad” to “11 Wall” Street.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act²⁶ in general, and with Section 6(b)(1)²⁷ 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.

The proposal to amend the Exchange’s Operating Agreement to establish a CFR as a sub-committee of the recently approved ROC, which, among other things, would be charged with hearing appeals of disciplinary determinations, complies with the Exchange Act’s requirement to provide for a fair procedure for the disciplining of member and persons associated with members. The Exchange’s ROC [sic] is composed of both Exchange directors that satisfy the independence requirements (i.e., any Exchange director, other than the chief executive officer) as well as persons who are not directors. The Exchange accordingly proposes that a majority of the members of the CFR voting on a matter subject to a vote of the CFR must be directors of the

²⁶ 15 U.S.C. 78f(b).

²⁷ 15 U.S.C. 78f(b)(1).

Exchange.

Further, the proposed CFR would include among the members who are not directors representatives of member organizations that engage in a business involving substantial direct contact with securities customers (upstairs firms), DMMS, and floor brokers. Accordingly, the Exchange believes the proposed creation of a ROC [sic] is consistent with Section 6(b)(7) of the Exchange Act,²⁸ which, among other things, requires that the rules of a national securities exchange provide a fair procedure for the disciplining of members and persons associated with members.

The Exchange also believes that not having the fourth category of proprietary floor-based traders in the proposed CFR would remove references to obsolete categories in the Exchange's rules, thereby reducing potential confusion.

Further, the Exchange believes that permitting but not requiring the CFR to appoint an appeals panel composed of at least three and no more than five individuals to conduct a review and make a recommendation to the CFR regarding the disposition of an appeal is consistent with Section 6(b)(7) of the Exchange Act. An appeals panel appointed by the CFR would be composed of at least one director and one member or individual associated with an equities or options member organization, as appropriate. The Exchange believes that the role of the appeals panel, including that the CFR would retain authority to determine the disposition of appeals, would ensure that the Exchange's rules provide a fair procedure for the disciplining of members and persons associated with members. In addition, for the reasons stated below, the Exchange believes that participation on the proposed CFR and appeals panels of members and persons associated with members would be sufficient to provide for the fair representation of members in

²⁸ See 15 U.S.C. 78f(b)(7).

the administration of the affairs of the Exchange, including rulemaking and the disciplinary process, consistent with Section 6(b)(3) of the Exchange Act.

The Exchange believes that this filing furthers the objectives of Section 6(b)(5) of the Exchange Act²⁹ 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 investors and the public interest. As discussed above, the Exchange believes that having the CFR serve in the advisory capacity of the Market Performance Committee and Regulatory Advisory Committee is consistent with and facilitates a governance and regulatory structure that furthers the objectives of Section 6(b)(5) of the Exchange Act. The Exchange believes that member participation on the proposed CFR and appeals panels would be sufficient to provide for the fair representation of members in the administration of the affairs of the Exchange, including rulemaking and the disciplinary process, consistent with Section 6(b)(3) of the Exchange Act.

The Exchange believes that eliminating references to “Chief Executive Officer” of NYSE Regulation in Rules 48 – Equities, 49 – Equities, and 86 – Equities and replacing them with CRO, which is used throughout the Exchange’s rules, removes impediments to and perfects a national market system because it would reduce potential confusion that may result from retaining different designations for the same individual in the Exchange’s rulebook. Removing potentially confusing conflicting designations would also further the goal of transparency and

²⁹ 15 U.S.C. 78f(b)(5).

add consistency to the Exchange's rules.

Finally, making conforming amendments to Rules 475, 476, 476A, 20 – Equities, 308 – Equities and Sections 1201, 1204, 1205, 1206, 1211, and 1212T of the Company Guide in connection with creation of the proposed CFR removes impediments to and perfects the mechanism of a free and open market by removing confusion that may result from having obsolete references in the Exchange's rulebook. deleting references to "NYSE Regulation, Inc." and "NYSE Regulation" in Section 4.05 of the Operating Agreement and Rules 0, 1 – Equities, 22 – Equities, 36 – Equities, 48 – Equities, 49 – Equities, 54 – Equities, 70 – Equities, 103 – Equities, 103A – Equities, 103B – Equities, 422 – Equities, 497 – Equities, and 902NY removes impediments to and perfects the mechanism of a free and open market by removing confusion that may result from having obsolete references in the Exchange's rulebook. The Exchange further believes that the proposal removes impediments to and perfects the mechanism of a free and open market by ensuring that persons subject to the Exchange's jurisdiction, regulators, and the investing public can more easily navigate and understand the Exchange's rulebook. The Exchange believes that eliminating obsolete references would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased transparency, thereby reducing potential confusion. Removing such obsolete references will also further the goal of transparency and add clarity to the Exchange's rules.

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 the administration and functioning of the Exchange and its board of directors.

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 up to 90 days (i) as the Commission may designate 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. Please include File Number SR-NYSEMKT-2015-106 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-2015-106. 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. 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-2015-106 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.³⁰

Robert W. Errett
Deputy Secretary

³⁰ 17 CFR 200.30-3(a)(12).