

from one or both sides would participate in the auction. In addition, the Exchange believes that the proposed changes will provide greater transparency and certainty in Exchange Auctions by helping to reduce the possibility that an auction would occur at a price that would qualify as clearly erroneous under Rule 11.17(c)(1) and that may result in cancelled executions. Further, the Exchange believes that the proposed change will provide greater transparency and certainty in Exchange Auctions by helping to limit the volatility in auction prices by narrowing the Collar Price Range. The Exchange also believes that the proposed changes will help prevent fraudulent and manipulative acts and practices along with, in general, protecting investors and the public interest by changing the auction information messages disseminated by the Exchange during IPO and Halt Auctions to include only the lesser of the Reference Buy Shares and the Reference Sell Shares, which will more help to prevent the possibility of gaming in the auctions, as described above. Lastly, the Exchange believes that the proposed changes will provide greater clarity and transparency by making clear that any portion of a Market RHO Auction Order will be cancelled immediately following any auction in which it is not executed, behavior that is consistent with the behavior of all other market orders entered on the Exchange.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on 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 Exchange consents, the Commission will: (a) By order approve or disapprove such 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 Exchange 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-BATS-2012-046 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-BATS-2012-046. 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 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-BATS-2012-046 and should be submitted on or before January 10, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Kevin M. O'Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68444; File No. SR-NYSEMKT-2012-78]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Section 102(a) of the NYSE MKT Company Guide To Eliminate an Erroneous Reference

December 14, 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 December 4, 2012, NYSE MKT LLC ("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 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 Section 102(a) of the NYSE MKT Company Guide (the "Company Guide") to eliminate an erroneous reference. 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,

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 Section 102(a) of the Company Guide (to eliminate an erroneous reference.

Section 102(a) of the Company Guide provides that a company listing its equity securities on the Exchange must have a minimum public distribution of 500,000 shares, together with a minimum of 800 public shareholders or minimum public distribution of 1,000,000 shares together with a minimum of 400 public shareholders. This provision contains an exception which ostensibly exempts from the distribution requirements in Section 102(a) applicants seeking to qualify for listing pursuant to Section 101(g). Section 101(g) is the Exchange's closed-end fund listing standard and it has always been the Exchange's policy to apply the general distribution standard of Section 102(a) to closed-end funds. As such, the reference to an exception for closed-end funds is erroneous and the Exchange proposes to delete it. The erroneous cross-reference was originally intended to be applicable to companies listing under the Exchange's Alternative Listing Standards for equity securities, which were eliminated in 2008.³

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)⁴ of the Securities Exchange Act of 1934 (the "Act"),⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁶ in particular in that it is designed 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 mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act in that it simply corrects a non-substantive error in the text of Section 102(a).

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 rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁷ and Rule 19b-4(f)(6)⁸ thereunder because the proposal does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, 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 Exchange has given the Commission notice of its 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.⁹

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)¹⁰ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay period. The Commission believes that waiver of the 30-day operative delay period is consistent with the protection of investors and the public interest because it would immediately eliminate confusion for issuers resulting

from the erroneous reference in the Company Guide and clarify the distribution requirement applicability. For these reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and therefore, it designates the proposed rule change to be operative upon filing with the Commission.¹¹

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.¹²

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-2012-78 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-2012-78. 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

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(6).

⁹ 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.

¹⁰ 17 CFR 240.19b-4(f)(6)(iii).

¹¹ For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹² 15 U.S.C. 78s(b)(3)(C).

³ See [sic] 34-59050 (December 3, 2008); 73 CFR 75144 (December 10, 2008) (SR-Amex-2008-70).

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78a.

⁶ 15 U.S.C. 78f(b)(5).

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 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-2012-78 and should be submitted on or before January 10, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012-30688 Filed 12-19-12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68439; File No. TP 11-10]

Order Granting Limited Exemptions From Exchange Act Rules 101 and 102 of Regulation M to Shares of JPM XF Physical Copper Trust Pursuant to Exchange Act Rules 101(d) and 102(e)

December 14, 2012.

By letter dated December 14, 2012 (the "Letter"),¹ as supplemented by conversations with the staff of the Division of Trading and Markets, counsel for J.P. Morgan Commodity ETF Services LLC ("Sponsor") on behalf of the Sponsor, JPM XF Physical Copper Trust ("Trust"), and persons or entities engaging in transaction in the shares of the Trust requested that the Securities and Exchange Commission ("Commission") issue an exemption from Rules 101 and 102 of Regulation M in connection with secondary market transactions in the shares of the Trust, and the creation or redemption of shares of the Trust.²

According to the Trust's registration statement, the Trust was formed as a Delaware statutory trust on October 15, 2010. The Trust, based on representations in the Letter, is a passive, unmanaged investment vehicle and will have no directors, officers, or employees. Additionally, the Letter represents that the Trust is an exchange-traded investment vehicle that will hold only Grade A Copper in physical form. The Letter also states that each share of the Trust represents a fractional undivided interest in the net assets of the Trust ("Share"). The Trust's investment objective, according to the Letter, is for the value of the Shares to reflect, at any given time, the value of copper owned by the Trust less the Trust's expenses and liabilities at that time.

The Letter contains the following representations:

- Shares of the Trust will trade on a national securities exchange.³
- Shares will be issued and redeemed in basket-size aggregations ("Creation Units") to registered broker-dealers or certain other persons that have entered into a participation agreement with the Trust and the Sponsor ("Authorized Participants").
- Creation Units will be issued and redeemed daily in exchange for a specified amount of physical metal that represents a *pro rata* share of the metal then held in the Trust.
- The Sponsor does not expect the difference in price based on the locational premia to be significant.⁴
- The Sponsor believes that the copper selection protocol,⁵ the

³ See also Approval Order, *supra*, note 1.

⁴ According to the Letter, the copper will be held in one or more warehouses in locations throughout the world. The value of copper depends in part on its location, *i.e.*, copper stored in a location that is low in supply and high in demand carries a higher premium than copper that is stored in a location where supply is high and demand is low. To assist in valuing the Trust's copper, by 9:00 a.m. EST, an independent valuation agent will provide the administrative agent (the administrative agent, which initially will be J.P. Morgan Treasury Securities Services, will administer various daily functions of the Trust ("Administrative Agent")) the locational premia for the locations at which the Trust is permitted to hold copper. The locational premium for a warehouse location for a business day will be calculated as an amount expressed in U.S. dollars that is equal to the average value of copper per metric ton in such location minus the LME Settlement Price of copper on such business day. See Securities Exchange Act Release No. 66816 (April 16, 2012); 77 FR 23772, 23779 ("Notice").

⁵ According to the Letter, the selection protocol is intended to provide a consistent and transparent method of selecting lots to satisfy redemption orders and calculating and paying expenses, by requiring the Administrative Agent to select lots in the following manner: (1) Lots will be selected first from the warehouse where it holds available copper that has the lowest locational premium at a particular time (*i.e.*, the "cheapest-to-deliver

independent third-party valuation agent,⁶ and information transparency measures⁷ will cause the price of Shares in the secondary market to closely track the net asset value per Share of the Trust.

- The Trust will continuously redeem baskets of Shares at net asset value expressed as a *pro rata* portion of the weight of copper held by the Trust.

- The Sponsor states that it believes that, because Authorized Participants have full, transparent information about the Trust's copper, including the locational premium and the brand for each lot of copper held by the Trust and whether the brand of any such lot is or has ceased to be an Acceptable Delivery Brand,⁸ factors such as locational premia and de-registering of copper will not impair the price alignment process or the arbitrage mechanism.⁹

- NYSE Arca will calculate and disseminate, approximately every 15 seconds during the Exchange's core

location"), and then from other warehouse locations successively based on a ranking of their respective locational premia from lowest to highest; (2) if there are multiple lots in the same warehouse location specified by the first step, lots in such warehouse location will be selected based on the date such lots were first delivered to the relevant account, with the earliest delivered lot being selected first; and (3) if there are multiple lots in the same warehouse location that were first delivered to the relevant account on the same date, lots will be selected based on the actual weight of the lot, with the lot having the lowest actual weight being selected first. For additional information, see Notice, *supra*, note 3, 77 FR at 23781-82.

⁶ According to the Letter, the valuation agent, which is independent from and unaffiliated with the Sponsor, is responsible for providing the locational premium for each permitted warehouse location, which is used to calculate the Trust's net asset value, determine the cheapest-to-deliver location, and make other determinations for the Trust.

⁷ According to the Letter, the Administrative Agent will provide full transparency on its Web site of the Trust's assets. The Sponsor anticipates that, through a combination of the use of the selection protocol and transparency of information, each Authorized Participant will be able to assess which lots of copper are likely to be delivered in connection with a redemption order by the Authorized Participant. Additionally, the Exchange will publish two intraday indicative values throughout the course of the day. These two intraday indicative values, discussed in subsequent bullets below, will provide Authorized Participants with an indication of the underlying value of the Trust's Shares during the trading day, on any day the Exchange is open for business.

⁸ According to the Letter, the LME oversees the registration process for each refinery seeking to register its brand of copper as an acceptable delivery brand for LME registered transactions ("Acceptable Delivery Brand"). Any copper that is delivered to the Trust by an Authorized Participant must, at the time of delivery, be of an Acceptable Delivery Brand. If the LME de-registers a brand of copper that is held by the Trust, the Trust will use the de-branded copper to satisfy redemptions before using any other lots of copper, even if the de-branded copper is not held in the cheapest-to-deliver location.

⁹ See *supra* notes 4 and 9.

¹³ 17 CFR 200.30-3(a)(12).

¹ See Letter from John Crowley to Josephine Tao (December 14, 2012), re: Request of J.P. Morgan Commodity ETF Services LLC for Relief from Certain Provisions of Regulation M, available at: <http://www.sec.gov/divisions/marketregr/mr-noaction.shtml>.

² For additional information regarding the Trust please see the Order Approving a Proposed Rule Change to List and Trade Shares of the JPM XF Physical Copper Trust Pursuant to NYSE Arca Equities Rule 8.201, Securities Exchange Act Release No. 68440; 77 FR ____ ("Approval Order").