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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-70653; File No. SR-NYSEMKT-2013-79)

October 10, 2013

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 2 - Equities to Specify that The Definition of An Approved Person Does Not Include A Governmental Entity and Amending Rule 304 - Equities To Provide That If A Governmental Entity Directly or Indirectly Owns A Member Organization, Then The Member Organization Must Identify Such Governmental Entity to The Exchange

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 September 26, 2013, 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 Rule 2 - Equities to specify that the definition of an approved person does not include a governmental entity and amend Rule 304 - Equities to provide that if a governmental entity directly or indirectly owns a member organization, then the member organization must identify such governmental entity to the Exchange. The text of the proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public

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1 15 U.S.C.78s(b)(1).

2 15 U.S.C. 78a.

3 17 CFR 240.19b-4.

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 Rule 2 - Equities to specify that the definition of an approved person does not include a governmental entity and amend Rule 304 to provide that if a governmental entity directly or indirectly owns a member organization, then the member organization must identify such governmental entity to the Exchange.

Under Rule 2(b)(i) - Equities, a "member organization" is defined as a registered broker-dealer that has been approved for membership on the Exchange. To qualify as a member organization, a broker-dealer must be a member of either (i) the Financial Industry Regulatory Authority, Inc. ("FINRA") or (ii) a registered securities exchange other than the Exchange. Under Rule 2(c) - Equities, an approved person of a member organization is defined as a person, other than a member, principal executive or employee of a member organization, who controls a member organization, is engaged in a securities or kindred business that is controlled by a member or member organization, or is a U.S.-registered broker-dealer under common control with a member organization. Under Rule

2(d) - Equities, "control" means the power to direct or cause the direction of the management or policies of a person whether through ownership of securities, by contract or otherwise. A person is presumed to control another person if such person, directly or indirectly, (i) has the right to vote 25 percent or more of the voting securities, (ii) is entitled to receive 25 percent or more of the net profits, or (iii) is a director, general partner or principal executive (or person occupying a similar status or performing similar functions) of the other person.[4]

Rule 304 - Equities provides that a member organization must identify each approved person to the Exchange. Each approved person must execute a written consent to the jurisdiction of the Exchange and agree to (1) supply the Exchange with information relating to the existence of any statutory disqualification to which the approved person or any person associated with the approved person may be subject, as defined in the Act; (2) abide by such provisions of the rules of the Exchange relating to approved persons as shall from time to time be in effect; and (3) permit examination by the Exchange, or any person designated by it, at any time or from time to time, of its books and records to verify the accuracy of the information required to be supplied herein and by the rules of the Exchange. Supplementary Material .10 to Rule 304 - Equities sets forth certain additional requirements for approved persons domiciled outside the United States.

The Exchange recently received a membership application for a broker-dealer that is an approved FINRA member; this broker-dealer has an owner that is a governmental entity that indirectly controls the broker-dealer and thus falls within the definition of

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[4] The Exchange notes that the approved person definition is an Exchange convention and is not intended to be identical to the definition of "associated person" pursuant to Section 3(a)(18) of the Act. See 15 U.S.C. 78c(a)(18).

approved person under the Exchange's rules. This is the first time that the Exchange has received a membership application presenting this ownership structure. The Exchange notes that a governmental entity could be either a direct or an indirect owner of a member organization, and by virtue of its control, fall within the Exchange's definition of approved person, although this result was not contemplated at the time the definition was created. The Exchange does not believe that the Exchange could, under conflict of laws, have jurisdiction over a governmental entity and therefore requiring a governmental entity that falls under the Exchange's definition of approved person to consent to jurisdiction, as required by Rule 304, would not be possible. In light of these conflicts and in the interest of providing better notice to member organizations, the Exchange proposes to amend Rule 2(c) -Equities to specifically exclude a governmental entity from the definition of approved person. The proposed rule text would define governmental entity as a sovereign nation, state, territory, or other political subdivision, agency, or instrumentality thereof. While it is unnecessary for a governmental entity to be deemed an approved person under the Exchange's rules, the Exchange nonetheless wishes to have all direct and indirect owners that control member organizations identified to the Exchange. Therefore, the Exchange proposes to add new Supplementary Material .20 to Rule 304 - Equities to specify that a member organization that is directly or indirectly controlled by a governmental entity as defined in Rule 2(c) - Equities is required to identify such governmental entity to the Exchange.[5]

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[5] The Exchange notes that irrespective of the proposed rule change, under the Act, any person that directly or indirectly controls a broker-dealer falls within the Act's definition of an associated person, and that the Act defines the term "person" to include a government or political subdivision, agency, or instrumentality of a government. See 15 U.S.C. 78c(a)(9) and (18). Nonetheless,

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Sections 6(b)(5) of the Act,[7] in particular, because it is designed to foster cooperation and coordination with persons engaged in regulating transactions in securities, 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 Exchange believes that the proposed rule change would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system because the Exchange does not have jurisdiction over governmental entities and therefore could not require a governmental entity to execute a written consent to the Exchange's jurisdiction and attempting to do so would serve no regulatory purpose. The proposed rule change would take such conflicts of law rules into account and provide better notice to member organizations about the operation of the Exchange's rules. The proposed rule change would protect investors and the public interest because a member organization would be required to identify to the Exchange any governmental entity that directly or indirectly controlled it. All other Exchange membership requirements would remain applicable as would any other Exchange rules that would apply to the member organization. For these reasons, the Exchange believes that the proposal is consistent with the Act.

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neither the Act nor any rule thereunder requires a direct or indirect owner of a broker-dealer to execute any type of written consent to jurisdiction; only the broker-dealer itself does so by virtue of executing and submitting the Form BD.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

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

In accordance with Section 6(b)(8) of the Act,[8] the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange would be at a competitive disadvantage in the absence of a proposed rule change. As noted above, the Exchange has a pending application for a member organization that has a governmental entity as a controlling indirect owner, and FINRA has already approved this broker-dealer for membership under FINRA rules. By amending its rules so that this governmental entity need not execute a written consent to jurisdiction under Rule 304 - Equities, the Exchange can facilitate the approval of this broker-dealer as its member too. The Exchange has not identified any other self-regulatory organization that requires a direct or indirect owner of a broker-dealer to execute a written consent to jurisdiction.

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[9] and Rule 19b-4(f)(6) thereunder.[10] Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest;

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8 15 U.S.C. 78f(b)(8).

9 15 U.S.C. 78s(b)(3)(A)(iii).

10 17 CFR 240.19b-4(f)(6).

(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.

A proposed rule change filed under Rule 19b-4(f)(6)[11] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[12] the Commission may 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.

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)[13] 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

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[11] 17 CFR 240.19b-4(f)(6).

[12] 17 CFR 240.19b-4(f)(6)(iii).

[13] 15 U.S.C. 78s(b)(2)(B).

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-2013-79 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEMKT-2013-79. 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 20549-1090. 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-2013-79 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.[14]

Kevin M. O'Neill
Deputy Secretary

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[14] 17 CFR 200.30-3(a)(12).