

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-69489; File No. SR-NYSEMKT-2013-39)

May 1, 2013

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the NYSE Amex Options Fee Schedule to Modify the Existing Floor Broker Rebate for Executed Qualified Contingent Cross Orders

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”) to modify the existing Floor Broker rebate for executed qualified contingent cross (“QCC”) orders. 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

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to modify the existing Floor Broker rebate for executed QCC orders.⁴ The proposed change will be operative on May 1, 2013.

Specifically, the Exchange proposes to adopt a tiered rebate based on Floor Broker executed QCC volume in a given month. The existing rebate is \$.07 per contract,⁵ and this rebate will continue to be paid to Floor Brokers that execute monthly QCC volumes up to and including 300,000 contracts. The Exchange is proposing to adopt a higher per contract rebate of \$.10 per contract to be paid to Floor Brokers for any QCC volume in excess of 300,000 contracts in a given month. The rebate paid per contract will include all eligible volume within each tier at the applicable rate. The rebate is per contract and not retroactive to the first contract. Thus, if a Floor Broker has 400,000 contracts in QCC volume, he or she will earn a rebate of \$.07 for the first 300,000 contracts and \$.10 for the remaining 100,000 contracts. As with the existing rebate, Customer to Customer QCC trades will not qualify for any rebate as such a transaction nets the

⁴ The QCC permits an NYSE Amex ATP Holder to effect a qualified contingent trade ("QCT") in a Regulation NMS stock and cross the options leg of the trade on the Exchange immediately upon entry and without order exposure if the order is for at least 1,000 contracts, is part of a QCT, is executed at a price at least equal to the national best bid or offer, as long as there are no Customer orders in the Exchange's Consolidated Book at the same price.

⁵ See Securities Act Release No. 66376 (February 10, 2012), 77 FR 9293 (February 16, 2012) (SR-NYSEAmex-2012-05).

Exchange no revenue.⁶

The Exchange notes that the proposed rebate falls within the range of rebates paid for QCC volumes across the industry. Specifically, the Exchange notes that the International Securities Exchange (“ISE”) pays a volume-based rebate for QCC and Solicitation volumes that ranges from \$.00 to \$.11 per contract.⁷ NASDAQ OMX PHLX (“PHLX”) also pays a volume-based rebate for QCC volume that ranges from \$.00 to \$.11 per contract.⁸

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)⁹ of the Act, in general, and Section 6(b)(4) and (5)¹⁰ 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 tiered rebates are reasonable because they are within the range of tiered volume rebates on other exchanges.¹¹ To the extent that the rebate is successful in attracting additional order flow to the Exchange, all market participants should benefit. Any participant will be able to engage a rebate-receiving Floor Broker in a discussion surrounding the appropriate level of fees that they may be charged for entrusting the QCC order

⁶ See Securities Act Release No. 65943 (December 13, 2011), 76 FR 78704 (December 19, 2011) (SR-NYSEAmex-2011-95).

⁷ See ISE fee schedule, available at http://www.ise.com/assets/documents/OptionsExchange/legal/fee/fee_schedule.pdf.

⁸ See PHLX fee schedule, available at http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLXTools/PlatformViewer.asp?selectednode=chp_1_4&manual=%2Fnasdaqomxphlx%2Fphlx%2Fphlx-rulesbrd%2F.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4) and (5).

¹¹ See supra notes 7-8.

to the Floor Broker. Moreover, the Exchange believes that the proposed rebates are equitable and not unfairly discriminatory because they will apply to all Floor Brokers that execute QCC orders on Exchange on an equal and non-discriminatory basis.

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 allow Floor Brokers to better compete for QCC volumes as the rebates are more in line with those paid to participants on other exchanges. 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 and/or rebates to be insufficient. 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.

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(2).

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-2013-39 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-2013-39. 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

¹⁴ 15 U.S.C. 78s(b)(2)(B).

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 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-NYSEMKT-2013-39 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).