

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-67702; File No. SR-NYSEMKT-2012-43)

August 21, 2012

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Amex Options LLC Limited Liability Company Agreement to Eliminate Certain Restrictions Relating to the Qualification of Founding Firm Advisory Committee Members

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 17, 2012, 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 and II 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 Amex Options LLC (“NYSE Amex Options”) Limited Liability Company Agreement (“LLC Agreement”) to eliminate certain restrictions relating to the qualification of Founding Firm Advisory Committee Members. 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, on the Commission’s website at www.sec.gov, 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 15 U.S.C. 78a.

³ 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 amend the LLC Agreement to eliminate certain restrictions relating to the qualification of Founding Firm⁴ Advisory Committee (“Advisory Committee”) Members. The LLC Agreement is the source of NYSE Amex Options’ governance and operating authority and, therefore, functions in a similar manner as articles of incorporation and by-laws function for a corporation.⁵ The Founding Firm Advisory Committee is comprised of natural persons (each, an “Advisory Committee Member”) who provide advice to the Board.⁶ The Board considers such advice but is not bound by it.⁷

⁴ Founding Firm means each of the Initial Members (NYSE MKT, Goldman, Sachs & Co., Citadel Securities LLC, Banc of America Strategic Investments Corporation, Citigroup Financial Strategies, Inc., Datek Online Management Corp., UBS Americas Inc., and Barclays Electronic Commerce Holdings Inc.) other than NYSE MKT and any permitted transferee(s) of such Initial Member, (ii) any required transferee deemed to be a Founding Firm by the Board of NYSE Amex Options, and (iii) any other Member (a person who is a signatory to the LLC Agreement, other than NYSE Euronext, or who has been admitted to NYSE Amex Options as a Member in accordance with the LLC Agreement and has not ceased to be a Member in accordance with the LLC Agreement or for any other reason), other than NYSE MKT, deemed to be a Founding Firm by the Board of NYSE Amex Options. See LLC Agreement, Section 1.1.

⁵ See Securities Exchange Act Release No. 64144 (March 29, 2011), 76 FR 18591 (April 4, 2011) (SR-NYSEAmex-2011-18) (approving the formation of a joint venture between the Exchange, its ultimate parent NYSE Euronext, and seven other entities to operate an electronic trading facility for options contracts).

⁶ See LLC Agreement, Section 8.3(a).

⁷ Id.

Currently, Section 8.3(d) of the LLC Agreement provides that each Founding Firm, prior to designating an individual to the Advisory Committee, shall certify in writing to the Board that such individual is not then a director (or an alternate director or observer to the board or any committee of the board), officer, or employee of a Specified Entity;⁸ in the event an individual designated to the Advisory Committee becomes a member of the board of directors or similar governing body of a Specified Entity, such individual shall immediately cease to be an Advisory Committee Member.

The Exchange proposes to amend the LLC Agreement to remove the restrictions that an individual who serves on the Advisory Committee cannot then be or later become a director (or alternate director or observer to the board or any committee of the board) of a Specified Entity.⁹

The Exchange believes that the Advisory Committee should not exclude individuals with certain

⁸ Specified Entity means, as of any date, (i) any U.S. securities option exchange (or facility thereof) or U.S. alternative trading system on which securities option contracts are executed (other than NYSE Amex Options or any of its Affiliates) that lists for trading any option contract that competes with a product or a contract that is contemplated by the then-current business plan of NYSE Amex Options to be listed for trading by the Exchange within ninety (90) days of such date, (ii) any person that owns or controls a U.S. securities option exchange or U.S. alternative trading system described in clause (i), and (iii) any affiliate of a person described in clause (i) or (ii) above; provided that, in the event of a change in applicable law permitting the execution of transactions in exchange-listed securities options otherwise than on a national securities exchange or facility thereof (including, but not limited to, internalization of orders for exchange-listed securities options or the execution of such orders on an alternative trading system), (x) a system operated by or on behalf of a Founding Firm or its affiliates for purposes of the internalization or crossing of: (i) orders of customers of such Founding Firm or its affiliates, (ii) orders of such Founding Firm or its affiliates or (iii) orders routed from a retail broker-dealer or retail brokerage unit, shall not be considered a Specified Entity and (y) in addition to the matters covered in clause (x), NYSE Amex Options and the Founding Firms will negotiate in good faith the terms of an exception from the definition of Specified Entity for any alternative trading system owned solely by an individual Founding Firm or its affiliates that performs order crossing in a manner that does not substantially compete with the Exchange in terms of market share and other relevant factors. See LLC Agreement, Section 1.1.

⁹ The restriction would continue to apply to officers and employees of Specified Entities.

affiliations with Specified Entities because Advisory Committee Members have no formal authority over NYSE Amex Options and only provide non-binding advice to the Board. Moreover, the Board determines which matters are referred to the Advisory Committee and may choose, if necessary and in light of the affiliations of Advisory Committee Members, not to seek its advice on sensitive competitive issues.¹⁰ As such, the Exchange believes that proposed rule change would not create a significant conflict of interest for Advisory Committee Members. In addition, the Exchange believes that the current restrictions unnecessarily limit the pool of qualified candidates, and the Exchange could benefit from the advice and industry knowledge provided by Advisory Committee Members that are affiliated with Specified Entities.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),¹¹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹² 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 regulating, clearing, settling, processing information with respect to, and 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.

Specifically, the Exchange believes the proposed rule change would expand the pool of candidates eligible for membership on the Advisory Committee and thereby increase the breadth

¹⁰ The Exchange does not propose to change the qualification for directors and alternates of the Board of NYSE Amex Options, which similarly restricts certain affiliations with Specified Entities. See LLC Agreement, Section 8.1(h).

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

of industry knowledge that will be available to it without creating any conflicts of interest that cannot be appropriately managed, which benefits the public interest. The increased representation of different constituencies on the Advisory Committee also would foster cooperation and coordination with persons engaged in facilitating transactions in securities, contribute to the identification of opportunities for innovation, and enhance competition.

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.

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 Act¹³ and Rule 19b-4(f)(6) thereunder.¹⁴ Because the proposed rule change does not: (i) 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 Act¹⁵ and Rule 19b-4(f)(6)(iii) thereunder.¹⁶

¹³ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-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

At any time within 60 days of the filing of the 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.

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 No. SR-NYSEMKT-2012-43 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 No. SR-NYSEMKT-2012-43. 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

designated by the Commission. The Exchange has satisfied this requirement.

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 such 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 No. SR-NYSEMKT-2012-43 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.¹⁷

Kevin M. O'Neill
Deputy Secretary

¹⁷ 17 CFR 200.30-3(a)(12).