

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-73095; File No. SR-NYSEMKT-2014-63)

September 15, 2014

Self-Regulatory Organizations; NYSE MKT LLC; Order Approving 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

On July 15, 2014, NYSE MKT LLC (the “Exchange” or “NYSE MKT”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> filed with the Securities and Exchange Commission (the “Commission”) a proposed rule change to removing building access and other restrictions on traders conducting certain futures and options trading on ICE Futures U.S., Inc. The proposed rule change was published for public comment in the Federal Register on August 1, 2014.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

I. Background and Introduction

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”).

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

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

<sup>3</sup> Securities Exchange Act Release No. 72680 (July 28, 2014), 79 FR 44953.

<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”).

## 1. 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 defines the terms “Trading Floor” and “NYSE Amex Options Trading Floor” (the “Original Filing”).<sup>5</sup> The Original Filing stated that the IFUS Traders relocating to 20 Broad Street and their clerical employees<sup>6</sup> would only utilize the 18 Broad Street entrance to access the Blue Room<sup>7</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

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<sup>5</sup> See Securities Exchange Act Release Nos. 68997 (February 27, 2013), 78 FR 17982 (March 5, 2013) (SR-NYSEMKT-2013-13).

<sup>6</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>7</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.

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 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>8</sup>

## 2. Proposed Rule Change

The Exchange is proposing to: (i) 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; (ii) eliminate the restriction on the IFUS Traders entering or crossing the Main Room in order to access the IFUS Trading Floor; and (iii) 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 states that it does not believe that removing the restrictions on the IFUS Traders would provide the IFUS Traders with an unfair competitive advantage over other market participants. The Exchange states that it believes removing certain restrictions on the IFUS Traders entering or crossing the Main Room is appropriate, in

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<sup>8</sup> Certain of the IFUS Traders conduct business on foreign markets on Exchange holidays. See Securities Exchange Act Release No. 69764 (June 13, 2013), 78 FR 37259 (June 20, 2013) (SR-NYSEMKT-2013-49).

part, because IFUS is purely an electronic trading market. Although there is a physical IFUS Trading Floor, the Exchange notes that there is no open outcry trading. IFUS Traders may accept customer orders for IFUS contracts by telephone or electronically and enter such orders electronically to the IFUS trading platform. However, IFUS Traders are prohibited by IFUS rules from orally discussing orders or transactions with each other while on the IFUS Trading Floor and communications between IFUS Traders on the IFUS Trading Floor must be made via instant message, email, or recorded telephone line. In addition, order tickets are prepared and time-stamped for each customer order. IFUS Traders may also enter orders electronically for their own proprietary account. There are 24 IFUS Traders,<sup>9</sup> and 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. 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”), but effects transactions primarily on options on cotton futures.<sup>11</sup>

The Exchange also notes that IFUS traders do not have wireless hand-held devices and can only conduct trading in IFUS products via terminals located on the IFUS Trading Floor. In addition, none of the IFUS Traders are registered to trade any of the

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<sup>9</sup> There were 40 IFUS Traders last year and no IFUS Traders are members of the Exchange, NYSE or Amex Options.

<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 states, 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.

<sup>11</sup> See Securities Exchange Act Release No. 68997 (February 27, 2013), 78 FR 14378 (March 5, 2013) (SR-NYSEMKT-2013-13).

securities traded on the Exchange, nor have the capability to enter orders in Exchange-traded securities from the IFUS Trading Floor via the IFUS electronic trading system.

The Exchange represents that there is a limited nexus between products that trade on IFUS and those that trade on the Exchange and that the only IFUS Contracts related to Exchange-traded products are futures and options on futures on certain Russell indexes, all of which are broad-based indexes as defined in Section 3(a)(55)(C)(vi) of the Securities Exchange Act of 1934 and that market participants ability to manipulate these are limited.<sup>12</sup> The Exchange further notes that pricing information about the products traded on the IFUS Trading Floor is contemporaneously and publicly available on Bloomberg and other quotation reporting systems. Thus, 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 believes 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. The Exchange represents that IFUS Traders represent only a small proportion of IFUS's total trading volume.<sup>13</sup>

The Exchange represents that Financial Industry Regulatory Authority, Inc. ("FINRA") is provided with the names of the IFUS Traders to assist in identifying any

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<sup>12</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>13</sup> As noted in the Original Filing, 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).

potentially violative trading<sup>14</sup> and that, to date, 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 represents that the following important safeguards will remain in place: (i) IFUS Traders sitting 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; (ii) IFUS Market Regulation compliance officer performing on-site surveillance on a regular basis; and (iii) Exchange's equities and options on-Floor surveillance staff being located near the IFUS Trading Floor. Finally, the Exchange represents that its members and member organizations have been notified of their responsibility to protect the confidentiality of nonpublic order and trade information, and to not engage in any trading, order or market related communications with the IFUS Traders or their clerical staff.<sup>15</sup>

### III. Commission Findings

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder

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<sup>14</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>15</sup> See Member Education Bulletin 2013-5 (March 20, 2013), available at [http://www.nyse.com/nysenotices/nyse/education-bulletins/pdf.action?memo\\_id=2013-5](http://www.nyse.com/nysenotices/nyse/education-bulletins/pdf.action?memo_id=2013-5).

applicable to a national securities exchange.<sup>16</sup> The Commission believes that the proposal is consistent with Section 6(b)(5)<sup>17</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, 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.

According to the Exchange, safeguards will remain in place to protect against IFUS Traders gaining an unfair competitive advantage over other market participants. The Exchange emphasizes that IFUS traders do not have wireless hand-held devices, are restricted to trading IFUS products at terminals located in the IFUS Trading Floor, and that IFUS Market Regulation compliance officers perform on-site surveillance on a regular basis. In addition, no IFUS Traders are registered to trade any Exchange securities, and they do not have the ability to enter orders in Exchange-traded securities from the IFUS Trading Floor via the IFUS electronic trading system. The Exchange also notes that there is a limited pricing nexus between products traded on IFUS, and that pricing information about the products traded on the IFUS Trading Floor is contemporaneously and publicly available on Bloomberg and other quotation reporting systems. Finally, the Exchange notes that equities and options on-Floor surveillance staff will continue to be located near the IFUS Trading Floor and FINRA has been provided

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<sup>16</sup> In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>17</sup> 15 U.S.C. 78f(b)(5).

with the names of the IFUS Traders to assist in identifying any potentially violative trading involving the IFUS Traders.

Based on the foregoing, the Commission believes the proposed rule change to eliminate the restrictions on the manner in which the IFUS Traders enter the Exchange's facilities and the prohibition on IFUS Traders from entering or crossing the Main Room on the way to the IFUS Trading Floor is consistent with the Act.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-NYSEMKT-2014-63), is hereby approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>18</sup> 17 CFR 200.30-3(a)(12).