SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-69294; File No. SR-NYSEMKT-2013-33)

April 4, 2013

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE MKT Rule 1000

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 April 2, 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 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 phase out the functionality associated with liquidity replenishment points ("LRPs") to coincide with the implementation of the Limit Up – Limit Down Plan (the "Plan") by adding language to NYSE MKT Rule 1000 - Equities that, beginning on April 8, 2013, LRPs will no longer be in effect for Tier 1 NMS Stocks, and on the earlier of August 1, 2013 or such date as Phase II of the Limit Up – Limit Down Plan is implemented, LRPs will no longer be in effect for all NMS Stocks. 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, on the Commission's website at http://www.sec.gov, and at the Commission's Public Reference Room.

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

2 15 U.S.C. 78a.

3 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 proposes to phase out the functionality associated with LRPs to coincide with the implementation of the Plan by amending NYSE MKT Rule 1000 - Equities to provide that, beginning on April 8, 2013, LRPs will no longer be in effect for Tier 1 NMS Stocks, and beginning on the earlier of, August 1, 2013 or such date as Phase II of the Limit Up – Limit Down Plan is implemented, LRPs will no longer be in effect for all NMS stocks.

The LRP mechanism was approved in 2006 to address market volatility on the New York Stock Exchange, and approved for use on the Exchange in 2008.[4] Specifically, the Exchange uses LRPs, which are triggered by rapid price movements over a short period of time, to moderate volatility in a security by temporarily converting the electronic market for the security into an auction market to afford new trading interests the opportunity to add liquidity. The Exchange additionally believes that LRPs were effective in moderating some of the impact from

[4] See Securities Exchange Act Release No. 53539 (March 22, 2006), 71 FR 16353 (March 31, 2006) (SR-NYSE-2004-05); Securities Exchange Act Release No. 58265 (July 30, 2008), 73 FR 46075 (Aug. 7, 2008) (SR-Amex-2008-63).

the events of May 6, 2010, for NYSE MKT trading customers as evidenced by the lack of erroneous trades on the Exchange. LRPs also served as the basis for the Plan,[5] as well as the implementation of the short sale circuit breakers. Indeed, for many years, LRPs have been a key selling point of the Exchange to both investors and listed companies who, like the Exchange, believe that stable prices further the purposes of protecting investors against unnecessary price swings thereby enhancing investor confidence in the U.S. securities markets. LRPs have delivered concrete benefits to public investors in the many erroneous or aberrant trades they have prevented, and have allowed the Exchange to communicate in an orderly way with issuers during periods of market stress.

Nevertheless, the Exchange proposes to phase out LRPs as a result of the scheduled implementation of the Plan, which was adopted in response to the market disruption of May 6, 2010. Specifically, in addressing comments focused on the relationship between the Plan and exchange-specific volatility mechanisms – such as the NYSE MKT's LRPs – the Commission stated that it was "aware of the potential for unnecessary complexity that could result if the Plan were adopted, and exchange-specific volatility mechanisms were retained" and "[t]o this end, the Commission expects that upon implementation of the Plan, such exchange-specific volatility mechanisms would be discontinued by the respective exchanges."[6]

Although the Exchange understands the need for industry-wide responses to address extraordinary volatility events such as the market disruption that occurred on May 6, 2010, the Exchange does not agree that such initiatives should come at the expense of existing investor protection mechanisms, particularly without any impact analysis, because such initiatives can

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5 See Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) ("LULD Release").

6 Id. at n. 182 (emphasis added).

have unintended consequences to the detriment of investors and the marketplace as a whole. In light of the fact that only potential concerns were noted and there is no evidence of systemic problems that would be caused by simultaneously operating the Plan and LRPs, the Exchange continues to believe that data could have been collected during the Plan pilot period and would have served as an excellent testing ground to determine if both the Limit Up – Limit Down bands as well as the LRP bands could function effectively together. The Exchange believes that only after such careful monitoring could an informed determination be made that accurately assesses whether the functionalities were redundant or conflicting so as to warrant continuing with one or the other, or both. The Plan pilot period could also have afforded the Commission and the Exchange the ability to compile and analyze data that would contribute to the making of an informed decision with respect to the merits of both programs.

Indeed, there is nothing particularly complex about how LRPs would have operated alongside the Plan. As the LRP bands are generally narrower than the Limit Up – Limit Down bands, LRPs might have continued to serve their current purpose of creating a temporary auction market buffer to rapid and extraordinary price movements occurring in the electronic market. They would have been triggered within Limit Up – Limit Down bands, would have applied only to the Exchange, and trading on away markets could have continued to occur because the NYSE MKT quotation is not protected during an LRP. Moreover, the Exchange believes that any incremental complexity the LRPs would have added to the operation of the Plan would have been outweighed substantially by their proven effectiveness in minimizing rapid price movements that are driven by erroneous orders.

Furthermore, the Exchange wishes to respectfully, but strenuously, object not only to the substance of the Commission's decision to effectively insist that the Exchange abandon LRPs,

but also the policy implications of the decision. From a policy perspective, the Commission's required removal of LRPs would seem to embody an effort to force markets "into a single mold"[7] for purposes of addressing extraordinary volatility, and to obstruct the development of "subsystems within the national market system," objectives which are inconsistent with the 1975 Act Amendments.[8]

Nevertheless, the Exchange proposes to phase out[9] the LRP functionality for securities as they are covered by the Plan in coordination with the Plan's Phase I and Phase II implementation timelines.[10] LRPs will remain in place for any securities not covered by the Plan.

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7 See H.R. Rep. No. 94-123, at 51 (1975) (emphasis added) ("The objective is to enhance competition and to allow economic force, interacting within a fair regulatory field, to arrive at appropriate variations of practices and services. Neither the markets themselves nor the broker-dealer participant in these markets should be forced into a single mold. Market centers should compete and evolve according to their own natural genius and all actions to compel uniformity must be measured and justified as necessary to accomplish the salient purposes of the Securities Exchange Act, assure the maintenance of fair and orderly markets and to provide price protection for the orders of investors.").

8 See S. Rep. No. 94-75 (1975). While there is no disputing that Congress intended to grant broad and discretionary market oversight powers to the Commission, it is also important to recognize the intended limits of that discretion. The Senate Committee Report sheds particular light on those limits with respect to uniformity of structure: "This is not to say that it is the goal of the legislation to ignore or eliminate distinctions between exchange markets and over-the-counter markets or other inherent differences or variations in components of a national market system. Some present distinctions may tend to disappear in a national market system, but it is not the intention of the bill to force all markets for all securities into a single mold. Therefore, in implementing the bill's objectives, the SEC would have the power to classify markets, firms, and securities in any manner it deems necessary or appropriate in the public interest or for the protection of investors and to facilitate the development of subsystems within the national market system." See id. at 7 (emphasis added).

9 The Exchange would note that the suspension, rather than the elimination thereof, of LRPs for the duration of the pilot period would not be put before the Commission for consideration.

10 See, e.g., Securities Exchange Act Release No. 68785 (January 31, 2013), 78 FR 8646 (February 6, 2013) (SR-NYSEArca-2013-06).

As such, the Exchange proposes to add rule language to NYSE MKT Rule 1000 - Equities that, beginning on April 8, 2013, LRPs will no longer be in effect for Tier 1 NMS Stocks, and on the earlier of August 1, 2013 or such date as Phase II of the Limit Up – Limit Down Plan is implemented, LRPs will no longer be in effect for all NMS Stocks. In order to accommodate the phasing out process, prior to the implementation of Phase II of the Plan, the Exchange will file a separate rule proposal deleting the references to LRP functionality in NYSE MKT Rules 60 - Equities, 79A - Equities, 104 - Equities, 128 - Equities, 501 - Equities, 508 – Equities, 512- Equities, and 1000 - Equities. The Exchange will apprise members and member organizations of the dates of the discontinuation of the LRP functionality via an Information Memorandum. The Exchange plans to revisit the merits of discontinuing the LRP functionality after the initial Plan pilot period has ended and may file to reincorporate the LRP functionality at that time as well.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b) of the Act,[11] in general, and Section 6(b)(5) of the Act,[12] in particular, in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system. However, the Exchange is discontinuing the LRP functionality and deleting corresponding rule references to implement changes that the Commission has requested and expects as reflected in the LULD Release. Moreover, the related Information Memorandum to members and member organizations would provide advance notice to NYSE MKT members and

11 15 U.S.C. 78f(b).

12 15 U.S.C. 78f(b)(5).

member organizations that the Exchange would cease offering the LRP functionality in furtherance of the Commission's expectations.

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

The Exchange does not believe that the proposed rule change will impose a burden on competition because the Exchange is discontinuing the LRP functionality to fulfill the Commission's expectations. In this respect, the Exchange notes that because Commission expects all exchanges to discontinue their respective volatility mechanisms, there should be no burden on competition because all exchanges as well as their members and issuers would be similarly situated.

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[13] and Rule 19b-4(f)(6) thereunder.[14] 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.

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13 15 U.S.C. 78s(b)(3)(A)(iii).

14 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) 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.

A proposed rule change filed under Rule 19b-4(f)(6)[15] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),[16] 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 designate an operative date of April 8, 2013. The Commission believes that waiving the operative delay and designating April 8, 2013 as the operative date of the proposed rule change is consistent with the protection of investors and the public interest because such waiver would allow the proposed rule change to be operative on the initial date of Plan operations. Accordingly, the Commission hereby grants the Exchange's request and designates an operative date of April 8, 2013.[17]

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.

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

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15 17 CFR 240.19b-4(f)(6).

16 17 CFR 240.19b-4(f)(6)(iii).

17 For purposes only of waiving the operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEMKT-2013-33 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-2013-33. 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 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 publicly available. All submissions should refer

to File Number SR-NYSEMKT-2013-33 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. [18]

Kevin M. O'Neill
Deputy Secretary

[18] 17 CFR 200.30-3(a)(12).