

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-69225; File No. SR-NYSE-2013-22)

March 25, 2013

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Deleting Commentary .01 to NYSE Rule 2B, Which Provides an Exception Related to the Exchange's Equity Ownership Interest in BIDS Holdings L.P.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 20, 2013, the New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. 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 delete Commentary .01 to NYSE Rule 2B, which provides an exception related to the Exchange's equity ownership interest in BIDS Holdings L.P. ("BIDS Holdings"). 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

¹ 15 U.S.C.78s(b)(1).

² 17 CFR 240.19b-4.

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 delete Commentary .01 to NYSE Rule 2B, which provides an exception related to the Exchange’s equity ownership interest in BIDS Holdings.

On January 22, 2009, the Securities and Exchange Commission (the “Commission”) approved on a pilot basis the governance structure proposed by the Exchange with respect to the New York Block Exchange (“NYBX”), an electronic trading facility of the Exchange for NYSE-listed securities that was established by means of a joint venture between the Exchange and BIDS Holdings.³ The governance structure that was approved is reflected in the Limited Liability Company Agreement (the “LLC Agreement”) of New York Block Exchange LLC (the “Company”), the entity that owns and operates NYBX. Under the governance structure approved by the Commission, the Exchange and BIDS Holdings each own a 50% economic interest in the Company. In addition, the Exchange, through its wholly-owned subsidiary NYSE Market, Inc., owns less than 10% of the aggregate limited partnership interest in BIDS Holdings. BIDS Holdings is the parent company of BIDS Trading, L.P. (“BIDS Trading”), which became a member organization of the Exchange in connection with the establishment of NYBX.

³ See Securities Exchange Act Release No. 59281 (January 22, 2009), 74 FR 5014 (January 28, 2009) (SR-NYSE-2008-120) (the “Approval Order”).

The foregoing ownership arrangements would violate NYSE Rule 2B without an exception from the Commission.⁴ First, the Exchange’s indirect ownership interest in BIDS Trading would violate the prohibition in Rule 2B against the Exchange maintaining an ownership interest in a member organization. Second, BIDS Trading is an affiliate of an affiliate of the Exchange,⁵ which would violate the prohibition in Rule 2B against a member of the Exchange having such status. Consequently, in approving NYBX, the Commission imposed certain limitations and conditions, one of which was set forth in Commentary .01 of Rule 2B. That commentary provides that the Exchange and BIDS Holdings must establish and maintain procedures and internal controls reasonably designed to ensure that BIDS Holdings and its affiliates do not have access to certain non-public information relating to the Exchange.

In the Approval Order, the Commission permitted an exception to these two potential violations of NYSE Rule 2B, subject to a number of limitations and conditions as follows:⁶

⁴ NYSE Rule 2B provides, in relevant part, that “[w]ithout prior SEC approval, the Exchange or any entity with which it is affiliated shall not, directly or indirectly, acquire or maintain an ownership interest in a member organization. In addition, a member organization shall not be or become an affiliate of the Exchange, or an affiliate of any affiliate of the Exchange. . . . The term affiliate shall have the meaning specified in Rule 12b-2 under the Act.”

⁵ Specifically, the Company is an affiliate of the Exchange, and BIDS Trading is an affiliate of the Company based on their common control by BIDS Holdings. The affiliation in each case is the result of the 50% ownership interest in the Company by each of the Exchange and BIDS Holdings.

⁶ See Approval Order at 5018. At the time of the Approval Order, BIDS Trading had not yet become a member of the Exchange. *Ibid.* (stating that BIDS “will become a member of NYSE in connection with the establishment of NYBX”) (citing Securities Exchange Act Release No. 58970 (November 17, 2008), 73 FR 71062 (November 24, 2008) (SR-NYSE-2008-120) (the “Notice”) at 71062). Accordingly, the limitations and conditions set out in the Approval Order only referenced BIDS Holdings. The Exchange has updated the limitations and conditions from the Approval Order to reference BIDS Trading, where appropriate.

- First, that NYSE and the Financial Industry Regulatory Authority (“FINRA”) enter into an agreement pursuant to Rule 17d-2 under the Act,⁷ under which FINRA is allocated regulatory responsibilities to review BIDS Trading’s compliance with certain NYSE rules.
- Second, that NYSE Regulation monitor BIDS Trading for compliance with NYSE’s trading rules and collect and maintain certain related information.⁸
- Third, that NYSE Regulation provide a report to NYSE’s Chief Regulatory Officer, on a quarterly basis, that (i) quantifies all alerts (of which NYSE Regulation is aware) that identify BIDS Trading as a participant that has potentially violated NYSE or Commission rules, and (ii) quantifies the number of all investigations that identify BIDS Trading as a participant that has potentially violated NYSE or Commission rules.
- Fourth, that NYSE and BIDS Holdings establish and maintain procedures and internal controls reasonably designed to ensure that BIDS Holdings and its affiliates do not have access to non-public information relating to the Exchange, obtained as a result of BID Holdings’ affiliation with NYSE, until such information is available generally to similarly situated members of NYSE.⁹ Under this rule, BIDS Holdings and its affiliates may have access to non-public information relating to the parties’ obligations under the LLC Agreement, and such non-public information must be kept confidential in accordance with Section 14.1 of the LLC Agreement.
- Fifth, that if, during at least four of the preceding six calendar months, the average daily trading volume in NYBX exceeds 10% of the aggregate daily trading volume of NYSE, then, within 180 days, either an independent third party self-regulatory organization engaged by the Company must begin to conduct surveillance of BIDS Trading with respect to BIDS Trading’s trading activity on both NYBX and NYSE, or BIDS Holdings must reduce its interest in the Company such that it does not exceed the “Concentration Limitation.”¹⁰

⁷ 17 CFR 240.17d-2.

⁸ See Approval Order at n.75 (stating that “NYSE Regulation ‘will collect and maintain the following information of which NYSE Regulation staff becomes aware – namely, all alerts, complaints, investigations and enforcement actions where BIDS [Trading] (in its capacity as an NYSE member) is identified as a participant that has potentially violated NYSE or applicable SEC rules – in an easily accessible manner so as to facilitate any review conducted by the SEC’s Office of Compliance Inspections and Examination”) (citing the Notice at 71068).

⁹ See NYSE Rule 2B, Commentary .01.

¹⁰ See Section 9.9 of the LLC Agreement.

- Sixth, that NYSE, or any of its affiliates, may not directly or indirectly increase its equity interest in BIDS Holdings above 10% without prior Commission approval.¹¹
- Finally, that the exceptions from NYSE Rule 2B would be for a pilot period of 12 months.

The original 12-month pilot period expired on January 22, 2010 and has been extended for four additional 12-month periods to January 22, 2014.¹²

The Exchange ceased operating NYBX on February 28, 2013 because, after years of operations, the facility did not garner enough volume to achieve critical mass and did not have strong customer support.¹³ Accordingly, on March 1, 2013, BIDS Trading terminated its membership with the Exchange and its affiliate, NYSE MKT LLC (“NYSE MKT”). Because BIDS Trading is no longer a member organization of the Exchange or any of the Exchange’s affiliates, the Exchange proposes to delete Commentary .01 to NYSE Rule 2B and notes that the conditions and limitations described in the Approval Order no longer apply.¹⁴

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of

¹¹ See supra note 4.

¹² See Securities Exchange Act Release Nos. 61409 (January 22, 2010), 75 FR 4889 (January 29, 2010) (SR-NYSE-2010-04); 63545 (December 14, 2010), 75 FR 80088 (December 21, 2010) (SR-NYSE-2010-82); 66059 (December 27, 2011), 77 FR 145 (January 3, 2012) (SR-NYSE-2011-67); and 68658 (January 15, 2013), 78 FR 4524 (January 22, 2013) (SR-NYSE-2013-01).

¹³ See Securities Exchange Act Release No. 68861 (February 7, 2013), 78 FR 10226 (February 13, 2013) (SR-NYSE-2013-12).

¹⁴ The Exchange notes that the conditions and limitations were applicable through March 1, 2013, when BIDS Trading ceased to be an Exchange member organization. As such, the report to the Exchange’s Chief Regulatory Officer, enumerated in the third condition, should include BIDS Trading activity through to March 1, 2013.

the Act,¹⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁶ in particular, because it promotes just and equitable principles of trade, removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, helps to protect investors and the public interest. The Exchange believes that the proposal removes impediments to and perfects the mechanism of a free and open market by reducing potential confusion that may result from having unnecessary rule commentary in the Exchange's rulebook. Specifically, because BIDS Trading is no longer a member organization of the Exchange or any of its affiliates, the relationship between the Exchange and BIDS Holdings no longer violates Rule 2B and therefore no longer requires an exception to that rule.

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 change is not designed to address any competitive issue but rather would delete unnecessary rule commentary in the Exchange's rulebook, thereby reducing confusion and making the Exchange's rules easier to understand and navigate.

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁷ and Rule 19b-4(f)(6) thereunder.¹⁸ Because the proposed rule change does not: (i)

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(5).

¹⁷ 15 U.S.C. 78s(b)(3)(A)(iii).

significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.¹⁹

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow the Exchange to delete unnecessary and obsolete rule text and therefore make the Exchange's rules easier to understand and navigate. Therefore, the Commission designates the proposed rule change as operative upon filing.²⁰

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily 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.

¹⁸ 17 CFR 240.19b-4(f)(6).

¹⁹ In addition, Rule 19-b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

²⁰ For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-NYSE-2013-22 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2013-22. 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 Section, 100 F Street, NE, Washington, DC 20549. Copies of the filing will also be available for website viewing and printing 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-NYSE-2013-22 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.²¹

Elizabeth M. Murphy
Secretary

²¹ 17 CFR 200.30-3(a)(12).