

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-70599; File No. SR-NYSEMKT-2013-77)

October 2, 2013

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 341A to Specify Applicable Continuing Education Requirements, Amending the NYSE Amex Options Fee Schedule to Specify Corresponding CE Fees and to Specify Fees for the Series 56 Examination

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 September 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 and II below, which Items have been prepared by the self-regulatory organization. NYSE MKT has designated the proposed rule change as constituting a non-controversial rule change under Section 19(b)(3)(A)(iii)⁴ of the Act and Rule 19b-4(f)(6)⁵ thereunder, which renders the filing effective upon filing with the Commission. 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 Rule 341A to specify applicable continuing education (“CE”) requirements, (ii) [sic] amend the NYSE Amex Options Fee Schedule

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ 15 U.S.C. 78s(b)(3)(A)(iii).

⁵ 17 CFR 240.19b-4(f)(6).

(“Fee Schedule”) to specify corresponding CE fees, and (iii) amend the Fee Schedule to specify fees for the Series 56 examination. 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 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 (i) amend Rule 341A to specify applicable CE requirements, (ii) amend the Fee Schedule to specify corresponding CE fees, and (iii) amend the Fee Schedule to specify fees for the Series 56 examination.

CE Requirements

Rule 341A(a) states that no member or member organization may permit any registered person to continue to, and no registered person may continue to, perform duties as a registered person unless such person has complied with the CE requirements of the rule. Rule 341A specifies the CE requirements for registered persons subsequent to their initial qualification and registration. The requirements consist of a Regulatory Element

and a Firm Element.⁶ The Regulatory Element is a computer-based education program administered by the Financial Industry Regulatory Authority, Inc. (“FINRA”), on behalf of the Securities Industry Council on Continuing Education, to help ensure that registered persons are kept up to date on regulatory, compliance, and sales practice matters in the industry.

There are currently three existing Regulatory Element programs: (1) the S201 (“S201 CE Program”) for registered principals (e.g., General Securities Principals and Limited Principals) and supervisors; (2) the S106 (“S106 CE Program”) for persons registered only as Investment Company Products/Variable Contracts Limited Representatives; and (3) the S101 (“S101 CE Program”) for all other registered persons (e.g., General Securities Representatives). The Exchange proposes to enumerate these existing programs in subsection (1) of Rule 341A(a).⁷

The Exchange also proposes to specify the new S501 (“S501 CE Program,” and together with the S201, S106 and S101 CE Programs, “CE Programs”) for persons registered only as Proprietary Traders.⁸ This would include registered Proprietary

⁶ Currently, the Firm Element applies to any registered person who has direct contact with customers in the conduct of the member’s or member organization’s securities sales, trading or investment banking activities, and to the immediate supervisors of such persons (collectively called “covered registered persons”). See Rule 341A(b)(1). The requirement stipulates that each member or member organization must maintain a continuing and current education program for its covered registered persons to enhance their securities knowledge, skills, and professionalism. Each member and member organization has the requirement to annually evaluate and prioritize its training needs and develop a written training plan. See Rule 341A(b)(2)(i).

⁷ Rule 341A(a)(1) currently includes existing rule text. Rule 341A(a)(1)-(3) would therefore be renumbered as Rule 341A(a)(2)-(4), respectively.

⁸ A Proprietary Trader is any person engaged in the purchase or sale of securities or other similar instruments for the account of a member or member organization with which he or she is associated, as an employee or otherwise, and who does

Traders who have successfully completed the Proprietary Traders Examination (“Series 56 Examination”)⁹ as well as registered Proprietary Traders who have completed the General Securities Registered Representative Examination (“Series 7 Examination”), but who have only registered as Proprietary Traders.¹⁰ Individuals who maintain any other registration would be subject to the CE Program associated with such other registration.

The S501 CE Program is a computer-based education program developed by

not transact any business with the public. The term “Proprietary Trader” does not include a person who is required to be registered as a Market Maker in accordance with Rule 921NY or a Market Maker Authorized Trader in accordance with in Rule 921.1NY. See Commentary .01 to Rule 341.

⁹ The Exchange previously amended its rules to prescribe the Series 56 Examination as the qualifying examination for registered Proprietary Traders. See Securities Exchange Act Release No. 66453 (February 23, 2012), 77 FR 12345 (February 29, 2012) (SR-NYSEAmex-2012-11). The Exchange stated in that proposal that it intended to submit a separate filing in the future to apply CE requirements to such persons. See id. at 12346, note 11.

¹⁰ For purposes of this filing, “registration” refers to the operational/functional registration status in FINRA’s Central Registration Depository (“CRD®”) (e.g., Proprietary Trader or General Securities Representative), not the qualification examination(s) that a registered person has completed (e.g., the Series 56 Examination or the Series 7 Examination).

Persons accepting orders from non-member customers (unless such customer is a broker-dealer registered with the Securities and Exchange Commission (“Commission”)) must successfully complete the Series 7 Examination. See Rule 920.06. However, an individual who has successfully completed the Series 7 Examination who does not conduct business with the public is permitted to register as a Proprietary Trader, either exclusively or concurrently with registration as a General Securities Representative, without successfully completing the Series 56 Examination, which would be redundant.

If a person initially qualified as a Proprietary Trader by taking the Series 7 Examination or otherwise previously maintained both Series 7 and Series 56 qualifications, but was only maintaining a Proprietary Trader registration when the CE requirement became due, then completion of the S501 CE Program by such person would satisfy his or her then-applicable CE requirement. However, upon re-registering thereafter as a General Securities Representative, such individual would be required to complete the S101 CE Program the next time he or she became subject to CE.

many of the self-regulatory organizations (“Participating SROs”)¹¹ and administered by FINRA to ensure that registered persons are kept current on regulatory, compliance, and trading practice matters in the industry. Unlike the other CE Programs, the S501 CE Program is not part of the Uniform Continuing Education Program, which is developed and maintained by the Securities Industry Regulatory Council on Continuing Education. However, the S501 CE Program would logistically operate as the current CE Programs do. Specifically, registered persons would be required, through CRD, to complete the Regulatory Element of the S501 CE Program on the second anniversary of the base date and then every three years thereafter. In creating the S501 CE Program, the Participating SROs determined that the current procedures of the other CE Programs work well. The Securities Industry Regulatory Council on Continuing Education has tailored the process of the other CE Programs since their inception in a manner that has been successful. Thus, as proposed, the S501 CE Program would work in the same manner. In addition, consistency between the different programs would avoid creating confusion among the registered persons and FINRA.

As proposed, registered Proprietary Traders would also be required to complete the Firm Element outlined in Rule 341A(b). Although registered Proprietary Traders,

¹¹ The Participating SROs that have assisted with the development of, and plan to administer, the Series 56 Examination and S501 CE Program are the Exchange; C2 Options Exchange, Incorporated (“C2”); Chicago Board Options Exchange, Incorporated (“CBOE”); Chicago Stock Exchange, Inc. (“CHX”); New York Stock Exchange LLC (“NYSE”); NYSE Arca, Inc. (“NYSEArca”); The NASDAQ Stock Market LLC (“NASDAQ”); National Stock Exchange, Inc. (“NSX”); NASDAQ OMX BX, Inc. (“BX”); NASDAQ OMX PHLX LLC (“PHLX”); BATS Y-Exchange, Inc. (“BATS Y”); BATS Exchange, Inc. (“BATS”); EDGA Exchange, Inc. (“EDGA”); EDGX Exchange, Inc. (“EDGX”); International Securities Exchange, LLC (“ISE”); BOX Options Exchange, LLC (“BOX”); and Miami International Securities Exchange LLC (“MIAX”).

including those who have passed the Series 56 Examination, do not interact with the public, the Exchange believes that this requirement is appropriate because it ensures that these registered Proprietary Traders continue to enhance their securities knowledge, skill, and professionalism. As stated in Rule 341A(b)(2)(ii), the program should be tailored to fit the business of the member or member organization. Thus, the Exchange believes that it is appropriate that registered Proprietary Traders also complete the Firm Element.

The introduction of the S501 CE Program would allow the Exchange to tailor its CE requirements more closely to those individuals who are registered only as Proprietary Traders. More specifically, the Exchange believes that the proposed rule change would allow persons registered only as Proprietary Traders to complete a CE Program separate from persons maintaining other registrations. For example, in comparison to the Series 7 Examination, the Series 56 Examination is more closely tailored to the practice of proprietary trading while the Series 7 Examination is more comprehensive. As such, the Exchange believes that the S501 CE Program should also be closely tailored to proprietary trading. If an individual remains registered in another capacity, such as a General Securities Representative, the Exchange believes that it is appropriate that such individual continue to be required to complete the more comprehensive CE Program (i.e., the S101 CE Program). The Exchange anticipates that the other Participating SROs will adopt, or have adopted, rules requiring completion of the S501 CE Program for registered Proprietary Traders.¹²

CE Fees

The Exchange proposes to amend the Fee Schedule to specify the CRD session

¹² See, e.g., Securities Exchange Act Release No. 70027 (July 23, 2013), 78 FR 45584 (July 29, 2013) (SR-CBOE-2013-076).

fees for the CE Programs described above, including the existing CE Programs and the proposed new S501 CE Program. Specifically, the Exchange proposes to specify the existing \$100 session fee associated with the existing CE Programs (i.e., the S201, S106 and S101 CE Programs) and a new \$60 session fee associated with the new S501 CE Program.¹³ The Exchange anticipates that other exchanges requiring completion of the S501 CE Program will similarly implement corresponding fees. As with existing CE Program session fees, only one \$60 session fee would be charged through CRD for a registered person completing the S501 CE Program, even if such registered person's firm was a member of multiple exchanges.

The Exchange has determined that the \$60 session fee is necessary to administer the S501 CE Program. Specifically, the \$60 session fee will be used to fund the S501 CE Program administered to persons registered only as Proprietary Traders who are required to complete the S501 CE Program. The \$60 session fee is less than the existing \$100 session fee currently charged by FINRA through CRD for the existing CE Programs, including the S101 CE Program, because the fees associated with the existing CE Programs are utilized for both development and administration, whereas the \$60 session fee for the S501 CE Program would only be used for the administration of the program. The costs associated with the development of the S501 CE Program are included in the Series 56 Examination fee. The Exchange anticipates that the other Participating SROs will adopt, or have adopted, the same \$60 session fee applicable to completion of the

¹³ "Session" refers to a registered person sitting for the actual computer-based CE training. FINRA administers the CE Programs on behalf of the Exchange. ATP Holders pay the related fees directly to FINRA through CRD.

S501 CE Program.¹⁴

Series 56 Examination Fees

The Exchange previously amended its rules to prescribe the Series 56 Examination as the qualifying examination for registered Proprietary Traders.¹⁵ The Exchange hereby proposes to amend the Fee Schedule to specify a fee of \$195 per registered person that chooses to complete the Series 56 Examination.

The Fee Schedule does not currently set forth the examination fees for other qualification examinations required or accepted by the Exchange because these programs are within FINRA's jurisdiction. The Series 56 Examination, however, is a limited registration category that is not recognized by FINRA under its registration rules. However, as with existing non-FINRA examinations, FINRA administers the Series 56 Examination and collects the \$195 fee through CRD on behalf of the SROs that developed and maintain the exam. Additionally, only one \$195 fee would be charged through CRD for a registered person completing the Series 56 Examination, even if such registered person's firm was a member of multiple exchanges. The Exchange anticipates that the other Participating SROs will adopt, or have adopted, the same \$195 fee applicable to completion of the Series 56 Examination.¹⁶

The proposed change is not otherwise intended to address any other issues relating to CE or related fees and the Exchange is not aware of any problems that ATP Holders or their registered persons would have in complying with the proposed change.

¹⁴ See, e.g., Securities Exchange Act Release No. 70064 (July 30, 2013), 78 FR 47469 (August 5, 2013) (SR-CBOE-2013-078).

¹⁵ See supra note 9.

¹⁶ See, e.g., Securities Exchange Act Release No. 70163 (August 12, 2013), 78 FR 50120 (August 16, 2013) (SR-EDGA-2013-24).

2. Statutory Basis

The proposed rule change is consistent with Section 6(c) of the Act,¹⁷ in general, and furthers the objectives of Section 6(c)(3) of the Act,¹⁸ in particular, which authorizes the Exchange to prescribe standards of training, experience and competence for registered persons of ATP Holders. The proposed rule change would specify the existing CE requirements for registered persons of ATP Holders while also specifying the new S501 CE Program requirement for registered Proprietary Traders of ATP Holders. The Exchange believes that the proposed rule change is reasonable and sets forth the applicable CE requirements for individuals required to register under Rule 341 and will therefore contribute to ensuring that registered persons of ATP Holders are properly trained. In this regard, the Exchange believes that the S501 CE Program is the appropriate CE Program for persons registered only as Proprietary Traders because the S501 CE Program is specifically tailored toward proprietary trading. Individuals who maintain any other registration would be required to complete the CE Program associated with such other registration, even if simultaneously registered as Proprietary Traders, because such other CE Program would be more comprehensive and correspond to the other, more comprehensive registration category. The Exchange also believes that the proposed rule change is reasonable because the other Participating SROs are anticipated to adopt, or have adopted, rules requiring completion of the S501 CE Program for registered Proprietary Traders.¹⁹

The Exchange also believes that the proposed rule change is consistent with

¹⁷ 15 U.S.C. 78f(c).

¹⁸ 15 U.S.C. 78f(c)(3).

¹⁹ See supra note 12.

Section 6(b) of the Act,²⁰ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,²¹ 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. The Exchange believes that the proposed \$60 session fee is reasonable. While it is less than the existing \$100 session fee currently charged by FINRA through CRD for the existing CE Programs, including the S101 CE Program, the fees associated with the existing CE Programs are utilized for both development and administration, whereas the \$60 session fee for the S501 CE Program would only be used for the administration of the program. The costs associated with the development of the S501 CE Program are included in the Series 56 Examination fee. The Exchange also believes that the fee is reasonable because the other Participating SROs are anticipated to adopt, or have adopted, the same \$60 session fee applicable to completion of the S501 CE Program.²² The Exchange also believes that the proposed rule change is reasonable because it will specify the existing \$100 session fee applicable to registered persons of ATP Holders who are subject to CE requirements, which is collected by FINRA through CRD. Finally, the Exchange believes that the proposed rule change is equitable and not unfairly discriminatory because all registered persons of ATP Holders that are subject to CE requirements would be treated the same, as is currently the case. Therefore, any registered person of an ATP Holder that is required to complete the S501 CE Program would be subject to the corresponding \$60 session fee.

²⁰ 15 U.S.C. 78f(b).

²¹ 15 U.S.C. 78f(b)(4) and (5).

²² See supra note 14.

The Exchange believes that it is reasonable to include the Series 56 Examination fee within the Fee Schedule to make the cost of this examination clear to ATP Holders. The proposed fee is reasonably designed to allow FINRA to cover its cost of administering the Series 56 Examination on behalf of the Exchange. The Exchange believes that the proposed \$195 Series 56 Examination fee is also reasonable because it is designed to reflect the costs of maintaining and developing the Series 56 Examination, as well as the development of the S501 CE Program, and to ensure that the examination's content is, and continues to be, adequate for testing the competence and knowledge generally applicable to proprietary trading. The Exchange also believes that the fee is reasonable because the Exchange anticipates that the other Participating SROs will adopt, or have adopted, the same \$195 fee applicable to completion of the Series 56 Examination.²³ Finally, the Exchange believes that the proposed rule change is equitable and not unfairly discriminatory because all registered persons of ATP Holders that wish to be registered as Proprietary Traders would be treated the same, as is currently the case.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,²⁴ 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. Specifically, the Exchange does not believe that the proposed administrative changes (i.e., specifying the existing CE Programs and related fees), the introduction of the S501 CE Program and

²³ See supra note 16.

²⁴ 15 U.S.C. 78f(b)(8).

related fee, or the introduction of the Series 56 Examination fee will affect intermarket competition because the Exchange anticipates that the other Participating SROs will similarly adopt, or have adopted, rules requiring completion of the S501 CE Program for registered Proprietary Traders, the same \$60 session fee applicable to completion of the S501 CE Program and the same \$195 fee applicable to completion of the Series 56 Examination.²⁵ In addition, the Exchange does not believe that the proposed rule change will affect intramarket competition because all similarly situated registered persons of ATP Holders, e.g., registered persons maintaining the same categories of registration, are required to complete the same CE Programs, the same qualification examinations, and are subject to the same fees.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act²⁶ and subparagraph (f)(6) of Rule 19b-4 thereunder.²⁷

²⁵ See supra notes 12, 14 and 16.

²⁶ 15 U.S.C. 78s(b)(3)(a)(ii).

²⁷ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory

The Exchange has requested that the Commission waive the 30-day operative delay. Waiver of the operative delay would allow the Exchange to modify its rules and implement the proposed rule change at once, enabling its Members to comply with their continuing education requirements in a timely manner, and thus is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposal operative upon filing.²⁸

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings 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

organization to give the Commission written notice of its intent to file 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.

²⁸ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEMkt-2013-77 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-2013-77. 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 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 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-2013-77 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.²⁹

Kevin M O'Neill
Deputy Secretary

²⁹ 17 CFR 200.30-3(a)(12).