

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-73490; File No. SR-NYSEMKT-2014-92)

October 31, 2014

Self-Regulatory Organizations: NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Amex Options Fee Schedule to Modify the Fees Related to the Use of ports that Provide Connectivity to the Exchange's Trading Systems for Entry of Orders and/or Quotes

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 October 23, 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 Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Amex Options Fee Schedule ("Fee Schedule") to modify the fees related to the use of ports that provide connectivity to the Exchange's trading systems for entry of orders and/or quotes. The Exchange proposes to implement the fee changes effective November 3, 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.

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to modify the fees related to the use of ports that provide connectivity to the Exchange's trading systems for entry of orders and/or quotes. The Exchange proposes to implement the fee changes on November 3, 2014. The purpose of the proposed fee changes are to ensure a fair and reasonable use of Exchange resources by allowing the Exchange to recoup certain of its connectivity costs (described below), while continuing to offer competitive rates to ATP Holders.

The Exchange currently makes available to ATP Holders order/quote entry ports for connectivity to Exchange trading systems (each a "Port"). ATP Holders may be authorized to utilize Port(s) for option activity on NYSE Amex Options and incur monthly Port Fees by the Exchange, as set forth in the table below.

PORT FEES:	
ORDER/QUOTE ENTRY PORT*	Ports 1-5: no charge
	Ports 6-100: \$200 per port per month
	Ports 101 and greater: \$100 per port per month
	Backup datacenter port: no fee unless utilized during the relevant month, in which case, above fees shall apply
* For purpose of calculating the number of order/quote entry ports, the Exchange shall aggregate the ports of affiliates ⁴	

Thus, while there is no charge to an ATP Holder authorized to utilize five Ports, an ATP Holder will, for example, pay \$200 per month for a sixth Port. Once ATP Holders exceed the first five Ports, the charges may look as follows: An ATP Holder authorized to utilize 50 Ports is charged \$9,000 in monthly Port Fees (i.e., 45 x \$200); 100 Ports is charged \$19,000 in monthly Port Fees (i.e., 95 x \$200); or 120 Ports is charged \$21,000 in monthly Ports Fees (i.e., 95 x \$200 plus 20 x \$100). Finally, unutilized Ports that connect to the Exchange via its backup datacenter are considered to have been established for backup purposes and are not charged Port Fees.⁵

At this time, the Exchange is proposing to modify its Port Fees as set forth in the table below, with new charges appearing underlined and deletions appearing in brackets.

⁴ An affiliate is a person or firm that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the firm. See Rule 900.2NY(1).

⁵ The Exchange's backup datacenter is currently located in Chicago, Illinois. The Exchange notes that it monitors usage of these particular Ports and, accordingly, if an order/quote is sent to the Exchange via one of these Ports, then the Port is charged the applicable monthly Port Fee.

PORT FEES:	
ORDER/QUOTE ENTRY PORT*	[Ports 1-5: no charge]
	[Ports 6-100: \$200 per port per month] <u>Ports 1- 40: \$450 per port per month</u>
	Ports [101]41 and greater: [\$100] <u>\$150</u> per port per month
<u>NYSE Amex Options Market Maker Open Outcry Discount</u>	<u>Any NYSE Amex Options Market Maker that executes 50% or more of their market maker volume in open outcry shall receive a discount on their monthly port fees of 60%, not to exceed a maximum dollar discount of \$10,000 per month.</u>

In sum, the Exchange is proposing to no longer offer Ports 1 – 5 free of charge and will instead charge ATP Holders \$450 per Port, per month for the first 40 Ports that an ATP Holder is authorized to utilize. The Exchange further proposes to charge \$150 per Port, per month for any Port in excess of 40 for which an ATP Holder is authorized. Using the example above, an ATP Holder would be charged as follows: An ATP Holder authorized to utilize 50 Ports would be charged \$19,500 in monthly Port Fees (i.e., 40 x \$450 plus 10 x \$150); 100 Ports is charged \$27,000 in monthly Port Fees (i.e., 40 x \$450 plus 60 x \$150); or 120 Ports is charged \$30,000 in monthly Ports Fees (i.e., 40 x \$450 plus 80 x \$150). In addition, the Exchange proposes to offer a discount on monthly Port Fees of 60%, not to exceed \$10,000, for any NYSE Amex Option Market Maker firms that execute at least 50% of their Market Maker volume in open outcry in any given month.⁶

⁶ For example, a NYSE Amex Market Maker authorized to utilize 100 Ports is charged \$27,000 in monthly Port Fees (i.e., \$450 x 40 = \$18,000 plus \$150 x 60 = \$9,000). However, if during that month, the NYSE Amex Market Maker executes at least 50% of their volume in open outcry, the NYSE Amex Market Maker then becomes eligible for a discount of 60% -- or a reduction of \$16,200. However, the proposal caps the amount of the available discount to \$10,000 per month. Thus, in this example, the Port Fees charged would be \$17,000 (\$27,000 less the maximum monthly discount of \$10,000).

The Exchange proposes to implement these changes on November 3, 2014. In this regard, as is the case today, the Exchange notes that billing for Ports would continue to be based on the number of Ports for which an ATP Holder has been authorized for option activity on the third business day prior to the end of the month. Similarly, the Exchange would continue to assess the Port Fees based on the number of Ports authorized – except for Ports that are considered established for backup purposes – such that the level of activity with respect to a particular Port would not affect the assessment of monthly fees. With regard to the discount on monthly Port Fees for Market Maker volume executed in open outcry, the measurement period for billing purposes will be based on the activity in the month prior, such that September Market Maker volumes will be used to decide if the Market Maker qualified for the 60% discount on their October Port Fees.

The Exchange is also proposing a non-substantive, formatting change to the section of the fee schedule that applies to Port Fees. The Exchange is proposing to re-format that section of the Fee Schedule as a table with distinct rows and columns to make the Fee Schedule easier for participants to understand.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),⁷ in general, and furthers the objectives of Section 6(b)(4) of the Act,⁸ 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.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4).

The Exchange believes that the proposed fee changes are reasonable, equitable and not unfairly discriminatory because they are designed to ensure a fair and reasonable use of Exchange resources by allowing the Exchange to recoup for certain of its connectivity costs, while continuing to offer competitive rates to ATP Holders. The Exchange notes that it has not increased its Port Fees since November 2012⁹, and the proposed increases are intended to adjust the Port Fees to reflect the increased costs that the Exchange bears with respect to maintaining the Ports. Specifically, the Exchange believes that the proposed increase in Port Fees are reasonable because the proposed fees charged for Ports would enable the Exchange to offset, in part, its connectivity costs associated with making such Ports available, including costs based on gateway software and hardware enhancements and resources dedicated to gateway development, quality assurance, and support. In this regard, the Exchange believes that the proposed Port Fees are in line with those charged by other venues, and that in some cases its Port Fees would be less expensive than many of its primary competitors. For example, the Chicago Board Options Exchange (“CBOE”) charges \$500 per port per month for a Network Access Port.¹⁰ The NASDAQ Options Market (“NOM”) charges \$550 per port per month.¹¹

The Exchange believes that the proposed fees are reasonable, equitable and not unfairly discriminatory because – just as they do today – ATP Holders are able to request, and pay for, only those Ports that they require, with no impact to other ATP Holders.

⁹ See Securities and Exchange Release No. 68231 (November 14, 2012), 77 FR 69682 (November 20, 2012) (SR-NYSEMKT-2012-60).

¹⁰ See CBOE Fee Schedule [available here](http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf), <http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf> (CBOE Command Connectivity Charges, at p 10).

¹¹ See NOM Price List, [available here](http://nasdaq.cchwallstreet.com/NASDAQTools/bookmark.asp?id=nasdaq-rule-), <http://nasdaq.cchwallstreet.com/NASDAQTools/bookmark.asp?id=nasdaq-rule->

The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to no longer offer the first five ports free of charge as all ATP Holders are being treated in the same manner. Further, as noted above, the Exchange believes that the proposed fee changes are reasonable, equitable and not unfairly discriminatory because they are designed to ensure a fair and reasonable use of Exchange resources by allowing the Exchange to recoup for certain of its connectivity costs, while continuing to offer competitive rates to ATP Holders.

The Exchange believes that the proposed monthly per Port fee of \$450 for the first 40 Ports is reasonable, equitable and not unfairly discriminatory because it is comparable to the rates of other exchanges.¹² The Exchange also believes that the proposed fees are equitable and not unfairly discriminatory because they would apply to all ATP Holders that utilize Ports for options activity on the Exchange.

The Exchange also believes that it is reasonable, equitable and not unfairly discriminatory to decrease the monthly per Port rate from \$450 to \$150 once an ATP Holder has exceeded 40 Ports (i.e., a monthly per Port charge of \$150 for Ports 41+). Specifically, reducing the monthly fee to \$150 per Port when an ATP Holder needs to utilize more than 40 Ports would enable those firms to maintain those connections to the Exchange, while helping to offset the increased costs of that connection. In addition, the reduced fee is likewise appropriate given that certain market participants, particularly options Market Makers, require more than 40 Ports in order to satisfy their responsibilities and obligations to investors, which stem from the significant

[options_XVS3&manual=/nasdaq/main/nasdaq-optionsrules/](#)(Section 3, NASDAQ Options Market – Access Services).

¹² See supra nn. 10-11.

number of series that exist for any particular option class¹³ and the requirement for NYSE Amex Option Market Makers to maintain a bid or offer in assigned classes. Furthermore, Market Makers that quote across a significant number, if not all, of the 2,482 classes traded on the Exchange have responsibility for upwards of 650,000 individual option series.¹⁴ Accordingly, the level of activity that is required to satisfy a Market Maker's quoting obligations, which directly relates to the number of Ports required, is such that the Exchange believes it is reasonable, equitable and not unfairly discriminatory to offer a reduced fee to ATP Holders that utilize more than 40 Ports on the Exchange in a given month.

Further, the Exchange believes that the proposal to offer a 60% discount on Port Fees, not to exceed a maximum discount of \$10,000 per month, to those NYSE Amex Options Market Makers that execute at least 50% of their market maker volume in a given month in open outcry is also reasonable, equitable and not unfairly discriminatory. First, the Exchange believes that the trading floor plays an important role in the options market. Specifically, trading floors provide price discovery for large or complex strategies not easily exposed in electronic auctions. In order to encourage robust participation in the Exchange's outcry markets, the Exchange believes that it is reasonable to offer a discount in the manner described for those NYSE Amex Options Market Makers that continue to provide price discovery in open outcry as evidenced by the relative level of their market maker volume executed in open outcry. The Exchange notes that it has offered similar discounts in the past to encourage NYSE Amex Options Market Makers to maintain a presence in the open outcry market. For example, the Exchange charges a lower ATP fee for Floor Market Makers to encourage their presence and participation in the

¹³ For example, as of October 9, 2014, there were more than 2350 individual option series overlying Chipotle Mexican Grill, Inc. (NYSE: CMG).

¹⁴ These figures are valid as of October 9, 2014.

outcry markets on the trading floor. The qualifying criteria for eligibility for the discounted ATP fees is a function of how much of the Floor Market Maker's volume is transacted in open outcry.¹⁵

As the proposed discount is available to any NYSE Amex Options Market Maker that executes at least 50% of their market maker volume in open outcry, the Exchange believes that the current proposal is not unfairly discriminatory as any market making firm can seek to place individual traders on the trading floor. The Exchange believes the proposal is reasonable and equitable as the price discovery found in the outcry markets benefits all participants. The Exchange notes that the proposed discount would apply for those Market Makers that reach or exceed the volume threshold for open outcry transactions. The Exchange believes that this threshold has been appropriately set to provide an incentive for floor-based market making because this threshold represents a level where the preponderance of volume is in open outcry and therefore not dependent on a Port, but a Port is nonetheless necessary to meet Market Maker quoting obligations. The Exchange notes that Floor Market Makers that do not meet this volume threshold for their options activity in open outcry would continue to be charged at the same rate for Port Fees as all other ATP Holders.

The Exchange believes that the proposal to re-format the section of the fee schedule describing Port Fees into a table, with distinct rows and columns, 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.

¹⁵ See the Fee Schedule, available here, https://www.nyse.com/publicdocs/nyse/markets/amex-options/NYSE_Amex_Options_Fee_Schedule.pdf.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

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

In accordance with Section 6(b)(8) of the Act,¹⁶ the Exchange does not believe that the proposed rule change would 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 the reduced fee for ATP Holders that utilize more than 40 Ports will relieve any undue burden that the proposed fee change might have on Market Makers. Further, the Exchange believes that the proposed discount to the monthly Port Fee, capped at \$10,000 for those NYSE Amex Options Market Maker that executes at least 50% of their market maker volume in open outcry, likewise does not impose any undue burden on competition among and between market participants because as any market making firm can seek to place individual traders on the trading floor. In addition, the Exchange believes that the proposed changes will enhance the competitiveness of the Exchange relative to other exchanges and, as noted above, the increased fees are comparable to port fees offered by competing option exchanges.¹⁷ The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and

¹⁶ 15 U.S.C. 78f(b)(8).

¹⁷ See supra nn. 10-11.

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)¹⁸ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁹ 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)²⁰ 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:

¹⁸ 15 U.S.C. 78s(b)(3)(A).

¹⁹ 17 CFR 240.19b-4(f)(2).

²⁰ 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-2014-092 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NYSEMKT-2014-092. 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 available publicly. All submissions should refer

to File Number SR-NYSEMKT-2014-092 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.²¹

Kevin M. O'Neill
Deputy Secretary

²¹ 17 CFR 200.30-3(a)(12).