

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-69488; File No. SR- NYSEMKT-2013-38)

May 1, 2013

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Amex Options Fee Schedule for Firms to Increase the Transaction Fee for Certain Proprietary Electronic Executions and to Introduce Volume-Based Tiers for Certain Proprietary 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 April 19, 2013, 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 (“Fee Schedule”). 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 received on the proposed rule change. The text of those statements may be examined at the places

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 for Firms to (1) increase the transaction fee for certain proprietary electronic executions of standard option contracts and (2) introduce volume-based tiers for certain proprietary electronic executions of standard option contracts that will be charged a lower per contract rate. The proposed change will be operative on May 1, 2013.

Specifically, the Exchange proposes to increase the per contract transaction fee for proprietary electronically executed orders for Firms from \$.20 to \$.25 per contract. The Exchange notes that the proposed fee is within the range of Firm fees presently assessed in the industry, which range from \$.17 per contract for high volume (over 500,000 contracts per month) Firms in Multiply Listed, non-Select Symbols on NASDAQ OMX PHLX ("PHLX")⁴ to \$.89 per contract to take liquidity on The NASDAQ Options Market ("NOM") for non-Penny Pilot securities.⁵

At the same time, the Exchange proposes to establish volume-based tiers for Firms that trade electronically on the Exchange. Upon achieving a higher volume tier, a Firm will automatically become eligible for a lower per contract rate on all of its electronic executions in that month. The proposed volume-based tiers will be based on a percentage of the Total Industry

⁴ See PHLX Fee Schedule, available at <http://www.nasdaqtrader.com/Micro.aspx?id=PHLXPricing>.

⁵ See NOM Fee Schedule, available at <http://www.nasdaqtrader.com/Micro.aspx?id=OptionsPricing>.

Customer equity and exchange-traded fund (“ETF”) option average daily volume (“ADV”).⁶ By doing so, the tiers will float with the level of overall activity in the marketplace. The tiers will be as follows:

Tiers For Firm Proprietary Electronic Transactions	Rate Per Contract (retroactive to the first contract traded during the month)
Less than .21% of Total Industry Customer equity and ETF option ADV	\$.25
.21% to .32% of Total Industry Customer equity and ETF option ADV	\$.20
Greater than .32% of Total Industry Customer equity and ETF option ADV	\$.17

Based on the past few months of activity, .32% of Total Industry Customer equity and ETF option ADV would be approximately 38,750 contracts per day (or 813,750 contracts per month) and .21% would be approximately 25,500 contracts per day (or 536,550 contracts per month), in each case assuming 21 trading days per month.

By way of comparison, the Exchange notes that the discounted fee for Firm electronic volume on PHLX is available if a Firm executes more than 500,000 contracts per month (which would be an average of 23,810 contracts per day if measured daily, assuming 21 trading days per month). The PHLX fee is \$.45 if the Firm executes 500,000 or fewer contracts or \$.17 if the

⁶ Total Industry Customer equity and ETF option ADV will be that which is reported for the month by The Options Clearing Corporation (“OCC”) in the month in which the discounted rate may apply. For example, May 2013 Total Industry Customer equity and ETF option ADV will be used in determining what, if any, discount a Firm may be eligible for on its electronic Firm transactions based on the amount of electronic Firm volume it executes in May 2013 relative to Total Industry Customer equity and ETF option ADV. Total Industry Customer equity and ETF option ADV comprises those equity and ETF contracts that clear in the customer account type at OCC and does not include contracts that clear in either the firm or market maker account type at OCC or contracts overlying a security other than an equity or ETF security.

Firm executes more than 500,000 contracts. While the highest volume tier that the Exchange is proposing is higher than the one on PHLX, the Exchange notes that the base rate on PHLX is substantially higher at \$.45 per contract⁷ as compared to the Exchange's base rate of \$.25 per contract.

In calculating the amount of Firm electronic volume that is counted in the volume tier necessary to achieve the lower per contract rate, the Exchange will exclude qualified contingent cross ("QCC") volume because QCC volumes are already eligible for a separate rebate.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)⁸ of the Act, in general, and Section 6(b)(4) and (5)⁹ 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 does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed fees are reasonable because they are within the range of similar fees on other exchanges.¹⁰ They also are reasonable because they are designed to attract higher volumes of Firm proprietary electronic equity and ETF volume to the Exchange, which will benefit all participants by offering greater price discovery, increased transparency, and an increased opportunity to trade on the Exchange. Encouraging Firms to send higher volumes of orders to the Exchange will contribute to the Exchange's depth of book as well as to the top of book liquidity. The Exchange also believes that proposed thresholds for the tiers for

⁷ See supra, notes 4-5.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4) and (5).

¹⁰ See supra, notes 4-5.

the lower rates are reasonable because they are comparable to at least one other exchange (PHLX) and will reward Firms with lower fees when they bring a larger number of equity and ETF orders to the Exchange. The proposed fee increase for lower volume Firms is reasonable and equitable because it will reasonably ensure that the Exchange will derive sufficient revenue to continue to fund the fee reductions at the higher volumes for the benefit of all participants. Moreover, the Exchange believes that the proposed fees are equitable and not unfairly discriminatory because they will apply to all Firms that execute proprietary electronic equity and ETF orders on the Exchange on an equal and non-discriminatory basis.

The Exchange believes that excluding the volumes attributable to QCC executions is reasonable, equitable, and not unfairly discriminatory. QCC volumes are already counted toward a separate rebate that the Exchange pays to Floor Brokers who transact QCC trades.¹¹ If the Exchange were to count QCC volumes toward Firm electronic volumes for discounted rates, the Exchange would have to raise fees for all other participants. The Exchange does not believe such a result would be reasonable or equitable. Because all Firms will be treated equally with respect to QCC volume, the proposal to exclude this volume from the tiers is not inequitable or unfairly discriminatory.

The Exchange further notes that non-Firm market participants pay substantially more for the ability to trade on the Exchange, and as such, the proposed amount of the increase for Firms that contribute relatively lower levels of volume is reasonable. For example, Market Makers have much higher fixed monthly costs as compared to Firms. A Market Maker seeking to stream quotes in the entire universe of names traded on the Exchange must pay \$26,000 per month in Amex Trading Permit (“ATP”) fees. In addition, a Market Maker acting as a Specialist, e-

¹¹ See Securities Exchange Act Release No. 65472 (Oct. 3, 2011), 76 FR 62887 (Oct. 11, 2011) (SR-NYSEAmex-2011-72).

Specialist, or Directed Order Market Maker incurs monthly Rights Fees that range from \$75 per option to \$1,500 per option along with Premium Product Fees that can be as high as \$7,000 per month. Firms pay only \$1,000 per month in ATP fees and for that low monthly cost are able to send orders in all issues traded on the Exchange. Other participants have a much higher per contract cost to trade on the Exchange, such as Non-NYSE Amex Options Market Makers, who pay \$.43 per contract to transact on the Exchange electronically.

Firms also are free to change the manner in which they access the Exchange. Firms may apply to become Market Makers to transact on a proprietary basis as Market Makers. In light of the ability to access the Exchange in a variety of ways, each of which is priced differently, Firms and other participants may access the Exchange in a manner that makes the most economic sense for them.

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. The Exchange believes that the proposed change will encourage Firms to send higher volumes of order flow to the Exchange to qualify for the lower transaction fees. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. 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.

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)¹² of the Act and subparagraph (f)(2) of Rule 19b-4¹³ thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

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. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)¹⁴ of the Act to determine whether the proposed rule change should be approved or 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 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. Please include File Number SR-NYSEMKT-2013-38 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.

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(2).

¹⁴ 15 U.S.C. 78s(b)(2)(B).

All submissions should refer to File Number SR- NYSEMKT-2013-38. 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, 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 publicly available. All submissions should refer to File Number SR-NYSEMKT-2013-38 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.¹⁵

Kevin M. O'Neill
Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).