

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-67505; File No. SR-NYSEMKT-2012-24)

July 26, 2012

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Deleting Existing Rule Text Found in Rule 923NY(d)(1) to (4) Concerning the Number of ATP's Required by an NYSE Amex Options Market Maker to Quote on the Exchange and Move It to the Fee Schedule

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 12, 2012, 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 and II 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 delete existing rule text found in Rule 923NY(d)(1) to (4) concerning the number of ATP's required by an NYSE Amex Options Market Maker to quote on the Exchange and move it to the Fee Schedule. 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to delete Rule 923NY(d)(1) to (4) and insert language referencing the Exchange's Fee Schedule. The Exchange further proposes to move the content of Rule 923NY(d)(1) to (4) to the Fee Schedule, without any substantive changes.

With one exception, the Fee Schedule sets forth the fees and charges that participants on the Exchange can be expected to pay. However, even though it implicates a fee issue, ATP Holders acting as NYSE Amex Options Market Makers need to refer to Rule 923NY(d)(1) to (4) to ascertain the number of ATP's they are required to have based on the number of option products that they have in their assignment. The Exchange believes that this information more appropriately belongs in the Fee Schedule so that all participants can have the same source to understand the basis for fees.<sup>4</sup> In particular, because the Exchange charges a fee for each ATP assigned to an ATP Holder, the rule text identifies the fee structure by setting forth the number of trading permits that are required according to the number of options issues including [sic] in their appointment.

Rule 923NY(d)(1) to (4) sets forth the trading appointments of participants acting as

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<sup>4</sup> See NASDAQ OMX PHLX fees charged to Streaming Quote Traders and Remote Streaming Quote traders in Section VI "Membership Fees" in their fee schedule found here:  
<http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLXTools/PlatformViewer.asp?selectednode=chp%5F1%5F4%5F1&manual=%2Fnasdaqomxphlx%2Fphlx%2Fphlx%2Drulesbrd%2F>.

Market Makers on the Exchange. They are as follows:

- (1) Market Makers with 1 ATP may have up to 100 option issues included in their appointment.
- (2) Market Makers with 2 ATPs may have up to 250 option issues included in their electronic appointment.
- (3) Market Makers with 3 ATPs may have up to 750 option issues included in their appointment.
- (4) Market Makers with 4 ATPs may have all option issues traded on the Exchange included in their appointment.

The Exchange proposes to delete the text found in bullets 1 to 4 above, replace the rule text in 1 and re-number 5 to number 2. The proposed language for 1 is, “Market Makers shall have the number of ATP’s required under the Fee Schedule in order to have a trading appointment on the Exchange.”

Concurrent with this change, the Exchange proposes to add a section to the Fee Schedule under the section entitled, “NYSE AMEX OPTIONS GENERAL OPTIONS and TRADING PERMIT (ATP) FEES”, that will replicate the rule text deleted in Rules 923NY(d)(1) to (4). No change in the number of ATPs required by Market Makers is being made at this time.

The Exchange proposes to make a non-substantive change when moving the rule text to the Fee Schedule by clarifying in the introduction text that all appointments are electronic appointments, and delete the term “electronic” in connection with the entry for Market Makers with 2 ATPs.

## 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 Securities Exchange Act of 1934 (the “Act”), in general, and Section

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

6(b)(5)<sup>6</sup> of the Act, in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that [sic] relocating the number of permits required of ATP Holders acting as Market Makers on the Exchange from within the rule text of Rules 923NY(d)(1) through (4) to the Fee Schedule, the Exchange is making it easier and more transparent for participants to understand the basis for fees.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>7</sup> and Rule 19b-4(f)(6) thereunder.<sup>8</sup>

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<sup>6</sup> 15 U.S.C. 78f(b)(4) [sic].

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of the filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has

A proposed rule change filed under Rule 19b-4(f)(6)<sup>9</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>10</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing because the proposal is administrative in nature and simply moves fee-related text from the rules to the Fee Schedule, and because it will make it easier and more transparent for participants to understand the basis for these fees. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.<sup>11</sup> Therefore, the Commission designates the proposed rule change to be operative upon filing with the Commission.

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 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 to determine whether the proposed rule should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning

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satisfied this requirement.

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>10</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>11</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2012-24 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- NYSEMKT-2012-24. 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 20549-1090. Copies of the filing will also be available for inspection and copying at the Exchange's principal office and on its Internet website at [www.nyse.com](http://www.nyse.com). 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-2012-24 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>12</sup>

Kevin M. O'Neill  
Deputy Secretary

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