

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-66043; File No. SR-NYSEAmex-2011-101)

December 23, 2011

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing of Proposed Rule Change Amending NYSE Amex Equities Rules 504 and 509 to Modify the Quoting Requirements Applicable to Designated Market Maker Units Registered in 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 December 15, 2011, NYSE Amex LLC (“NYSE Amex” or “Exchange”) 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule 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 Amex Equities Rules 504 and 509 to modify the quoting requirements applicable to Designated Market Maker units (“DMM units”) registered in Nasdaq Stock Market (“Nasdaq”) securities traded on the Exchange pursuant to a grant of unlisted trading privileges (“UTP”). The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and www.nyse.com.

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 Amex Equities Rules 504 and 509 to modify the quoting requirements applicable to DMM units³ registered in Nasdaq-listed securities traded on the Exchange pursuant to UTP.

NYSE Amex Equities Rules 500-525, as a pilot program, govern the trading of Nasdaq-listed securities on the Exchange pursuant to UTP (“UTP Pilot Program”).⁴ 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”),⁵ and (ii) has been

³ See NYSE Amex Equities Rule 98(b)(2). “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, (ii) is eligible for allocations under Rule 103B - NYSE Amex 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.

⁴ The UTP Pilot Program is currently scheduled to expire on the earlier of Commission approval to make such pilot permanent or January 31, 2012. See Securities Exchange Act Release No. 64746 (June 24, 2011), 76 FR 38446 (June 30, 2011) (SR-NYSEAmex-2011-45). See also Securities Exchange Act Release No. 62479 (July 9, 2010), 75 FR 41264 (July 15, 2010) (SR-NYSEAmex-2010-31) (“UTP Pilot Program Approval Order”). The Exchange anticipates proposing an extension of the UTP Pilot Program beyond the current January 31, 2012 expiration date.

⁵ See Securities Exchange Act Release No. 58863 (October 27, 2008), 73 FR 65417 (November 3, 2008) (Notice of Filing and Immediate Effectiveness of Amendment No. 20 to the UTP Plan). The Exchange’s predecessor, the American Stock Exchange LLC,

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”)⁶ (collectively, “Nasdaq Securities”).⁷

DMM units registered in one or more Nasdaq Securities must comply with all “DMM rules,” as defined in NYSE Amex Equities Rule 98,⁸ subject to the modifications enumerated in NYSE Amex Equities Rule 509. In this regard, NYSE Amex Equities Rule 509(a)(1) states that, in lieu of NYSE Amex Equities Rule 104(a)(1)(A), with respect to maintaining a continuous two-sided quote with reasonable size, a DMM unit must maintain a quote at the National Best Bid or Offer (“NBBO”) 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.⁹ In contrast, NYSE Amex Equities Rule 104(a)(1)(A) requires that DMM units maintain a bid or offer at the NBBO at least 10% of the trading day cumulatively for all less active securities in which the DMM unit is registered and at least 5% of the trading day cumulatively for all more active securities in which the DMM unit is registered.

joined the UTP Plan in 2001. See Securities Exchange Act Release No. 55647 (April 19, 2007), 72 FR 2091 (April 27, 2007) (S7-24-89). In March 2009, the Exchange changed its name to NYSE Amex LLC. See Securities Exchange Act Release No. 59575 (March 13, 2009), 74 FR 11803 (March 19, 2009) (SR-NYSEALTR-2009-24).

⁶ 15 U.S.C. 78l.

⁷ “Nasdaq Securities” is included within the definition of “security” as that term is used in the NYSE Amex Equities Rules. See NYSE Amex Equities Rule 3. 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 Amex Equities Rule 501.

⁸ “DMM rules” means any rules that govern DMM conduct or trading.

⁹ These obligations are also included within current NYSE Amex Equities Rule 504.

The Exchange proposes to amend the text of NYSE Amex Equities Rule 509(a)(1) to reflect that DMM units registered in Nasdaq Securities would be obligated to maintain a quote at the NBBO in each assigned Nasdaq Security 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 consolidated average daily volume equal to or greater than one million shares per calendar month, i.e., securities that would qualify as “more active” securities under NYSE Amex Equities Rule 103B(II)(C).¹⁰ This proposed change would result in DMM units being obligated to maintain a bid or offer at the NBBO for a specified percentage of the trading day (either 10% or 5%, depending upon volume) that is more consistent with the percentages applicable under NYSE Amex Equities Rule 104(a)(1)(A) for Exchange-listed securities. However, as opposed to the percentage requirements under NYSE Amex Equities Rule 104(a)(1)(A), which apply *cumulatively* across all Exchange-listed securities in which a DMM unit is registered, NYSE Amex Equities Rule 509(a)(1) would continue to apply the percentage requirements therein for *each* individual Nasdaq Security in which the DMM unit is assigned.¹¹

The Exchange also proposes to delete from NYSE Amex Equities Rule 504(b)(1)(A) text referencing NYSE Amex Equities Rule 103B(II), which provides for security allocation eligibility. This reference is not necessary within NYSE Amex Equities Rule 504(b)(1)(A),

¹⁰ The Exchange proposes to make conforming changes to NYSE Amex Equities Rules 504(b)(1)(A). DMM units would remain obligated to maintain a quote at the NBBO an average of at least 10% of the time during the regular business hours of the Exchange for each calendar month in each assigned Nasdaq Security with a consolidated average daily volume less than one million shares per calendar month, i.e., securities that would qualify as “less active” securities under NYSE Amex Equities Rule 103B(II)(B).

¹¹ The Exchange notes that it is proposing this change to DMM unit quoting obligations in Nasdaq Securities based on the current trading characteristics of Nasdaq Securities at the Exchange. The Exchange would continue to review and monitor the trading of Nasdaq Securities and the associated DMM unit obligations and would seek to modify those obligations as may be appropriate.

which, as discussed above, provides for DMM unit quoting obligations. The Exchange notes that, despite the proposed deletion, DMM units would remain subject to NYSE Amex Equities Rule 103B(II) with respect to security allocation eligibility.

The Exchange proposes to announce the implementation date, if approved by the Commission, via Trader Update.

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 (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, 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 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 because 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.

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).

The Exchange's decision to establish DMM unit quoting obligations was initially based on commercial considerations at the time, including the desire to encourage quoting activity on the Exchange in Nasdaq Securities, and an estimate of the volume in Nasdaq Securities that might trade at the Exchange.¹⁶ However, based on the nearly 17 months of experience with the UTP Pilot Program thus far, the Exchange believes that it is appropriate to modify the DMM unit quoting obligations for more active Nasdaq Securities, as described above.¹⁷ In particular, the Exchange believes that it is appropriate to more closely align DMM unit quoting requirements for Nasdaq Securities with those applicable for Exchange-listed securities. In this regard, the Exchange believes that the current DMM unit quoting obligation for more active Nasdaq Securities may outweigh the benefit that such higher quoting provides to the marketplace. The Exchange therefore proposes to reflect the distinction between more active and less active securities for the DMM unit quoting requirements for Nasdaq Securities, while still requiring that these quoting requirements be calculated on a stock-by-stock basis rather than a portfolio basis across all of the DMM unit's assigned securities.

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.

¹⁶ In the UTP Pilot Program Approval Order, the Commission took into account the specific obligations that DMMs in Nasdaq Securities would be subject to, including the increased quoting obligation for Nasdaq Securities as compared to the quoting obligation for Exchange-listed securities. See UTP Pilot Program Approval Order at Section III.A. The Commission noted that the obligations proposed for DMMs in Nasdaq Securities would closely track, but would be slightly different from, those applicable to DMMs in Exchange-listed securities.

¹⁷ In particular, before the UTP Pilot Program began, the Exchange did not have any data on the volume in Nasdaq Securities that would trade at the Exchange. Accordingly, the Exchange identified in its original filing a set of obligations that were largely based on the trading characteristics of Exchange-listed securities.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be 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-NYSEAmex-2011-101 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- NYSEAmex-2011-101. 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 will also 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- NYSEAmex-2011-101 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).