

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-80902; File No. SR-NYSEMKT-2017-35)

June 12, 2017

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend the Exchange's Authority to Grant Exemptions from the OATS Requirements

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 2, 2017, 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 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 amend Rule 7470 – Equities (Exemption to the Order Recording and Data Transmission Requirements) to extend until November 15, 2019 the ability to exempt certain members from the recording and order data transmission requirements of Rules 7440 – Equities and 7450 – Equities, respectively, for manual orders. 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

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

<sup>2</sup> 17 CFR 240.19b-4.

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's Rule 7400 Series consists of Rules 7410 – Equities through 7470 – Equities and sets forth the recording and reporting requirements of the Order Audit Trail System (“OATS”) Rules. The OATS Rules require all Exchange member organizations and associated persons to record in electronic form and report to the Financial Industry Regulatory Authority, Inc. (“FINRA”), on a daily basis, certain information with respect to orders originated, received, transmitted, modified, canceled, or executed by members in all NMS stocks, as that term is defined in Rule 600(b)(47) of Regulation NMS,<sup>3</sup> traded on the Exchange. This information is used by FINRA staff to conduct surveillance and investigations of member firms for violations of FINRA rules and federal securities laws. Rule 7470 – Equities provide the Exchange with the authority to exempt certain members from the recording and reporting requirements and from the recording and order data transmission requirements of Rules 7440 – Equities and 7450 – Equities, respectively, for manual orders, if such exemption is consistent with the protection of investors and the public interest, and the member organization meets the criteria set forth in paragraph (a) of the Rule.<sup>4</sup>

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<sup>3</sup> 17 CFR 242.600(b)(47).

<sup>4</sup> The criteria are as follows: (1) the member organization and current control affiliates and associated persons have not been subject within the last five years to any final disciplinary action, and within the last ten years to any disciplinary action involving fraud; (2) the member organization has annual revenues of less than \$2 million; (3) the member organization does not conduct any market making activities in NMS stocks; (4)

Rule 7470 – Equities contains a sunset provision, which was July 10, 2015. In June 2015, FINRA filed a proposed rule change to extend the sunset provision until July 10, 2019.<sup>5</sup> The Exchange proposes to amend Rule 7470 to extend the provision until November 15, 2019. The proposed change would correct an oversight in not filing when the sunset provision [sic] in 2015.

The Exchange believes it would be appropriate to extend the sunset provision in Rule 7470 – Equities to November 15, 2019 rather than the July 10, 2019 date in the FINRA Rule. At the time FINRA filed its proposed rule change, the National Market System Plan Governing the Consolidated Audit Trail (the “CAT NMS Plan”)<sup>6</sup> had not been approved by the Commission. The CAT NMS Plan was approved by the Commission, as modified, on November 15, 2016.<sup>7</sup> On March 21, 2017, the Commission approved the Exchange’s new Rule 6800 Series to implement provisions of the CAT NMS Plan that are applicable to Exchange member organizations.<sup>8</sup> Rule 6895(c)(2) requires each Industry Member that is a Small Industry Member to record and report the Industry Member Data to the Central Repository by November 15, 2019.

The Exchange believes that extending the sunset provision in Rule 7470 to the same date

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the member organization does not execute principal transactions with its customers (with limited exception for principal transactions executed pursuant to error corrections); and (5) the member organization does not conduct clearing or carrying activities for other firms.

<sup>5</sup> See Securities Exchange Act Release No. 75160 (June 11, 2015), 80 FR 34727 (June 17, 2015) (SR-FINRA-2015-016).

<sup>6</sup> Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth herein or in the CAT NMS Plan.

<sup>7</sup> Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016) (Order Approving the National Market System Plan Governing the Consolidated Audit Trail).

<sup>8</sup> See Securities Exchange Act Release No. 80256 (March 15, 2017), 82 FR 14526 (March 21, 2017) (SR-NYSEMKT-2017-02) (Order Approving Proposed Rule Changes to Adopt Consolidated Audit Trail Compliance Rules).

that all Small Industry Members must report to the CAT is appropriate and would permit such firms relying on the exemption to continue to do so provided they meet the criteria to qualify until that time. The Exchange is not proposing any substantive changes to the criteria necessary for firms to qualify for an exemption and notes that all of those member organizations currently reporting to OATS or relying on an exemption from OATS reporting will be reporting to the CAT by November 15, 2019.<sup>9</sup>

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>10</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>11</sup> in particular, 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 facilitating transactions in securities, and 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.

In particular, the Exchange believes that amending Rule 7470 – Equities to extend until November 15, 2019 the ability to exempt certain members from the recording and order data transmission requirements of Rules 7440 – Equities and 7450 – Equities, respectively, for manual orders, is consistent with Section 6(b)(5) of the Act<sup>12</sup> because it would enable the Exchange to exempt manual orders received by certain small firms from the OATS Rules and

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<sup>9</sup> Rule 6895(c)(1) requires each Industry Member (other than a Small Industry Member) to record and report the Industry Member Data to the Central Repository by November 15, 2018.

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

avoid imposing potentially unnecessary expense or hardship on those firms that qualify for the exemption as they transition to reporting order information to the CAT Central Repository. As noted, the proposed sunset provision is the same date that all Small Industry Members must report to the CAT. Further, the Exchange is not proposing any substantive changes to the criteria necessary for firms to qualify for an exemption, which will continue to ensure that only those firms with limited revenue, no recent final disciplinary actions, and limited business models will remain eligible for the exemption. The Exchange accordingly believes that the proposed rule change is consistent with the protection of investors and the public interest.

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, as noted above, would enable the Exchange to exempt manual orders received by certain small firms from the OATS reporting requirements through November 15, 2019, the same date that all Small Industry Members must report to the CAT, and thereby avoid imposing potentially unnecessary expense or hardship on those firms that qualify for the exemption as they transition to reporting order information to the CAT Central Repository.

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 Act<sup>13</sup> and Rule 19b-4(f)(6) thereunder.<sup>14</sup> Because the proposed rule change does not: (i)

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<sup>13</sup> 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.<sup>15</sup>

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change will become operative immediately upon filing. In support of its request, the Exchange stated that waiver of the operative delay would continue to enable the Exchange to grant small firms exemptions from the OATS requirements as those firms are preparing to report information to the CAT Central Repository, thereby avoiding potentially unnecessary expense or hardship on firms that qualify for the exemption.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Absent such action, a small firm that otherwise would qualify for an exemption would have to comply with the Exchange requirements to record and report manual orders to OATS because the Exchange would not have the authority to grant an exemption during the 30-day pre-operative period. The Commission agrees with the Exchange that waiving the 30-day operative delay would enable the Exchange, in appropriate cases, to prevent unnecessary expense being imposed on small firms. Therefore, the

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<sup>14</sup> 17 CFR 240.19b-4(f)(6).

<sup>15</sup> In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to provide 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 days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has complied with this requirement.

Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.<sup>16</sup>

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) of the Act<sup>17</sup> 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:

- 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-2017-35 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-2017-35. This file number should

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<sup>16</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).

<sup>17</sup> 15 U.S.C. 78s(b)(2)(B).

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-2017-35 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>18</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>18</sup> 17 CFR 200.30-3(a)(12).