with an investment company by its affiliated persons.

5. The boards of the Replacement Funds have adopted procedures, as required by paragraph (e)(1) of Rule 17a–7, pursuant to which their series may purchase and sell securities to and from their affiliates. The 17(a) Applicants will carry out the proposed in-kind purchases in conformity with all of the conditions of Rule 17a–7 and the Replacement Funds' procedures adopted thereunder, except that the consideration paid for the securities being purchased or sold may not be entirely cash. The investment advisers of the Replacement Funds will examine any securities received from an in-kind redemption, and accept any securities that they would otherwise have purchased for cash for the respective portfolio to hold. The circumstances surrounding the proposed substitution will be such as to offer the Replacement Funds the same degree of protection from overreaching that Rule 17a–7 provides to them generally in connection with their purchase and sale of securities under that Rule in the ordinary course of their business. In particular, the proposed transactions will not be effected at a price that is disadvantageous to the Replacement Funds. Although the transactions may not be entirely for cash, each will be effected based upon (1) the independent market price of the portfolio securities valued as specified in paragraph (b) of Rule 17a–7, and (2) the net asset value per share of each Fund involved valued in accordance with the procedures disclosed in its registration statement and as required by Rule 22c–1 under the Act. Moreover, consistent with Rule 17a–7(d), no brokerage commissions, fees, or other cost or remuneration will be paid in connection with the proposed transactions, except for any brokerage commissions paid in connection with the liquidation of the securities that are not distributed as part of the in-kind redemption, which will be borne by the Companies and not by the Contract owners.

6. Applicants state that, consistent with Section 17(b) and Rule 17a–7(c), any in-kind redemptions and purchases for purposes of the proposed substitution will be transacted in a manner consistent with the investment objectives and policies of the Vanguard Fund, the DWS Fund, and the Investment Corporation, as recited in their registration statements. Any in-kind redemptions will be effected on a pro-rata basis, where each Replacement Fund will receive an approximate proportionate share of every security position in the corresponding Replaced Fund's portfolio in accordance with the Signature Letter. The adviser(s) to each Replacement Fund will review the proportionate share of securities holdings of the corresponding Replaced Fund to determine whether such holdings would be suitable investments for the Replacement Fund in the overall context of that Fund's investment objectives and policies and consistent with the management of that Fund. If the adviser declines to accept particular portfolio securities of the Replaced Fund for purchase in-kind of shares of the Replacement Fund, the Replaced Fund will liquidate those portfolio securities as necessary and shares of the Replacement Fund will be purchased with cash equal in value to the liquidated portfolio securities. In addition, the redeeming and purchasing values of such securities will be the same.

Conclusion

For the reasons and upon the facts set forth above and in the application, the Substitution Applicants and the Section 17 Applicants believe that the requested orders meet the standards set forth in Section 26(c) of the Act and Section 17(b) of the Act, respectively, and should therefore, be granted.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–29858 Filed 12–10–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68354; File No. SR–NYSEMKT–2012–73]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 472—Equities, Which Addresses Communications With the Public, Adopting New Rule Text To Conform to the Changes Adopted by the Financial Industry Regulatory Authority, Inc. for Research Analysts and Research Reports as Required by the Jumpstart Our Business Startups Act

December 4, 2012.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on November 27, 2012, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'' or ''SEC'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the self-regulatory organization. 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 Rule 472—Equities, which addresses communications with the public, to adopt new rule text to conform to the changes adopted by the Financial Industry Regulatory Authority, Inc. (''FINRA'') for research analysts and research reports as required by the Jumpstart Our Business Startups Act (the ''JOBS Act'').[4] 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 472—Equities, which addresses communications with the public, to adopt new rule text to conform to the changes adopted by FINRA for research analysts and research reports as required by the JOBS Act.[5]

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] Public Law 112–106, 126 Stat. 306.

[5] *See* Securities Exchange Act Release No. 68037 (October 11, 2012), 77 FR 63908 (October 17, 2012) (SR–FINRA–2012–045). *See also* FINRA Regulatory Notice 12–49.

Background

On July 30, 2007, FINRA's predecessor, the National Association of Securities Dealers, Inc. (''NASD''), and NYSE Regulation, Inc. (''NYSER'') consolidated their member firm regulation operations into a combined organization, FINRA. Pursuant to Rule 17d-2 under the Securities Exchange Act of 1934, as amended (the ''Act''), New York Stock Exchange LLC (''NYSE''), NYSER and FINRA entered into an agreement (the ''Agreement'') to reduce regulatory duplication for their members by allocating to FINRA certain regulatory responsibilities for certain NYSE rules and rule interpretations (''FINRA Incorporated NYSE Rules''). NYSE MKT became a party to the Agreement effective December 15, 2008.[6]

As part of its effort to reduce regulatory duplication and relieve firms that are members of FINRA, NYSE and NYSE MKT of conflicting or unnecessary regulatory burdens, FINRA is now engaged in the process of reviewing and amending the NASD and FINRA Incorporated NYSE Rules in order to create a consolidated FINRA rulebook.[7]

Proposed Rule Change

The Exchange proposes to amend Rule 472—Equities to adopt new rule text to conform to the changes adopted by FINRA for research analysts and research reports in NASD Rule 2711 and FINRA Incorporated NYSE Rule 472. FINRA amended these rules primarily to conform to the requirements of the JOBS Act. The proposed changes to Rule 472—Equities are identical to the changes FINRA made to FINRA Incorporated NYSE Rule 472.[8]

The JOBS Act was signed into law on April 5, 2012. Among other things, the JOBS Act is intended to help facilitate capital formation for ''emerging growth companies'' (''EGCs'') by improving the information flow about EGCs to investors. To that end, Section 105(b) of the JOBS Act amended Section 15D of the Act to prohibit the Commission or any national securities association from adopting or maintaining any rule or regulation in connection with an initial public offering (''IPO'') of an EGC that:

- Restricts, based on functional role, which associated persons of a broker, dealer or member of a national securities association, may arrange for communications between an analyst and a potential investor; or
- Restricts a securities analyst from participating in any communication with the management of an EGC that is also attended by any other associated person of a broker, dealer, or member of a national securities association whose functional role is other than as a securities analyst.

Section 105(d) further prohibits the Commission or any national securities association from adopting or maintaining any rule or regulation that prohibits a broker or dealer from publishing or distributing any research report or making a public appearance, with respect to the securities of an EGC either:

- Within any prescribed period of time following the IPO date of the EGC; or
- Within any prescribed period of time prior to the expiration date of any agreement between the broker, dealer, or member of a national securities association and the EGC or its shareholders that restricts or prohibits the sale of securities held by the EGC or its shareholders after the IPO date.

These provisions became effective upon signature of the President of the United States on April 5, 2012. On August 22, 2012, the SEC's Division of Trading and Markets provided guidance on these provisions in the form of Frequently Asked Questions (''FAQs'').[9] The Exchange is amending Rule 472—Equities to conform with FINRA's amendments to the applicable provisions of NASD Rule 2711 and FINRA Incorporated NYSE Rule 472 to conform to the JOBS Act and the SEC staff's guidance with regard to the applicable JOBS Act provisions. The SEC staff guidance interprets the JOBS Act provisions as applicable to FINRA Incorporated NYSE Rule 472 to the same extent as NASD Rule 2711. As such, FINRA made corresponding amendments to Incorporated NYSE Rule 472. The proposed rule change corresponds identically to FINRA's amendments to FINRA Incorporated NYSE Rule 472.[10]

Arranging and Participating in Communications

Rule 472(b)(5)—Equities prohibits a research analyst from participating ''in efforts to solicit investment banking business,'' including any ''pitches'' for investment banking business or other communications with companies for the purpose of soliciting investment banking business. The FAQs interpret the JOBS Act to now allow, in connection with an IPO of an EGC, research analysts to attend meetings with issuer management that are also attended by investment banking personnel, including pitch meetings, but not ''engage in otherwise prohibited conduct in such meetings,'' including ''efforts to solicit investment banking business.'' The FAQs further explain that a research analyst that attends a pitch meeting ''could, for example, introduce themselves, outline their research program and the types of factors that the analyst would consider in his or her analysis of a company, and ask follow-up questions to better understand a factual statement made by the [EGC's] management.'' Accordingly, the proposed rule change creates an exception to Rule 472(b)(5)—Equities to reflect this guidance regarding the application of the JOBS Act.

The FAQs state that under Section 105(b) of the JOBS Act, an associated person of a broker-dealer, including investment banking personnel, may arrange communications between research analysts and investors in connection with an IPO of an EGC. As an example, the FAQs state that an investment banker could forward a list of clients to a research analyst that the analyst could, ''at his or her own discretion and with appropriate controls, contact.'' The FAQs acknowledge that no self-regulatory organization, including the Exchange, has a rule directly prohibiting this activity and further states that such activity, without more, would not constitute conduct by investment banking personnel to directly or indirectly direct a research analyst to engage in sales or marketing efforts related to an investment banking services transaction, in violation of Rule 472(b)(6)(ii)—Equities.[11] Accordingly,

[6] *See* Securities Exchange Act Release Nos. 56148 (July 26, 2007), 72 FR 42146 (August 1, 2007) (order approving the Agreement); 56147 (July 26, 2007), 72 FR 42166 (August 1, 2007) (SR–NASD–2007–054) (order approving the incorporation of certain NYSE Rules as ''Common Rules''); and 60409 (July 30, 2009), 74 FR 39353 (August 6, 2009) (order approving the amended and restated Agreement, adding NYSE MKT LLC as a party). Paragraph 2(b) of the Agreement sets forth procedures regarding proposed changes by FINRA, NYSE or NYSE MKT to the substance of any of the Common Rules.

[7] FINRA's rulebook currently has three sets of rules: (1) NASD Rules, (2) FINRA Incorporated NYSE Rules, and (3) consolidated FINRA Rules. The FINRA Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (''Dual Members''), while the consolidated FINRA Rules apply to all FINRA members. For more information about the FINRA rulebook consolidation process, *see* FINRA Information Notice, March 12, 2008.

[8] NYSE Rule 472 is identical to Rule 472—Equities.

[9] These FAQs are available at *http://www.sec.gov/divisions/marketreg/tmjobsact-researchanalystsfaq.htm.*

[10] *See supra* note 5.

[11] *See supra* note 9. In 2003 and 2004, the Commission, self-regulatory organizations, and other regulators instituted settled enforcement actions against 12 broker-dealers to address conflicts of interest between the firms' research and

this JOBS Act provision requires no conforming rule change.

Quiet Periods

Section 105(d) of the JOBS Act expressly permits publication of research and public appearances with respect to the securities of an EGC any time after the IPO of an EGC or prior to the expiration of any lock-up agreement. While the JOBS Act refers only to the ''expiration'' of a lock-up agreement, the FAQs note the Commission staff's belief that Congress intended for the JOBS Act provisions to apply equally to the period before a ''waiver'' or ''termination'' of a lock-up agreement. Thus, in accordance with SEC staff guidance on this JOBS Act provision, the proposed rule change amends Rule 472—Equities to eliminate the following quiet periods with respect to an IPO of an EGC:

- Rule 472(f)(1)—Equities, which imposes a 40-day quiet period after an IPO on a member organization that acts as a manager or co-manager of such IPO;
- Rule 472(f)(3)—Equities, which imposes a 25-day quiet period after an IPO on a member organization that participates as an underwriter or dealer (other than manager or co-manager) of such an IPO; and
- Rule 472(f)(4)—Equities with respect to the 15-day quiet period applicable to IPO managers and co-managers prior to the expiration, waiver, or termination of a lock-up agreement or any other agreement that such member organization has entered into with a subject company or its shareholders that restricts or prohibits the sale of securities held by the subject company or its shareholders after the completion of an IPO.

The FAQs note that the JOBS Act makes no reference to quiet periods after a secondary offering or during a period of time after expiration, termination or waiver of a lock-up agreement. Accordingly, the FAQs note that Rule 472(f)(2)—Equities, which imposes a 10-day quiet period on managers and co-managers following a secondary offering and the remaining portion of Rule 472(f)(4)—Equities relating to quiet periods *after* the expiration, termination or waiver of a lock-up agreement, remain fully in effect. Nonetheless, the FAQs express the SEC staff's belief that the policies underlying the JOBS Act are equally applicable to quiet periods during these other times. The Exchange agrees that elimination of those quiet periods would advance the policy objectives of the JOBS Act and therefore has proposed to amend Rule 472(f)—Equities accordingly.

The Exchange also proposes to make a non-substantive change to correct the existing text of current Rule 472(f)(6)—Equities, which would become Rule 472(f)(7)—Equities as a result of the proposed changes described above.

2. Statutory Basis

The Exchange believes that the proposed change is consistent with 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 foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system.

The proposed changes to Rules 472(b)(5), (f)(1), (f)(3) and (f)(4)—Equities (with respect to the 15-day quiet period before the expiration, termination or waiver of a lock-up agreement) conform those rules to statutory mandates. The proposed additional changes to Rules 472(f)(2) and (f)(4)—Equities further the policies underlying the statutory mandates by improving information flow to investors with respect to EGCs without sacrificing the reliability of research reports, as the other objectivity safeguards in Rule 472—Equities and SEC Regulation AC[14] are effective and will continue to apply. In addition, the Exchange believes that the proposed rule changes will remove impediments to and perfect the mechanisms of a free and open market and a national market system not only because it will conform Exchange rules to statutory mandates, but also because it will harmonize Exchange rules with identical FINRA rules.

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[15] and Rule 19b–4(f)(6) thereunder.[16] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[17]

A proposed rule change filed under Rule 19b–4(f)(6)[18] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[19] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission hereby grants the request.[20] Waiving the 30-day operative delay will allow the Exchange to conform its rules to statutory mandates and harmonize Exchange rules with identical FINRA rules. The Commission believes it is consistent with the protection of investors and the public interest to waive the 30-day operative delay and, therefore, designates the proposal as operative upon filing.

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

investment banking functions (''Global Settlement''). As the guidance point out, firms subject to the Global Settlement should also be mindful of the requirements of that court order as they remain in place.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 17 CFR 242.500–05.

[15] 15 U.S.C. 78s(b)(3)(A)(iii).

[16] 17 CFR 240.19b–4(f)(6).

[17] In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of the filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 240.19b–4(f)(6)(iii).

[20] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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–2012–73 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–2012–73. 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 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 Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549–1090. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* 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–2012–73 and should be submitted on or before January 2, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–29853 Filed 12–10–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68358; File No. SR–NYSEMKT–2012–71]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Commentary .07 to Exchange Rule 904 To Increase the Position and Exercise Limits for Options on the iShares MSCI Emerging Markets Index Fund to 500,000 Contracts

December 5, 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 November 26, 2012, NYSE MKT LLC (''NYSE MKT'' or ''Exchange'') 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 Commentary .07 to Exchange Rule 904 to increase the position and exercise limits for options on the iShares MSCI Emerging Markets Index Fund (''EEM'') to 500,000 contracts. 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 Commission approved the Exchange to list and trade the options on the iShares MSCI Emerging Markets Index Fund (''EEM'') on May 17, 2006.[3] Position limits for exchange-traded fund (''ETFs'') options, such as EEM options, are determined pursuant to Rule 904 and vary according to the number of outstanding shares and past six-month trading volume of the underlying stock or ETF. The largest in capitalization and most frequently traded stocks and ETFs have an option position limit of 250,000 contracts (with adjustments for splits, re-capitalizations, etc.) on the same side of the market; smaller capitalization stocks and ETFs have position limits of 200,000, 75,000, 50,000 or 25,000 contracts (with adjustments for splits, re-capitalizations, etc.) on the same side of the market. The current position limit for EEM options is 250,000 contracts. The purpose of the proposed rule change is to amend Exchange Rule 904, Commentary .07 to increase the position and exercise limits for EEM options to 500,000 contracts.[4]

Position limits serve as a regulatory tool designed to address potential manipulative schemes and adverse market impact surrounding the use of options. The Exchange understands that the Commission, when considering the appropriate level at which to set option position and exercise limits, has considered the concern that the limits be sufficient to prevent investors from disrupting the market in the security underlying the option.[5] This consideration has been balanced by the concern that the limits ''not be established at levels that are so low as to discourage participation in the options market by institutions and other

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[21] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 53824 (May 17, 2006), 71 FR 30003 (May 24, 2006) (SR–Amex–2006–43).

[4] By virtue of Exchange Rule 905(a)(i), which is not being amended by this filing, the exercise limit for EEM options would be similarly increased.

[5] *See* Securities Exchange Act Release No. 40969 (January 22, 1999), 64 FR 4911, 4912–4913 (February 1, 1999) (SR–CBOE–98–23) (citing H.R. No. IFC–3, 96th Cong., 1st Sess. at 189–91 (Comm. Print 1978)).