

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-67525; File No. SR-NYSEMKT-2012-29)

July 27, 2012

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE MKT Equities Price List to Change Certain Fees Relating to Trading Pursuant to Unlisted Trading Privileges of Securities Listed on the Nasdaq Stock Market LLC and Other Conforming Changes

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> notice is hereby given that, on July 20, 2012, NYSE MKT LLC (the “Exchange” or “NYSE MKT”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. 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 NYSE MKT Equities Price List (“Price List”) to change certain fees relating to trading pursuant to unlisted trading privileges (“UTP”) of securities listed on the Nasdaq Stock Market LLC (“Nasdaq”) and to make other conforming changes. The Exchange proposes to make the rule change operative on August 1, 2012. 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, 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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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 amend the Price List to change certain fees relating to trading pursuant to UTP of securities listed on Nasdaq and to make other conforming changes.

For fees and credits applicable to market participants for transactions in Nasdaq securities traded pursuant to UTP, the Exchange proposes to provide a \$0.0025 equity per share credit per transaction when adding liquidity, including displayed and non-displayed orders, when the share price is \$1.00 or more; currently, the Exchange does not provide a credit. The Exchange proposes to change the \$0.0003 equity per share credit for all other transactions (i.e., when taking liquidity from the Exchange) with a per share price of \$1.00 or more to a \$0.0030 equity per share charge.<sup>3</sup> The Exchange proposes to increase the \$0.0027 per share routing fee to \$0.0030 when the share price is \$1.00 or more. The Exchange proposes to increase the equity per share credit per transaction for displayed liquidity when adding liquidity in orders that originally display a minimum of 2,000 shares with a trading price of at least \$5.00 per share, as long as the order is not cancelled in an amount that would reduce the original displayed amount below 2,000 shares, from \$0.0020 to \$0.0035. The Exchange does not propose to change any fees or credits applicable to market participants for transactions in Nasdaq securities traded pursuant to UTP when the share price is below \$1.00.

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<sup>3</sup> The Exchange does not propose to change the current Price List for agency cross trades, non-electronic agency transactions between floor brokers in the crowd, or Discretionary e-Quotes and verbal agency interest by floor brokers.

For fees and credits applicable to Designated Market Makers (“DMMs”) for transactions in Nasdaq securities traded pursuant to UTP, the Exchange proposes to increase the equity per share credit per transaction when adding liquidity from \$0.0020 to \$0.0040 when the share price is \$1.00 or more. The Exchange proposes to change the \$0.0003 equity per share credit for all other transactions (i.e., when taking liquidity from the Exchange) with a per share price of \$1.00 or more to a \$0.0030 equity per share charge. The Exchange proposes to increase the \$0.0027 per share routing fee to \$0.0030 when the share price is \$1.00 or more. The Exchange proposes to eliminate the \$0.0020 equity per share credit per transaction for the displayed portion of s-Quotes when adding liquidity in s-Quotes that display 2,000 shares or more at the time of execution with a trading price of at least \$5.00 per share. The Exchange does not propose to change any fees or credits applicable to DMMs for transactions in Nasdaq securities traded pursuant to UTP when the share price is below \$1.00.

For fees and credits applicable to Supplemental Liquidity Providers (“SLPs”) for transactions in Nasdaq securities traded pursuant to UTP, the Exchange proposes to increase the equity per share credit per transaction when adding liquidity, if the SLP meets quoting requirements pursuant to Rule 107B, from \$0.0005 to \$0.0030 when the share price is \$1.00 or more. The Exchange proposes to add an equity per share credit per transaction when adding liquidity, if the SLP does not meet the quoting requirement pursuant to Rule 107B, to \$0.0025 when the share price is \$1.00 or more; currently, the Exchange does not provide a credit. Lastly, the Exchange proposes to increase the equity per share credit per transaction for displayed liquidity when adding liquidity in orders that originally display a minimum of 2,000 shares with a trading price of at least \$5.00 per share, as long as the order is not cancelled in an amount that would reduce the original displayed amount below 2,000 shares, from \$0.0020 to \$0.0035. The

Exchange does not propose to change any fees or credits applicable to SLPs for transactions in Nasdaq securities traded pursuant to UTP when the share price is below \$1.00.

NYSE Amex LLC (“NYSE Amex”) recently changed the name of its equities market to NYSE MKT LLC.<sup>4</sup> Accordingly, the Exchange proposes to replace references to “NYSE Amex” with “NYSE MKT” to reflect the name change.

The Exchange proposes to make the rule change operative on August 1, 2012.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)<sup>5</sup> of the Securities Exchange Act of 1934 (the “Act”), in general, and Section 6(b)(4)<sup>6</sup> of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

The Exchange believes that the proposed fee changes are equitably allocated and not unfairly discriminatory because all similarly situated market participants, DMMs, and SLPs will be subject to the same fee structure, and access to the Exchange’s market is offered on fair and non-discriminatory terms.

With respect to the increased credits for providing liquidity, the Exchange believes that the credits will attract more volume to the Exchange by incentivizing market participants, DMMs and SLPs to submit orders that provide liquidity to the Exchange and thereby will result in a more competitive market in the trading of Nasdaq securities pursuant to UTP. The Exchange believes that offering a higher credit to DMMs and SLPs than market participants is consistent

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<sup>4</sup> See Securities Exchange Act Release No. 67037 (May 21, 2012), 77 FR 31415 (May 25, 2012) (SR-NYSEAmex-2012-32).

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

<sup>6</sup> 15 U.S.C. 78f(b)(4).

with an equitable allocation of fees because it allocates a higher credit to member organizations that contribute to price discovery by providing high volumes of liquidity. In addition, DMMs and SLPs have higher obligations, including quoting obligations; therefore, it is reasonable to pay them a higher credit. The Exchange further believes that the increases in the fees for DMMs, SLPs, and market participants for taking liquidity are appropriate in light of the increase in credits for providing liquidity.

The Exchange believes that raising the fee for routing to other markets for orders in Nasdaq securities with a share price of \$1.00 or more to \$0.0030 is reasonable because the fee is same as the fee for routing to other markets for orders in Exchange-listed securities with a per share price of \$1.00 or more, and it will help to cover the costs associated with routing orders away from the Exchange.

With respect to the credit increase for market participants and SLPs that provide liquidity in 2,000 or more share orders for securities priced at \$5.00 or more, as long as the order is not cancelled in an amount that would reduce the original displayed amount below 2,000 shares, the Exchange believes that the proposed credits are fair and reasonable given that the Exchange is increasing the general credits for market participants and SLPs for providing liquidity to an amount that is higher than the current block credits for providing liquidity. As such, the Exchange believes that is fair and reasonable to increase the credit for block orders to an amount that is higher than the proposed general credit for providing liquidity in order to encourage both market participants and SLPs to place block orders, which will promote liquidity on the Exchange. The Exchange believes that eliminating the credit for DMMs that provide liquidity in 2,000 or more share orders for securities priced at \$5.00 or more, as long as the order is not cancelled in an amount that would reduce the original displayed amount below 2,000 shares, is

fair and reasonable given that the proposed general credit for providing liquidity is greater than the current credit for block orders. The Exchange believes the fee changes will attract more displayed liquidity, lower transaction costs, and improve overall trading.

The Exchange also believes that it is reasonable not to change the fees or credits for transactions in Nasdaq securities with a share price below \$1.00 because there are only a small number of issues that trade below \$1.00 and these shares are thinly traded. In addition, the Exchange believes it is reasonable not to increase the credits for providing liquidity in Nasdaq securities with a share price below \$1.00 because it could have the potential of being greater than the spread, creating an inappropriate incentive to trade.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges.

Finally, the Exchange also believes that replacing references to “NYSE Amex” with “NYSE MKT” is reasonable, equitable and not unfairly discriminatory because it would add clarity to the Exchange’s Price List by correctly reflecting the current name.

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 that is not necessary or appropriate in furtherance of the purposes of the Act.

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 foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)<sup>7</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>8</sup> thereunder, because it establishes a due, fee, or other charge imposed by NYSE MKT.

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
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEMKT-2012-29 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-2012-29. 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

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<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(2).

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-2012-29 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>9</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>9</sup> 17 CFR 200.30-3(a)(12).