

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-68139; File No. SR-NYSEMKT-2012-56)

November 2, 2012

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

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 19, 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, 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 amend the fees for Specialists and eSpecialists relating to Qualified Contingent Cross (“QCC”) orders. 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to amend the fees for Specialists and eSpecialists relating to QCC orders.⁴ The Exchange proposes to implement these changes on November 1, 2012.

Current Fees

Currently, the Exchange does not charge an order fee for Customer orders that comprise all or part of a QCC order. The Exchange charges \$0.20 per contract for non-Customer orders for all other participants.⁵ If a Specialist, eSpecialist, Market Maker, or Firm has reached its respective fee cap of \$350,000 for the month and has executed volume in excess of \$3,500,000 for the month, then the Exchange charges an incremental service fee of \$0.05 per contract for a QCC order executed against a non-Customer and \$0.10 per contract for a QCC order executed against a Customer.

Proposed Fees

⁴ The QCC order permits an 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.

⁵ This includes Specialists, eSpecialists, NYSE Amex Options Market Makers, Non-NYSE Amex Options Market Makers, Broker Dealers, Professional Customers, and Firms.

For a Specialist or eSpecialist executing a QCC order that has not reached its fee cap for the month under the Fee Schedule, the Exchange proposes to charge \$0.13 per contract if the Specialist or eSpecialist executes an average daily volume (“ADV”) of fewer than 50,000 contracts during the month, and \$0.10 per contract if the Specialist or eSpecialist executes an ADV of 50,000 or more contracts during the month. In calculating the threshold of 50,000 contracts, the Exchange will exclude both Strategy Trades⁶ and QCC trades. These are the same fees that the Exchange currently charges to Specialists and eSpecialists for non-QCC transactions.

The Exchange is proposing the fee reduction because Specialists and eSpecialists that are solicited to take part in a trade do not know, and have no control over, whether the trade is going to be executed as a QCC trade or through some other means.⁷ Therefore, if the trade is executed as a QCC trade, Specialists and eSpecialists may incur a transaction fee that is more per contract than they would pay if the trade were executed as a non-QCC trade. Currently, participants other than Specialists and eSpecialists may trade at a discount to their regular transaction fees when they execute a QCC trade. However, non-capped Specialists and eSpecialists pay a premium for QCC trades under the current Fee Schedule, which the Exchange does not believe is warranted.⁸

⁶ Strategy Trades include reversals and conversions, dividend spreads, box spreads, short stock interest spreads, merger spreads, and jelly rolls.

⁷ The Exchange notes that, at the time it proposed the QCC fees prior to the implementation of the QCC order type, the Exchange believed that non-Customer participants would know in advance that they were being solicited to take part in a QCC order. See Securities Exchange Act Release No. 65472 (Oct. 3, 2011), 76 FR 62887 (Oct. 11, 2011) (SR-NYSEAmex-2011-72), at 62888. However, with the implementation of the QCC order type, the Exchange has determined that a participant that is solicited to take part in a trade will not necessarily know whether the trade is going to be executed as a QCC trade or through some other means.

⁸ For example, non-NYSE Amex Options Market Makers trading electronically are charged \$0.43 per contract for non-QCC trades and \$0.20 per contract for QCC trades.

The proposed change is not otherwise intended to address any other problem, and the Exchange is not aware of any significant problem that the affected Specialists and eSpecialists would have in complying with the proposed change.

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”),⁹ in general, and furthers the objectives of Section 6(b)(4) of the Act,¹⁰ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that reducing the QCC non-Customer order fee for non-capped Specialists and eSpecialists is reasonable because Specialists and eSpecialists that are solicited to take part in a trade do not know in advance whether the trade is going to be executed as a QCC trade or through some other means and may incur a transaction fee that is more per contract than they would pay if the trade were executed as a non-QCC trade, which the Exchange does not believe is warranted. For these reasons, the Exchange believes that it is reasonable to charge Specialists and eSpecialists the same transaction fee for QCC or non-QCC transactions.

In addition, the Exchange believes that lowering the fee for Specialists and eSpecialists is equitable and not unfairly discriminatory because under the current Fee Schedule, other participants, including non-NYSE Amex Options Market Makers, Professional Customers, Broker Dealers, and Firms, may trade at a discount to their regular transaction fees when they

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4).

execute QCC trades. As such, the proposed rule change would put Specialists and eSpecialists on more equal footing with other participants.

However, the Exchange notes that non-Directed NYSE Amex Options Market Maker orders are currently charged \$0.20 per contract and \$0.17 per contract if the NYSE Amex Options Market Maker executes 50,000 or more contracts ADV each day in a month. Therefore, NYSE Amex Options Market Makers pay an amount equal to or greater than their regular transaction fee when they execute QCC trades.¹¹ The Exchange believes that reducing the fee, as proposed, for Specialists and eSpecialists, but not reducing the fee for non-Directed NYSE Amex Options Market Makers, is equitable and not unfairly discriminatory because Specialists and eSpecialists are required to pay a monthly Rights Fee based on their prorated share of contract volume on the Exchange in each issue, unlike non-Directed NYSE Amex Options Market Makers, who do not pay any portion of the monthly Rights Fee.¹² Any QCC volume executed by a Specialist or eSpecialist will proportionally increase the amount of the monthly Rights Fee that they pay, whereas any QCC volume executed by a non-Directed NYSE Amex Options Market Maker does not result in an additional charge in the form of the monthly Rights Fee. As such, the Exchange believes that it is equitable and not unfairly discriminatory to require non-Directed NYSE Amex Options Market Makers to pay an amount equal to or slightly more for a QCC trade than their regular transaction fee. In addition, NYSE Amex Options Market Makers continue to be eligible for the lower service fee for QCC trades if they exceed their monthly cap. The Exchange also notes that Specialists and eSpecialists have higher quoting

¹¹ The Exchange notes that Directed NYSE Amex Options Market Maker orders do not apply to QCC trades.

¹² See endnote 1 of the Fee Schedule.

obligations than NYSE Amex Options Market Makers, and in recognition of the additional liquidity and transparency they provide, the difference in treatment is warranted.

In addition, the Exchange believes that the proposed fee change is equitable and not unfairly discriminator [sic] because it would make Specialists and eSpecialists more likely to continue to respond to solicitations to trade, thereby attracting additional order flow to the Exchange, which can help price discovery, transparency, and liquidity, all of which are beneficial to Exchange participants.

For these reasons, the Exchange believes that the entire proposal is reasonable, equitable and not unfairly discriminatory. Finally, 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. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

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)¹³ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁴ 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-2012-56 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-2012-56. This file number should be included on the subject line if e-mail is used. To help the Commission process and review

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(2).

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 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 NYSE's principal office and on its Internet website at 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-2012-56, 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.¹⁵

Kevin M. O'Neill
Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).