

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-71952; File No. SR-NYSEMKT-2014-32)

April 16, 2014

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Proposes to Amend Certain of its NYSE MKT Equities Rule Series (500 through 525) to Permit Additional Securities to be Admitted to Dealings on the Exchange Pursuant to a Grant of Unlisted Trading Privileges

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 April 4, 2014, 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 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 Exchange proposes to amend certain of its NYSE MKT Equities Rule Series (500 through 525) to permit additional securities to be admitted to dealings on the Exchange pursuant to a grant of unlisted trading privileges. Additionally, the Exchange proposes to amend Supplementary Material .20 to Rule 103 – Equities to apply a uniform minimum net capital standard to Designated Market Maker (“DMM”) units, regardless of the type of security in which the DMM unit is registered. The text of the proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, at the Commission’s Public Reference Room, and on the Commission’s website at [www.sec.gov](http://www.sec.gov).

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<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.

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend certain of its NYSE MKT Equities Rule Series (500 through 525) (the “500 series rules”) to permit additional securities to be admitted to dealings on the Exchange pursuant to a grant of unlisted trading privileges. Additionally, the Exchange proposes to amend Supplementary Material .20 to NYSE MKT Rule 103 – Equities to apply a uniform minimum net capital standard to DMM units,<sup>4</sup> regardless of the type of security in which the DMM unit is registered.

Amendments to 500 Series rules

Securities admitted to trade on the Exchange pursuant to a grant of unlisted trading privileges are subject to a pilot program (the “UTP Pilot Program”) set forth in the 500 series

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<sup>4</sup> DMM unit is defined as “any member organization, aggregation unit within a member organization, or division or department within an integrated proprietary aggregation unit of a member organization that (i) has been approved by NYSE Regulation pursuant to NYSE MKT Rule 98(c) – Equities, (ii) is eligible for allocations under Rule 103B – Equities as a DMM unit in a security listed or traded on the Exchange, and (iii) has met all registration and qualification requirements for DMM units assigned to such unit.” See Rule 98(b)(2) – Equities.

rules.<sup>5</sup> The current UTP Pilot Program is limited to securities listed on the Nasdaq Stock Exchange (“Nasdaq Securities”), and includes only a single Exchange Traded Fund, the Invesco PowerShares QQQ™ (the “QQQ™”).<sup>6</sup>

The Exchange proposes to amend certain of the 500 series rules to expand the UTP Pilot Program beyond Nasdaq Securities and replace the term “Nasdaq Securities” with the term “UTP Securities,” which would be admitted to trading on the Exchange pursuant to a grant of unlisted trading privileges. As proposed, amended Rule 501(b) – Equities<sup>7</sup> would define “UTP Security” to mean any security not listed on the Exchange that (i) is designated as an “eligible security” under the “UTP Plan,” discussed below, and (ii) has been admitted to dealings on the Exchange pursuant to a grant of unlisted trading privileges in accordance with Section 12(f) of the Act.<sup>8</sup>

In addition to Nasdaq Securities, the new definition of UTP Securities would include certain “Exchange Traded Products” (“ETPs”). For purposes of this filing, ETPs include

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<sup>5</sup> See Securities Exchange Act Release No. 62479 (July 9, 2010), 75 FR 41264 (July 15, 2010) (SR-NYSEAmex-2010-31).

<sup>6</sup> The UTP Pilot Program is currently scheduled to expire on the earlier of Commission approval to make the pilot permanent or July 31, 2014. See Securities Exchange Act Release No. 71363 (Jan. 21, 2014), 79 FR 4373 (Jan. 27, 2014) (SR-NYSEMKKT-2014-01).

<sup>7</sup> As discussed in detail below, the scope of Exchange Traded Funds eligible to trade on the Exchange pursuant to a grant of unlisted trading privileges would be expanded beyond the QQQ™. Thus, current Rule 501(b) – Equities would be deleted and current paragraphs (c) through (g) of Rule 501 – Equities would be redesignated as paragraphs (b) through (d) of Rule 501 – Equities, and certain of those redesignated paragraphs would be amended, as indicated in this filing.

<sup>8</sup> Section 12(a) of the Act generally prohibits the trading on a national securities exchange of any security that is not listed on that exchange. Subject to certain limitations, however, Section 12(f) excludes from this restriction securities traded pursuant to unlisted trading privileges that are listed and registered on another national securities exchange, otherwise registered under Section 12 of the Act, or that would be required to be so registered except for a specified exemption from registration. 15 U.S.C. 78l; Securities Exchange Act Release No. 43217 (Aug. 29, 2000), 65 FR 53560 (Sept. 5, 2000).

Exchange Traded Funds (“ETFs”);<sup>9</sup> Exchange Traded Notes (“ETNs”);<sup>10</sup> Exchange Traded Vehicles (“ETVs”);<sup>11</sup> or any other security, other than a single equity option or a security futures product, whose value is based, in whole or in part, upon the performance of, or interest in, an underlying instrument.

As proposed, New Rule 501(b)(3) – Equities, would exclude from the definition of UTP Security any ETP that has one or more component securities that trade either on the Exchange or on the New York Stock Exchange, LLC (the “NYSE”). However, consistent with current 500 Series Rules, proposed new Rule 501(b)(3) – Equities would permit the QQQ™, an ETF, to continue to trade on the Exchange on an unlisted trading privileges basis, subject to the continuation of certain restrictions.<sup>12</sup>

The Exchange proposes to amend the definition of UTP Plan under Rule 501(f) – Equities to reflect the expanded scope of the UTP Pilot Program. The current rule<sup>13</sup> applies only

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<sup>9</sup> An ETF is an open-end management investment company under the Investment Company Act of 1940 that has received certain exemptive relief from the Commission to allow secondary market trading in the ETF shares. An ETF typically holds a portfolio of securities that is intended to provide results that, before fees and expenses, generally correspond to the price and yield performance of an underlying benchmark index or an investment objective, or that, rather than seek to track the performance of an underlying index, are managed according to the investment objective of the ETF’s investment advisor.

<sup>10</sup> An ETN is a senior unsecured debt obligation designed to track the total return of an underlying index, benchmark or strategy, minus investor fees. ETNs are registered under the Securities Act of 1933 and are redeemable to the issuer.

<sup>11</sup> An ETV tracks the underlying performance of an asset or index, allowing the investors exposure to underlying assets such as futures contracts, commodities, and currencies without trading futures or taking physical delivery of the underlying asset. An ETV is traded intraday like an ETF. An ETV is an open-end trust or partnership unit that is registered under the Securities Act of 1933.

<sup>12</sup> See Rule 504(b)(5) – Equities. The Exchange proposes to replace the reference to “ETF” and “Exchange Traded Fund” in Rule 504(b)(5) – Equities with “QQQ™” because the only ETF that would be subject to the requirements of that rule would be the QQQ™.

<sup>13</sup> Rule 501(g) – Equities has been redesignated as Rule 501(f) – Equities.

to Nasdaq Securities and, therefore, the definition of UTP Plan is limited to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis (the “Nasdaq Plan”). Amended Rule 501(f) – Equities would define the UTP Plan as comprising the Nasdaq Plan for Nasdaq Securities, plus the Consolidated Tape Association Plan for the Dissemination of Last Sale Prices of Transactions in Eligible Securities (“CTA Plan”), which would apply to all securities other than Nasdaq Securities that trade on the Exchange on an unlisted trading privileges basis, including ETPs listed on NYSE Arca, Inc.<sup>14</sup>

The Exchange proposes to amend Rule 509(a)(2) – Equities with respect to a DMM’s obligations to maintain price continuity with reasonable depth under Rules 104(f)(ii) and (iii) and 104(h)(ii) and (iii)(A) – Equities. The obligations are set out in Depth Guidelines and Price Participation Points (“PPPs”), which are implemented by the Exchange. The Exchange issues Depth Guidelines for each security in which a DMM is registered, and a DMM is expected to quote and trade with reference to such guidelines.<sup>15</sup> PPPs serve as guidelines that identify the

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<sup>14</sup> See Securities Exchange Act Release No. 10787 (May 10, 1974), 39 FR 17799 (May 20, 1974) (declaring the CTA Plan effective). The Nasdaq Plan provides for the collection, processing, and dissemination of last sale and quotation data with respect to Nasdaq Securities trading on participant exchanges on an unlisted trading privileges basis. See Securities Exchange Act Release No. 70429 (Sept. 17, 2013), 78 FR 58352 (Sept. 23, 2013). The CTA Plan provides for the collection, processing, and dissemination of last sale data for non-Nasdaq Securities trading on participant exchanges on an unlisted trading privileges basis. See Securities Exchange Act Release No. 70010 (July 19, 2013), 78 FR 44984 (July 25, 2013) (SR-CTA/CQ-2013-04).

<sup>15</sup> Rule 104(f)(iii) – Equities.

price at or before which a DMM unit is expected to re-enter the market after a “Conditional Transaction.”<sup>16</sup>

The Depth Guidelines and PPPs, as described in Rules 104(f)(ii) and (iii) and 104(h)(ii) and (iii)(A) – Equities, would apply to UTP Securities; however, the Exchange would determine when implementation of the provisions would occur, and in any case it would not be until at least six months after the Commission’s approval of this filing. The phased implementation would give the Exchange time to gather data to develop and phase in appropriate guidelines for UTP Securities.<sup>17</sup>

The Exchange proposes to amend the following rules to change references from “Nasdaq Securities” to “UTP Securities”: Rules 500, 501,<sup>18</sup> 502, 504, 506, 508,<sup>19</sup> 509, 511, 512, 515, 516, and 518 – Equities. The Exchange also proposes to amend Rules 510 and 522 – Equities to change references from “Exchange Traded Fund” to “ETP.”

The Exchange believes that the proposed amendments to the 500 Series rules would encourage the additional utilization of, and interaction with, the Exchange, and provide market participants with improved price discovery, increased liquidity, more competitive quotes, and greater price improvement for UTP Securities. A DMM in each UTP Security would be required to facilitate trading, which would supply liquidity as needed. By allowing a broader set of

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<sup>16</sup> Rule 104(h)(iii)(A) – Equities. A “Conditional Transaction” is a DMM’s transaction in a security that establishes or increases a position and reaches across the market to trade as the contra-side to the Exchange-published bid or offer. Rule 104(h)(i) – Equities.

<sup>17</sup> For similar reasons, the Exchange implemented depth guidelines under the current UTP Pilot Program six months after approval of those rule changes. See supra note 5.

<sup>18</sup> In addition to the other amendments to Rule 501 – Equities identified in this filing, a reference to trading pauses under the LULD Pilot Program was added to situations in which the market for a UTP Security could be manual or “slow.”

<sup>19</sup> Rule 508(b)(2) – Equities also added a reference to trading pauses under the LULD Pilot Program to situations in which the market for a UTP Security could be manual or “slow.”

securities to be traded on the Exchange under the UTP Pilot Program, the proposed revision gives market participants more flexibility in deciding on which venue to trade UTP Securities, consistent with trading needs of such participants.

#### Amendments to DMM Unit Minimum Capital Requirements

The Exchange proposes to amend Supplementary Material .20 to Rule 103 – Equities to apply a uniform minimum net capital standard to DMM units, regardless of the type of security in which the DMM unit is registered. Under the current version of Supplementary Material .20, each DMM unit, other than those registered in Structured Products,<sup>20</sup> must maintain tentative net capital in the amount of the greater of \$1,000,000 or an amount sufficient to assume a position of sixty trading units of each security in which the DMM unit is registered. DMM units that are registered in Structured Products, however, must maintain tentative net capital in the amount of the greater of \$500,000 for each Structured Product or \$1,000,000.

The Exchange proposes to eliminate the distinction between DMM units registered in Structured Products and DMM units registered in other securities. The revised version of Supplementary Material .20 eliminates the special net capital requirement applicable to DMM units registered in Structured Products, requiring all DMM units to maintain tentative net capital in the amount of the greater of \$1,000,000 or an amount sufficient to assume a position of sixty trading units of each security in which the DMM is registered.

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<sup>20</sup> Rule 123D(4) – Equities defines “Structured Products” as “securities listed pursuant to Sections 104 (Bonds and Debentures), 106 (Currency and Index Warrants), or 107 (Other Securities) of the Company Guide or pursuant to Rules 1000-AEMI and 1001 et seq. (Portfolio Depositary Receipts), 1000A-AEMI and 1001A et seq. (Index Fund Shares), 1000B et seq. (Managed Fund Shares), 1200-AEMI and 1201 et seq. (Trading of Trust Issued Receipts), 1200A-AEMI and 1201A et seq. (Commodity-Based Trust Shares), 1400 et seq. (Trading of Paired Trust Shares), 1500-AEMI and 1501 et seq. (Trading of Partnership Units), or 1600 et seq. (Trading of Trust Units).” ETPs fall within the definition of Structured Products.

The Exchange does not believe that DMMs registered in Structured Products should be treated differently from DMMs registered in other securities for net capital purposes. The purpose of the net capital requirement is to ensure that DMM units maintain sufficient liquidity to carry out their obligations to maintain an orderly market in their assigned securities during periods of market stress. The Exchange believes that the uniform minimum net capital standard will be adequate to support the liquidity needs of DMM units to meet their obligations to the market during periods of market stress. Thus, the Exchange proposes to eliminate disparate treatment for DMM units registered in Structured Products with respect to net capital requirements.

## 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 applicable to a national securities exchange. In particular, the Exchange believes that the proposal is consistent with (i) Section 6(b) of the Act,<sup>21</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>22</sup> in particular, in that it is designed to promote just and equitable principles of trade, 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; (ii) Section 11A(a)(1) of the Act,<sup>23</sup> in that it seeks to ensure the economically efficient execution of securities transactions and fair competition among brokers and dealers and among exchange markets; and (iii) Section 12(f) of the Act,<sup>24</sup> which governs the trading of securities pursuant to unlisted trading privileges consistent with the

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<sup>21</sup> 15 U.S.C. 78f(b).

<sup>22</sup> 15 U.S.C. 78f(b)(5).

<sup>23</sup> 15 U.S.C. 78k-1(a)(1).

<sup>24</sup> 15 U.S.C. 78l(f).



maintenance of fair and orderly markets, the protection of investors and the public interest, and the impact of extending the existing markets for such securities.

The Exchange believes that the proposed rule change will remove impediments to and perfect the mechanism of a free and open market because expanding the number of securities available to trade on the Exchange on an unlisted trading privileges basis will enhance intermarket competition for such securities. Specifically, the Exchange believes that expanding the set of securities covered by the UTP Pilot Program would encourage the additional utilization of, and interaction with, the Exchange, thereby providing market participants with additional price discovery, increased liquidity, more competitive quotes, and potentially greater price improvement for UTP Securities. The Exchange also believes that eliminating disparate treatment of DMM units registered in Structured Products for net capital purposes will remove impediments to and perfect the mechanism of a free and open market because a uniform minimum net capital standard will equalize the net capital requirements for a DMM registered in Structured Products as compared with other securities.

Finally, the Exchange believes that the proposed elimination of disparate treatment of DMM units registered in Structured Products for net capital purposes in favor of a uniform net capital requirement applicable to all DMM units is designed to protect investors and the public interest and promote just and equitable principles of trade. The Exchange believes the proposed rule change will protect investors and the public interest because the uniform standard will adequately support the liquidity needs of DMM units to enable them to meet their obligations during times of market stress.<sup>25</sup> Further, the proposed rule change will promote just and

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<sup>25</sup> Additionally, the Exchange notes that the net capital requirements of Rule 103 – Equities are in addition to the net capital requirements applicable to all broker-dealers pursuant Rule 15c3-1, promulgated under the Act.

equitable principles of trade because the Exchange does not believe that DMM units registered in Structured Products should be treated differently from DMM units registered in other securities.

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 not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that expanding the set of securities permitted to be traded on the Exchange pursuant to unlisted trading privileges will promote competition in the trading of UTP Securities by providing an additional market for the trading of such securities, and thereby provide market participants with opportunities for improved price discovery, increased liquidity through additional market making, more competitive quotes, and greater price improvement. Additionally, the Exchange believes that eliminating disparate treatment of Structured Products for net capital purposes will not impose any burden on competition because DMM units registered in Structured Products and DMM units registered in other securities will be required to meet the same minimum net capital standard.

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) of the Act<sup>26</sup> and Rule 19b-4(f)(6) thereunder.<sup>27</sup> Because the proposed rule change does not (i)

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<sup>26</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>27</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.<sup>28</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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>29</sup> of the Act to determine whether the proposed rule 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 proposal 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEMKT-2014-32 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.

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<sup>28</sup> 17 CFR 240.19b-4(f)(6).

<sup>29</sup> 15 U.S.C. 78s(b)(2)(B).

All submissions should refer to File Number SR-NYSEMKT-2014-32. 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 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 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-2014-32 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.<sup>30</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>30</sup> 17 CFR 200.30-3(a)(12).