

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-78586; File No. SR-NYSEMKT-2016-62)

August 16, 2016

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Rule Change Amending Section 146 of the NYSE MKT Company Guide to Adjust the Entitlement to Services of Special Purpose Acquisition Companies

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 August 2, 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 Section 146 of the NYSE MKT Company Guide (the “Company Guide”) to adjust the entitlement to services of special purpose acquisition companies. 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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 amend Section 146 of the Company Guide to adjust the service entitlements of special purpose acquisition companies (“SPACs”) under that rule.

The Exchange offers complimentary products and services for a period of 24 calendar months from the date of initial listing to a category of listed companies defined as Eligible New Listings. Eligible New Listings include: (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 security 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).

Eligible New Listings are entitled to receive 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. Notwithstanding the foregoing, however, if an Eligible New Listing begins to use a particular product or service provided for under Section 146 within 30 days of its initial listing date, the complimentary period will begin on the date of first use.

A SPAC is a special purpose company formed for the purpose of effecting a merger, capital stock exchange, asset acquisition, stock purchase, reorganization or similar business combination with one or more operating businesses or assets. To qualify for initial listing a SPAC must meet one of the quantitative standards in Section 101 or 102 and also the SPAC-specific requirements of Section 119. At least 90% of the gross proceeds from the SPAC's initial public offering and any concurrent sale by the company of equity securities must be deposited in a trust account maintained by an independent trustee, an escrow account maintained by an "insured depository institution", as that term is defined in Section 3(c)(2) of the Federal Deposit Insurance Act, or in a separate bank account established by a registered broker or dealer (collectively, a "deposit account"). Under Section 119(b), within 36 months of the effectiveness of a SPAC's initial public offering registration statement, or such shorter period that the company specifies in its registration statement, the company must complete one or more business combinations having an aggregate fair market value of at least 80% of the value of the deposit account (excluding any deferred underwriter's fees and taxes payable on the income earned on the deposit account) at the time of the agreement to enter into the initial combination (the "Business Combination Condition").

The Exchange now proposes to amend Section 146 to exclude newly-listed SPACs from the definition of Eligible New Listings. In lieu of receiving these services at the time of initial listing, the proposed amended rule would treat a SPAC that remains listed after meeting the Business Combination Condition as an Eligible New Listing and would provide the services to

which that status would entitle it for 24 months from the date of meeting the Business Combination Condition.

The Exchange believes this approach is appropriate in light of the special characteristics of a SPAC. SPACs raise money on a one-time basis and typically trade at a price that is very close to their liquidation value. As such, SPAC managements are typically not focused on their stock price and investor relations to the same degree as operating companies are. As the services provided to Eligible New Listings are targeted in large part on those market-driven concerns of newly-listed operating companies, they are less useful to SPACs. A SPAC that has met the Business Combination Condition, on the other hand, is similarly situated to a newly-formed publicly-traded operating company and the Exchange believes that the services provided to Eligible New Listings will be as relevant and attractive to a SPAC that has met the Business Combination Condition as to the newly-listed operating companies that are generally eligible for those services.

The Exchange believes that companies will often require a period of time after meeting the Business Combination Condition to complete the contracting and training process with vendors providing the complimentary products and services. Therefore, many companies may not be able to begin using the suite of products offered to them immediately on becoming eligible. To address this issue, the Exchange proposes to specify in Section 146 that if a SPAC that has met the Business Combination Condition begins using a particular service within 30 days after the date of it met [sic] the Business Combination Condition, the complimentary period begins on such date of first use. In all other instances, the complimentary period will begin on the date the SPAC meets the Business Combination Condition.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁴ in general, and furthers the objectives of Sections 6(b)(4)⁵ 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)⁶ 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 and retain listings and respond to competitive pressures. As SPACs are unlikely to utilize the services available to them currently at the time of initial listing but would likely find those services useful if they remain listed after they meet the Business Combination Condition, the Exchange believes it is reasonable to shift the time when SPACs are eligible for the services available to Eligible New Listings to the period immediately after meeting the Business Combination Condition.

The Exchange believes that it is not unfairly discriminatory to provide SPACs with the applicable services only if and when they meet the Business Combination Condition. The Exchange recognizes that not all SPACs will meet the Business Combination Condition and that some listed SPACs will therefore never become eligible for the services that would be provided to an otherwise similarly qualified operating company. However, given the specific characteristics of the SPAC structure, these services are generally not of any particular value to a SPAC prior to meeting the Business Combination Condition and the Exchange therefore believes

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(4).

⁶ 15 U.S.C. 78f(b)(5).

that those SPACs that never qualify for the services will not suffer any meaningful detriment as a consequence.

Allowing SPACs up to 30 days after meeting the Business Combination Condition 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 becoming eligible for those services. 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. In many cases, SPACs will consider transferring to a new listing venue at the time they meet the Business Combination Condition. The proposed rule change enables the Exchange to compete for the retention of these companies by offering them a package of complimentary products and services that assist their transition to being a publicly listed operating company for the first time. All similarly situated companies are eligible for the same package of services. 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-2016-62 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-2016-62. 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-2016-62 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.⁷

Robert W. Errett
Deputy Secretary

⁷ 17 CFR 200.30-3(a)(12).