

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-68231; File No. SR-NYSEMKT-2012-60)

November 14, 2012

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Amex Options Fee Schedule to Introduce Fees for the Use of Ports

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”),<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on November 1, 2012, NYSE MKT LLC (the “Exchange” or “NYSE MKT”) filed with the Securities and Exchange Commission (the “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 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 the NYSE Amex Options Fee Schedule (the “Fee Schedule”) to introduce fees for the use of ports. The text of the proposed rule change is available on the Exchange’s website at [www.nyse.com](http://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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

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 the Fee Schedule to introduce monthly fees for the use of ports that provide connectivity to the Exchange's trading systems (i.e., ports for entry of orders and/or quotes ("order/quote entry ports")) as well as for ports that allow for the receipt of "drop copies" of order or transaction information ("drop copy ports" and, together with order/quote entry ports, "ports").<sup>4</sup> The Exchange proposes to implement the fee changes on November 1, 2012.

The Exchange currently makes order/quote entry ports available for connectivity to its trading systems, but does not currently charge for order/quote entry ports related to option activity on NYSE Amex Options. The Exchange proposes to implement fees for order/quote entry ports on a per port basis. More specifically, the Exchange proposes to charge \$200 per port per month for order/quote entry ports; provided, however, that (i) the first five order/quote entry ports authorized for option activity on NYSE Amex Options would not be charged and the proposed \$200 per port fee would be decreased to \$100 per port per month for ports 101 or

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<sup>4</sup> Firms receive confirmations of their orders and receive execution reports via the order/quote entry port that is used to enter the order or quote. A "drop copy" contains redundant information that a firm chooses to have "dropped" to another destination (e.g., to allow the firm's back office and/or compliance department, or another firm – typically the firm's clearing broker – to have immediate access to the information). Such drop copies can only be sent via a drop copy port. Drop copy ports cannot be used to enter orders and/or quotes.

more,<sup>5</sup> and (ii) unutilized order/quote entry ports that connect to the Exchange via its backup datacenter would be considered established for backup purposes and not charged port fees.<sup>6</sup>

The Exchange proposes that unutilized order/quote entry ports that connect to the Exchange via its backup datacenter and are not utilized be considered established for backup purposes and not charged port fees. However, if activity were conducted through one of these order/quote entry ports, whether for backup or any other purposes, port fees would apply for the relevant month or months. In this regard, the Exchange notes that it monitors usage of these particular ports. Accordingly, if an order/quote were sent to the Exchange via one of these ports, then the port would be charged the applicable monthly port fee.

The Exchange proposes to implement a fee of \$500 for drop copy ports.<sup>7</sup> Additionally, the Exchange proposes to specify that only one fee per drop copy port would apply, even if the port receives drop copies from multiple order/quote entry ports.

The Exchange also proposes that drop copy ports that connect to the Exchange via its backup datacenter not be charged if the drop copy port is configured such that it is duplicative of another drop copy port of the same user, regardless of whether the drop copy port is utilized or not. The Exchange is proposing to treat drop copy ports in this manner because a firm would not derive any value or utility from a drop copy port in the datacenter that is duplicative of another

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<sup>5</sup> For example, if five ports are authorized for order/quote activity, there would be no charge. However, a sixth order/quote entry port would be charged \$200. 50 order/quote entry ports would be charged \$9,000 total (i.e., 45 x \$200) and 100 order/quote entry ports would be charged \$19,000 total (i.e., 95 x \$200). However, 120 order/quote entry ports would be charged \$21,000 total (i.e., 95 x \$200 plus 20 x \$100). For purposes of calculating the number of order/quote entry ports, the Exchange proposes to aggregate the ports of affiliates. An affiliate would be a person or firm that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the firm. See NYSE Amex Options Rule 900.2NY(1).

<sup>6</sup> The Exchange's backup datacenter is currently located in Chicago, Illinois.

<sup>7</sup> See supra note 4.

drop copy port that it already has outside of the datacenter, in that, because drop copy ports are used to send duplicative information, a second drop copy port carrying the same information would not be a useful resource, except for a backup purpose.

Overall, the Exchange believes that the changes proposed herein will result in a method of billing for ports that is closely aligned with the needs of firms with ports and permit the Exchange to remain competitive with other exchanges with respect to fees charged for ports.<sup>8</sup> The Exchange notes that the proposed changes are not otherwise intended to address any other issues surrounding ports or port fees and that the Exchange is not aware of any problems that port users would have in complying with the proposed change.

The Exchange proposes to implement these changes on November 1, 2012. In this regard, the Exchange notes that billing for ports would be based on the number of ports on the third business day prior to the end of the month. In addition, the level of activity with respect to a particular port would not affect the assessment of monthly fees, such that, except for ports that are not charged and ports considered established for backup purposes, even if a particular port is not used, a port fee would still apply.

## 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”),<sup>9</sup> in general, and furthers the objectives of

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<sup>8</sup> For example, the charge for connectivity to the NASDAQ Stock Market LLC (“NASDAQ”) NY-Metro and Mid-Atlantic Datacenters is \$500 and a separate charge for Pre-Trade Risk Management ports is applicable, which ranges from \$400 to \$600 and is capped at \$25,000 per firm per month. Also, the BATS Exchange, Inc. (“BZX”) charges \$400 per month per pair (primary and secondary data center) for logical ports. Additionally, EDGA Exchange, Inc. (“EDGA”) and EDGX Exchange, Inc. (“EDGX”) each charge \$500 per port. EDGA and EDGX also provide the first five ports for free.

<sup>9</sup> 15 U.S.C. 78f(b).

Section 6(b)(4) of the Act,<sup>10</sup> in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

Overall, the Exchange believes that the proposed changes, including the rates proposed, are reasonable because the fees charged for order/quote entry ports and drop copy ports are expected to permit the exchange to offset, in part, its connectivity costs associated with making such ports available, including costs based on gateway software and hardware enhancements and resources dedicated to gateway development, quality assurance, and support. In this regard, the Exchange believes that its fees are competitive with those charged by other venues, and that in some cases its port fees are less expensive than many of its primary competitors.<sup>11</sup> The Exchange believes that the changes proposed herein will result in a method of billing for ports that is closely aligned with the needs of firms with ports.

The Exchange believes that the proposed methodology for billing for order/quote entry ports is reasonable because it will allow a firm to request, and pay for, the specific number of ports that it requires. This aspect of the proposed change is also equitable and not unfairly discriminatory because it will result in charges for order/entry ports being based on the number of ports utilized. This aspect of the proposed change is also equitable and not unfairly discriminatory because it will apply on an equal basis for all ports on the Exchange, except for order/quote entry ports in the backup datacenter that are not utilized.<sup>12</sup>

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<sup>10</sup> 15 U.S.C. 78f(b)(4).

<sup>11</sup> See supra note 8.

<sup>12</sup> The Exchange describes below how the proposed changes regarding the backup datacenter are consistent with the Act.

The Exchange believes that it is reasonable to charge \$200 per port per month for order/quote entry ports because it is comparable to the rates of other exchanges.<sup>13</sup> The Exchange also believes that the fees are equitable and not unfairly discriminatory because they would apply to all users of order/quote entry ports on the Exchange, subject to the exception noted above.

The Exchange also believes that it is equitable and not unfairly discriminatory to provide the first five option order/quote entry ports for free and to decrease the rate to \$100 for ports 101 and greater. Specifically, providing the first five option ports without charge would allow firms to adapt to the introduction of the fees for ports. Additionally, decreasing the fee to \$100 per port for more than 100 ports would permit those firms that have multiple order/quote entry ports to maintain connections to the Exchange, despite the port fees that would apply as a result of this proposed change. Further, the Exchange notes that option Market Makers would, generally, be the type of market participant that would have more than 100 ports. This is due in large part to the significant number of series that exist for any particular option class<sup>14</sup> and the corresponding obligations that NYSE Amex Option Market Makers have to maintain a bid or offer in assigned classes. Furthermore, Market Makers that quote across a significant number, if not all, of the 2207 classes traded on the Exchange<sup>15</sup> have responsibility for upwards of 400,000 individual option series. Accordingly, the level of activity that is required to satisfy the quoting obligations, which directly relates to the number of ports needed, is such that the Exchange believes it is equitable and not unfairly discriminatory to provide the first five option order/quote entry ports

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<sup>13</sup> See supra note 8.

<sup>14</sup> For example, as of October 18, 2012, there were more than 1800 individual option series overlying Google, Inc.

<sup>15</sup> As of October 18, 2012.

for free and to decrease the per port charge for firms that have more than 100 order/quote entry ports on the Exchange.<sup>16</sup>

The Exchange believes that the proposed new fee for drop copy ports is reasonable because it will result in a fee being charged for the use of technology and infrastructure provided by the Exchange. In this regard, the Exchange believes that the rate is reasonable because it is comparable to the rate charged by other exchanges for drop copy ports.<sup>17</sup> Furthermore, the Exchange believes that the proposed rate for a drop copy port is reasonable because, when compared to the proposed rate for order/quote entry ports, it reflects the level of resources required of the Exchange to establish and maintain the port, including the various sources from which data comes (i.e., establishing connections to order/quote entry ports). The proposed rate is also reasonable in light of the functional/operational differences between a drop copy port and an order/quote entry port (e.g., that configuration and monitoring of the drop copy port is more substantial and because drop copy ports capture cumulative activity).

The Exchange also believes that it is reasonable that only one fee per drop copy port would apply, even if the port receives drop copies from multiple order/quote entry ports, because the purpose of drop copies is such that a trading unit's or a firm's entire order and execution activity is captured, including with respect to both equities and options [sic]. This is also reflected in the rate of \$500 that is proposed for drop copy ports, which is higher than the rate proposed for order/quote entry ports. The Exchange believes that the proposed new fee for drop copy ports is equitable and not unfairly discriminatory because it will apply on an equal basis to all users of drop copy ports and to all drop copy ports on the Exchange, except for ports in the

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<sup>16</sup> See supra note 5.

<sup>17</sup> See supra note 8.

backup datacenter.<sup>18</sup> In this regard, all firms are able to request drop copy ports, as is the case with order/quote entry ports.

The Exchange believes that it is reasonable to not charge for order/quote entry ports in its backup datacenter that are not utilized. However, the exchange does not restrict firms from using order/quote entry ports from the backup datacenter and, as described above, if one of these ports is utilized for order/quote entry, then port fees would apply. The Exchange believes that this is equitable and not unfairly discriminatory because it would permit firms to have ports established for backup purposes, should they ever be needed, without the burden of paying for such ports when they are not utilized. The Exchange believes this is equitable and not unfairly discriminatory because firms will not be disincentivized from requesting backup ports because of a fee that may otherwise apply. This would contribute to the efficiency of a backup process if primary order/quote entry ports ever became unavailable.

The Exchange also believes that it is reasonable to not charge for drop copy ports in its backup datacenter if configured such that it is duplicative of another drop copy port of the same user, regardless of whether the drop copy port is utilized or not. The Exchange believes that it is reasonable to treat drop copy ports in this manner because a firm would not derive any value/use from a drop copy port in the datacenter that is duplicative of another drop copy port that it already has outside of the datacenter (i.e., because drop copy ports are used to send duplicative information anyways, a second drop copy port carrying the same information would not be a useful resource), except for a backup purpose. The Exchange believes that this is equitable and not unfairly discriminatory because it would permit firms to have ports established for drop copy purposes in the backup datacenter, should they ever be needed, without the burden of paying for

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<sup>18</sup> See supra note 12.



such ports. Because the drop copy port would not be providing any information that the firm did not already have, since the port would be configured such that it is duplicative of another drop copy port of the same user, the Exchange believes that it is equitable and not unfairly discriminatory to treat order/quote entry ports and drop copy ports differently in this manner. The Exchange believes this is also equitable and not unfairly discriminatory because firms will not be disincentivized from requesting backup drop copy ports because of a fee that may otherwise apply. This would contribute to the efficiency of a backup process if primary drop copy ports ever became unavailable.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

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 is effective upon filing pursuant to Section 19(b)(3)(A)<sup>19</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>20</sup> thereunder, because it establishes a due, fee, or other charge imposed by the NYSE MKT.

At any time within 60 days of the filing of such 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEMKT-2012-60 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-2012-60. This file number should be included on the subject line if e-mail is used. To help the Commission process and review

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<sup>19</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>20</sup> 17 CFR 240.19b-4(f)(2).

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 20549-1090, 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 NYSE's principal office and on its Internet website at [www.nyse.com](http://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-2012-60 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.<sup>21</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>21</sup> 17 CFR 200.30-3(a)(12).