

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-72574; File No. SR-NYSEMKT-2014-55)

July 9, 2014

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Amex Options Fee Schedule in a Number of Different Ways

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 July 1, 2014, 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”) in a number of different ways. The proposed changes will be operative on July 1, 2014. 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

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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.

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 in a number of different ways as described below. The proposed changes will be operative on July 1, 2014.

First, the Exchange proposes to adopt separate fees for electronic transactions in securities that are not included as part of the Penny Pilot Program ("Non Penny Pilot") for Broker Dealers, Professional Customers, Non NYSE Amex Options Market Makers and Firms, similar to how NYSE Amex Options Markets Makers liable for Marketing Charges pay a different rate for electronic executions in Penny versus Non Penny Pilot names.<sup>4</sup> Specifically, the Exchange is proposing a fee of \$0.58 per contract for Broker Dealers, Professional Customers, Non NYSE Amex Options Market Maker and Firms who electronically transact in Non Penny Pilot issues. The rate per contract for those same participants who electronically transact in Penny Pilot issues will be the same rate they are presently charged for electronic transactions generally. For example, Broker Dealers, Professional Customers and Firms presently pay \$0.32 per contract for electronic transactions and Non NYSE Amex Options Market Makers pay \$0.43 per contract for electronic transactions – these will continue to be the rates charged to those participants for electronic transactions in Penny Pilot issues.

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<sup>4</sup> The Exchange charges \$0.25 per contract for manual transactions in both Penny and Non Penny issues and this rate will remain unchanged.

The Exchange is also proposing a non-substantive, formatting change to the section of the fee schedule that applies to Transaction Fees. The Exchange is proposing to re-format that section of the fee schedule as a table with distinct rows and columns (to distinguish charges for manual versus electronic transactions) to make the fee schedule easier for participants to understand.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)<sup>5</sup> of the Act, in general, and Section 6(b)(4) and (5)<sup>6</sup> 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 proposal to adopt separate fees for electronic transactions in Non Penny Pilot securities for Broker Dealers, Professional Customers, Non NYSE Amex Options Market Makers and Firms is reasonable, equitable and not unfairly discriminatory for the following reasons. First, the Exchange notes that the proposed per contract fee of \$0.58 is within the range of fees charged by other exchanges for Broker Dealers, Professional Customers, Non NYSE Amex Options Market Makers and Firms who electronically transact in Non Penny Pilot issues.<sup>7</sup> Further, the Exchange notes that the proposed fee for these participants is still less

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<sup>5</sup> 15 U.S.C. 78f(b).

<sup>6</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>7</sup> See NASDAQ OMX PHLX (“PHLX”) fee schedule, as of 6/19/2014 located here: <http://www.nasdaqtrader.com/Micro.aspx?id=phlxpricing>. PHLX charges Professionals, Broker Dealers, and Firms \$0.70 per contract to transact electronically in Non Penny Pilot issues and \$0.48 per contract in Penny issues. See also the Nasdaq Options Market (“NOM”) fee schedule located here: <http://www.nasdaqtrader.com/Micro.aspx?id=OptionsPricing>, which charges \$0.89 per

than the fees for which a NYSE Amex Options Market Maker might be liable. For example, an NYSE Amex Options Market Maker that has reached the monthly fee cap applicable,<sup>8</sup> that electronically trades against a Customer in a Non Penny issue will be liable for a maximum charge of \$0.66 (comprised of a \$0.01 service fee and Marketing Charges of \$0.65). For an NYSE Amex Options Market Maker that has not reached the monthly fee cap and has traded less than 50,000 contracts of ADV each day in the month, the same transaction would result in a maximum fee of \$0.85 per contract (comprised of a transaction fee of \$0.20 and Marketing Charges of \$0.65).

NYSE Amex Options Market Makers are subject to other fees that are either higher or not charged at all to Broker Dealers, Professional Customers, Non NYSE Amex Options Market Makers and Firms, such as ATP Permit fees and Rights Fees.<sup>9</sup> For example, in order to transact electronically on the Exchange, a NYSE Amex Options Market Maker is required to have at least one options trading permit (“ATP”) that allows it to quote sixty issues, plus the bottom 45% of issues traded on the Exchange by volume. The cost of one ATP is \$8,000 per month. A NYSE Amex Options Market Maker that wishes to transact electronically in all issues on the Exchange is required to have five ATPs, at a monthly cost of \$26,000. By comparison, in order to transact electronically on the Exchange, Broker Dealers, Professional Customers, Non NYSE Amex Options Market Makers and Firms are only required to have a single ATP, at a monthly cost of

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contract in Non Penny issues and \$0.49 per contract in Penny issues for Professionals, Broker Dealers, Firms and Non NOM Market Makers who take liquidity.

<sup>8</sup> See NYSE Amex Options fee schedule dated June 12, 2014 located here: [https://www.theice.com/publicdocs/nyse/markets/amex-options/NYSE\\_Amex\\_Options\\_Fee\\_Schedule.pdf](https://www.theice.com/publicdocs/nyse/markets/amex-options/NYSE_Amex_Options_Fee_Schedule.pdf).

<sup>9</sup> Id.

\$1,000.<sup>10</sup> The Exchange notes the monthly cost differential of \$7,000 to \$25,000 in ATP fees paid by NYSE Amex Options Market Makers, while Broker Dealers, Professional Customers, Non NYSE Amex Options Market Makers and Firms incur no such cost. Therefore, while the NYSE Amex Options Markets Makers may be charged a lower per contract rate than the rate proposed for Broker Dealers, Professional Customers, Non NYSE Amex Options Market Makers and Firms transacting electronically in Non Penny issues, when all costs to these participants are considered, the cost differential is much less or even transposed, with NYSE Amex Options Market Makers paying higher fees.<sup>11</sup> As such, the Exchange believes that charging Broker Dealers, Professional Customers, Non NYSE Amex Options Market Makers and Firms a higher rate to transact electronically in Non Penny issues is equitable and reasonable as the higher rate is designed to reflect the costs to the Exchange in supporting trading in Non Penny issues.<sup>12</sup> While Non Penny issues account for the vast majority of issues by count, Non Penny issues represent a relatively small percentage of overall total industry volume. For example, there are currently 358 issues in the Penny Pilot as compared with 2,054 Non Penny issues listed on the Exchange. However, with respect to volume during the past two months ending in May 2014,

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<sup>10</sup> Of the participants in question, only Firms are members of the Exchange that are billed directly for any ATPs they own. All of the other participants conduct business through an Exchange member that is only required to have a single ATP for all business that flows through them. For example, an Order Flow Provider with a single ATP may route electronic orders to the Exchange on behalf of Broker Dealers, Professional Customers and Non NYSE Amex Options Market Makers.

<sup>11</sup> For example, an NYSE Amex Market Makers [sic] that electronically trades contra to a Customer is potentially liable for Marketing Charges. Further, the Exchange notes that a subset of NYSE Amex Options Market Makers (Specialists, e-Specialists and Directed Order Market Makers) also incur monthly Rights Fees, which fees are not charged to Broker Dealers, Professional Customers, Non NYSE Amex Options Market Makers and Firms. See supra n. 8.

<sup>12</sup> The Exchange notes that this higher rate is still below the rate charged to an NYSE Amex Options Market Maker that electronically trades with a Customer. See supra n. 8.

Penny Pilot options accounted for 81% of Total Industry Equity Option volume, while Non Penny issues accounted for only 19% of Total Industry Equity Option Volume.

For the forgoing reasons, the Exchange believes that the proposal to charge \$0.58 per contract to Broker Dealers, Professional Customers, Non NYSE Amex Options Market Makers and Firms that transact electronically in Non Penny Pilot issues is reasonable, equitable and not unfairly discriminatory. The proposed fee is also reasonable, equitable and not unfairly discriminatory because the charge will apply equally to all Broker Dealers, Professional Customers, Non NYSE Amex Options Market Makers and Firms electronically executed volumes in Non Penny Pilot issues on the Exchange.

The Exchange believes that the proposal to re-format the section of the fee schedule describing Transaction Fees into a table and delineating cost by transaction type (manual versus electronic) is reasonable, equitable and not unfairly discriminatory as the proposed change will reduce confusion and will make the fee schedule more transparent and easier for all participants to understand.

**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 the proposed fee change is reasonably designed to be fair and equitable, and therefore, will not unduly burden any particular group of market participants trading on the Exchange vis-à-vis another group (i.e., Market Makers versus non-Market Makers).

Specifically, the Exchange believes that Broker Dealers, Professional Customers, Non NYSE Amex Options Market Makers and Firms who are not subject to the additional dues and fees of NYSE Amex Market Makers, will not be unduly burdened by the increased transaction fee. In

addition, the Exchange believes that the proposed changes will enhance the competitiveness of the Exchange relative to 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. 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)<sup>13</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>14</sup> 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)<sup>15</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

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<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(2).

<sup>15</sup> 15 U.S.C. 78s(b)(2)(B).

#### 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-2014-55 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEMKT-2014-55. 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, D.C. 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 available publicly. All submissions should refer to File Number SR-NYSEMKT-2014-55, 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>16</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).