

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-67740; File No. SR-NYSEMKT-2012-37)

August 28, 2012

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE MKT Rules 103B(IX) - Equities and 504 - Equities to Provide that a Designated Market Maker Unit May Trade at the Same Panel Securities Traded on the Exchange and/or Securities Listed on the New York Stock Exchange LLC

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 August 22, 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 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 103B(IX) - Equities and 504 - Equities to provide that a Designated Market Maker (“DMM”) unit may trade at the same panel securities traded on the Exchange and/or securities listed on the New York Stock Exchange LLC (“NYSE”). 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

¹ 15 U.S.C. 78s(b)(1).

² 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 NYSE MKT Rules 103B- Equities (“Rule 103B”) and 504 - Equities (“Rule 504”) to provide that a DMM unit may trade at the same panel securities traded at the Exchange and/or securities listed on the NYSE.

Background

Rule 103B(IX) currently provides that securities listed on the Exchange or admitted to dealings on the Exchange pursuant to a grant of unlisted trading privileges, i.e., Nasdaq Securities,³ (collectively, “Exchange-traded securities”) shall be assigned for trading only at panels exclusively designated for trading securities on the Exchange. The rule further provides that “DMM units may only trade securities listed on the Exchange or admitted to dealings on the Exchange pursuant to a grant of unlisted trading privileges at panels exclusively designated for trading securities on the Exchange.” In practice, this means that a DMM panel designated for trading in Exchange-traded securities may not also be assigned securities listed on the New York Stock Exchange, LLC (“NYSE”).⁴ This rule was adopted in 2008, when the Exchange moved from the 86 Trinity Place location and trading systems to 11 Wall Street and the NYSE trading

³ See Exchange Rule 501(c) - Equities.

⁴ The restriction on trading Exchange-traded securities and NYSE-listed securities at the same panel is only in Exchange rules; NYSE rules do not have a counterpart.

systems,⁵ and amended in 2010 when the Exchange began trading Nasdaq Securities.⁶ At the time, the Exchange proposed that Exchange-traded Securities be traded at separate panels designated for trading in NYSE securities to prevent any potential confusion between Exchange and NYSE rules.

Rule 504(b)(6) further provides that DMM units registered on both the Exchange and the NYSE must commit staff, including DMMs and clerks, for the trading of NYSE-listed securities separate from that for the trading of Exchange-listed securities and/or Nasdaq Securities. The rule further provides that “[i]ndividual DMMs and support staff will not be permitted to trade NYSE-listed securities together with Exchange-listed securities and/or Nasdaq Securities at the same time.” Rule 504(d) also provides that, in accordance with Rule 103B(IX), Nasdaq Securities shall be allocated for trading only at panels exclusively designated for trading Nasdaq Securities and/or securities listed on the Exchange.

As a result of these rule requirements, DMM units that are registered in both Exchange-traded securities and NYSE-listed securities must maintain separate panels and staff for NYSE-listed securities. In addition, Exchange DMM units must maintain separate panels and staff for Nasdaq Securities, separate from Exchange-listed securities.

Proposed Amendments

The Exchange proposes to eliminate the restrictions on a DMM unit trading Exchange-listed, Nasdaq Securities, and NYSE-listed securities at the same panel. To effect this change, the Exchange proposes to amend Rule 103B(IX) to provide that Exchange-traded securities may

⁵ See Securities Exchange Act Release No. 58705 (Oct 1, 2008), 73 FR 58995 (Oct. 8, 2008) (SR-Amex-2008-63).

⁶ See Securities Exchange Act Release No. 62479 (July 9, 2010), 75 FR 41264 (July 15, 2010) (SR-NYSEAmex-2010-31) (Amending Rule 103B to permit trading of Exchange-traded securities on posts throughout the Trading Floor).

be assigned to panels that also trade NYSE-listed securities, delete Rule 504(b)(6), and amend Rule 504(d) to provide that Nasdaq Securities may be allocated to DMM units for trading at panels that also trade Exchange-listed and/or NYSE-listed securities.

The Exchange notes that even if Exchange-traded securities and NYSE-listed securities are assigned to a single panel, the Exchange will keep them on separate Display Book systems. To the extent the rules applicable to a security differ between the Exchange and NYSE, the separate Display Book systems will operate in accordance with the separate rules. In addition, the individual DMMs and clerks will be able to sign into ID Track simultaneously for both Exchange-traded and NYSE-listed securities so that the Exchange can continue to track which securities a DMM and Floor clerk is operating in for a particular day.⁷

The Exchange proposes these changes to reflect the changes in the trading environment, as compared to 2010, when Rule 504 was adopted and Rule 103B(IX) was last amended. In particular, the Exchange believes the changes are warranted because they reflect the changing landscape for DMM units. In 2010, when the rules relating to trading Nasdaq Securities were adopted, only one of the DMM units registered to trade on the Exchange was also registered to trade securities listed on the NYSE. Now, all DMM units registered to trade on the Exchange are also registered to trade securities listed on the NYSE. In addition, former NYSE-only DMM units are now all either registered, or in the process of registering, to trade Exchange-traded securities. Accordingly, all but one DMM units that operate on the Trading Floor are now dually-registered for Exchange-traded and NYSE-listed securities.

The Exchange notes that the rationale provided in 2010 to maintain separate panels was to reduce confusion between Exchange and NYSE rules. However, the Exchange believes that

⁷ See Exchange Rule 103.11 – Equities.

now that DMM units and Floor broker firms have had two years' experience managing Exchange-traded and NYSE-listed securities on the Trading Floor, the risk of confusion among trading rules has been obviated through experience. Accordingly, the stated need in 2010 to maintain separate panels is no longer necessary, and is outweighed by the inefficiencies in DMM unit operations that maintaining separate panels entails.

The Exchange further notes that the Exchange and NYSE already operate in an integrated manner on a single physical Trading Floor, and the proposed change is minimally incremental. For example, in 2008, when the Exchange moved to its current location, it adopted a rule that made clear that Exchange-traded equity securities would be traded on the systems and facilities of NYSE Market, Inc., which are located at 11 Wall Street and are the same systems and facilities where NYSE-listed securities trade.⁸ In recognition of the fact that the Exchange-traded and NYSE-listed securities would be trading on the same physical space, in 2008, the Exchange adopted Exchange Rule 2.10 - Equities, which provides that any registered broker dealer that is approved or deemed approved as a member organization of the NYSE shall be approved as an Exchange member organization. Similarly, pursuant to Exchange Rule 2.20 – Equities, all natural persons who were approved or deemed approved as a member of the NYSE, i.e., all NYSE DMMs and Floor brokers, were similarly deemed approved as members of the Exchange.⁹ Accordingly, as part of the move of the Exchange to the NYSE facilities, all Floor brokers and DMMs were approved as member organizations of both the Exchange and the

⁸ See Exchanges [sic] Rule 0(b) and 0-Equities. In addition, the Exchange's Equities Trading Floor is defined as the physical locations commonly known as the "Main Room" and the "Garage", which is the same definition of Trading Floor for the NYSE. See Exchange Rule 6A – Equities and NYSE Rule 6A.

⁹ NYSE adopted similar rules pursuant to which Exchange member organizations and members were deemed approved as NYSE member organizations and members. See NYSE Rules 2.10 and 2.20.

NYSE. As a practical matter, this meant that Floor brokers were approved to operate from their Trading Floor booth premises to trade both Exchange-traded and NYSE-listed securities.

With respect to the physical location of DMM units assigned to Exchange-listed securities, the Exchange notes that in 2008, Exchange-listed securities were physically located at DMM posts in the “Garage” room of the Trading Floor. However, in 2010, when the Exchange adopted its pilot program to trade Nasdaq Securities, the Exchange further integrated Exchange-listed securities and Nasdaq Securities at DMM posts throughout the Trading Floor, which had the practical effect of moving Exchange-traded securities from the posts located in the Garage and having them assigned to posts in both the Main Room and the Garage, at panels that were contiguous with panels that traded NYSE-listed securities.¹⁰ The Exchange believes that the current proposal to permit Exchange-traded and NYSE-listed securities to trade at a single panel within a post is an incremental change from the existing physical integration between Exchange and NYSE trading that raises no new or novel regulatory issues.

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 is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹² in particular, because 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

¹⁰ See supra footnote 6. In the approval order, the Commission noted that the integration of Exchange-traded and NYSE-listed securities trading at the same post was reasonable and consistent with the Act.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that the proposal promotes just and equitable principles of trade because it will remove a restriction that is applicable only to DMM units. Off-Floor market makers, and Exchange supplemental liquidity providers [sic], do not have similar restrictions, and may assign personnel to trade in equity securities regardless of the listing venue. The Exchange therefore believes that the proposed rule change would eliminate a restriction that places DMMs at a competitive disadvantage as compared to off-Floor market participants. The Exchange further believes that the proposed rule change removes impediments to and perfects the mechanism of a free and open market because it would eliminate rule-based requirements that impose unnecessary restrictions on DMM units that in today's market environment, serve only to force DMM units to operate in an inefficient manner, and at a competitive disadvantage to off-Floor market participants. Rather, the proposed rule change will perfect the mechanism of a free and open market by assuring that DMM units staff the securities registered with that DMM unit based on the needs of the market, rather than on artificial constraints imposed by rule.

Finally, the Exchange believes that the proposal to further integrate trading of Exchange-traded and NYSE-listed securities at a single panel of a DMM post is consistent with the Act because the Commission has already approved the existing integration to permit Exchange-traded and NYSE-listed securities to trade at the same DMM post. The Exchange believes that permitting the securities to trade at a single panel is an incremental change because currently, Exchange-traded and NYSE-listed securities can trade at contiguous panels at the same post. Therefore, the proposed change does not raise any new or novel regulatory issues.

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 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 Act¹³ and Rule 19b-4(f)(6) thereunder.¹⁴

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 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

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 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.

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEMKT-2012-37 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-2012-37. 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-2012-37 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.¹⁵

Kevin M. O'Neill
Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).