

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-69952; File No. SR-NYSEMKT-2013-61)

July 9, 2013

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE MKT Rules 504 and 509 - Equities with Respect to DMM Quoting Requirements Applicable to Nasdaq Stock Market Securities Traded on the Exchange Pursuant to A Grant of Unlisted Trading Privileges

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that, on June 26, 2013, 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 and II 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 NYSE MKT Rules 504 and 509 - Equities with respect to DMM quoting requirements applicable to Nasdaq Stock Market (“Nasdaq”) securities traded on the Exchange pursuant to a grant of unlisted trading privileges. 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.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 NYSE MKT Rules 504 and 509 - Equities with respect to DMM quoting requirements applicable to Nasdaq securities traded on the Exchange pursuant to a grant of unlisted trading privileges. NYSE MKT Rules 500-525 - Equities, as a pilot program, govern the trading of any Nasdaq-listed security on the Exchange pursuant to unlisted trading privileges ("UTP Pilot Program").³ The UTP Pilot Program includes any security listed on Nasdaq that (i) is designated as an "eligible security" under 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, as amended ("UTP Plan"),⁴ and (ii) has been admitted to dealings on the

³ The UTP Pilot Program is currently scheduled to expire on the earlier of Commission approval to make such pilot permanent or January 31, 2014. See Securities Exchange Act Release No. 69814 (June 20, 2013) (SR-NYSEMKT-2013-53) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE MKT Rule 500 - Equities to Extend the Operation of the Pilot Program that Allows Nasdaq Stock Market ("Nasdaq") Securities to be Traded on the Exchange Pursuant to a Grant of Unlisted Trading Privileges). See also Securities Exchange Act Release No. 62479 (July 9, 2010), 75 FR 41264 (July 15, 2010) (SR-NYSEAmex-2010-31). See also Securities Exchange Act Release Nos. 62857 (September 7, 2010), 75 FR 55837 (September 14, 2010) (SR-NYSEAmex-2010-89); 63601 (December 22, 2010), 75 FR 82117 (December 29, 2010) (SR-NYSEAmex-2010-124); 64746 (June 24, 2011), 76 FR 38446 (June 30, 2011) (SR-NYSEAmex-2011-45); 66040 (December 23, 2011), 76 FR 82324 (December 30, 2011) (SR-NYSEAmex-2011-104); 67497 (July 25, 2012), 77 FR 45404 (July 31, 2012) (SR-NYSEMKT-2012-25); and 68561 (January 2, 2013), 78 FR 1290 (January 8, 2013) (SR-NYSEMKT-2012-86).

⁴ See Securities Exchange Act Release No. 58863 (October 27, 2008), 73 FR 65417 (November 3, 2008) (File No. S7-24-89). The Exchange's predecessor, the American Stock Exchange LLC, joined the UTP Plan in 2001. See Securities Exchange Act

Exchange pursuant to a grant of unlisted trading privileges in accordance with Section 12(f) of the Act⁵ (collectively, “Nasdaq Securities”).⁶

Designated Market Maker units (“DMM units”)⁷ registered in one or more Nasdaq Securities must comply with all “DMM rules,” as defined in NYSE MKT Rule 98 - Equities,⁸ and the obligations and benefits of DMMs in Nasdaq Securities closely track those applicable to DMMs in Exchange-listed equities, subject to certain modifications enumerated in NYSE MKT Rule 509 - Equities. As is the case with DMMs in Exchange-listed equities, a DMM unit in Nasdaq Securities has an affirmative obligation to engage in a course of dealings for its own account to assist in the maintenance of a fair and orderly market insofar as reasonably practicable, including maintaining price continuity with reasonable depth and quoting and

Release No. 55647 (April 19, 2007), 72 FR 20891 (April 26, 2007) (S7-24-89). In March 2009, the Exchange changed its name to NYSE Amex LLC, and in May 2012, the Exchange subsequently changed its name to NYSE MKT LLC. See Securities Exchange Act Release Nos. 59575 (March 13, 2009), 74 FR 11803 (March 19, 2009) (SR-NYSEALTR-2009-24) and 67037 (May 21, 2012), 77 FR 31415 (May 25, 2012) (SR-NYSE Amex-2012-32),

⁵ 15 U.S.C. 781.

⁶ “Nasdaq Securities” is included within the definition of “security” as that term is used in the NYSE MKT Rules - Equities. *See* NYSE MKT Rule 3 - Equities. In accordance with this definition, Nasdaq Securities are admitted to dealings on the Exchange on an “issued,” “when issued,” or “when distributed” basis. See NYSE MKT Rule 501 - Equities.

⁷ See NYSE MKT Rule 103 - Equities - Registration and Capital Requirements of DMMs and DMM Units. “DMM unit” means 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 section (c) of this Rule 103, (ii) is eligible for allocations under NYSE MKT 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 NYSE MKT Rule 98(b)(2) - Equities.

⁸ “DMM rules” means any rules that govern DMM conduct or trading. See NYSE MKT Rule 98(b)(5) - Equities.

trading with reference to Exchange-provided Depth Guidelines.⁹ In addition, a DMM in Nasdaq Securities is required to facilitate trading when a “gap” quote procedure is being used and when a manual block trade is being executed.¹⁰

The obligations of DMM units registered to trade Nasdaq Securities are, however, slightly different from those that apply to DMMs in Exchange-listed securities. First, the rules that apply to trading in Nasdaq Securities on the Exchange do not provide for opening and closing auctions in Nasdaq Securities, so DMMs in Nasdaq Securities are not responsible for facilitating openings and closings, as DMMs in listed equities are. Second, NYSE MKT Rule 509(a)(1) - Equities states that in lieu of NYSE MKT Rule 104(a)(1)(A) - Equities, with respect to maintaining a continuous two-sided quote with reasonable size, a DMM unit registered in Nasdaq Securities must maintain a quote at the National Best Bid or Offer (“inside”) in each assigned Nasdaq Security an average of at least 10% of the time during the regular business hours of the Exchange for each calendar month for Nasdaq Securities with a consolidated average daily volume (“CADV”) of less than one million shares per calendar month and an average of at least 5% of the time during the regular business hours of the Exchange for each calendar month for Nasdaq Securities with a CADV equal to or greater than one million shares per calendar month. As such, a DMM in a Nasdaq Security is required to meet these quoting requirements on a stock-by-stock basis.

The Exchange proposes to amend NYSE MKT Rule 509(a)(1) - Equities to require that DMM units maintain a bid or offer at the NBBO for a certain percentage of the trading day on a portfolio basis. The percentage required would depend on whether the stock is a “More Active Security” or “Less Active Security” security, as defined in Rule 103B(II)(B) and (C) - Equities.

⁹ See NYSE MKT Rule 104(a), (f)(ii) and (f)(iii) - Equities.

¹⁰ See NYSE MKT Rule 104(a)(5) - Equities.

As proposed, a DMM unit would be required to maintain a bid or offer at the NBBO for at least 15% of the trading day for Nasdaq Securities in which the DMM unit is registered with a CADV of less than one million shares (i.e., Less Active Securities), and at least 10% of the trading day for Nasdaq Securities in which the DMM unit is registered with a CADV equal to or greater than one million shares (i.e., More Active Securities).

The requirements of proposed NYSE MKT Rule 509(a)(1)(A) are modeled on the DMM unit quoting requirements in New York Stock Exchange LLC (“NYSE”) Rule 104(a)(1)(A), which requires that DMM units maintain a bid or offer at the NBBO for a certain percentage of the trading day on a portfolio basis. Specifically, NYSE Rule 104(a)(1)(A) requires that DMM units maintain a bid or offer at the NBBO for at least 15% of the trading day for NYSE-listed securities in which the DMM unit is registered with a CADV of less than one million shares, and at least 10% for securities for NYSE-listed securities in which the DMM unit is registered with a CADV equal to or greater than one million shares.

The Exchange notes that the NYSE requirement for NYSE-listed securities is greater than the DMM unit quoting requirement for Exchange-listed securities. NYSE MKT Rule 104(a)(1)(A) - Equities requires that DMM units maintain a bid or offer at the NBBO for a certain percentage of the trading day for all Exchange-listed securities in which the DMM unit is registered, specifically, at least 10% of the trading day for the Exchange-listed securities in which the DMM unit is registered with a CADV of less than one million shares, and at least 5% for securities in which the DMM unit is registered with a CADV equal to or greater than one million shares.

Accordingly, under the proposed change, DMM units would be required to meet a quoting requirement for Nasdaq Securities that is greater than the quoting requirement for

Exchange-listed securities.

The Exchange believes the proposed change is appropriate in light of the low volume of trading of Nasdaq Securities occurring on the Exchange. The Exchange believes that basing the quoting requirements on quoting in the portfolio of securities in which the DMM unit is registered rather than on a security-by security basis will encourage quoting activity in a broader number of Nasdaq Securities, including less active securities. Because, in part, of the difficulty DMM units have in meeting the current stock-by-stock quoting obligation, DMM units have declined to participate in the UTP Pilot Program, and trading in Nasdaq Securities on NYSE MKT is minimal, with only 135 of the approximately 2,600 Nasdaq Securities trading at the Exchange as of May 21, 2013. Specifically, meeting the security-by-security quoting requirement on a daily basis has been sufficiently difficult to discourage DMM units from participating in the UTP program. The Exchange believes that the portfolio approach will give DMM units more flexibility in meeting the quoting requirements, thus encouraging DMM participation in the UTP Pilot Program. The Exchange notes that while there may be more or less quoting in individual securities in the portfolio in any particular trading session, as with the portfolio quoting requirement for NYSE and the Exchange, the Exchange believes that over time, quoting across all of the assigned Nasdaq Securities will even out as the requirement to meet the portfolio requirement would discourage an imbalance in quoting any one security. The Exchange therefore seeks to adopt an obligation that is both meaningful and attainable to encourage increased participation by DMM units in the UTP Pilot Program, which would result in more liquidity providing and quoting in a higher number of Nasdaq Securities trading on the Exchange.

The Exchange also notes that the proposed quoting requirement is higher than the quoting

requirement applicable to Exchange-listed securities, and therefore the obligation associated with the quoting requirement for DMMs in Nasdaq Securities would still be greater than the similar obligation for Exchange-listed securities. The Exchange believes that this is appropriate given the Commission's prior finding that the obligations and benefits for DMMs that trade Nasdaq Securities differ from the obligations and benefits for DMMs that trade Exchange-listed securities.¹¹ The Exchange believes that the proposed change strikes the appropriate balance between setting a meaningful obligation to the market that is tailored to the volume levels of Nasdaq Securities that trade in the UTP Pilot Program while at the same time recognizing that the obligations for DMM units must be meaningful as compared to the benefits they receive.

Finally, the Exchange notes that using a similar structure for the obligations for listed securities and for Nasdaq Securities would, for the same DMM unit eliminate in large part the additional responsibility and burden for DMM units to design, implement and maintain different technology approaches and programming for their trading and internal compliance applications relating to Nasdaq Securities only.

The Exchange also proposes to delete from NYSE MKT Rule 504(b)(1)(A) – Equities, Nasdaq Security Assignment, the text setting out the DMM quoting requirements of NYSE MKT Rule 509 - Equities and to replace the repetition of the text with a cross-reference to NYSE MKT Rule 509 - Equities.

The Exchange proposes to implement the rule changes effective [sic] August 1, 2013.

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.

¹¹ See Securities Exchange Act Release Nos. 62479 (July 9, 2010), 75 FR 41264 (July 15, 2010) (SR-NYSEAmex-2010-31).

In particular, the Exchange believes that its proposal is consistent with: (i) Section 6(b) of the Act,¹² in general, and furthers the objectives of 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 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,¹⁴ 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,¹⁵ which governs the trading of securities pursuant to UTP consistent with the 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.

Specifically, the Exchange believes that the proposed change would remove impediments to and perfect the mechanism of a free and open market and national market system because it would remove an obligation that is virtually impossible for DMM units to meet and replace it with a quoting obligation better tailored to the scope of the UTP Pilot Program and how Nasdaq Securities trade at the Exchange. The Exchange believes that the proposed change would promote fair competition among broker dealers by encouraging more DMM units to quote Nasdaq Securities, thereby increasing the available liquidity in such securities, which would benefit investors and the public.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ 15 U.S.C. 78k-1(a)(1).

¹⁵ 15 U.S.C. 78l(f).

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

The Exchange does not believe that the proposed rule changes will impose any burden on competition that are not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed change is pro-competitive because it would remove an overly burdensome obligation that places Exchange DMM units at a disadvantage vis-à-vis market makers on other markets because the Exchange DMM units are unable to meet the quoting obligations, and therefore do not trade Nasdaq Securities at the Exchange. The Exchange further believes that the proposed change will foster competition because it will increase the number of DMM units that would be willing to be registered in Nasdaq Securities, thereby increasing the potential pool of liquidity in Nasdaq Securities in the market.

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

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁶ and Rule 19b-4(f)(6) thereunder.¹⁷

At any time within 60 days of the filing of such proposed rule change, the Commission

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 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.

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-2013-61 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-2013-61. 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

¹⁸ 15 U.S.C. 78s(b)(2)(B).

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-2013-61 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).