

the other Applicants. Applicants state that the entry of the Injunction may result in Applicants being subject to the disqualification provisions of section 9(a) of the Act because ReconTrust is enjoined from engaging in or continuing particular conduct or practice in connection with banking activity.⁵

2. Section 9(c) of the Act provides that the Commission shall grant an application for exemption from the disqualification provisions of section 9(a) if it is established that these provisions, as applied to Applicants, are unduly or disproportionately severe or that the Applicants' conduct has been such as not to make it against the public interest or the protection of investors to grant the exemption. Applicants have filed an application pursuant to section 9(c) seeking a temporary and permanent order exempting the Applicants and the other Covered Persons from the disqualification provisions of section 9(a) of the Act.

3. Applicants believe they meet the standard for exemption specified in section 9(c). Applicants state that the prohibitions of section 9(a) as applied to them would be unduly and disproportionately severe and that the conduct of Applicants has been such as not to make it against the public interest or the protection of investors to grant the exemption from section 9(a).

4. Applicants state that the conduct giving rise to the Injunction did not involve any of the Applicants acting in the capacity as investment adviser, sub-adviser, or principal underwriter (as defined in section 2(a)(29) of the Act) for any registered investment companies ("RIC") or ESCs (together with any business development company, "Funds"). Applicants state that to the best of their reasonable knowledge none of the Applicants' current directors, officers or employees who is involved in providing services as investment adviser, subadviser or depositor for any Funds or principal underwriter (as defined in section 2(a)(29) of the Act) for any registered open-end company, UIT or registered face amount certificate company (collectively, the "Fund Servicing Activities") (or any other persons in such roles during the time

period covered by the Complaint) participated in the conduct alleged in the Complaint that constitutes the violations that provide a basis for the Injunction. Applicants also state that the alleged conduct giving rise to the Injunction did not involve any Fund for which an Applicant provided Fund Servicing Activities.

5. Applicants further represent that the inability of Applicants (except for ReconTrust) to continue providing Fund Servicing Activities would result in potentially severe financial hardships for both the Funds and their shareholders. Applicants state that they will distribute written materials, including an offer to meet in person to discuss the materials, to the board of directors of each Fund (excluding the ESCs), including the directors who are not "interested persons," as defined in section 2(a)(19) of the Act, of such Fund, and their independent legal counsel as defined in rule 0-1(a)(6) under the Act, if any, regarding the Injunction, any impact on the Funds, and the application. The Applicants will provide the Funds with all information concerning the Injunction and the application that is necessary for the Funds to fulfill their disclosure and other obligations under the federal securities laws.

6. Applicants also assert that, if the Applicants were barred from engaging in Fund Servicing Activities, the effect on their businesses and employees would be severe. The Applicants state that they have committed substantial resources to establishing expertise in providing Fund Servicing Activities.

7. Applicants also state that disqualifying KECALP and MLGPE from continuing to provide investment advisory services to their ESCs is not in the public interest or in furtherance of the protection of investors and would frustrate the expectations of eligible employees who invest in the ESCs that the ESCs would be managed by an affiliate of their employer.

8. Applicants state that several Applicants and certain of their affiliates have previously received orders under section 9(c), as described in greater detail in the application.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, Covered Persons, including without

limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application, or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

Temporary Order

The Commission has considered the matter and finds that Applicants have made the necessary showing to justify granting a temporary exemption.

Accordingly,

It is hereby ordered, pursuant to section 9(c) of the Act, that the Applicants and the other Covered Persons are granted a temporary exemption from the provisions of section 9(a), effective forthwith, solely with respect to the Injunction, subject to the condition in the application, until the date the Commission takes final action on their application for a permanent order.

By the Commission.

Elizabeth M. Murphy,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67684; File No. SR-NYSEMKT-2012-14]

Self-Regulatory Organizations; NYSE MKT LLC; Order Granting Approval of Proposed Rule Change Adopting Rules Governing the Listing and Trading of New Products Known as DIVS, OWLS, and RISKS

August 17, 2012.

I. Introduction

On June 19, 2012, NYSE MKT LLC ("Exchange" or "NYSE MKT"), on behalf of NYSE Amex Options LLC, filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to adopt rules governing the listing and trading of new products known as DIVS, OWLS, and RISKS (collectively, "DORS"). The proposed rule change was published for comment in the **Federal Register** on July 6, 2012.³ The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 67315 (June 12, 2012), 77 FR 130 ("Notice").

⁵ Applicants represent that the foreclosure trustee activity specified in the Injunction is the same as or similar to at least some of the loan servicing activity deemed banking activity by an administrative order issued by the Office of the Comptroller of the Currency. See *In the Matter of Bank of America, N.A.*, The Office of the Comptroller of the Currency Stipulation & Consent Order No. AA-EC-11-12 (Apr. 13, 2011) (the "OCC Order"). Applicants state that under the standard set forth in the OCC Order, ReconTrust is enjoined from engaging in or continuing particular conduct or practice in connection with banking activity.

II. Description of the Proposed Rule Change

The Exchange proposes to adopt rules governing the listing and trading of new products known as DIVS, OWLS, and RISKS. Each product has a different risk/reward profile and may be bought or sold separately to achieve a specific investment goal. The three products, when combined appropriately (*i.e.*, long a DIVS, OWLS, and RISKS on the same underlying security, having the same expiration, where the OWLS and RISKS have identical strike prices), are expected to generate total returns that replicate that of a long stock position held for the same duration. The Exchange believes that the structure of the product will enable investors to hedge or obtain exposure to discrete portions of the total return of a security.

DIVS. The phrase “Dividend Value of Stock” or “DIVS” refers to an option contract that returns to the investor a stream of periodic cash flows equivalent to the dividends paid by the underlying stock. An investor that holds a long DIVS contract will receive cash payments equal to the dividend paid by the underlying security. Such payment will occur on the “ex-dividend” date for the underlying security. The investor will continue to have the right to earn such dividend-equivalent cash payments as long as the investor remains long the DIVS contract until expiration. DIVS contracts will be European-style and cannot be exercised prior to expiration.

OWLS. The phrase “Options with Limited Stock” or “OWLS” refers to an option contract that returns to the investor at expiration shares of the underlying security equal in value to the lesser of (1) the current value of the underlying security or (2) the strike price of the option contract. At expiration, regardless of how high the stock closes above the strike price of an OWLS contract, the holders of the contract will never receive more than shares of stock equivalent in value to the strike price of the OWLS contract. The risk/reward of a long OWLS position is similar to a buy/write or covered call position, less the dividends, if any. A long OWLS position offers investors some limited downside protection in exchange for limiting their upside participation to the strike price of the OWLS contract. OWLS contracts will be European-style and cannot be exercised prior to expiration.

RISKS. The phrase “Residual Interest in Stock” or “RISKS” refers to an option contract that returns to the investor at expiration shares of the underlying

security equal in value to the difference between the value of the underlying security at expiration and the strike price of the contract. At expiration, holders of RISKS will receive nothing if the stock closes at or below the strike price of the RISKS contract. A position consisting of a long RISKS contract has a risk/reward similar to that of a long call position. A long RISKS position offers an investor all of the upside price appreciation above the strike price of the RISKS contract while limiting the investor’s capital at risk to the premium paid to acquire the RISKS contract. RISKS contracts will be European-style and cannot be exercised prior to expiration.

Listing Standards. Any security eligible for listed options pursuant to NYSE MKT Rule 915 will be eligible for the listing of DORS. The Exchange has stated that it will generally avoid listing DORS on securities that meet the criteria in Rule 915 but do not in fact have regular put and call options listed for trading.

Series Open for Trading. DIVS, OWLS, and RISKS will be listed with expirations of up to six years from the listing date. The Exchange intends to list five consecutive-year expiration series at any one time, with the expiration date set to coincide with regular options expiration on the third Friday of January in each expiration year.

At the initial time of listing, the Exchange will seek to list both OWLS and RISKS with strike prices that are slightly in or out of the money. Periodically the Exchange will introduce new strikes as necessary to ensure that both OWLS and RISKS that are slightly in or out of the money will be available for trading. The listing of a new OWLS series will result in the listing of a RISKS contract with the same terms, and vice versa. Standard strike price intervals will apply to series of both OWLS and RISKS. DIVS, however, will always have one strike available for trading for a given expiration series. DIVS will always be listed with a strike price of \$0.01.

Settlement. All DORS components will be automatically exercised, and settled in accordance with the policies and procedures of the Options Clearing Corporation (“OCC”). Settlement of OWLS and RISKS will be made via a combination of shares of the underlying security plus cash in lieu of any fractional shares of the underlying security, except that RISKS may expire worthless and convey nothing at expiration upon assignment. At expiration, holders of OWLS will receive shares of the underlying security

plus cash in lieu of fractional shares equal to the lesser of the composite closing price of the stock or the strike price of the OWLS contract. RISKS contracts will settle for shares of stock equal to the value (if any) between the difference of the composite closing price of the stock at expiration and the strike price of the RISKS contract. Though all DIVS contracts will be limited to strike prices of \$0.01, settlement will not require delivery (receipt) of \$1 per contract assigned (exercised) because there is no value attached to the strike price; the only amount due will be potentially a cash amount equal to any dividend amount that the underlying security is “ex” on expiration Friday.

Additional information relating to DORS, including listing standards, exercise and settlement, symbology, margin rules, and position limits can be found in the Notice.

III. Discussion

The Commission finds 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.⁴ In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,⁵ which requires, among other things, that the Exchange’s rules be designed 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. The Commission believes that the proposal appropriately balances, on the one hand, the Exchange’s desire to offer new products to investors with, on the other hand, the necessity of having appropriate rules for listing, trading, capital, and margin, among other considerations relevant under the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁶ that the proposed rule change (SR–NYSEMKT–2012–14) be, and hereby is, approved.

⁴ In approving this proposed rule change, the Commission notes that it has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁵ 15 U.S.C. 78f(b)(5).

⁶ 15 U.S.C. 78s(b)(2).

⁷ 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷

Elizabeth M. Murphy,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67695; File No. SR-NYSEMKT-2012-38]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Making Certain Conforming Changes to Its Rules Following the Change in the Exchange's Name From NYSE Amex LLC ("NYSE Amex") to NYSE MKT LLC

August 20, 2012.

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 9, 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 make certain conforming changes to its rules following the change in the Exchange's name from NYSE Amex LLC ("NYSE Amex") to NYSE MKT LLC. The text of the proposed rule change is available on the Exchange's Web site 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 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 make certain conforming changes to its rules following the change in the Exchange's name from NYSE Amex to NYSE MKT LLC.³

As part of the Exchange's name change, the Exchange simplified cross-references within the Exchange's rules. The Exchange shortened references to "NYSE Amex Equities" to "Equities" (e.g., Rule 0—NYSE Amex Equities became Rule 0—Equities). The Exchange proposes to change several remaining cross-references to certain NYSE Amex Equities rules in Rules 17—Equities, 80B—Equities, 107B—Equities, 107C—Equities, 127—Equities, 128—Equities, 241—Equities, 250—Equities, 273—Equities, 432—Equities, and 502—Equities. Lastly, the Exchange proposes to replace a reference to "Amex" in Rule 193 and references to "NYSE Amex Equities" and "NYSE Amex" in Rule 107C—Equities with references to "Exchange."

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),⁴ in general, and Section 6(b)(5) of the Act,⁵ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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. The Exchange is proposing certain conforming changes that would make the rule text more uniform, which is in the public interest.

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 proposed rule change is concerned solely with the administration of the Exchange pursuant to Section 19(b)(3)(A)(iii)⁶ of the Act and Rule 19b-4(f)(3)⁷ thereunder. Accordingly, the proposal will take effect upon filing with the Commission. 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
- Send an email to rule-comments@sec.gov. Please include File Number SR-NYSEMKT-2012-38 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-2012-38. This file number should be included on the subject line if email 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 Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent

³ See Securities Exchange Act Release No. 67037 (May 21, 2012), 77 FR 31415 (May 25, 2012) (SR-NYSEAmex-2012-32).

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5).

⁶ 15 U.S.C. 78s(b)(3)(A)(iii).

⁷ 17 CFR 240.19b-4(f)(3).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.