

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-67153; File No. SR-NYSEMKT-2012-05)

June 7, 2012

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Modifying the NYSE Amex Options Fee Schedule to Amend the Rights Fee that is Charged to Specialists, e-Specialists and Directed Order Market Makers

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 May 31, 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 (“Fee Schedule”) to amend the Rights Fee that is charged to Specialists, e-Specialists and Directed Order Market Makers. 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

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 Exchange proposes to amend the Fee Schedule to amend the Rights Fee that is charged to Specialists, e-Specialists, and Directed Order Market Makers (“DOMMs”). The Exchange believes the proposed change will allow it to recoup some of the costs of listing new option classes that may not generate sufficient trading activity and, in turn, trading-related revenues.

Presently, the Exchange assesses a monthly Rights Fee to Specialists, e-Specialists, and DOMMs. The current Rights Fee is variable, based on the Average Daily National Customer Contracts traded, calculated over the prior three months, with a one-month lag. For example, the Average Daily National Customer Contracts traded for January, February, and March are used to arrive at the Rights Fee applicable to a particular option for trading in the month of May. The table below contains the Average Daily National Customer Contracts traded tiers and the associated Rights Fee:

Average National Daily Customer Contracts Per Issue	Monthly Base Rate Per Issue
0 to 2,000	\$75
2,001 to 5,000	\$200
5,001 to 15,000	\$375
15,001 to 100,000	\$750
Over 100,000	\$1,500

The Exchange proposes to amend the tiers and fees as follows:

Average National Daily Customer Contracts Per Issue	Monthly Base Rate Per Issue
0 to 200	\$250
201 to 2,000	\$75
2,001 to 5,000	\$200
5,001 to 15,000	\$375
15,001 to 100,000	\$750
Over 100,000	\$1,500

The 0-to-200 tier will only apply to options listed after June 1, 2012. Options listed before June 1, 2012 will be “grandfathered” and, as such, subject to the monthly base rate per issue of \$75 if they fall into the 0 to 200 contract volume tier. The Exchange will publish on its website a list of all “grandfathered” options.

By adding a new, lower volume tier, the Exchange intends to recoup the costs associated with a new options listing that does not in turn generate sufficient trading volume and associated trade-related revenues. The Exchange believes that the higher Rights Fee for the new lower volume tier will encourage more efficient use of the Exchange’s resources. Unfettered growth in option listings without an offsetting growth in volume will ultimately result in increased costs for all participants. By instituting the proposed Rights Fee for lower volume issues, the Exchange intends to encourage the delisting of inactive options. In those instances where participants instead wish to continue to trade relatively inactive options, they will directly contribute toward some of the Exchange costs to support that trading instead of having those costs shared among all Exchange participants.

Additionally, the Exchange wishes to explain the manner in which the monthly Rights Fee is apportioned among the Specialist, e-Specialist and DOMM participants in the event that participant volumes are all zero in a given month. Presently, the Rights Fee

is shared among participants according to the relative amount of trading volume each participant accounts for.³ Consider the following example of an option that has Average Daily National Customer Contracts traded between 5,001 and 15,000 – such option has a Rights Fee of \$375. During the month, each of the participants accounts for the following volumes:

Specialist	5,000
e-Specialist	5,000
DOMM 1	2,500
DOMM 2	<u>2,500</u>
	15,000 Total

The participants in aggregate account for 15,000 contracts. Each participant is then charged based on its proportion of the total volume. For example:

Specialist	$5,000/15,000 = 33.3\% \times \$375 = \$125.00$
e-Specialist	$5,000/15,000 = 33.3\% \times \$375 = \$125.00$
DOMM 1	$2,500/15,000 = 16.6\% \times \$375 = \$62.50$
DOMM 2	$2,500/15,000 = 16.6\% \times \$375 = \underline{\$62.50}$
	\$375.00

In the scenario where the Specialist, the e-Specialist, or DOMMs transact zero volume in a month, the Exchange splits the Rights Fee equally among the Specialist and e-Specialist, such that each Specialist and/or e-Specialist participant is liable for 50% of the Rights Fee. In the event that there is only a Specialist or e-Specialist and there are no DOMM volumes, then that sole Specialist or e-Specialist incurs 100% of the Rights Fee applicable to the option issue.

Finally, the Exchange proposes to amend the Fee Schedule to reflect the Exchange's name change to NYSE MKT LLC.

³ See endnote 1 to the Fee Schedule dated May 1, 2012, available at http://globalderivatives.nyx.com/sites/globalderivatives.nyx.com/files/nyse_amex_options_fee_schedule_05_01_12.pdf.

The proposed changes will be operative on June 1, 2012.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)⁴ of the Securities Exchange Act of 1934 (the “Act”), in general, and Section 6(b)(4)⁵ 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 change to Rights Fees are reasonable, given the need to offset some of the costs associated with listing new options that do not subsequently trade sufficiently to generate trade-related revenues for the Exchange.

The proposed change is reasonable and equitable because it averts the need to share the costs of supporting low volume option issues among all Exchange participants. Instead, those participants, specifically Specialists, e-Specialists, and DOMMs that are subject to the new, lower volume tier and Rights Fee contribute toward some of the Exchange’s costs in supporting trading in low volume issues. The Exchange notes that unless a Specialist or e-Specialist applies to be the Specialist or e-Specialist in a new option issue, it cannot be subject to the Rights Fee charges. Similarly, a Market Maker can opt out of receiving Directed Orders on a symbol-by-symbol basis and thereby avert incurring the Rights Fee. Given this ability to knowingly incur the fee, or conversely avoid it, the Exchange believes that the proposal is reasonable, equitable, and not unfairly discriminatory, as participants may decide of their own accord to subject themselves to the proposed fee. Further, other Exchange participants are not being asked to subsidize

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(4).

the listing of new options that subsequently do not generate sufficient trading revenues to offset the Exchange's costs in supporting those new option listings.

The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to apportion the Rights Fee equally among the Specialist and e-Specialist in the event that none of the Specialist, e-Specialist or DOMMs have any volume in a given month. Specifically, the Exchange is unable to list an option unless a Specialist or e-Specialist opts to include it in their assignment; it is able to list an option without a DOMM. As such, in the event that participant volumes are all zero in a given month, limiting the Rights Fee assessment to the Specialist and e-Specialist is warranted given that, unlike a DOMM, they can request to have the option delisted if they feel that the opportunity cost of the listing, i.e. the Rights Fee, outweighs the benefit of the listing, the potential trading opportunities.

The proposed change also is not unfairly discriminatory as it applies equally to all Specialists, e-Specialists, and DOMMs. As noted, those participants are able to avoid incurring the fee by simply not applying to trade options listed on or after June 1, 2012. The fee for options in the newly proposed volume tier of 2 [sic] to 200 Average National Daily Customer Contracts is only \$250 per issue, so any one participant would never pay more than that per option class. As noted, the Exchange is implementing this fee for all options listed on or after June 1, 2012, and then only when the option fails to achieve greater than 200 Average National Daily Customer Contracts.

For these reasons, the Exchange believes that the proposed change is reasonable, 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)⁶ of the Act and subparagraph (f)(2) of Rule 19b-4⁷ 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:

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 240.19b-4(f)(2).

- 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-2012-05 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-2012-05. 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-2012-05 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.⁸

Kevin M. O'Neill
Deputy Secretary

⁸ 17 CFR 200.30-3(a)(12).