

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-65472; File No. SR-NYSEAmex-2011-72)

October 3, 2011

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees Applicable to Qualified Contingent Cross Orders in the Options Fee Schedule

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 26, 2011, NYSE Amex LLC (the “Exchange” or “NYSE Amex”) filed with the Securities and Exchange Commission (“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 establish fees relating to Qualified Contingent Cross (“QCC”) orders that are entered and executed through the Exchange systems. The proposed change will be operative on September 26, 2011. The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and www.nyse.com.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 purpose of the proposal is to establish fees for executions of a new order type known as QCC.³ The Exchange intends to charge Customer orders that comprise all or part of a QCC order a rate of \$.00 per contract. This rate is consistent with the fees charged to Customer orders generally. All other participants⁴ will be charged a rate of \$.20 per contract for QCC orders in which they participate. The Exchange does not intend to allow QCC orders to be treated as Strategy Trades for billing purposes. Participants engaged in trades that would qualify for the fee caps on Strategy Executions can choose to either pay the proposed QCC fees or avail themselves of the Strategy Trade fee cap by not executing such orders utilizing the QCC order type.

³ See Securities Exchange Act Release No. 65047 (August 5, 2011), 76 FR 49812 (August 11, 2011) (SR-NYSEAmex-2011-56). 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, and is executed at a price at least equal to the national best bid and offer, as long as there are no Customer orders in the Exchange’s Consolidated Book at the same price.

⁴ This includes Specialists, e-Specialists, NYSE Amex Options Market Makers, Non-NYSE Amex Options Market Makers, Broker Dealers, Professional Customers, and Firms.

Along with this change, the Exchange proposes to introduce an incremental service fee of \$.05 or \$.10 per contract for a QCC order executed on behalf of a Specialist, e-Specialist, Market Maker (both Directed and non-Directed), or Firm that has reached its respective fee cap for the month under endnotes 5 or 6 of the Fee Schedule.⁵ When a capped participant trades with a non-Customer, the service fee will be \$.05 per contract. When a capped participant trades with a Customer, the service fee will be \$.10 per contract. Additionally, the incremental service fee of \$.10 per contract will apply to all Firm Facilitation trades that would otherwise be charged a rate of \$.00 per contract. All QCC trades will count towards the monthly fee caps and volume thresholds in endnotes 5 and 6 of the Fee Schedule.

QCC orders where a Customer trades against a Market Maker will not result in the collection of Marketing Charges.

Along with the proposed QCC fees, the Exchange intends to adopt a rebate of \$.03 per contract for executed QCC orders. The rebate will be credited to the executing Floor Broker. The Exchange notes that the terms of a QCC order are negotiated and agreed to prior to being brought to an exchange for possible execution. In bringing a QCC order to the Exchange for execution, permit holders have two primary means of doing so. They can configure their systems to deliver the QCC order to the Exchange matching engines for validation and execution. Alternatively they can utilize the services

⁵ Under endnote 5, Specialist, e-Specialist, and Market Maker (both Directed and non-Directed) fees are aggregated and capped at \$350,000 per month plus an incremental service fee of \$.01 per contract for all Specialist, e-Specialist and Market Maker volume executed in excess of 3,500,000 contracts per month. Under endnote 6, fees for Firm Proprietary manual trades are aggregated and capped at \$100,000 per month for member firms plus an incremental service fee of \$.01 per contract for all Firm Proprietary manual trading volume in excess of that cap.

of another ATP Holder acting as a Floor Broker. In turn, the Floor Broker who is in receipt of such an order can enter the order through an Exchange-provided system⁶ to be delivered to the Exchange matching engine for validation and potential execution. In light of the fact that the Exchange does not offer a front-end for order entry, unlike some of the competing exchanges,⁷ the Exchange believes it is necessary from a competitive standpoint to offer this rebate to the executing Floor Broker on a QCC order. The Exchange expects that the rebate offered to executing Floor Brokers will allow them to price their services at a level that will enable them to attract QCC order flow from participants who would otherwise utilize an existing front-end order entry mechanism offered by the Exchange's competitors instead of incurring the cost in time and money to develop their own internal systems to be able to deliver QCC orders directly to the Exchange systems. To the extent that Floor Brokers are able to attract these QCC orders, they will gain important information that will allow them to solicit the parties to the QCC orders for participation in other trades, which will in turn benefit all other Exchange participants through the additional liquidity and price discovery that may occur as a

⁶ Floor Brokers are required by NYSE Amex Rule 955NY to have systematized orders prior to representing them in open outcry. Using the same Electronic Order Capture System, Floor Brokers will be able to enter QCC orders for validation by the Exchange matching engines and potential execution.

⁷ The International Securities Exchange ("ISE") offers PRECISE TRADE as a means for users to enter orders and Chicago Board Options Exchange ("CBOE") has a similar front-end order entry system called PULSE. Such systems do not require users to develop their own internal front-end order entry systems and may provide savings to users in terms of development time and costs.

result. The Exchange notes that at least one other exchange offers a similar rebate.⁸

The proposed changes will be operative on September 26, 2011.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)⁹ of the Securities Exchange Act of 1934 (the “Act”), in general, and Section 6(b)(4)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.

The Exchange believes that adopting the proposed new fees for QCC orders where Customers pay \$.00 and other participants pay \$.20 per contract is reasonable, particularly since Customers have come to expect that they are able to trade for free. Also, Customers will likely have no way of knowing in advance whether or not their order might be executed as a QCC order or through some other means. Conversely, other parties to a QCC order will know in advance that they are being solicited to take part in a QCC order and can therefore factor in the expected charges in making their trading decision. Furthermore, the level of QCC fees for non-Customer participants is comparable to the existing fees such participants currently pay to participate in trades on the Exchange. For these reasons the Exchange believes that the proposed fees are reasonable.

⁸ See NASDAQ OMX PHLX fee schedule dated September 12, 2011, page 22 (describing a Floor Broker Subsidy that can range as high as \$.09 per contract), available at <http://www.nasdaqtrader.com/content/marketregulation/membership/phlx/feesched.pdf>.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4).

The Exchange believes that the proposed new QCC order fees are not unfairly discriminatory because non-Customer participants generally are being charged the same rate. In addition, those participants who may benefit from a monthly fee cap and/or reduced or zero rates¹¹ for certain trades will be subject to service fees of either \$.05 or \$.10 per contract that will serve to ameliorate the per contract difference for a capped participant and a non-capped participant that is party to a QCC order.

The Exchange notes that the inclusion of QCC order fees and subsequent capping of such fees is consistent with what has been filed for and is effective on multiple exchanges, particularly with respect to the fee cap available to Firms.¹² Additionally, the Exchange notes that, in seeking approval for the Firm monthly fee cap, the Exchange stated that it:

believes that the proposed monthly fee cap, which applies only to manual firm proprietary trades, is not unfairly discriminatory to other market participants because its purpose is to attract large block order flow to the floor of the Exchange, where such orders can be better handled in comparison with electronic orders that are not negotiable. To the extent that this purpose is achieved, all of the Exchange's market participants should benefit from the improved market liquidity.¹³

Including QCC orders in the Firm monthly fee cap is not inconsistent with that statement for several reasons. First, the Exchange expects that most Firms will chose to

¹¹ See supra note 5.

¹² CBOE, ISE and NASDAQ OMX PHLX, all include QCC fees in the fee caps that they have adopted on behalf of Firms. See CBOE fee schedule dated September 1, 2011, page 5, footnote 11, available at <http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf>; ISE fee schedule dated August 1, 2011, page 16, endnote 1, available at http://www.ise.com/assets/documents/OptionsExchange/legal/fee/fee_schedule.pdf; and NASDAQ OMX PHLX fee schedule, supra note 8, pages 8-9.

¹³ See Securities Exchange Act Release No. 64656 (June 13, 2011), 76 FR 35493, 35494 (June 17, 2011) (SR-NYSEAmex-2011-36).

utilize a Floor Broker to handle their QCC orders. As explained previously, entering a QCC order requires either modifying proprietary front-end order entry systems, utilizing a Floor Broker, or utilizing an exchange sponsored front-end order entry system.¹⁴ Given the cost in both time and money associated with modifying proprietary front-end order entry systems and the fact that the Exchange does not offer an exchange sponsored front-end order entry system, it is the Exchange's expectation that the majority of QCC orders will be entered by a Floor Broker on behalf of Firms. Firms will utilize existing infrastructure, such as telephones, to communicate QCC orders to Floor Brokers for entry and execution in the same manner in which they communicate other orders to Floor Brokers for manual execution. In short, from a Firm's perspective, QCC orders will be handled by a Floor Broker just like their other orders that are subject to the Firm monthly fee cap.¹⁵ By utilizing a Floor Broker, as opposed to an exchange-sponsored front-end order entry system available on other exchanges, Floor Brokers will gain important information that will allow them to solicit the parties to the QCC orders for participation in other trades, which will in turn benefit all other Exchange participants through the additional liquidity and price discovery that may occur as a result. For these reasons, the Exchange believes that the inclusion of QCC orders in the Firm monthly fee cap is not inconsistent with the statement made when the Firm monthly fee cap was implemented. Further, the adoption of these fees is expected to attract additional order flow to the Exchange and thereby benefit all market participants.

¹⁴ See supra note 7.

¹⁵ The Floor Broker's handling of orders will vary depending on whether the order is a solicitation, facilitation, or QCC order.

The Exchange also notes that even capped market participants will still pay at least \$0.10 per contract for QCC executions, as opposed to \$0.00 for open-outcry facilitation trades, so the proposed pricing will continue to provide a strong incentive to expose customer orders for possible price improvement, as is described further below.

The Exchange believes that adopting the service fee of \$.05 or \$.10 per contract for participants whose trading is subject to a fee cap and or reduced/zero rates is reasonable because it will allow those participants who reach their fee cap during a month to pay the service fee instead of the regular transaction fees and thus will be able to lower their monthly fees. The Exchange believes that charging a service fee is also reasonable because it will allow the Exchange to recoup the costs incurred in providing certain services, which include trade matching and processing, post-trade allocation, submission for clearing and customer service activities related to trading activity on the Exchange. The Exchange notes that charging a service fee to certain participants for trades is not new or novel and that the relative level of the service fee is consistent with that found on other exchanges like the ISE and NASDAQ OMX PHLX.¹⁶

The Exchange believes that charging a higher service fee of \$.10 per contract when capped participants trade with a Customer is reasonable due to the nature of the order type. QCC orders will cross cleanly without exposure upon the entry of a qualifying QCC order. When a capped participant trades with a non-Customer, the total charge is either \$.10 (when a capped participant, who is charged the \$.05 services fee, trades with another capped participant, who is also charged the \$.05 service fee) or \$.25 (when a capped participant, who is charged the \$.05 service fee, trades with a non-

¹⁶ See ISE and NASDAQ OMX PHLX fee schedules, supra notes 8 and 12.

capped, non-Customer, who is charged \$.20). By contrast, when a capped participant trades with a Customer, the total charge is \$.10 (the capped participant is charged the \$.10 service fee and the Customer is charged \$.00). Therefore, the Exchange believes the higher service fee for capped participants trading with a Customer is warranted given the all-in (considering both sides of the trade) economic costs of executing a clean cross using QCC.

Additionally, the Exchange notes that Firms are still able to utilize Firm Facilitation trading procedures in attempting to facilitate their own Customer orders. Such Firm Facilitation trades are charged at the rate of \$.00 per contract as an alternative to QCC. By charging capped Firms \$.10 when they facilitate Customer orders using QCC, the Exchange is intentionally providing an economic incentive to encourage Firms to expose such orders in open outcry, instead of utilizing the clean cross afforded by a QCC order. The Exchange believes the proposed fee change will attract additional order flow to the Exchange and thereby will benefit all market participants.

The Exchange believes the proposal to adopt the service fee is equitable and not unfairly discriminatory because it would uniformly apply to participants who benefit from a monthly fee cap. The proposed fee is designed to give those capped participants that trade frequently on the Exchange a benefit by way of a lower transaction fee, while enabling the Exchange to recoup some of its costs in providing the services associated with validation, execution, submission for clearing, and customer service activities related to trading activity on the Exchange.

The Exchange believes that the proposal to exclude QCC orders from the Marketing Charges program is reasonable given the nature of a QCC order. QCC orders

by design are not subject to competitive bidding or offering, instead a qualifying QCC order is printed to the tape allowing for a clean cross. Therefore, it is the Exchange's expectation that inducements such as payment for order flow will not factor into attracting QCC orders since a market maker being solicited to be a party to such a trade will simply ask for the order to be sent to a venue that does not collect marketing charges for QCC orders. One such exchange, the CBOE, already explicitly excludes QCC orders from its payment for order flow program.¹⁷ The Exchange believes therefore that it is reasonable to exclude QCC orders from the Marketing Charges program.

The Exchange believes the proposed \$.03 per contract rebate for Floor Brokers who enter QCC orders that execute is reasonable because it will allow Floor Brokers the opportunity to compete for QCC orders that would otherwise be entered into front-end order entry systems of competing exchanges.¹⁸ The proposed rebate is comparable to that found on NASDAQ OMX PHLX¹⁹ in that it is being offered to Floor Brokers as an inducement that may allow them to competitively price their services offered to all participants. To the extent that the rebate is successful in attracting additional order flow to the Exchange, all participants should benefit. As such, the Exchange believes that the rebate is appropriate and reasonable.

The Exchange believes the proposal to adopt a \$.03 per contract rebate is equitable and not unfairly discriminatory because it would uniformly apply to all QCC orders entered by a Floor Broker for validation by the system and potential execution. Any participant will be able to engage a rebate-receiving Floor Broker in a discussion

¹⁷ See CBOE fee schedule, supra note 12, at page 4, footnote 6.

¹⁸ See supra note 7.

¹⁹ See supra note 8.

surrounding the appropriate level of fees that they may be charged for entrusting the entry of the QCC order to the Floor Broker into the Exchange systems for validation and execution. The additional order flow attracted by this rebate should benefit all participants. For this reason, the Exchange believes the adoption of the proposed rebate is both equitable and not unfairly discriminatory.

For the reasons noted above, the Exchange believes that the proposed fees are fair, equitable and not unfairly discriminatory.

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.

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)²⁰ of the Act and subparagraph (f)(2) of Rule 19b-4²¹ thereunder, because it establishes a due, fee, or other charge imposed by the NYSE Amex.

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

²⁰ 15 U.S.C. 78s(b)(3)(A).

²¹ 17 CFR 240.19b-4(f)(2).

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.

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-NYSEAmex-2011-72 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-NYSEAmex-2011-72. 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, NW, Washington, D.C. 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. The text of the proposed rule change is available on the Commission's website at <http://www.sec.gov>. 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-NYSEAmex-2011-72 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.²²

Elizabeth M. Murphy
Secretary

²² 17 CFR 200.30-3(a)(12).