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SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-75984; File No. SR-NYSEMKT-2015-71)

September 25, 2015

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Adding to The Rules of the Exchange the Third Amended and Restated Certificate of Incorporation of NYSE Market, Inc., and the Eighth Amended and Restated Operating Agreement of New York Stock Exchange LLC

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 September 22, 2015, 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 Exchange has designated this proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>4</sup> and Rule 19b-4(f)(6)(iii) thereunder,<sup>5</sup> which renders it effective upon filing with the Commission. 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 add to the rules of the Exchange the (1) the Third Amended and Restated Certificate of Incorporation of NYSE Market (DE), Inc. (“NYSE Market (DE)”)),

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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.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(6)(iii).

and (2) the Eighth Amended and Restated Operating Agreement of New York Stock Exchange LLC (“NYSE LLC”). The text of 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 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 add to the rules of the Exchange the (1) Third Amended and Restated Certificate of Incorporation of NYSE Market (DE) (the “Certificate of Incorporation”), and (2) the Eighth Amended and Restated Operating Agreement of NYSE LLC (the “NYSE LLC Operating Agreement”).

Background and Proposed Rule Change

NYSE Market (DE), a Delaware corporation, is a wholly-owned subsidiary of NYSE LLC, which is an affiliate of the Exchange.<sup>6</sup> NYSE Market (DE), in turn, owns a majority interest in NYSE Amex Options LLC (“NYSE Amex Options”), a facility of the Exchange.

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<sup>6</sup> See Exchange Act Release No. 70210 (August 15, 2013) (SR-NYSEMKT-2013-50), 78 FR 51758 (August 21, 2013) (approving proposed rule change relating to a corporate transaction in which NYSE Euronext will become a wholly owned subsidiary of IntercontinentalExchange Group, Inc. (now Intercontinental Exchange, Inc.)). The

The Exchange is filing as a “rule of the exchange” under Section 3(a)(27) of the Act<sup>7</sup> the Certificate of Incorporation of NYSE Market (DE) because NYSE Market DE has a majority ownership interest in a facility of the Exchange. The Certificate of Incorporation contains restrictions on the ability of NYSE Market (DE)’s parent, NYSE LLC, to transfer or assign any interest in NYSE Market (DE) without Securities and Exchange Commission (“Commission”) approval.<sup>8</sup>

Similarly, because of NYSE LLC’s ownership of NYSE Market (DE), the Exchange is filing the NYSE LLC Operating Agreement as a “rule of the exchange” under Section 3(a)(27) of the Act.<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 with Section 6(b)(1)<sup>11</sup> in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to

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Exchange and NYSE Market (DE) are the only members of NYSE Amex Options. See Exchange Act Release No. 75301 (June 25, 2015), 80 FR 37695 (July 1, 2015) (SR-NYSEMKT-2015-44) (notice of filing and immediate effectiveness of proposed rule change amending the members' schedule of the Amended and Restated Limited Liability Company Agreement of NYSE Amex Options LLC).

<sup>7</sup> 15 U.S.C. 78c(a)(27).

<sup>8</sup> Article IV, Section 2 of the Certificate of Incorporation provides that the:

New York Stock Exchange LLC may not transfer or assign any shares of stock of [NYSE Market (DE)], in whole or in part, to any entity, unless such transfer or assignment shall be filed with and approved by the U.S. Securities and Exchange Commission . . . under Section 19 of the Exchange Act and the rules promulgated thereunder.

<sup>9</sup> 15 U.S.C. 78c(a)(27).

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

<sup>11</sup> 15 U.S.C. 78f(b)(1).

comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange.

The Exchange believes that the proposed rule change would contribute to the orderly operation of the Exchange and would enable the Exchange to be so organized as to have the capacity to carry out the purposes of the Act and comply and enforce compliance by its members and persons associated with its members, with the provisions of the Act because, by making the Certificate of Incorporation a rule of the Exchange, no amendment to the Certificate of Incorporation, including its restrictions on the ability of NYSE LLC to transfer or assign any interest in NYSE Market (DE), could be made without the Exchange filing a proposed rule change with the Commission. Similarly, the Exchange would be required to file as a proposed rule change any changes to the NYSE LLC Operating Agreement with the Commission.<sup>12</sup> In addition, the Exchange believes that the proposed changes are consistent with and will facilitate an ownership structure of the Exchange's facility NYSE Amex Options that will provide the Commission with appropriate oversight tools to ensure that the Commission will have the ability to enforce the Act with respect to NYSE Amex Options and its direct and indirect parent entities.

The Exchange also believes that this filing furthers the objectives of Section 6(b)(5) of the Act<sup>13</sup> because the proposed rule change would be consistent with and facilitate a governance and regulatory structure that 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

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<sup>12</sup> The Exchange notes that any amendment to the NYSE LLC Operating Agreement would also require that NYSE LLC file a proposed rule change with the Commission.

<sup>13</sup> 15 U.S.C. 78f(b)(5).

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. The Exchange believes that making the Certificate of Incorporation and NYSE LLC Operating Agreement rules of the Exchange will remove impediments to the operation of the Exchange by ensuring that no amendment to the Certificate of Incorporation or NYSE LLC Operating Agreement could be made without the Exchange filing a proposed rule change with the Commission. For the same reasons, the proposed rule change is also 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 proposed rule change is not intended to address competitive issues but rather is concerned solely with ensuring that the Commission will have the ability to enforce the Act with respect to NYSE Amex Options and its direct and indirect parent entities.

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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.<sup>14</sup>

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<sup>14</sup> In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii) 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 30-day operative delay is appropriate because the Certificate of Incorporation of NYSE Market (DE) and the NYSE LLC Operating Agreement will become “rules of the exchange” of NYSE MKT without delay. Based on the foregoing, the Commission believes that the waiver of the operative delay is consistent with the protection of investors and the public interest.<sup>15</sup> The Commission hereby grants the waiver and designates the proposal operative upon filing.

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 should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning

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

<sup>15</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).

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-2015-71 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEMKT-2015-71. 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 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](http://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-2015-71 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>16</sup>

Robert W. Errett  
Deputy Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).