

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-73671; File No. SR-NYSEMKT-2014-97)

November 21, 2014

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Rule Change Amending Rules 311 - Equities and 313 - Equities to Add Limited Liability Companies as Eligible Member Organizations and Delineate the Information Limited Liability Companies Must Submit to the Exchange as Part of the Membership Process; Eliminate the Requirement that a Member Corporation Be Created or Organized, and Maintain its Principal Place of Business, in the United States; and Make Additional Related Amendments to Update Its Membership Rules

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 November 12, 2014, 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 substantially 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 Rules 311 - Equities and 313 - Equities to add limited liability companies as eligible member organizations and delineate the information limited liability companies must submit to the Exchange as part of the membership process; eliminate the requirement that a member corporation be created or organized, and maintain its principal place of business, in the United States; and make additional related amendments to update its membership rules. The text of the proposed rule change is available on the Exchange’s website at

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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

The Exchange proposes to amend Rules 311 - Equities ("Rule 311") and 313 - Equities ("Rule 313") to add limited liability companies ("LLCs") to the types of eligible member organizations and delineate the information LLCs must submit to the Exchange as part of the membership process; eliminate the requirement that a member corporation be created or organized, and maintain its principal place of business, in the United States; and make additional related amendments to update its membership rules.

Rule 311

NYSE MKT Rule 311 governs the formation and approval of member organizations. The Exchange proposes to revise Rule 311 to explicitly provide for LLCs to apply to become member organizations and eliminate the requirement that a member corporation be created or organized, and maintain its principal place of business, in the United States.

First, the Exchange's membership rules currently provide for member organizations to be

corporations or partnerships, but have not explicitly provided for LLCs.⁴ The Exchange proposes to add LLCs to the types of potential member organizations and require LLCs to meet the same requirements currently applicable to partnerships and corporations set forth in Rule 311(b). As part of the proposed revision, the Exchange seeks to add a new section (4) to Rule 311(b) requiring every member of an LLC to be a member, principal executive or approved person.⁵ Similarly, the Exchange proposes to amend current Rule 311(b)(6) to reflect that proposed LLC member organizations must, like corporations and partnerships, also comply with any additional requirements as the rules of the Exchange may prescribe. The Exchange also proposes to add new Supplementary Material .16 to Rule 311 to specify that LLC applicants for Exchange membership are subject to Rule 313.24 regarding the submission of copies of proposed or existing limited liability company documents and other agreements.

The Exchange also proposes to amend Rule 311(f) to eliminate the geographic limitation on incorporation and domicile of corporation members. The first sentence of Rule 311(f) currently provides that every member corporation be a corporation “created or organized under the laws of, and shall maintain its principal place of business in, the United States or any State thereof.”⁶ The Exchange does not believe that the Exchange’s restriction on whether foreign entities may be a member organization is consistent with either federal rules or those of other

⁴ Current Rule 311(f) permits the Exchange to approve “entities that have characteristics essentially similar to corporations, partnerships, or both” as a member organization “on such terms and conditions as the Exchange may prescribe.”

⁵ Rule 311(b)(2) and (b)(3) currently impose the same requirement on the relevant control persons at corporations and partnerships, respectively.

⁶ The first sentence of Rule 311(f) also provides that every member firm organization shall be a partnership or corporation. This statement is redundant to Rule 311(b), which the Exchange is amending to add LLCs. Accordingly, the Exchange proposes to delete the first sentence of Rule 311(f) in its entirety.

self-regulatory organizations (“SRO”). For an example supporting its belief, the Exchange states that rules promulgated pursuant to the Act require, under certain circumstances, a foreign broker-dealer to register with the Commission.⁷ The Exchange also states that other SROs, including the Financial Industry Regulatory Authority, Inc. (“FINRA”), do not require their members to be domiciled in the United States.⁸

The Exchange believes that the current restriction in Rule 311(f) puts it at a competitive disadvantage because it restricts foreign broker-dealers that are registered with the Commission and are members of another SRO from also becoming Exchange member organizations. The Exchange notes that its rules already require member organizations to meet prerequisites as specified in Rule 2(b). Specifically, regardless of corporate form, all member organizations must be registered broker-dealers that are members of FINRA or another registered securities exchange. If a registered broker-dealer transacts business with public customers or conducts business on the Floor of the Exchange, such member organization must be a member of FINRA.

The Exchange further notes that a member organization will be subject to regulatory examination and jurisdiction for misconduct whether or not it is based in the United States. However, for the avoidance of doubt, as discussed below, the Exchange proposes to add

⁷ See 17 CFR 240.15a-6 and Commission Guide to Broker-Dealer Registration, Division of Trading and Markets, available at <http://www.sec.gov/divisions/marketreg/bdguide.htm> (foreign broker-dealers that, from the outside of the United States, induce or attempt to induce securities transactions by any person in the United States, or that use the means or instrumentalities of interstate commerce in the United States for this purpose, must register as broker-dealers with the Commission).

⁸ See e.g., NASD Membership and Registration Rules (1000 Series). NASD Rule 1090 imposes specific requirements on members that do not maintain an office in the United States responsible for preparing and maintaining financial and other reports required to be filed with the SEC and the Exchange, which the Exchange proposes to import into Rule 313. See the discussion *infra*. See also BATS Exchange, Inc. Rules 2.3, 2.5 and 2.6.

supplementary material to Rule 313 based on NASD Rule 1090 that imposes certain requirements on foreign members that do not maintain an office in the United States.

Rule 313

Rule 313 sets forth certain corporate or partnership documents that each member organization must submit to enter into and continue in NYSE membership. The Rule also sets forth certain restrictions on capital withdrawals and distributions applicable to member corporations and partnerships. The Exchange proposes to amend Rule 313 to delineate the types of documents LLCs must submit that, as noted, mirror the requirements currently in place for member corporations and partnerships.

First, the Exchange proposes to add a subsection (d) to Rule 313 requiring all articles of organization and operating documents for LLCs to be submitted for Exchange approval prior to becoming effective. Relatedly, the Exchange proposes to add Supplementary Material .24 setting forth that existing LLCs must promptly submit certified copies (to the extent possible) of articles of organization and operating agreements to the Exchange.

Second, the Exchange proposes to add Supplementary Material .25 providing restrictions on capital withdrawals by LLC members that are substantially the same as those applicable to corporations and partnerships. The Supplementary Material would provide that the capital contribution of any LLC member may not be withdrawn on less than six months' written notice of withdrawal given no sooner than six months after such contribution was first made without the prior written approval of the Exchange. The Supplementary Material would also specify that each member firm shall promptly notify the Exchange of the receipt of any notice of withdrawal of any part of a member's capital contribution or if any withdrawal is not made because prohibited under the provisions of Securities and Exchange Commission Rule 15c3-1.

Third, the Exchange proposes to add Supplementary Material .26 providing that LLCs not organized under the laws of New York State must subject themselves to the following restrictions: no distributions shall be declared or paid that impair the LLC's capital; and no distribution of assets shall be made to any member unless the value of the LLC's assets remaining after such payment or distribution is at least equal to the aggregate of its debts and liabilities, including capital. These proposed restrictions are based on existing restrictions applicable to member corporations and partnerships.

In addition, as noted above, the Exchange proposes to add new Supplementary Material .27 to Rule 313 specifying the requirements applicable to Foreign Member Organizations. The proposed new rule text would adopt, without substantive change, paragraphs (a), (b), and (c) of NASD Rule 1090 (Foreign Members), which impose specific requirements on FINRA members that do not maintain an office in the United States responsible for preparing and maintaining financial and other reports required to be filed by the SEC and FINRA.⁹ As proposed, foreign member organizations that do not maintain an office in the United States responsible for preparing and maintaining financial and other reports required to be filed with the Commission and the Exchange would be required to: (1) prepare all such reports, and maintain a general ledger chart of account and any description thereof, in English and U.S. dollars; (2) reimburse

⁹ The Exchange is not proposing to adopt a rule similar to NASD Rule 1090(d), which requires foreign members to "utilize, either directly or indirectly, the services of a broker/dealer registered with the Commission, a bank or a clearing agency registered with the Commission located in the United States in clearing all transactions involving members of the Association, except where both parties to a transaction agree otherwise." The Exchange agrees with FINRA, which similarly recommended skipping paragraph (d) as part of its contemplated adoption of NASD Rule 1090, that the provision is "outdated" and that clearing arrangements are better addressed by FINRA Rule 4311 (Carrying Agreements), which is based in part on Rule 382 - Equities that FINRA Rule 4311 replaced. See FINRA Regulatory Notice 13-29 (September 2013). FINRA Rule 4311 governs the requirements applicable to members when entering into agreements for the carrying of any customer accounts in which securities transactions can be effected.

the Exchange or its representatives for expenses incurred in connection with examinations of the member organization to the extent that such expenses exceed the cost of examining a member organization located within the continental United States in the geographic location most distant from the Exchange's principal office or, in such other amount as the Exchange may deem to be an equitable allocation of such expenses; and (3) ensure the availability of an individual fluent in English and knowledgeable in securities and financial matters to assist representatives of the Exchange during examinations.

The Exchange also proposes to eliminate certain restrictions, which the Exchange considers redundant, on member organizations and prospective member organizations organized as partnerships and corporations. The Exchange proposes to eliminate the requirement in Rule 313.11 that the partnership articles of each member firm provide that capital withdrawals by partners cannot be made without the prior written approval of the Exchange. Rule 313.11 already requires the Exchange's prior written approval for any such capital withdrawals, and member organizations need to monitor for and comply with the prohibition, including whether particular withdrawals violate net capital requirements. The Exchange believes that because Exchange rules already govern this behavior, a partnership seeking approval as a member organization would not need to amend its partnership articles to reflect this existing rule requirement.¹⁰

Further, the Exchange proposes to eliminate the requirement in Rule 313.20 that prospective member corporations submit an opinion of counsel stating, among other things, that the corporation is duly organized and existing, that its stock is validly issued and outstanding, and that the restrictions and provisions required by the Exchange on the transfer, issuance,

¹⁰ See also footnote 11, *infra*.

conversion and redemption of its stock have been made legally effective. Corporate members are required under the Rule to submit relevant corporate documents, including articles of incorporation, that contain the same information required in the opinion of counsel. The Exchange represents that requiring a legal opinion attesting to facts contained in a corporation's public filings is redundant and, given the expense, potentially a disincentive to smaller entities applying for Exchange membership.

Similarly, the Exchange proposes to remove the requirement in Rule 313.23 that the opinion of counsel submitted to the Exchange at the time the corporation applies for approval under Rule 313.20 state the extent to which the corporation has made the following prohibitions legally effective: the prohibition on declaring or paying a dividend that impairs the capital of the corporation and the prohibition on distributing assets to any stockholder unless the value of the corporate assets remaining after such payment or distribution is at least equal to the aggregate of its debts and liabilities, including capital. Rule 313.23 would continue to prohibit corporation members from declaring or paying dividends or distributing corporate assets that impair the corporation's capital, and member corporations would not be relieved of the obligation to monitor and enforce these prohibitions. The Exchange believes that requiring these representations in a separate legal opinion is redundant and serves no necessary regulatory or other purpose.¹¹

Finally, the Exchange proposes to make certain miscellaneous amendments to Rule 313. Specifically, the Exchange proposes to replace outdated references to "Regulation and

¹¹ FINRA Rule 4110 (Capital Compliance) contains similar prohibitions on capital withdrawals by FINRA members without requiring that the prohibitions be reflected in a firm's partnership articles or requiring a legal opinion that the member has made the prohibitions legally effective. See FINRA Rule 4110 (c)(1) ("No equity capital of a member may be withdrawn for a period of one year from the date such equity capital is contributed, unless otherwise permitted by FINRA in writing.").

Surveillance” with “the Exchange” in Rules 313.10 and 313.20.¹² Similarly, the Exchange proposes to replace outdated references to “photostatic” copies in Rules 313.10 and 313.20 in connection with the submission of documents to the Exchange and replace them with “electronically or mechanically reproduced.”

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹³ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁴ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. The Exchange believes that adding LLCs to the list of eligible member organizations would remove impediments to and perfect the mechanism of a free and open market and a national market system by expanding the types of organizational forms a member organization may take. The Exchange also believes that permitting LLCs to become member organizations subject to the same restrictions and requirements currently applicable to corporations and partnerships also protects investors and the public interest by holding LLCs to the same high standards.

In addition, the Exchange believes that permitting non-United States-based registered broker-dealers that are members of FINRA or another registered securities exchange and that do not have their principal place of business in the United States to become Exchange member

¹² Under Rule 0 - Equities, references to the Exchange also refer to FINRA staff and FINRA departments acting on behalf of the Exchange pursuant to a Regulatory Services Agreement (“RSA”). FINRA currently provides member application proceedings services to the Exchange pursuant to an RSA.

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

organizations would remove impediments to and perfect the mechanism of a free and open market by removing geographic restrictions on Exchange membership that are not required by FINRA or other exchanges. The Exchange further believes that broadening the Exchange membership pool by facilitating the participation of additional foreign-based U.S. registered broker-dealers would benefit investors and the public interest by increasing market participation and depth at the Exchange. Moreover, the Exchange believes that adoption of specific requirements for foreign members that do not maintain an office in the United States based on NASD Rule 1090 would further assure that foreign Exchange members, once approved, remain subject to regulatory examination and jurisdiction.

Similarly, the Exchange represents that updating the Exchange's rules to remove requirements, which the Exchange believes are redundant, that a member firm's partnership articles provide that capital withdrawals by partners cannot be made without the prior written approval of the Exchange, that prospective member corporations submit an opinion of counsel reciting facts contained in its public filings, and that certain prohibitions have been made legally effective would remove impediments to and perfect the mechanism of a free and open market and a national market system by ensuring that potential member organizations, persons subject to the Exchange's jurisdiction, regulators, and the public could more easily navigate the Exchange's rulebook and better understand what obligations attach and when. Further, the Exchange represents that updating the Exchange's rules to remove what the Exchange considers redundant requirements is also designed to protect investors as well as the public interest by providing transparency and reducing potential confusion regarding the Exchange membership process that may result from having what the Exchange characterizes as obsolete rules and outdated guidelines in the Exchange's rulebook. For the same reasons, the Exchange represents that

updating the Exchange's rules to remove requirements that the Exchange considers outdated would remove impediments to and perfect the mechanism of a free and open market and a national market system and is equally designed to protect investors as well as the public interest.

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

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change would foster competition by expanding the types of organizational forms a member organization may take and, by removing geographic restrictions on corporate Exchange membership, permitting foreign broker-dealers that are members of FINRA or another SRO and that do not have their principal place of business in the United States to become Exchange member organizations. The Exchange represents that, by removing outdated and redundant provisions from the Exchange membership rules not found in the in the rules of other SROs and adding a provision found in the rules of another SRO, the proposed rule change also would foster competition by providing greater harmonization between Exchange membership requirements and the requirements of other SROs, resulting in less burdensome and more efficient and consistent standards for prospective member organizations.

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-2014-97 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-2014-97. 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 on official business days 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-2014-97 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.¹⁵

Kevin M. O'Neill
Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).