SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-68407; File No. SR-NYSEMKT-2012-74)

December 11, 2012

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Proposing to Amend the NYSE Amex Options Fee Schedule for Professional Customers and Broker-Dealers to Modify Existing Volume-Based Tiers and the Associated Rate per Contract for Certain Electronic Executions

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 29, 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Amex Options Fee Schedule ("Fee Schedule") for Professional Customers and Broker-Dealers to modify existing volume-based tiers and the associated rate per contract for certain electronic executions. The text of the proposed rule change is available on the Exchange's website 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

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

2 15 U.S.C. 78a.

3 17 CFR 240.19b-4.

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 amend the Fee Schedule for Professional Customers and Broker-Dealers to modify existing volume-based tiers and the associated rate per contract for certain electronic executions.

Presently, electronic executions for Professional Customers and Broker-Dealers that take liquidity are charged according to the following schedule:

Average Daily Volume ("ADV") Tiers For Professional Customers and Broker-Dealers Taking Liquidity	Rate Per Contract
0 to 50,000	$.28
50,001 to 100,000	$.26
Over 100,000	$.23

A Professional Customer or Broker-Dealer is treated as a "taker" of liquidity any time they send a marketable order to the Exchange and it immediately trades against a posted bid or offer in the Exchange's Consolidated Order Book. When a Professional Customer or Broker Dealer is resting a bid or offer in the Exchange's Consolidated Order Book, it is treated as a "maker" of liquidity and any volumes arising from making liquidity do not count toward these volume tiers for the month.[4]

[4] See endnote 16 of the Fee Schedule. Volumes arising from making liquidity are eligible for the lower per contract rate(s) if sufficient taking liquidity ADV is executed. ADV is calculated by using the total of taking liquidity volume divided by the number of days in the month when the Exchange was open for business. Volumes arising from the execution of either Complex Orders or Qualified Contingent Cross ("QCC") orders do

The Exchange proposes to change the tiers and the associated rate per contract as shown below:

ADV Tiers For Professional Customers and Broker-Dealers Taking Liquidity	Proposed Rate Per Contract	Former Rate Per Contract
0 to 16,999	$.32	$.28
17,000 to 49,999	$.28	$.28
Over 49,999	$.23	$.28 for 50,000 Contracts $.26 for 50,001 to 100,000 Contracts $.23 for over 100,000 Contracts

Thus, only Professional Customers and Broker-Dealers that have an average daily volume of 16,999 contracts or less (the lowest proposed tier) will pay a higher rate per contract under the proposed change; Professional Customers and Broker-Dealers with a higher ADV will pay either the same rate or a lower rate than they do today.

Since adopting tiered pricing for Professional Customer and Broker-Dealer electronic transactions, the Exchange has not garnered as much electronic Professional Customer and Broker-Dealer electronic take volume as expected. To attract more of this business, the Exchange proposes to reduce the levels of take volumes necessary to achieve certain lower per contract rates on all Professional Customer and Broker-Dealer electronic volumes but to raise fees for Professional Customers and Broker-Dealers that execute relatively lower volumes on the Exchange. By reducing the tiers and reducing the rate at relatively higher levels of volume, the Exchange expects to attract more Professional Customer and Broker-Dealer taking volume to the Exchange. The Exchange further notes that the proposed fees fall within the range of fees

not count towards the calculation of ADV for purposes of these volume tiers. Complex Order volumes from electronic executions are eligible for the reduced rates that a participant may achieve based on their take volumes. QCC orders continue to be billed at the $.20 per contract rate applicable to Non-Customers. Id.

charged in the industry for Professional Customer and Broker Dealer electronic transaction charges.[5]

The proposed change will be operative on December 1, 2012.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)[6] of the Securities Exchange Act of 1934 (the "Act"), in general, and Section 6(b)(4)[7] of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities and is not unfairly discriminatory.

The Exchange believes that the proposed changes to the volume-based tiers and the associated rates per contract for electronically executed orders of Professional Customers and Broker-Dealers that take liquidity are reasonable, equitable and not unfairly discriminatory. The Exchange believes the fees are reasonable because they are within the range of comparable fees on at least two other exchanges.[8] Moreover, the fee increase at the proposed lowest volume tier is reasonable because these Professional Customers and Broker-Dealers are bringing less volume to the Exchange and the higher fees will offset the loss in revenue associated with reducing fees at lower volume thresholds. The Exchange notes that with only a modest increase in trading activity, Professional Customers and Broker-Dealers will be able to maintain the same rate as

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5 See ISE fee schedule as of November 6, 2012, under which that exchange charges Professional Customer and Broker-Dealer "take" fees of $.33 per contract in Select Symbols, and the Nasdaq Options Market fee schedule as of November 1, 2012, under which that exchange charges Professional Customers and Broker-Dealers $.49 [sic] to take liquidity in Penny Pilot symbols and $.89 per contract to take liquidity in non-Penny Pilot symbols.

6 15 U.S.C. 78f(b).

7 15 U.S.C. 78f(b)(4).

8 See supra note 5.

they are currently paying. A more significant increase in trading activity will result in such participants paying a lower transaction rate than they pay today. The Exchange believes that it is reasonable to adjust the tier thresholds in this manner to encourage greater participation and thereby foster more transparency and price discovery for the benefit of all market participants.

The Exchange notes that while other participants may pay less for electronic transactions that take liquidity, such participants also pay substantially more for the ability to trade on the Exchange. For example, Market Makers have much higher fixed monthly costs as compared to Professional Customers and Broker-Dealers. A Market Maker seeking to stream quotes in the entire universe of names traded on the Exchange would have to pay $33,000 per month in Amex Trading Permit ("ATP") fees and Premium Product Fees. In addition, a Market Maker acting as a Specialist, e-Specialist, or Directed Order Market Maker will incur monthly Rights Fees that range from $75 per option to $1,500 per option. Professional Customers and Broker-Dealers, which access the Exchange via an order routing firm, pay only $500 per month in ATP fees (assuming the cost is passed back to them), and for that low monthly cost are able to send orders in all issues traded on the Exchange. Broker-Dealers that are ATP Holders and access the Exchange directly incur the monthly ATP fee of $500 and in turn have the ability to send orders in all issues traded on the Exchange. Given these facts, coupled with the aforementioned range in Professional Customer fees on other exchanges, the Exchange believes that the proposed change is reasonable, equitable, and not unfairly discriminatory.

The Exchange believes the proposed change to increase fees to $.32 per contract for the lowest volume Professional Customer and Broker-Dealer participants is equitable and not unfairly discriminatory because the change will apply to all Professional Customers and Broker-Dealers equally and the increase will offset the costs to the Exchange associated with offering more favorable rates at lower trading thresholds. Furthermore, Professional Customers and Broker-Dealers are free to change the manner in which they access the Exchange. A Professional Customer may, by sending fewer than 390 orders per day across the industry, begin participating as a Customer and avoid incurring any transaction fees. Broker-Dealers and Professional Customers may apply to become Market Makers to transact on a proprietary basis as Market Makers or become ATP Holders to transact on the Exchange as a Firm. In light of the ability to access the Exchange in a variety of ways, each of which is priced differently, Professional Customers, Broker-Dealers, and other participants may access the Exchange in a manner that makes the most economic sense for them.

The Exchange believes that the proposed change to modify the existing volume-based tiers for Professional Customers and Broker-Dealers that transact electronically is equitable and not unfairly discriminatory because the change will apply to all participants in those categories equally and such participants are free to change the manner in which they access the Exchange. The proposed change also will reward Professional Customers and Broker-Dealers that bring relatively higher volumes of trading activity to the Exchange. Moreover, as noted previously, these participants have lower aggregate fees when compared to, for example, the ATP fees incurred by a NYSE Amex Market Maker to quote the entire universe of names traded on the Exchange. Further, the establishment of the tiers will enable Professional Customers and Broker-Dealers that transact in sufficient volumes to obtain a lower per contract rate on all of their electronic volumes in a given month. This is equitable and not unfairly discriminatory given that a higher volume of marketable orders, which these volume tiers will encourage, is beneficial to other Exchange participants due to the increased opportunity to trade.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they determine that such venues offer more favorable trading conditions and rates.

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)[9] of the Act and subparagraph (f)(2) of Rule 19b-4[10] thereunder, because it establishes a due, fee, or other charge imposed by 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:

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[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b-4(f)(2).

Electronic comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEMKT-2012-74 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-2012-74. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room 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 NYSE's principal office and on its Internet website 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-2012-74, 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.[11]

Kevin M. O'Neill
Deputy Secretary

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[11] 17 CFR 200.30-3(a)(12).