

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-69764; File No. SR-NYSEMKT-2013-49)

June 13, 2013

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Proposing To Permit Traders Conducting Certain Futures and Options Trading On ICE Futures U.S. In Space Rented From The Exchange At 20 Broad Street To Access The IFUS Trading Floor Prior To 7 a.m. And On Days That The Exchange Is Closed Via The Exchange's 11 Wall Street Facilities And To Permit Additional IFUS Traders To Conduct Business On The IFUS Trading Floor

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 June 3, 2013, 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 permit traders conducting certain futures and options trading on ICE Futures U.S. ("IFUS")⁴ in space rented from the Exchange at 20 Broad Street (the "IFUS Trading Floor") to access the IFUS Trading Floor prior to 7 a.m. and on days that the Exchange is closed via the Exchange's 11 Wall Street facilities and to permit additional IFUS traders to conduct business on the IFUS Trading Floor (together, the "Proposal").

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ 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"). IFUS was formerly known as the New York Board of Trade ("NYBOT").

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 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

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 amend NYSE MKT Rule 6A, which defines the terms "Trading Floor" and "NYSE Amex Options Trading Floor" (the "Original Filing").⁵ The Original Filing stated that the IFUS traders relocating to 20 Broad Street (the "IFUS Traders") and their clerical employees would be prohibited from entering the Main Room, where most of the New York Stock Exchange LLC ("NYSE") and NYSE MKT Equities Floor brokers and all NYSE and NYSE MKT Equities Designated Market Makers ("DMMs") are located, as well as

⁵ See Securities Exchange Act Release Nos. 68996 (February 27, 2013), 78 FR 14378 (March 5, 2013) (SR-NYSE-2013-13).

the NYSE Amex Options trading floor. Moreover, the Original Filing stated that the IFUS Traders can only utilize the 18 Broad Street entrance to access the Blue Room.

However, because the 18 Broad Street entrance does not open until 7 a.m., the Exchange proposes 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. Given that the IFUS Traders' Exchange-issued identification badges do not provide access to 11 Wall Street, any IFUS Trader wishing to access their workspace prior to 7 a.m. would need to request access and be approved by the Exchange. As noted, access would be limited to hours before the 18 Broad Street entrance opens at 7 a.m. Because the Exchange is not open for the transaction of business until 9:30 a.m.,⁶ the Exchange does not believe that allowing one or more IFUS Traders to briefly cross the Main Room on the way to the Blue Room prior to 7 a.m., which is significantly prior to the Exchange's open, would pose any realistic risk that the IFUS Traders would be exposed to confidential customer order information or other confidential trading information.

To date, only one IFUS Trader has requested and been provided access before 7 a.m. following review and approval by NYSE Regulation and IFUS Market Regulation. As a condition of permitting access, IFUS Market Regulation advised the trader that access to the IFUS Trading Floor through the 11 Wall Street entrance is only permitted in the morning prior to 7 a.m. and that this is the only time the trader was permitted to cross through or be on the Main Floor. The trader was also reminded that access to and from the IFUS Trading Floor after 7:00

⁶ NYSE MKT Rule 52 limits dealings on the Exchange to the hours during which the Exchange is open for the transaction of business, which NYSE MKT Rule 51 defines to include a daily trading session between the hours of 9:30 a.m. and 4:30 p.m.

a.m. must be via the 18 Broad Street entrance. As proposed, any additional requests for access to the IFUS Trading Floor prior to 7 a.m. will be subject to the same restrictions.

In addition, the Exchange proposes to clarify that the IFUS Traders may access the Blue Room via the Exchange's 11 Wall Street facilities on days that the Exchange is closed.⁷ The Exchange believes that there is no realistic risk that the IFUS Traders would be exposed to confidential customer order information or other confidential trading information on legal holidays when the Exchange is closed.

The Exchange also seeks to allow additional IFUS Traders and relevant support staff to conduct business on the IFUS Trading Floor in its new location. IFUS has received several requests from traders who previously traded coffee and sugar products on IFUS when it was located at NYMEX to resume trading on IFUS. The Exchange believes that it is appropriate to permit additional IFUS Traders and their support staff to relocate to the Blue Room pursuant to all of the conditions specified in Original Filing.

The additional IFUS Traders would be located with the other IFUS Traders in the Blue Room (which, as the Original Filing notes, contains privacy barriers consisting of eight foot walls providing visual and sound insulation to reduce the likelihood that trading screens can be viewed or conversations overheard between firms and traders) and would be subject to the same restrictions on accessing the Blue Room described above and in the Original Filing. The names of the additional IFUS Traders would also be provided to the Financial Industry Regulatory Authority ("FINRA") which conducts surveillance of the NYSE MKT and NYSE markets to

⁷ Certain of the IFUS Traders conduct business on foreign markets on Exchange holidays.

enable FINRA to more readily identify any potentially violative trading involving the IFUS Traders.⁸

Any additional IFUS Traders would not trade any of the products traded on NYSE MKT, and there is extremely limited overlap in related products traded by the IFUS Traders and on the NYSE MKT. Moreover, even with additional traders conducting business in coffee and sugar products on the IFUS Trading Floor, the IFUS Traders overall will continue to execute a very small volume of predominantly cotton options. In light of these facts, the Exchange believes it is highly unlikely that any order handled by one of them could impact the price of any individual security traded on the Exchange. In this regard, the Exchange continues to believe that the pricing correlation between order flow in IFUS products and securities traded on NYSE MKT is tenuous at best and that it is extremely unlikely that information overheard by an equities Floor broker or an IFUS Trader could be used to benefit the broker's or trader's proprietary, personal or other customer trading.

Accordingly, the Exchange does not believe that permitting additional IFUS Traders to conduct business on the IFUS Trading Floor in the Blue raises any regulatory concerns.

2. Statutory Basis

The Exchange believes that the Proposal is consistent with the provisions of Section 6 of the Act,⁹ in general, and Section 6(b)(5) of the Act,¹⁰ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles

⁸ Providing the names of the IFUS Traders to FINRA will be 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 will not be subject to the Exchange's jurisdiction. Rather, the IFUS Traders will continue to be regulated by IFUS as they are today.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that the Proposal is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that the Proposal will permit the Exchange to allow additional IFUS Traders to utilize space on the trading floor within the existing regulatory framework at the Exchange, to efficiently and effectively conduct business in their respective area consistent with maintaining necessary distinctions between the two organizations. Moreover, the Proposal will impose restrictions designed to prevent inappropriate information sharing by and between members and member firm employees on the Trading Floor of the Exchange and additional IFUS Traders on the IFUS Trading Floor.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the Proposal will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposal is designed to promote competition by providing the Exchange the additional flexibility to maximize the use of its trading floor space.

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 Act¹¹ and Rule 19b-4(f)(6) thereunder.¹² Because the proposed rule change does not: (i)

¹¹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹² 17 CFR 240.19b-4(f)(6).

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.

A proposed rule change filed under Rule 19b-4(f)(6)¹³ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁴ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

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. 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:

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ 17 CFR 240.19b-4(f)(6)(iii).

¹⁵ 15 U.S.C. 78s(b)(2)(B).

- 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-2013-49 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-NYSEMKT-2013-49. 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 20549-1090, on official business between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying 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-NYSEMKT-2013-49 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

Elizabeth M. Murphy
Secretary

¹⁶ 17 CFR 200.30-3(a)(12).