

introducing new products to the marketplace and encouraging Specialists to make a market in these products, which would in turn, benefit market participants.

To the extent that there is an additional competitive burden on market participants that are not eligible for the credit (*i.e.*, non-Specialists), the Exchange believes that this is appropriate because the proposal would incent Specialists to quote and trade in options on ByRDs which would enhance the quality of the Exchange's markets and increases the volume of contracts traded here. To the extent that this purpose is achieved, all of the Exchange's market participants should benefit from the improved market liquidity. Enhanced market quality and increased transaction volume that results from the anticipated increase in order flow directed to the Exchange will benefit all market participants and improve competition on the Exchange. Moreover, the Exchange believes it is appropriate to offer the credit to Specialists (and not to other types of Market Makers) as Specialists are subject to heightened continuous quoting obligations that exceed those required of other Market Makers.<sup>13</sup>

#### *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 foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)<sup>14</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>15</sup> thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

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)<sup>16</sup> 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*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEMKT-2016-10 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-2016-10. This file number should be included on the subject line if email 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 Web site (<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 Web site 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 such 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-2016-10, and should be submitted on or before February 24, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Robert W. Errett,**

*Deputy Secretary.*

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#### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-76996; File No. SR-NYSEMKT-2016-12]

#### **Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Rule Change Amending the NYSE MKT Company Guide To Create a New Section 146 Under Which a Certain Category of Newly Listed Issuers Would Be Entitled To Receive Complimentary Products and Services From the Exchange**

January 28, 2016.

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 January 14, 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, 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 amend the NYSE MKT Company Guide (the "Company Guide") to create a new Section 146 under which a certain category of newly listed issuers would be entitled to receive complimentary products and services from the Exchange. The proposed rule change is available on the Exchange's Web site 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,

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

<sup>15</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>13</sup> See *supra* n. 5.

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(2).

<sup>16</sup> 15 U.S.C. 78s(b)(2)(B).

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 Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend the Company Guide to create a new Section 146 under which a certain category of newly listed issuers would be entitled to receive complimentary products and services from the Exchange. The Exchange proposes to offer such complimentary products and services for a period of 24 calendar months from the date of initial listing to (i) any U.S. company that lists common stock on the Exchange for the first time and any non-U.S. company that lists an equity security<sup>4</sup> on the Exchange under Section 101 or 110 of the Company Guide for the first time, regardless of whether such U.S. or non-U.S. company conducts an offering, (ii) any U.S. or non-U.S. company that transfers its listing of common stock or equity securities, respectively, to the Exchange from another national securities exchange or (iii) any U.S. or non-U.S. company emerging from a bankruptcy, spinoff (where a company lists new shares in the absence of a public offering), and carve-out (where a company carves out a business line or division, which then conducts a separate initial public offering) (each, an "Eligible New Listing").

Historically, the Exchange has served as an alternative listing venue to the New York Stock Exchange (the "NYSE") for small capitalization companies unable to meet the NYSE's heightened initial listing standards. In this respect, the Exchange regularly competes with the Nasdaq Capital Market tier of the Nasdaq Stock Market and, in some cases, with the Nasdaq Global Market tier of the Nasdaq Stock Market. Like the Exchange, Nasdaq Capital Market and Nasdaq Global Market each have initial listing standards that can more readily accommodate small capitalization companies than the NYSE. The Exchange hopes in the

<sup>4</sup> For purposes of the proposed rule, "equity securities" means common stock or common share equivalents such as ordinary shares, New York shares, global shares, American Depository Receipts, or Global Depository Receipts.

future to compete for new listings to a greater degree with the Nasdaq Global Market. One way that the exchanges compete with each other is to offer companies services that aid their transition to being public or listed on a new exchange. For example, the Nasdaq Global Market currently offers newly listed companies the following services for a period of 24 calendar months following their listing: whistleblower hotline, investor relations Web site, press releases, interactive webcasting and market analytic tools.<sup>5</sup> The total retail value of these services is approximately \$70,000 per year.

To enable it to compete for listings with the Nasdaq Global Market, the Exchange proposes to offer Eligible New Listings Web-hosting products and services (with a commercial value of approximately \$16,000 annually), web-casting services (with a commercial value of approximately \$6,500 annually), whistleblower hotline services (with a commercial value of approximately \$4,000 annually), news distribution products and services (with a commercial value of approximately \$20,000 annually) and corporate governance tools (with a commercial value of approximately \$15,000 annually) for a period of 24 calendar months from the date of initial listing on the Exchange.

The Exchange believes that each of the services it proposes to offer to Eligible New Listings on the Exchange may be valuable to companies that are listing publicly for the first time or transferring their listing to the Exchange. Web-hosting products and services assist Eligible New Listings in engaging with their shareholders by providing them with a Web site that contains business content that can be viewed by investors. Similarly, web-casting services are an important tool utilized by listed companies to communicate with shareholders in connection with their quarterly earnings release process. A whistleblower hotline assists Eligible New Listings in complying with, among other things, the requirements of the Sarbanes-Oxley Act, Foreign Corrupt Practices Act and UK Bribery Act. News distribution products and services assist Eligible New Listings in complying with Exchange disclosure requirements. Lastly, corporate governance tools will help educate the board of directors of each Eligible New Listing about corporate governance best practices.

The Exchange proposes to codify in the new Section 146 of the Company Guide that all companies listed on the

<sup>5</sup> See Nasdaq Stock Market Rule IM-5900-7(b).

Exchange are entitled to certain complimentary products and services via the Exchange's Market Access Center. The Market Access Center is a market information analytics platform that is a combination of technology-enabled market intelligence insight and a team of highly skilled market professionals. The platform was created to provide issuers with better market insight and information across all exchanges and trading venues. The Market Access Center includes products and services that were (i) developed by the Exchange using proprietary data and/or intellectual property or (ii) built by a third-party expressly for the Exchange's listed companies. Within this platform all issuers have access to tools and information related to market intelligence, education, investor outreach, media visibility, corporate governance, and advocacy initiatives. For example, the Market Access Center offers daily trading summaries; a trading alert system highlighting user-defined trading or market events; a Web site featuring timely content for Exchange-listed senior executives featuring trading information, market data, and institutional ownership. All issuers listed on the Exchange have access to the Exchange's Market Access Center on the same basis. The products and services currently available through the Exchange's Market Access Center have a commercial value of approximately \$50,000.

The specific tools and services offered by the products discussed herein will be developed by the Exchange or by third-party vendors. NYSE Governance Services<sup>6</sup> will offer and develop the corporate governance tools discussed herein, but will not provide any other service discussed herein. NYSE Governance Services is an entity that is owned by the Exchange's parent

<sup>6</sup> The Exchange believes that NYSE Governance Services is not a "facility" of the Exchange. 15 U.S.C. 78c(a)(2). The Act defines "facility" to include an exchange's "premises, tangible or intangible property whether on the premises or not, any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system or communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange), and any right of the exchange to the use of any property or service." NYSE Governance Services is a distinct entity that is separate from the Exchange and engages in a discrete line of business that is not "for the purpose of effecting or reporting a transaction" on an exchange. While this proposal is being filed with the Commission under Section 19(b)(2) of the Act because it relates to services offered in connection with a listing on the Exchange, the Exchange does not believe it is required to file NYSE Governance Services' price schedule or changes that do not relate to services offered in connection with a listing on the Exchange.

company and is a leading provider of corporate governance, risk and compliance services to a diverse set of customers, including, among others, companies listed on the Exchange. Companies that are offered these products are under no obligation to accept them and a company's listing on the Exchange is not conditioned upon acceptance of any product or service. The Exchange notes that, from time to time, companies elect to purchase products and services from other vendors at their own expense rather than accepting comparable products and services offered by the Exchange.

The Exchange believes that companies listing on the Exchange for the first time often require a period of time after listing to complete the contracting and training process with vendors providing the complimentary products and services. Therefore, many companies are not able to begin using the suite of products offered to them immediately on the date of listing. To address this issue, the Exchange proposes to specify in Section 146 that if an Eligible New Listing begins using a particular service within 30 days after the date of listing, the complimentary period begins on such date of first use. In all other instances, the complimentary period will begin on the listing date.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Sections 6(b)(4)<sup>8</sup> of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(5)<sup>9</sup> of the Act in that it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that it is reasonable to offer complimentary products and services to attract new listings and respond to competitive pressures. The Exchange faces competition in the market for listing services and it competes, in part, by improving the quality of the services that it offers to listed companies. By offering products and services on a complimentary basis and ensuring that it is offering the services most valued by its listed issuers, the Exchange will

improve the quality of the services that listed companies receive.

The Exchange believes it is appropriate to offer a package of complimentary products and services to Eligible New Listings because such services will ease the transition of companies that are becoming public for the first time or transferring their listing to a new exchange. Further, Nasdaq offers a comparable suite of complimentary products and services to new listings and transfers and the proposed rule change will enable the Exchange to more effectively compete for listings.

Allowing companies up to 30 days after their listing to start using the complimentary products and services is a reflection of the Exchange's experience that it can take companies a period of time to review and complete necessary contracts and training for services following their listing. Allowing this modest 30 day period, if the company needs it, helps ensure that the company will have the benefit of the full period permitted under the rule to actually use the services, thus giving companies the full intended benefit.

### *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 rule change enables the Exchange to compete for listings by offering Eligible New Listings a package of complimentary products and services that assist their transition to being publicly listed for the first time or transferring their listing to the Exchange. All similarly situated companies are eligible for the same package of services. Further, the Exchange notes that the Nasdaq Global Market already offers a similar suite of complimentary products and services to companies initially listing or transferring their listing from the New York Stock Exchange to its market. Therefore, the proposed creation of Section 146 of the Company Guide will increase competition by enabling the Exchange to more effectively compete for listings.

### *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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEMKT-2016-12 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-2016-12. This file number should be included on the subject line if email 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 Web site (<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 Web site 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

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

<sup>8</sup> 15 U.S.C. 78f(b)(4).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

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–2016–12 and should be submitted on or before February 24, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Robert W. Errett,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76990; File No. SR–ISE–2016–04]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees

January 28, 2016.

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 January 19, 2016 the International Securities Exchange, LLC (the “Exchange” or the “ISE”) filed with the Securities and Exchange 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 ISE proposes to amend the Schedule of Fees to rename its Payment for Order Flow program. The text of the proposed rule change is available on the Exchange’s Web site (<http://www.ise.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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects 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 administers a payment for order flow (“PFOF”) program that helps Market Makers<sup>3</sup> establish PFOF arrangements with Electronic Access Members (“EAMs”) in exchange for those EAMs routing some or all of their order flow to the Market Maker. This PFOF program is funded through a fee of \$0.70 per contract,<sup>4</sup> which is paid by ISE Market Makers for each regular Priority Customer<sup>5</sup> contract executed in Non-Select Symbols.<sup>6</sup> The Exchange now proposes to rename the PFOF fee to “marketing fee” to keep the name of this program consistent with usage on other options markets that have adopted this terminology. The Exchange is not proposing any substantive changes to this program.

<sup>3</sup> The term “Market Makers” refers to “Competitive Market Makers” and “Primary Market Makers” collectively. See Rule 100(a)(25).

<sup>4</sup> The fee is waived in FX Options, Flash Orders, and for Complex Orders in all symbols. The PFOF fee is rebated proportionately to the members that paid the fee such that on a monthly basis the PFOF fund balance administered by a Primary Market Maker for a Group of options established under Rule 802(b) does not exceed \$100,000 and the PFOF fund balance administered by a preferred Competitive Market Maker for such a Group does not exceed \$100,000. A preferred Competitive Market Maker that elects not to administer a fund will not be charged the PFOF fee.

The Exchange assesses an administrative fee of 0.45% on the total amount of the funds collected each month.

<sup>5</sup> A “Priority Customer” is a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s), as defined in Rule 100(a)(37A).

<sup>6</sup> “Non-Select Symbols” are options overlying all symbols excluding Select Symbols. The Schedule of Fees currently states that PFOF is applicable to “Non-Penny Pilot Symbols,” which is an outdated term. The Exchange therefore proposes to update the Schedule of Fees to refer instead to “Non-Select Symbols.”

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.<sup>7</sup> In particular, the proposal is consistent with Section 6(b)(5) of the Act,<sup>8</sup> because it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change makes a non-substantive change to the name of the PFOF program operated by the Exchange. The Exchange believes that this change will be beneficial for members and investors who already use this term with respect to trading on other options markets that have already adopted this terminology. The Exchange further notes that the marketing fee program will continue to operate exactly as it does today.

##### B. Self-Regulatory Organization’s Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,<sup>9</sup> the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is a non-substantive name change and is therefore not designed to have any competitive impact.

##### C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

#### 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

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

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78f(b)(8).

<sup>10</sup> 17 CFR 200.30–3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b–4.