

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-79132; File No. SR-NYSEMKT-2016-94)

October 21, 2016

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 497-Equities

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on October 13, 2016, 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 Rule 497-Equities regarding the requirements for the listing of securities that are issued by the Exchange or any of its affiliates. The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://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

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<sup>1</sup> 15 U.S.C.78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

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 Rule 497-Equities (Additional Requirements for Listed Securities Issued by Intercontinental Exchange, Inc. or its Affiliates) regarding the requirements for the listing of securities that are issued by the Exchange or any of its affiliates. Rule 497-Equities sets forth certain requirements that securities issued by the Exchange’s ultimate parent, Intercontinental Exchange, Inc. (“ICE”), or its affiliates, must meet before they can be listed on the Exchange, including certain pre-listing approvals and post-listing monitoring requirements.

Specifically, the Exchange is proposing to make the following changes to Rule 497-Equities: (i) expand the definition of Affiliate Security under Rule 497-Equities(a)(2); (ii) require that the annual review required under Rule 497-Equities(c)(2) be forwarded to the Exchange’s Regulatory Oversight Committee (“ROC”); and (iii) make non-substantive typographical changes.

Rule 497-Equities(a)(2) currently defines “Affiliate Security” as “any security issued by an ICE Affiliate.”<sup>4</sup> The Exchange proposes to expand the definition of Affiliate Security to include any Exchange-listed option on any security issued by an ICE Affiliate. As a consequence, under Rule 497-Equities(b), prior to listing any new class of options on a security

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<sup>4</sup> For purposes of Rule 497-Equities, an “ICE Affiliate” is “ICE and any entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with ICE, where ‘control’ means that one entity possesses, directly or indirectly, voting control of the other entity either through ownership of capital stock or other equity securities or through majority representation on the board of directors or other management body of such entity.” Rule 497-Equities(a)(1).

issued by an ICE Affiliate, Exchange regulatory staff would be required to make a finding that the option class satisfies the Exchange's rules for listing, and the ROC would be required to approve such finding. Likewise, throughout the continued listing of such option class on the Exchange, it would be covered by the reporting requirements of Rule 497-Equities(c).

In the event that an ICE Affiliate lists an Affiliate Security, Rule 497-Equities (c)(2) requires that, throughout the continued listing of the Affiliate Security on the Exchange, an independent accounting firm will review the listing standards for the Affiliate Security and a copy of the report shall be forwarded promptly to the Securities and Exchange Commission ("Commission"). The Exchange proposes to expand Rule 497-Equities(c)(2) to require that such report also be forwarded to the ROC.

The Exchange proposes to make the following additional, non-substantive changes to Rule 497-Equities(c):

- It proposes to move "the Exchange shall" from the end of Rule 497-Equities(c) to the start of Rule 497-Equities(c)(1), as the text only applies to Rule 497-Equities(c)(1), and not sub-paragraphs (2) or (3), and change "shall" to "will."
- It proposes to add "and trading" after "Throughout the continued listing" in Rule 497-Equities(c), as Rule 497-Equities(c)(1) references the listing of Affiliate Securities, as well as their trading.
- The Exchange proposes to delete an extraneous "that" from the final clause of Rule 497-Equities(c)(1)(b), so that it reads as follows:  
  
Exchange regulatory staff's monitoring of the trading of the Affiliate Security including summaries of all related surveillance alerts, complaints, regulatory referrals, adjusted trades, investigations, examinations, formal and informal

disciplinary actions, exception reports and trading data used to ensure the Affiliate Security's compliance with the Exchange's listing and trading rules.

The Exchange notes that the proposed amendments would be consistent with recent changes to the Bats BZX Exchange, Inc. ("BZX") Rule 14.3 regarding requirements for the listing of securities listed by BZX or any of its affiliates.<sup>5</sup>

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act<sup>6</sup> in general, and Section 6(b)(5)<sup>7</sup> in particular, in that it because 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 that the proposed rule change, by requiring heightened reporting by the Exchange to the Commission and the ROC with respect to oversight of the listing and trading on the Exchange of Affiliate Securities, will continue to help protect against concerns that the Exchange will not effectively enforce its rules with respect to the listing and trading of these securities. By adding Exchange-listed options on any security issued by an ICE Affiliate to the definition of "Affiliate Securities," the proposed changes would expand the scope of Rule 497-Equities. The Exchange accordingly believes that the proposed amendments

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<sup>5</sup> See Securities Exchange Act Release No. 77639 (April 18, 2016), 81 FR 23768 (April 22, 2016) (SR-BatsBZX-2016-08).

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

to Rule 497-Equities would continue to eliminate any perception of a potential conflict of interest if an ICE Affiliate seeks to list a security on the Exchange.

Lastly, the Exchange believes that the proposed non-substantive grammatical changes would promote just and equitable principles of trade and remove impediments to a free and open market by providing greater clarity in the Exchange's rules.

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 Exchange Act. The proposed rule change is not intended to address competitive issues but rather provide market participants with additional specificity and transparency regarding the Exchange's controls that are in place to address the potential conflicts of interest that may arise in the listing of Affiliate Securities on the Exchange.

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

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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</sup>

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>10</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>11</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. 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 waiver of the operative delay is consistent with the protection of investors and the public interest as it will allow the Exchange to implement the proposed changes to Rule 497-Equities without delay. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.<sup>12</sup>

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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

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days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>12</sup> For purposes only of waiving the 30-day operative delay, the Commission has also 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEMKT-2016-94 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-2016-94. 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-2016-94, 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.<sup>13</sup>

Brent J. Fields  
Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).