

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-80283; File No. SR-NYSEMKT-2017-14)

March 21, 2017

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend its Organizational Documents, Company Guide, Price List, Fee Schedules, Independence Policy and Rules to Change the Name of the Exchange to NYSE American LLC

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 March 16, 2017 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, in connection with its name change to NYSE American LLC, to amend certain organizational documents, the NYSE MKT LLC Company Guide (“Company Guide”), the NYSE MKT Equities Price List (“Price List”), the NYSE Amex Options Fee Schedule (“Fee Schedule”), the NYSE MKT LLC Equities Proprietary Market Data Fees (“Market Data Fees”), the Independence Policy of the Board of Directors (“Independence Policy”), and rules of the Exchange to reflect that name change. The proposed 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.

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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

NYSE MKT proposes, in connection with its name change to NYSE American LLC (“NYSE American”), to amend certain organizational documents, the Company Guide, Price List, Fee Schedule, Market Data Fees, Independence Policy, and rules of the Exchange to reflect that name change.

Name Change of the Exchange

In 2008, NYSE Euronext acquired the American Stock Exchange LLC (“Amex”), as a result of which the Exchange, as the successor entity to Amex, became a wholly owned subsidiary of NYSE Group, Inc. At that time, the Exchange was named “NYSE Alternext US LLC.”⁴ In 2009, the name of the Exchange was changed to “NYSE Amex LLC”⁵ and in 2012 it

⁴ See Securities Exchange Act Release No. 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR-Amex-2008-62).

⁵ See Securities Exchange Act Release No. 59575 (March 13, 2009), 74 FR 11803 (March 19, 2009) (SR-NYSEALTR-2009-24).

was changed to “NYSE MKT LLC.”⁶ The Exchange has now determined that for marketing purposes it would be desirable to change the name of the Exchange to “NYSE American LLC.”

In connection with the name change, the Exchange proposes to amend the following documents as described below:

- Certificate of Formation: The Exchange proposes to replace “NYSE MKT LLC” with “NYSE American LLC” in number 1 of the certificate of formation and to make conforming changes to the title.
- Tenth Amended and Restated Operating Agreement of NYSE MKT LLC: The Exchange proposes to replace “NYSE MKT LLC” with “NYSE American LLC” in Article I, Section 1.01 (Name) and to replace “NYSE MKT DCRC” with “NYSE American DCRC” in Article II, Section 2.03 (Board). The Exchange also proposes to make conforming changes to the title, preamble, recitals, and signature line.
- Company Guide: The Exchange proposes to replace “NYSE MKT LLC” with “NYSE American LLC” in the title, Section 211(c) (Original Listing Application—General) and Section 350 (Cancellation Notice), and in the Appendix forms for an Initial Public Offering, Common Stock, and Listing Agreement.
- Price List: The Exchange proposes to replace “NYSE MKT” with “NYSE American” in the title and throughout the Price List. Under “Co-Location Fees,” the Exchange proposes to replace “NYSE MKT Equities Price List” with “NYSE American Equities Price List” and “NYSE MKT Options Fee Schedule” with

⁶ See Securities Exchange Act Release No. 67037 (May 21, 2012), 77 FR 31415 (May 25, 2012) (SR-NYSEAmex-2012-32).

“NYSE American Options Fee Schedule.” Under “Listing Fees,” the Exchange proposes to replace “NYSE MKT Company Guide” with “NYSE American Company Guide.”

- Fee Schedule: The Exchange proposes to replace “NYSE MKT LLC” with “NYSE American LLC” in the title. Additionally, the Exchange proposes to replace all references to “NYSE MKT” with “NYSE American” in “Section V. Technology & System Access Fees—Co-Location Fees.”
- Market Data Fees: The Exchange proposes to replace “NYSE MKT LLC” with “NYSE American LLC” in the title. Additionally, the Exchange proposes to replace all references to “NYSE MKT” with “NYSE American” in the product names and footnotes 1, 2, and 4.
- Independence Policy: The Exchange proposes to replace “NYSE MKT LLC” with “NYSE American LLC” throughout the Independence Policy.⁷ Additionally, the Exchange proposes to replace “[Insert name of relevant NYSE U.S. Regulated

⁷ In addition, the Exchange proposes to delete footnote 2 of the Independence Policy, which has an obsolete reference to NYSE Regulation, Inc. (“NYSE Regulation”). NYSE Regulation and NYSE Market (DE), Inc. (“NYSE Market (DE)”) were previously parties to a Delegation Agreement whereby the New York Stock Exchange LLC delegated certain regulatory functions to NYSE Regulation and certain market functions to NYSE Market (DE) (“Delegation Agreement”). The Delegation Agreement was terminated when the New York Stock Exchange LLC re-integrated its regulatory and market functions. As a result, the two entities ceased being regulated subsidiaries, and NYSE Regulation was merged out of existence. See Securities Exchange Act Release No. 75991 (September 28, 2015), 80 FR 59837 (October 10, 2015) (SR-NYSE-2015-27).

Subsidiary]” with “NYSE American LLC.” The text being replaced was used in prior filings because several entities used the same Independence Policy.⁸

In addition, the Exchange proposes to amend its rules as follows:

- The Exchange proposes to replace “NYSE MKT LLC” with “NYSE American LLC” in definitions 11 (“The Exchange”) and 37 (“Company Guide”); Rule 341, Commentary .02 and .08 (Approval of Registered Employees and Officers); Rule 1—Equities (The Exchange and Related Entities); Rule 37—Equities (Visitors); Rule 98—Equities(c)(6) (Operation of a DMM Unit); Rule 227—Equities Forms 6(a), 7(a), and 12(a)(Depository Eligibility); Rule 497—Equities(a)(3) (Additional Requirements for Listed Securities Issued by ICE or its Affiliates); and Rule 900.2NY(45) and (47) (Definitions).
- The Exchange proposes to replace “NYSE MKT LLC” with “the Exchange” in Rule 341, Commentary .08 (Approval of Registered Employees and Officers).
- The Exchange proposes to replace “NYSE MKT Bonds” with “NYSE American Bonds” in Rule 51—Equities (a), Supplementary Material .20 (Hours for Business); Rule 72—Equities, Supplementary Material .40 (Priority of Bids and Offers and Allocation of Executions); Rule 86—Equities (NYSE MKT Bonds); Rule 119—Equities (Change in Basis from “And Interest” to “Flat”); and Rule 123B—Equities, Supplementary Material .30 (Exchange Automated Order Routing System).

⁸ Prior to the termination of the Delegation Agreement, the same Independence Policy applied to the Exchange, the New York Stock Exchange LLC, NYSE Market (DE), and NYSE Regulation. See Securities Exchange Act Release Nos. 72156 (May 13, 2014), 79 FR 28782 (May 19, 2014) (SR-NYSEMKT-2014-41); 67564 (August 1, 2012), 77 FR 47161 (August 7, 2012) (SR-NYSE-2012-17; SR-NYSEArca-2012-59; SR-NYSEMKT-2012-07).

- In Rule 86—Equities (b)(2) and (c), the Exchange proposes to replace “NYSE MKT Bonds Limit Order” with “NYSE American Bonds Limit Order”; “NYSE MKT Bonds Reserve Order” with “NYSE American Bonds Reserve Order”; “NYSE MKT Bonds Good ‘Til Cancelled Order” with NYSE American Bonds Good ‘Til Cancelled Order”; and “NYSE MKT Bonds Day Order” with “NYSE American Bonds Day Order.”
- The Exchange proposes to replace “NYSE MKT Company Guide” with “Company Guide” in Rule 2210—Equities (c)(7)(N) (Communications with the Public).
- The Exchange proposes to replace “NYSE MKT” with “NYSE American” in Rule 3170—Equities (a)(3) (Tape Recording of Registered Persons by Certain Firms).
- In the Trading of Options Contracts portion of the rulebook, the Exchange proposes to replace “NYSE MKT” with “Exchange” in Section 15 (Flexible Exchange (“FLEX”) Options), Rule 900G(b) (Applicability and Definitions); Rule 903G(b)(4) and (5) (Terms of FLEX Options); and Rule 975NY(k)(3)(A) (Nullification and Adjustment of Options Transactions including Obvious Errors).

None of the foregoing changes are substantive.⁹ The name change and the above-listed changes would become operative upon the effectiveness of an amendment to the Exchange’s Certificate of Formation, which is expected to be no later than June 30, 2017. The Exchange will announce the name change via Trader Update.

⁹ The Exchange will submit subsequent rule filings as necessary to make any technical corrections to proposed rule changes that are pending as of the date of submission of this filing and approved by the Commission thereafter.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act¹⁰ in general, and with Section 6(b)(1)¹¹ 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 proposed rule change is a non-substantive change and does not impact the governance or ownership of the Exchange. The Exchange believes that the proposed rule change would enable the Exchange to continue to be so organized as to have the capacity to carry out the purposes of the Exchange Act and comply and enforce compliance with the provisions of the Exchange Act by its members and persons associated with its members, because ensuring that the Exchange's governing documents, Company Guide, Price List, Fee Schedule, Market Data Fees, Independence Policy and rulebook accurately reflect the name of the Exchange would contribute to the orderly operation of the Exchange by adding clarity and transparency to such documents and rules.

For similar reasons, the Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹² 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

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(1).

¹² 15 U.S.C. 78f(b)(5).

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 proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system by ensuring that market participants can more easily navigate, understand and comply with the Exchange's governing documents, Company Guide, Price List, Fee Schedule, Market Data Fees, Independence Policy and rulebook. The Exchange believes that, by ensuring that such documents and rulebook accurately reflect the name of the Exchange, the proposed rule change would reduce potential investor or market participant confusion.

The Exchange believes that the proposed changes to replace "[Insert name of relevant NYSE U.S. Regulated Subsidiary]" with "NYSE American LLC" would contribute to the orderly operation of the Exchange by adding clarity and transparency to such document.

Further, the Exchange believes that the proposed deletion of footnote two of the Independence Policy would remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest because the change would eliminate an obsolete reference to NYSE Regulation, thereby reducing potential confusion. Market participants and investors would not be harmed and in fact could benefit from the increased clarity and transparency in the Independence Policy, ensuring that market participants could more easily understand the Independence Policy.

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 is not intended to address competitive issues but rather is concerned solely

with updating the Exchange's organizational documents, Company guide, Price List, Fee Schedule, Market Data Fees, Independence Policy and rules to reflect its name change.

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

The proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹³ and Rule 19b-4(f)(3)¹⁴ thereunder in that the proposed rule change is concerned solely with the administration of the Exchange.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)¹⁵ of the Act to determine whether the proposed rule change should be approved or 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

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(3).

¹⁵ 15 U.S.C. 78s(b)(2)(B).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEMKT-2017-14 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-2017-14. 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-2017-14 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.¹⁶

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Assistant Secretary

¹⁶ 17 CFR 200.30-3(a)(12).