

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-72790; File No. SR-NYSEMKT-2014-66)

August 7, 2014

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

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 August 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 to amend the NYSE Amex Options Fee Schedule (“Fee Schedule”) in a number of different ways. The proposed changes will be operative on August 1, 2014. 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 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 August 1, 2014.

First, the Exchange proposes to increase fees for Firm Proprietary⁴ electronic transactions in Penny Pilot issues. Specifically, the Exchange is proposing a fee of \$0.34 per contract (increased from \$0.32 per contract) for electronic Firm Proprietary transactions in Penny Pilot issues.

Separately, the Exchange is proposing a fee of \$0.44 per contract charged to Broker Dealers, Professional Customers, and Non NYSE Amex Options Market Makers that electronically transact in Penny Pilot issues. Currently, Broker Dealers, and Professional Customers pay \$0.32 per contract, and Non NYSE Amex Options Market Makers pay \$0.43 per contract, for electronic transactions in Penny Pilot issues.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)⁵ of the Act, in general, and Section 6(b)(4) and (5)⁶ of the Act, in particular, in that

⁴ "Firm Proprietary" transactions refer to trades the Firm is entering into on a proprietary basis as opposed to trades entered into in order to facilitate the activity of one of Firm's customers, which is referred to as a "Firm Facilitation" trade on the NYSE Amex Options Fee Schedule. Throughout this filing, the Exchange's reference to Firm or Firms shall mean transactions the Firm is executing electronically on a proprietary basis.

⁵ 15 U.S.C. 78f(b).

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 increase fees for electronic transactions in Penny Pilot issues for Firms, Broker Dealers, Professional Customers, and Non NYSE Amex Options Market Makers is reasonable, equitable and not unfairly discriminatory for the following reasons. First, the Exchange notes that the proposed per contract fee of \$0.44 for electronic Broker Dealers, Professional Customers, and Non NYSE Amex Options Market Makers and \$0.34 for Firm Proprietary transactions, are both within the range of fees charged by other exchanges for Broker Dealers, Professional Customers, Non NYSE Amex Options Market Makers and Firms that electronically transact in Penny Pilot issues.⁷

In addition, the Exchange notes that NYSE Amex Options Market Makers are subject to other fees that are either higher than those charged to – or not at all charged to – Broker Dealers, Professional Customers, Non NYSE Amex Options Market Makers and Firms, such as ATP Permit fees and Rights Fees.⁸ 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

⁶ 15 U.S.C. 78f(b)(4) and (5).

⁷ See NASDAQ OMX PHLX (“PHLX”) fee schedule, as of July 23, 2014, located here: <http://www.nasdaqtrader.com/Micro.aspx?id=phlxpricing>. PHLX charges Professionals, Broker Dealers, and Firms \$0.48 per contract to transact electronically in Penny Pilot issues. See also the Nasdaq Options Market (“NOM”) fee schedule located here: <http://www.nasdaqtrader.com/Micro.aspx?id=OptionsPricing>. NOM charges \$0.49 per contract in Penny Pilot issues for Professionals, Broker Dealers, Firms and Non NOM Market Makers that take liquidity.

⁸ See NYSE Amex Options Fee Schedule dated August 1, 2014 located here: https://www.nyse.com/publicdocs/nyse/markets/amex-options/NYSE_Amex_Options_Fee_Schedule.pdf.

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 \$1,000.⁹ 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. Further, the Exchange notes that a large subset of NYSE Amex Options Market Makers (Specialists, e-Specialists and Directed Order Market Makers) also incur monthly Rights Fees, which are not charged to Broker Dealers, Professional Customers, Non NYSE Amex Options Market Makers and Firms. 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 Penny Pilot issues, when all costs to these participants are considered, the cost differential is much less. Thus, the Exchange believes that charging non-NYSE Amex Market Makers a higher rate to transact electronically in Penny Pilot issues is equitable and reasonable and not unfairly discriminatory vis-à-vis NYSE Amex Market Makers

⁹ 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.

because the higher rate is designed to reflect the costs to the Exchange in supporting trading in Penny Pilot issues.¹⁰

As noted above, for electronic transactions in Penny Pilot issues, the Exchange proposes to charge \$0.34 to Firms and \$0.44 to Broker Dealers, Professional Customers, and Non NYSE Amex Options Market Makers. The Exchange believes that the per contract differential between these market participants is reasonable, equitable and not unfairly discriminatory because, among other reasons (discussed below), the rate differential falls within the range that already exists in the industry. For example, Clearing Trading Permit Holder Proprietary (the equivalent of a Firm Proprietary transaction on NYSE Amex) electronic transactions on the Chicago Board Options Exchange (“CBOE”) are charged \$0.35 per contract in Penny Pilot issues, while Professionals, Voluntary Professionals, JBO Participants, Broker Dealers and Non-Trading Permit Holder Market Makers on the CBOE are charged \$0.45 per contract for electronic transactions in Penny Pilot issues.¹¹ Thus, the Exchange believes that imposing a fee differential similar to one in existence on a competing exchange – on similar market participants, for the same types of transactions – is likewise reasonable, equitable and not unfairly discriminatory. Further, the Exchange notes that the Miami International Securities Exchange LLC (“MIAX”) recently adopted a monthly Firm fee cap for electronic Firm transactions.¹² In adopting the monthly Firm fee cap, which applied solely to Firms, MIAX stated:

¹⁰ The Exchange notes that this higher rate is still below the rate charged to an NYSE Amex Options Market Maker – Non Directed that electronically trades with a Customer, which rate would be \$0.45, comprised of a \$0.20 transaction fee plus a \$0.25 marketing charge. See supra n. 8.

¹¹ See the CBOE fee schedule as of, July 1, 2014, located here: <http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf>.

¹² See Securities and Exchange Release No. 72583 (SR-MIAX-2014-37) (July 10, 2014), 79 FR 41612 (July 16, 2014).

Providing a fee cap for Firms and not for other types of transactions is not unfairly discriminatory, because it is intended as a competitive response to create an additional incentive for Firms to send order flow to the Exchange in a manner consistent with other exchanges. Firms that value such incentives will have another venue to send their order flow. To the extent that there is additional competitive burden on non-Firm Members, the Exchange believes that this is appropriate because the proposal should incent Members to direct additional order flow to the Exchange and thus provide additional liquidity that enhances the quality of its markets and increases the volume of contracts traded here. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market liquidity. Enhanced market quality and increased transaction volume that results from the anticipated increase in order flow directed to the Exchange will benefit all market participants and improve competition on the Exchange.¹³

Similar to the reasons articulated by MIAX, the Exchange also believes the proposed fee change is not unfairly discriminatory as it is designed to attract order flow to the Exchange in a manner consistent with other exchanges, which will, in turn, increase liquidity and enhance the quality of the market to the benefit of the investing public. For the forgoing reasons, the Exchange believes that the proposal to charge \$0.44 per contract to Broker Dealers, Professional Customers, Non NYSE Amex Options Market Makers and \$0.34 to Firms for electronic transactions in Penny Pilot issues is reasonable, equitable and not unfairly discriminatory.

The Exchange believes that the proposed fees are also reasonable, equitable and not unfairly discriminatory because the proposed fee changes will apply equally to all Broker Dealers,

¹³ Id., 79 FR at 41613.

Professional Customers, Non NYSE Amex Options Market Makers and Firms electronically executed volumes in Penny Pilot issues on the Exchange.

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 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 or Firms versus non-Firms). Specifically, the Exchange believes that Broker Dealers, Professional Customers, Non NYSE Amex Options Market Makers and Firms that are not subject to the additional dues and fees of NYSE Amex Options Market Makers, will not be unduly burdened by the increased transaction fee. Moreover, with respect to the fee differential between Firms versus Broker Dealers, Professional Customers, Non NYSE Amex Options Market Makers, the proposed fees are lower than the range of similar transaction fees found on other options exchanges; therefore, the Exchange believes the proposal is consistent with robust competition by increasing the intermarket competition for order flow from Firms. To the extent that there is additional competitive burden on non-Firm ATP Holders, the Exchange believes that this is appropriate because the proposal should incent ATP Holders to direct additional order flow to the Exchange and thus provide additional liquidity that enhances the quality of its markets and increases the volume of contracts traded here, which, in turn, benefits the investing public. 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 and to attract order flow. 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)¹⁴ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁵ 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)¹⁶ 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:

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f)(2).

¹⁶ 15 U.S.C. 78s(b)(2)(B).

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-2014-66 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-2014-66. 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-2014-66, 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.¹⁷

Kevin M. O'Neill
Deputy Secretary

¹⁷ 17 CFR 200.30-3(a)(12).