

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. The Exchange has stated that it is requesting this waiver because the proposed rule change is based on the approved rules of NYSE and would be applicable to member organizations that are also NYSE member organizations, trade on the same physical facilities as NYSE, and are subject to trading rules based on the rules of NYSE. The Exchange further stated that the proposed rule change would permit the Exchange to implement changes to its rules at the same time that the approved changes are implemented by NYSE.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because this waiver will enable the Exchange to maintain consistent definitions of Trading Floor and Floor between the Exchange and NYSE, which utilize the same physical location and have their member organizations in common. Waiver could thus avoid confusion that might arise from excluding the telephone booths described herein from the definition of Trading Floor for purposes of NYSE but not for the Exchange. The Commission notes that the Exchange, in adopting this proposed rule change, will be held to the same standards with respect to conducting surveillance for the misuse of material non-public information and monitoring for compliance with Exchange rules within the telephone booths and on the Trading Floor that the Commission based its findings on when approving NYSE's version of the proposed rule change. For the reasons described above, consistent with the protection of investors and the public interest, the Commission hereby waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing.<sup>21</sup>

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>22</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-2016-92 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-2016-92. 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-2016-92, and should be

submitted on or before November 14, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>23</sup>

**Robert W. Errett,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79118; File No. SR-NASDAQ-2016-121]

### Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change Related to the Payment of a Credit by Execution Access, LLC Based on Volume Thresholds Met on the NASDAQ Options Market

October 19, 2016.

On August 29, 2016, The Nasdaq Stock Market LLC ("Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change related to the payment of a credit by Execution Access, LLC that would be based on volume thresholds met on the NASDAQ Options Market LLC. The proposed rule change was published for comment in the **Federal Register** on September 8, 2016.<sup>3</sup> The Commission has received no comment letters on the proposal.

Section 19(b)(2) of the Act<sup>4</sup> provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is October 23,

<sup>23</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.

<sup>3</sup> See Securities Exchange Act Release No. 78749 (September 1, 2016), 81 FR 62212.

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>21</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>22</sup> 15 U.S.C. 78s(b)(2)(B).

2016. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, pursuant to Section 19(b)(2) of the Act,<sup>5</sup> the Commission designates December 7, 2016, as the date by which the Commission shall either approve or disapprove or institute proceedings to determine whether to disapprove the proposed rule change (File No. SR–NASDAQ–2016–121).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>6</sup>

**Brent J. Fields,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79115; File No. SR–NYSE–2016–66]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Article IV, Section 4.05 of the Tenth Amended and Restated Operating Agreement of the Exchange

October 18, 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 October 6, 2016, New York Stock Exchange LLC (“NYSE” or the “Exchange”) 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 Article IV, Section 4.05 of the Tenth Amended and Restated Operating Agreement of the Exchange (“Operating Agreement”) regarding use of regulatory

assets, fees, fines and penalties, and make additional, non-substantive edits. 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 Article IV, Section 4.05 (Limitation on Distributions) of the Operating Agreement (“Section 4.05”), regarding use of regulatory assets, fees, fines and penalties (“Regulatory Funds”), and make additional, non-substantive edits.

###### Proposed Amendment to Section 4.05

Section 4.05 provides that: [t]he Company shall not use any regulatory assets or any regulatory fees, fines or penalties collected by the Exchange’s regulatory staff for commercial purposes or distribute such assets, fees, fines or penalties to the Member or any other entity.<sup>4</sup>

Although it prohibits the use of Regulatory Funds for “commercial purposes,” that term is not defined in Section 4.05 or elsewhere in the Operating Agreement. Accordingly, to add greater clarity to the limits on the use of Regulatory Funds, the Exchange proposes to replace the prohibition against using Regulatory Funds for “commercial purposes” with a statement that Regulatory Funds “will be applied to fund the legal, regulatory and surveillance operations” of the Exchange. The prohibition on using Regulatory Funds for distributions to the Member or any other entity would remain.

In addition, “Exchange” is not a defined term in the Operating Agreement, which defines the Exchange as the “Company.” Accordingly, the Exchange proposes to replace “Exchange’s regulatory staff” with “Company’s regulatory staff.”

The amended Section 4.05 would read as follows:

Any regulatory assets or any regulatory fees, fines or penalties collected by the Company’s regulatory staff will be applied to fund the legal, regulatory and surveillance operations of the Company, and the Company shall not distribute such assets, fees, fines or penalties to the Member or any other entity.

The Exchange believes that the increased clarity in the scope of the limits on use of Regulatory Funds will enhance the protections provided by Section 4.05 against the possibility that Regulatory Funds may be assessed to respond to the Exchange’s budgetary needs rather than to serve a disciplinary purpose.<sup>5</sup>

The proposed amendments would have the benefit of bringing Section 4.05 into greater conformity with the bylaws of the Exchange’s affiliate NYSE Arca, Inc., which provide that regulatory fees and penalties “will be applied to fund the legal, regulatory and surveillance operations of the Exchange.”<sup>6</sup>

The proposed amendments would make Section 4.05 more consistent with the limitations on the use of regulatory income of other self-regulatory organizations (“SROs”). Most such limitations are substantially similar to the proposed revised Section 4.05. For example, similar to the proposed Section 4.05, the limited liability company agreements of the BOX Options Exchange (“BOX”), International Securities Exchange, LLC (“ISE”), and its affiliates ISE Gemini, LLC and ISE Mercury, LLC, provide that regulatory funds shall be used to fund the relevant SRO’s legal, regulatory and surveillance operations.<sup>7</sup> Consistent

<sup>5</sup> See Securities Exchange Act Release No. 77899 (May 24, 2016), 81 FR 34393 (May 31, 2016) (SR–NYSE–2016–37).

<sup>6</sup> See Bylaws of NYSE Arca, Inc., Art. II, Sec. 2.06 (“Any revenues received by the Exchange from regulatory fees or regulatory penalties will be applied to fund the legal, regulatory and surveillance operations of the Exchange and will not be used to pay dividends. For purposes of this Section, regulatory penalties shall include restitution and disgorgement of funds intended for customers.”). The Exchange’s affiliate NYSE MKT LLC has submitted substantially the same proposed amendment to its operating agreement. See SR–NYSEMKT–2016–93.

<sup>7</sup> Such provisions also limit the relevant SRO from making any distribution to its member using regulatory funds. See Box Options Exchange Limited Liability Company Agreement, Art. 1, Sec.

Continued

<sup>5</sup> *Id.*

<sup>6</sup> 17 CFR 200.30–3(a)(31).

<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> See Tenth Amended and Restated Operating Agreement of New York Stock Exchange LLC, Art. IV, Sec. 4.05; see also Securities Exchange Act Release No. 78805 (September 9, 2016), 81 FR 63536 (September 15, 2016) (SR–NYSE–2016–51).