

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-76996; File No. SR-NYSEMKT-2016-12)

January 28, 2016

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Rule Change Amending the NYSE MKT Company Guide to Create a New Section 146 Under Which a Certain Category of Newly Listed Issuers Would Be Entitled to Receive Complimentary Products and Services from the Exchange

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 January 14, 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, 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 NYSE MKT Company Guide (the “Company Guide”) to create a new Section 146 under which a certain category of newly listed issuers would be entitled to receive complimentary products and services from the Exchange. 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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 Company Guide to create a new Section 146 under which a certain category of newly listed issuers would be entitled to receive complimentary products and services from the Exchange. The Exchange proposes to offer such complimentary products and services for a period of 24 calendar months from the date of initial listing to (i) any U.S. company that lists common stock on the Exchange for the first time and any non-U.S. company that lists an equity security⁴ on the Exchange under Section 101 or 110 of the Company Guide for the first time, regardless of whether such U.S. or non-U.S. company conducts an offering, (ii) any U.S. or non-U.S. company that transfers its listing of common stock or equity securities, respectively, to the Exchange from another national securities exchange or (iii) any U.S. or non-U.S. company emerging from a bankruptcy, spinoff (where a company lists new shares in the absence of a public offering), and carve-out (where a company carves out a business line or division, which then conducts a separate initial public offering) (each, an "Eligible New Listing").

Historically, the Exchange has served as an alternative listing venue to the New York Stock Exchange (the "NYSE") for small capitalization companies unable to meet the NYSE's heightened initial listing standards. In this respect, the Exchange regularly competes with the

⁴ For purposes of the proposed rule, "equity securities" means common stock or common share equivalents such as ordinary shares, New York shares, global shares, American Depository Receipts, or Global Depository Receipts.

Nasdaq Capital Market tier of the Nasdaq Stock Market and, in some cases, with the Nasdaq Global Market tier of the Nasdaq Stock Market. Like the Exchange, Nasdaq Capital Market and Nasdaq Global Market each have initial listing standards that can more readily accommodate small capitalization companies than the NYSE. The Exchange hopes in the future to compete for new listings to a greater degree with the Nasdaq Global Market. One way that the exchanges compete with each other is to offer companies services that aid their transition to being public or listed on a new exchange. For example, the Nasdaq Global Market currently offers newly listed companies the following services for a period of 24 calendar months following their listing: whistleblower hotline, investor relations website, press releases, interactive webcasting and market analytic tools.⁵ The total retail value of these services is approximately \$70,000 per year.

To enable it to compete for listings with the Nasdaq Global Market, the Exchange proposes to offer Eligible New Listings Web-hosting products and services (with a commercial value of approximately \$16,000 annually), web-casting services (with a commercial value of approximately \$6,500 annually), whistleblower hotline services (with a commercial value of approximately \$4,000 annually), news distribution products and services (with a commercial value of approximately \$20,000 annually) and corporate governance tools (with a commercial value of approximately \$15,000 annually) for a period of 24 calendar months from the date of initial listing on the Exchange.

The Exchange believes that each of the services it proposes to offer to Eligible New Listings on the Exchange may be valuable to companies that are listing publicly for the first time or transferring their listing to the Exchange. Web-hosting products and services assist Eligible New Listings in engaging with their shareholders by providing them with a website that contains

⁵ See Nasdaq Stock Market Rule IM-5900-7(b).

business content that can be viewed by investors. Similarly, web-casting services are an important tool utilized by listed companies to communicate with shareholders in connection with their quarterly earnings release process. A whistleblower hotline assists Eligible New Listings in complying with, among other things, the requirements of the Sarbanes-Oxley Act, Foreign Corrupt Practices Act and UK Bribery Act. News distribution products and services assist Eligible New Listings in complying with Exchange disclosure requirements. Lastly, corporate governance tools will help educate the board of directors of each Eligible New Listing about corporate governance best practices.

The Exchange proposes to codify in the new Section 146 of the Company Guide that all companies listed on the Exchange are entitled to certain complimentary products and services via the Exchange's Market Access Center. The Market Access Center is a market information analytics platform that is a combination of technology-enabled market intelligence insight and a team of highly skilled market professionals. The platform was created to provide issuers with better market insight and information across all exchanges and trading venues. The Market Access Center includes products and services that were (i) developed by the Exchange using proprietary data and/or intellectual property or (ii) built by a third-party expressly for the Exchange's listed companies. Within this platform all issuers have access to tools and information related to market intelligence, education, investor outreach, media visibility, corporate governance, and advocacy initiatives. For example, the Market Access Center offers daily trading summaries; a trading alert system highlighting user-defined trading or market events; a website featuring timely content for Exchange-listed senior executives featuring trading information, market data, and institutional ownership. All issuers listed on the Exchange have access to the Exchange's Market Access Center on the same basis. The products and

services currently available through the Exchange’s Market Access Center have a commercial value of approximately \$50,000.

The specific tools and services offered by the products discussed herein will be developed by the Exchange or by third-party vendors. NYSE Governance Services⁶ will offer and develop the corporate governance tools discussed herein, but will not provide any other service discussed herein. NYSE Governance Services is an entity that is owned by the Exchange’s parent company and is a leading provider of corporate governance, risk and compliance services to a diverse set of customers, including, among others, companies listed on the Exchange. Companies that are offered these products are under no obligation to accept them and a company’s listing on the Exchange is not conditioned upon acceptance of any product or service. The Exchange notes that, from time to time, companies elect to purchase products and services from other vendors at their own expense rather than accepting comparable products and services offered by the Exchange.

The Exchange believes that companies listing on the Exchange for the first time often require a period of time after listing to complete the contracting and training process with vendors providing the complimentary products and services. Therefore, many companies are not

⁶ The Exchange believes that NYSE Governance Services is not a “facility” of the Exchange. 15 U.S.C. 78c(a)(2). The Act defines “facility” to include an exchange’s “premises, tangible or intangible property whether on the premises or not, any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system or communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange), and any right of the exchange to the use of any property or service.” NYSE Governance Services is a distinct entity that is separate from the Exchange and engages in a discrete line of business that is not “for the purpose of effecting or reporting a transaction” on an exchange. While this proposal is being filed with the Commission under Section 19(b)(2) of the Act because it relates to services offered in connection with a listing on the Exchange, the Exchange does not believe it is required to file NYSE Governance Services’ price schedule or changes that do not relate to services offered in connection with a listing on the Exchange.

able to begin using the suite of products offered to them immediately on the date of listing. To address this issue, the Exchange proposes to specify in Section 146 that if an Eligible New Listing begins using a particular service within 30 days after the date of listing, the complimentary period begins on such date of first use. In all other instances, the complimentary period will begin on the listing date.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Sections 6(b)(4)⁸ of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(5)⁹ of the Act in that it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that it is reasonable to offer complimentary products and services to attract new listings and respond to competitive pressures. The Exchange faces competition in the market for listing services and it competes, in part, by improving the quality of the services that it offers to listed companies. By offering products and services on a complimentary basis and ensuring that it is offering the services most valued by its listed issuers, the Exchange will improve the quality of the services that listed companies receive.

The Exchange believes it is appropriate to offer a package of complimentary products and services to Eligible New Listings because such services will ease the transition of companies that are becoming public for the first time or transferring their listing to a new exchange.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4).

⁹ 15 U.S.C. 78f(b)(5).

Further, Nasdaq offers a comparable suite of complimentary products and services to new listings and transfers and the proposed rule change will enable the Exchange to more effectively compete for listings.

Allowing companies up to 30 days after their listing to start using the complimentary products and services is a reflection of the Exchange's experience that it can take companies a period of time to review and complete necessary contracts and training for services following their listing. Allowing this modest 30 day period, if the company needs it, helps ensure that the company will have the benefit of the full period permitted under the rule to actually use the services, thus giving companies the full intended benefit.

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. The proposed rule change enables the Exchange to compete for listings by offering Eligible New Listings a package of complimentary products and services that assist their transition to being publicly listed for the first time or transferring their listing to the Exchange. All similarly situated companies are eligible for the same package of services. Further, the Exchange notes that the Nasdaq Global Market already offers a similar suite of complimentary products and services to companies initially listing or transferring their listing from the New York Stock Exchange to its market. Therefore, the proposed creation of Section 146 of the Company Guide will increase competition by enabling the Exchange to more effectively compete for listings.

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-2016-12 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-2016-12. 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 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-2016-12 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.¹⁰

Robert W. Errett
Deputy Secretary

¹⁰ 17 CFR 200.30-3(a)(12).