

- MidPoint Peg Orders. Exchange Rule 11.8(d)(1) describes the TIF instructions that may be attached to a MidPoint Peg Order. The Exchange proposes to amend paragraph (d)(1) to state that a MidPoint Peg Order may have a TIF instruction of PRE, PTX, or PTD, in addition to Day, FOK, IOC, RHO, GTX and GTD.

- Market Maker Peg Orders. The proposed TIF instruction of PRE, PTX, and PTD would not be available to Market Maker Peg Orders. Under Exchange Rule 11.8(e)(4), a Market Maker Peg Order may only include a TIF instruction of Day, RHO, or GTD.

- Supplemental Peg. Exchange Rule 11.8(f)(1) describes the TIF instructions that may be attached to a Supplemental Peg Order. The Exchange proposes to amend paragraph (f)(1) to state that a Supplemental Peg Order may have a TIF instruction of PRE, PTX, or PTD, in addition to GTD, GTX, RHO and Day.

### III. Discussion and Commission Findings

After careful consideration, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>32</sup> The Commission believes that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5)<sup>33</sup> in particular, in that 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, 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 proposes to adopt an Early Trading Session and three new TIF instructions and to make related changes to its rules as discussed above.<sup>34</sup> The Commission believes that the proposed rules would provide Users

or Price Adjust instruction will remove contra-side liquidity from the EDGX Book if the order is an order to buy or sell a security priced below \$1.00 or if the value of such execution when removing liquidity equals or exceeds the value of such execution if the order instead posted to the EDGX Book and subsequently provided liquidity, including the applicable fees charged or rebates provided.

<sup>32</sup> In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>33</sup> 15 U.S.C. 78f(b)(5).

<sup>34</sup> See *supra* section II.

with additional options for trading on the Exchange. The Commission notes that the proposed Early Trading Session hours are similar to those of other exchanges<sup>35</sup> and that the proposed TIF instructions would offer functionality similar to existing functionality available on the Exchange and other exchanges which allows Members to select when their orders become eligible for execution.<sup>36</sup>

The Commission notes that the Exchange has represented that it would subject orders that are eligible for execution as of the start of the Pre-Opening Session to all of the Exchange's standard regulatory checks, as it currently does with all orders upon entry.<sup>37</sup> Specifically, the Exchange will subject such orders to checks for compliance with, including but not limited to, Regulation NMS,<sup>38</sup> Regulation SHO,<sup>39</sup> and relevant Exchange rules. Moreover, the Exchange reminds its Members of their regulatory obligations when submitting an order with one of the proposed TIF instructions.<sup>40</sup> In particular, the Exchange states that Members must comply with the Market Access Rule,<sup>41</sup> which requires, among other things, pre-trade controls and procedures that are reasonably designed to assure compliance with Exchange trading rules and Commission rules pursuant to Regulation SHO and Regulation NMS. The Exchange also notes that a Member's procedures must be reasonably designed to ensure compliance with the applicable regulatory requirements, not just at the time the order is routed to the Exchange, but also at the time the order becomes eligible for execution.<sup>42</sup>

The Commission further notes the Exchange's discussion of the best execution obligations of Members utilizing the proposed TIF

<sup>35</sup> For example, NYSE Arca, Inc. operates an Opening Session that starts at 4:00 a.m. Eastern Time and ends at 9:30 a.m. Eastern Time and Nasdaq Stock Market LLC operates a pre-market session that also opens at 4:00 a.m. and ends at 9:30 a.m. Eastern Time. See NYSE Arca Rule 7.34(a)(1); Nasdaq Rule 4701(g); see also Securities Exchange Act Release No. 60605 (September 1, 2009), 74 FR 46277 (September 8, 2009) (SR-CHX-2009-13) (adopting bifurcated post-trading session on the Chicago Stock Exchange, Inc.).

<sup>36</sup> Specifically, on the Exchange, Users may enter an order starting at 6:00 a.m. Eastern Time with a TIF of Regular Hours Only, which designates that the order only be eligible for execution during Regular Trading Hours, which begin at 9:30 a.m. Eastern Time. See Exchange Rule 11.6(q)(6); see also NASDAQ Rule 4703(a)(7).

<sup>37</sup> See Amendment No. 1, *supra* note 4.

<sup>38</sup> See 17 CFR 242.600–613.

<sup>39</sup> See 17 CFR 242.200–204.

<sup>40</sup> See Notice, *supra* note 5, at 8811.

<sup>41</sup> See 17 CFR 240.15c3–5.

<sup>42</sup> See Notice, *supra* note 5, at 8811.

instructions.<sup>43</sup> Specifically, the Exchange states that a Member's best execution obligations may include cancelling an order when market conditions deteriorate and could result in an inferior execution or informing customers if the execution of their order may be delayed intentionally while the Member utilizes reasonable diligence to ascertain the best market for the security.<sup>44</sup> The Exchange further notes that Members will maintain the ability to cancel or modify the terms of an order utilizing any of the proposed TIF instructions at any time, including during the time from when the order is routed to the Exchange until the start of the Pre-Opening Session. As a result, the Exchange states that a Member who utilizes the proposed TIF instructions, but later determines that market conditions favor execution during the Early Trading Session, can cancel the order residing at the Exchange and enter a separate order to execute during the Early Trading Session.<sup>45</sup>

### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act<sup>46</sup> that the proposed rule change (SR-EDGX-2016-06), as modified by Amendment No. 1, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>47</sup>

**Robert W. Errett,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission Investor Advisory Committee will hold a meeting on Thursday, April 14, 2016, in Multi-Purpose Room LL-006 at the Commission's headquarters, 100 F Street NE., Washington, DC. The meeting will begin at 9:30 a.m. (ET) and will be open to the public. Seating will be on a first-come, first-served basis. Doors will open at 9:00 a.m. Visitors will be subject to security checks. The meeting will be webcast on the Commission's Web site at [www.sec.gov](http://www.sec.gov).

<sup>43</sup> See *id.* at 8810–11.

<sup>44</sup> *Id.* at 8810 n.45.

<sup>45</sup> *Id.* at 8810.

<sup>46</sup> 15 U.S.C. 78s(b)(2).

<sup>47</sup> 17 CFR 200.30-3(a)(12).

On March 23, 2016, the Commission issued notice of the Committee meeting (Release No. 33-10058), indicating that the meeting is open to the public (except during that portion of the meeting reserved for an administrative work session during lunch), and inviting the public to submit written comments to the Committee. This Sunshine Act notice is being issued because a quorum of the Commission may attend the meeting.

The agenda for the meeting includes: Remarks from Commissioners; a discussion of a recommendation of the Investor as Purchaser subcommittee regarding mutual fund cost disclosure; an update from the Commission's Office of Compliance Inspections and Examinations; subcommittee reports; a discussion regarding cybersecurity and related investor protection concerns; reflections on the first full term of Investor Advisory Committee membership; and a nonpublic administrative work session during lunch.

For further information, please contact the Office of the Secretary at (202) 551-5400.

Dated: April 7, 2016.

**Brent J. Fields,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77536; File No. SR-NYSEMKT-2016-26]

### Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Rule Change Amending the Eighth Amended and Restated Operating Agreement of the Exchange

April 6, 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 March 29, 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 Eighth Amended and Restated Operating Agreement of the Exchange ("Operating Agreement") to (1) change the process for nominating non-affiliated directors; (2) remove a reference to an obsolete category of member; and (3) add references to Designated Market Makers. 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, 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 the Operating Agreement to (1) change the process for nominating non-affiliated directors; (2) remove a reference to an obsolete category of member; and (3) add references to Designated Market Makers ("DMMs").

###### Process for Nominating Non-Affiliated Directors

Pursuant to the Operating Agreement, at least 20% of the Board of Directors of the Exchange ("Board") is made up of "Non-Affiliated Directors" (commonly referred to as "fair representation directors").<sup>4</sup> Pursuant to Section 2.03(a) of the Operating Agreement, the nominating and governance committee

<sup>4</sup> Pursuant to Section 2.03(a) of the Operating Agreement, Non-Affiliate Directors are persons who are not members of the board of directors of Intercontinental Exchange, Inc. ("ICE"). A person may not be a Non-Affiliate Director unless he or she is free of any statutory disqualification, as defined in Section 3(a)(39) of the Exchange Act. Non-Affiliate Directors need not be independent.

("NGC") of the board of directors of ICE, the indirect parent of the Exchange, nominates the candidates for Non-Affiliated Directors, who are then elected by NYSE Group, as the sole member of the Exchange. The Exchange proposes to amend Section 2.03(a) to have the Director Candidate Recommendation Committee ("DCRC") of the Exchange assume the role currently played by the ICE NGC, and to make a conforming change to Section 2.03(h)(i). In addition, if the Member Organizations endorse a petition candidate for Non-Affiliate Director, pursuant to Section 2.03(a)(iv) the ICE NGC makes the determination of whether the person is eligible.<sup>5</sup> The Exchange proposes to amend Section 2.03(a)(iv) to have the Exchange make such determination instead of the ICE NGC.

Currently, the nomination by the ICE NGC is the final step in the process for electing a Non-Affiliated Director. First, the DCRC recommends a candidate, whose name then is announced to the Exchange's Member Organizations. The Member Organizations may propose alternate candidates by petition. If there are no petition candidates, the DCRC recommends its candidate to the ICE NGC. If petition candidates are proposed, the ICE NGC makes the determination of whether the candidates are eligible, and then all of the eligible candidates are submitted to the Member Organizations for a vote. The DCRC recommends to the ICE NGC the candidate receiving the highest number of votes. The ICE NGC is obligated to designate the DCRC-recommended candidate as the nominee, and NYSE Group is obligated to elect him or her as a Non-Affiliated Director.

The Exchange believes obligating the ICE NGC to nominate the candidates for Non-Affiliated Directors based on the DCRC's unalterable recommendation is neither necessary nor meaningful. Pursuant to Section 2.03(a)(iii) the ICE NGC is obligated to designate whomever the DCRC recommends or, if there is a petition candidate, whomever emerges from the petition process. The ICE NGC does not have any discretion. Removing this unnecessary step would make the NYSE MKT process more efficient.

The Exchange believes that having the Exchange determine whether persons endorsed to be petition candidates are eligible also would be more efficient, as it would not require action from the ICE NGC, thereby removing the possibility

<sup>5</sup> Pursuant to Section 2.02 of the Operating Agreement, "Member Organizations" refers to members and member organizations, as defined in NYSE MKT Rules 18 and 24, respectively.

<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.