

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-67321; File No. SR-NYSEMKT-2012-16)

June 29, 2012

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Amex Options Fee Schedule to Increase the Monthly Fee Per Amex Trading Permit for Order Flow Providers and Clearing Members and Make a Conforming Change to the Current Text in the 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 June 27, 2012, NYSE MKT LLC (the “Exchange” or “NYSE MKT”) 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 (the “Fee Schedule”) to increase the monthly fee per Amex Trading Permit (“ATP”) for Order Flow Providers and Clearing Members and to make a conforming change to the current text in the Fee Schedule. The proposed change will be operative on July 1, 2012. 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 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 increase the monthly fee per ATP for Order Flow Providers and Clearing Members and to make a conforming change to the current text in the Fee Schedule. Specifically, the Exchange proposes to increase the fee per ATP for Order Flow Providers and Clearing Members from \$500 per month to \$1000 per month. The Exchange does not propose to increase the monthly fee per ATP for Floor Brokers. The Exchange believes that the proposed rule change is warranted because volume on the Exchange has increased and the ATP fees for these participants have not changed since March 2009.³ Since March 2009, the Exchange's market share has increased from approximately 5% to 15%. The Exchange notes that the proposed fee will fall within the range of fees charged by at least one other exchange.⁴

³ See Securities Exchange Act Release No. 59478 (Feb. 27, 2009), 74 FR 9857 (Mar. 6, 2009) (SR-NYSEALTR-2009-19).

⁴ See NASDAQ Phlx Fee Schedule as of June 1, 2012, section VI Membership fees, where the Permit and Registration fees for a PHLX Member transacting business on PHLX is \$2000 per month, available at

The Exchange also proposes to make conforming changes to the text of the Fee Schedule. Presently, the Fee Schedule refers to “Order Routing” and “Clearing Firms” in the context of the ATP fees charged on a monthly basis for a participant acting in either capacity. The Exchange proposes to change Clearing Firm to Clearing Member and Order Routing to Order Flow Provider because Clearing Firm and Order Routing are not defined terms in the rules of the Exchange.⁵ The Exchange is making this change in order to reduce any potential confusion regarding which fee applies.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)⁶ of the Securities Exchange Act of 1934 (the “Act”), in general, and Section 6(b)(4)⁷ 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 the proposed increase in ATP fees for participants acting as Order Flow Providers or Clearing Members is reasonable and equitable given the large increase in volume since the fees were established in March 2009. In addition, the fee increase from \$500 to \$1000 per month is reasonable in light of the Exchange’s increase in market share during the same time period, from approximately 5% in March 2009 to approximately 15% presently. The proposed rule change is equitable in that other participants have previously experienced

http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLXTools/PlatformViewer.asp?selectednode=chp_1_4_1&manual=%2Fnasdaqomxphlx%2Fphlx%2Fphlx-rulesbrd%2F.

⁵ See Rule 900.2NY(11) and Rule 900.2NY(57), which define Clearing Member and Order Flow Provider, respectively.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4).

fee increases during the same time period. For example, the ATP fee for NYSE Amex Options Market Makers was increased from \$1000 per month to \$5000 per month.⁸ In addition, the proposed fee increase is reasonable because it is comparable to fees offered on at least one another exchange.⁹

The Exchange notes that it is leaving the monthly ATP fee for Floor Brokers at \$500 per month. The Exchange believes this is both reasonable and equitable given the following. First, ATP Holders conducting a floor brokerage business are required to purchase an ATP for each Floor Broker that is engaged in business on the floor of the Exchange. In practice, such firms typically have more than one ATP to ensure adequate coverage on the trading floor (i.e., a single Floor Broker cannot be physically present in several trading crowds at the same time). As a result, ATP Holders conducting a floor brokerage business typically pay more in ATP fees than either Order Flow Providers or Clearing Members by virtue of the requirement that they have an ATP for each Floor Broker on the floor in their employ. By contrast, an Order Flow Provider sending agency orders to the Exchange for execution, either electronically or via phone for a Floor Broker to execute, need only purchase a single ATP each month to conduct their business. Similarly, a Clearing Member, sending orders to the Exchange electronically or utilizing a Floor Broker to represent their orders also is only required to purchase a single ATP to conduct their business. Further, while the Exchange has seen increases in volume and market share, the amount of open outcry volume has remained steady over time and as a result has actually decreased as a percentage of overall Exchange volume.

⁸ See Securities Exchange Act Release No. 61670 (March 5, 2010), 75 FR 12325 (March 15, 2010) (SR-NYSEAmex-2010-19).

⁹ See supra note 4.

Consequently, Floor Brokers and other on floor participants may have not benefited from the overall increase in Exchange volumes and market share as have other participants.

The Exchange believes the proposed change is not unfairly discriminatory as it will apply to all participants who act as either Order Flow Providers or Clearing Members equally. Also, the Exchange believes that increasing the fees applicable to Order Flow Providers and Clearing Members while leaving the ATP fee applicable to Floor Brokers is not unfairly discriminatory given the nature of the volume increases coupled with the fact that most ATP Holders conducting a Floor Broker business are already paying more than \$500 per month as they are required to purchase an ATP for each Floor Broker in their employ – whereas that is not the case for Order Flow Providers and Clearing Members.

The Exchange also believes that the proposed conforming changes to terms in the Fee Schedule will add clarity and reduce any potential confusion among market participants.

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)¹⁰ of the Act and subparagraph (f)(2) of Rule 19b-4¹¹ thereunder, because it establishes a due, fee, or other charge imposed by the NYSE MKT.

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.

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-NYSEMKT-2012-16 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.

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(2).

All submissions should refer to File Number SR-NYSEMKT-2012-16. 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-2012-16 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.¹²

Kevin M. O'Neill
Deputy Secretary

¹² 17 CFR 200.30-3(a)(12).