

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-68997; File No. SR-NYSEMKT-2013-13)

February 27, 2013

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relocating Certain Futures and Options Trading Conducted on ICE Futures U.S. From Rented Space at the New York Mercantile Exchange to the Exchange's Facilities at 20 Broad Street and Amending Rule 6A - Equities, Which Defines the Terms "Trading Floor" and "NYSE Amex Options Trading Floor"

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 February 13, 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 relocate certain futures and options trading conducted on ICE Futures U.S. ("IFUS")⁴ from rented space at the New York Mercantile Exchange ("NYMEX") to the Exchange's facilities at 20 Broad Street and amend Rule 6A - Equities, which defines the terms "Trading Floor" and "NYSE Amex Options Trading Floor" (together, the "Proposal"). 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 Reference Room.

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ IFUS is a Designated Contract Market pursuant to the Commodity Exchange Act, as amended, and is regulated by the U.S. Commodity Futures Trading Commission ("CFTC"). IFUS was formerly known as the New York Board of Trade ("NYBOT").

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 make trading space at 20 Broad Street, commonly known as the “Blue Room”, available to IFUS to accommodate electronic trading of certain futures and options contracts currently conducted on IFUS in space rented from the NYMEX. The arrangement would be pursuant to an arms-length commercial lease. IFUS’s lease on its NYMEX trading space expires in June 2013. The Exchange notes that on December 20, 2012, Intercontinental Exchange, Inc. (“ICE”) entered into a merger agreement to acquire the Exchange’s parent, NYSE Euronext (the “Transaction”). IFUS, a wholly-owned subsidiary of ICE, requested assistance in relocating its remaining trading floor following announcement of the Transaction.

IFUS trades its products exclusively on an electronic trading platform and no longer utilizes open outcry trading. Approximately 40 traders (the “IFUS Traders”)⁵ currently utilize the IFUS trading floor (along with a small group of clerical staff they employ) as a place from which they may accept customer orders and execute electronic transactions in IFUS contracts.

⁵ None of the IFUS Traders are members of the Exchange, New York Stock Exchange LLC (“NYSE”) or NYSE Amex Options.

The IFUS Traders that are proposed to relocate to the Blue Room can execute transactions electronically in all products listed for trading by the IFUS, including futures and options on futures on cotton, frozen concentrated orange juice, coffee, sugar, cocoa, energy, foreign currencies, and certain Russell Indices.⁶ However, most of the IFUS Traders predominantly execute transactions in options on cotton futures. The IFUS Traders, collectively, transact less than 5% of average daily IFUS volume excluding IFUS energy contracts (which account for approximately 83% of IFUS's daily volume)⁷ and a fraction of 1% of the total average daily IFUS volume (which includes the energy contracts transacted on IFUS). The IFUS Traders do not engage in trading in equity securities or securities options through IFUS.

Further, six of the forty IFUS Traders engage in proprietary-only trading while the rest execute customer orders⁸ in addition to proprietary trading. IFUS customer orders may be accepted by telephone or electronically; however, the IFUS Traders cannot verbally discuss orders or transactions with each other while on the trading floor. Communications between traders on the floor must be made via instant message, email, or recorded telephone line. Order tickets are prepared and time-stamped for each customer order, and IFUS, as it does today, would have a compliance officer from IFUS Market Regulation in the Blue Room performing on-site surveillance on a regular basis.

⁶ These include the Russell 2000, Russell 1000, and Russell Value and Growth, all of which qualify as broad-based indices. The Exchange understands, however, that the IFUS Traders primarily trade Russell 2000 mini-contracts.

⁷ In other words, the IFUS Traders transact less than 5% of the 17% of IFUS's average daily volume that is not related to energy contracts.

⁸ Pursuant to the definition of the term "floor broker" in Section 1a(22) of the Commodity Exchange Act, the Floor Traders can only execute customer orders from a trading floor that is operated and supervised by a contract market such as IFUS.

The IFUS Traders will be sitting together in dedicated space in the Blue Room. A small group of NYSE MKT Floor brokers, currently in the Blue Room, will have their booths nearby.⁹ Both the space to be assigned to the IFUS Traders and the NYSE MKT Floor broker booths have privacy barriers consisting of eight foot walls which provide visual and sound insulation to reduce the likelihood that trading screens can be viewed or conversations overheard between firms and traders.¹⁰ Consequently, the Exchange believes that the combination of these visual and acoustical barriers, coupled with the IFUS limitations on verbal communications related to an order, substantially eliminate the risk that either the IFUS Traders or NYSE MKT Floor brokers could overhear each other's customer orders or other confidential trading information. Nonetheless, the names of the IFUS Traders will be provided to the Financial Industry Regulatory Authority ("FINRA") which conducts surveillance of the NYSE MKT and NYSE markets to enable FINRA to more readily identify any potentially violative trading by the IFUS Traders.¹¹

In light of the fact that the IFUS Traders do not trade any of the products traded on NYSE MKT, and the extremely limited overlap in related products traded by the IFUS Traders and on the NYSE MKT, as well as the very small volume of predominantly cotton options executed by the IFUS Traders, it is highly unlikely that any order handled by one of them could impact the

⁹ However, the Exchange expects to relocate the NYSE MKT Floor brokers to an area adjacent to the Garage once certain ongoing renovations are complete.

¹⁰ The booths are approximately 40 feet long by 10 feet wide. The barriers are eight feet high on both sides except for the two gated and badge access entry and exit points at the front and back of the booth, which are four feet high.

¹¹ Providing the names of the IFUS Traders to FINRA will be for the purpose of regulatory information sharing. Neither the Exchange nor FINRA will be responsible for regulating or surveilling the IFUS Traders' activity and the IFUS Traders will not be subject to the Exchange's jurisdiction. Rather, the IFUS Traders will continue to be regulated by IFUS as they are today.

price of any individual security traded on the Exchange. In this regard, the Exchange believes that the pricing correlation between order flow in IFUS products and securities traded on NYSE MKT is tenuous at most. Consequently, even if an NYSE MKT Floor broker in the Blue Room were to overhear the terms of an order handled by an IFUS Trader, or vice-a-versa, the likelihood that the information could be used to benefit that trader's or broker's proprietary, personal or other customer trading is extremely unlikely. This is also true with respect to the Russell Index products given their broad-based nature. The Exchange believes that the same considerations apply with respect to the NYSE, which operates on the same Trading floor, and NYSE Amex Options, which operates on a trading floor that is adjacent to NYSE MKT. Nonetheless, NYSE MKT Floor brokers initiating trades based on confidential order information overheard from the IFUS Traders would be subject to disciplinary action for violating NYSE MKT rules, including Rules 2010 – Equities and 2020 - Equities, which require members and member organizations to observe high standards of commercial honor, to use just and equitable principles of trade, and prohibit the use of manipulative, deceptive or fraudulent devices.

Further, IFUS will issue a regulatory notice specifying the method IFUS Traders must use to access the Blue Room and prohibiting the IFUS Traders from entering the Main Room, where most of the NYSE MKT and NYSE Equities Floor brokers and all NYSE MKT and NYSE Designated Market Makers (“DMMs”) are located as well as the NYSE Amex Options trading floor. Specifically, the IFUS Traders will be required to take the 18 Broad Street entrance elevator and enter the Trading Floor using the turnstile nearest the Blue Room. The Exchange will periodically monitor badge swipes at that turnstile. Moreover, the Exchange will install a security door requiring a badge swipe to enter and exit the physical area to be occupied by the IFUS Traders. The IFUS Traders will also wear distinctive badges and trading jackets.

NYSE MKT Floor Governors and FINRA's On Floor Surveillance Unit will be instructed to identify and promptly report violations of the restriction on entering the Main Room to the IFUS Market Supervision officer. IFUS Traders entering the Main Room in violation of this restriction could face disciplinary action pursuant to IFUS Rule 4.04, which prohibits conduct or practices inconsistent with just and equitable principles of trade or conduct detrimental to the best interests of IFUS. The Exchange believes that these restrictions are appropriate to prevent the IFUS Traders from having potential access to any nonpublic information that might be available at the DMM booths.

Based on the limited trading conducted by the IFUS Traders, the extremely limited overlap in products traded and the controls that will be put in place, the Exchange does not believe that the proposed relocation of the IFUS Traders to the Blue Room raises any regulatory concerns.

The Exchange also proposes to amend Rule 6A - Equities, which defines the term "Trading Floor" to update the definition. Rule 6A - Equities provides that the term "Trading Floor" means the restricted-access physical areas designated by the Exchange for the trading of securities, commonly known as the "Main Room" and the "Garage." Rule 6A - Equities further provides that the Exchange's Trading Floor does not include the areas where NYSE Amex-listed options are traded, commonly known as the "Blue Room" and the "Extended Blue Room," which, for the purposes of the Exchange's Rules, are referred to as the "NYSE Amex Options Trading Floor."

The Exchange proposes to amend Rule 6A - Equities to add "Blue Room" to the definition of "Trading Floor" and remove that term from the definition of "NYSE Amex Options Trading Floor".

The Exchange notes that the proposed rule change would not have an impact on the Exchange's trading rules or the IFUS rules, nor would it have an impact on the Exchange's or IFUS' authority to bring a disciplinary action for violation of those rules.

2. Statutory Basis

The Exchange believes that the Proposal is consistent with the provisions of Section 6 of the Act,¹² in general, and Section 6(b)(5) of the Act,¹³ 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, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that the Proposal is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that the proposed rule change will permit the Exchange to allow IFUS Traders to utilize space on the trading floor within the existing regulatory framework at the Exchange, to efficiently and effectively conduct business in their respective area consistent with maintaining necessary distinctions between the two organizations. Moreover, the proposed rule changes will impose restrictions designed to prevent inappropriate information sharing by and between members and member firm employees on the Trading Floor of the Exchange and the IFUS Traders in the proposed IFUS Trading area. The Exchange believes that updating the references in the Exchange rules to reflect the correct use of the Exchange Trading Floor may help eliminate potential confusion among investors and other market participants on the

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(4) and (5) [sic].

Exchange who may not be aware of which portion of the trading space will be used as the Trading Floor.

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

The Exchange does not believe that the Proposal will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposal is designed to promote competition by providing the Exchange the additional flexibility to maximize the use of its trading floor space.

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 Act¹⁴ and Rule 19b-4(f)(6) thereunder.¹⁵ 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 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)¹⁶ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule

¹⁴ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁵ 17 CFR 240.19b-4(f)(6).

¹⁶ 17 CFR 240.19b-4(f)(6).

19b4(f)(6)(iii),¹⁷ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

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)¹⁸ 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 e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEMKT-2013-13 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-2013-13. This file number should be included on the subject line if e-mail is used. To help the Commission process and

¹⁷ 17 CFR 240.19b-4(f)(6)(iii).

¹⁸ 15 U.S.C. 78s(b)(2)(B).

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, 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. 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-2013-13 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.¹⁹

Kevin M. O'Neill
Deputy Secretary

¹⁹ 17 CFR 200.30-3(a)(12).