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SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-68561; File No. SR-NYSEMKT-2012-86)

January 2, 2013

Self-Regulatory Organizations; NYSE MKT LLC; 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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 18, 2012, 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 Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ 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 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. 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

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

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").⁵ The Exchange hereby seeks to extend the operation of the UTP Pilot Program, currently scheduled to expire on January 31, 2013, until the earlier of Commission approval to make such pilot permanent or July 31, 2013.

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

⁵ See 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); and 67497 (July 25, 2012), 77 FR 45404 (July 31, 2012) (SR-NYSEMKT-2012-25).

Securities Traded on Exchanges on an Unlisted Trading Privilege Basis, as amended (“UTP Plan”),⁶ 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 Securities Exchange Act of 1934, as amended (the “Act”),⁷ (collectively, “Nasdaq Securities”).⁸

The Exchange notes that its New Market Model Pilot (“NMM Pilot”), which, among other things, eliminated the function of specialists on the Exchange and created a new category of market participant, the Designated Market Maker (“DMM”),⁹ is also scheduled to end on January 31, 2013.¹⁰ The timing of the operation of the UTP Pilot Program was designed to correspond to that of the NMM Pilot. In approving the UTP Pilot Program, the Commission

⁶ 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 Release No. 55647 (April 19, 2007), 72 FR 20891 (April 26, 2007) (File No. 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-NYSEAmex-2012-32).

⁷ 15 U.S.C. 78l.

⁸ “Nasdaq Securities” is included within the definition of “security” as that term is used in the NYSE MKT Equities Rules. 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.

⁹ See NYSE MKT Rule 103 - Equities.

¹⁰ See Securities Exchange Act Release No. 60758 (October 1, 2009), 74 FR 51639 (October 7, 2009) (SR-NYSEAmex-2009-65). See also Securities Exchange Act Release Nos. 61030 (November 19, 2009), 74 FR 62365 (November 27, 2009) (SR-NYSEAmex-2009-83); 61725 (March 17, 2010), 75 FR 14223 (March 24, 2010) (SR-NYSEAmex-2010-28); 62820 (September 1, 2010), 75 FR 54935 (September 9, 2010) (SR-NYSEAmex-2010-86); 63615 (December 29, 2010), 76 FR 611 (January 5, 2011) (SR-NYSEAmex-2010-123); 64773 (June 29, 2011), 76 FR 39453 (July 6, 2011) (SR-NYSEAmex-2011-43); 66042 (December 23, 2011), 76 FR 82326 (December 30, 2011) (SR-NYSEAmex-2011-102); and 67495 (July 25, 2012), 77 FR 45406 (July 31, 2012) (SR-NYSEMKT-2012-21).

acknowledged that the rules relating to DMM benefits and duties in trading Nasdaq Securities on the Exchange pursuant to the UTP Pilot Program are consistent with the Act¹¹ and noted the similarity to the NMM Pilot, particularly with respect to DMM obligations and benefits.¹² Furthermore, the UTP Pilot Program rules pertaining to the assignment of securities to DMMs are substantially similar to the rules implemented through the NMM Pilot.¹³ The Exchange has similarly filed to extend the operation of the NMM Pilot until the earlier of Commission approval to make the NMM Pilot permanent or July 31, 2013.¹⁴

Extension of the UTP Pilot Program in tandem with the NMM Pilot, both from January 31, 2013 until the earlier of Commission approval to make such pilots permanent or July 31, 2013, will provide for the uninterrupted trading of Nasdaq Securities on the Exchange on a UTP basis and thus continue to 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 Nasdaq Securities.

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 its proposal to extend the UTP Pilot Program is consistent with (i) Section 6(b) of the Act,¹⁵ in general, and furthers the objectives of Section

¹¹ 15 U.S.C. 78.

¹² See SR-NYSEAmex-2010-31, supra note 5, at 41271.

¹³ Id.

¹⁴ See SR-NYSEMKT-2012-84.

¹⁵ 15 U.S.C. 78f(b).

6(b)(5) of the Act,¹⁶ 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,¹⁷ 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,¹⁸ 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 extending the UTP Pilot Program would provide for the uninterrupted trading of Nasdaq Securities on the Exchange on a UTP basis and thus continue to 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 Nasdaq Securities.

Additionally, under the UTP Pilot Program, Nasdaq Securities trade on the Exchange pursuant to rules governing the trading of Exchange-Listed securities that previously have been approved by the Commission. Accordingly, this proposed rule change would permit the Exchange to extend the effectiveness of the UTP Pilot Program in tandem with the NMM Pilot, which the Exchange has similarly proposed to extend until the earlier of Commission approval to make such pilot permanent or July 31, 2013.¹⁹

¹⁶ 15 U.S.C. 78f(b)(5).

¹⁷ 15 U.S.C. 78k-1(a)(1).

¹⁸ 15 U.S.C. 78l(f).

¹⁹ See supra note 14.

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

Because the foregoing proposed rule does not (i) 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 if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file 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 proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act²⁰ and Rule 19b-4(f)(6) thereunder.²¹

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

²⁰ 15 U.S.C. 78s(b)(3)(A).

²¹ 17 CFR 240.19b-4(f)(6).

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-2012-86 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-2012-86. 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 available publicly. All submissions should refer to File Number SR-NYSEMKT-2012-86 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.²²

Kevin M. O'Neill
Deputy Secretary

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²² 17 CFR 200.30-3(a)(12).