

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="22"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2012"/> - * <input type="text" value="16"/> Amendment No. (req. for Amendments *) <input type="text"/>
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Proposed Rule Change by NYSE Amex LLC  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
Pilot <input type="checkbox"/> Extension of Time Period for Commission Action * <input type="text"/> Date Expires * <input type="text"/>			Rule <input type="checkbox"/> 19b-4(f)(1) <input type="checkbox"/> 19b-4(f)(4) <input checked="" type="checkbox"/> 19b-4(f)(2) <input type="checkbox"/> 19b-4(f)(5) <input type="checkbox"/> 19b-4(f)(3) <input type="checkbox"/> 19b-4(f)(6)		

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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**Description**  
Provide a brief description of the proposed rule change (limit 250 characters, required when Initial is checked \*).

**Contact Information**  
Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name \*  Last Name \*   
 Title \*   
 E-mail \*   
 Telephone \*  Fax

**Signature**  
Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date   
 By  Corporate Secretary  
 (Name \*)  (Title \*)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

**Form 19b-4 Information (required)**

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change (required)**

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

- (a) NYSE Amex LLC (“NYSE Amex” or the “Exchange”) proposes to amend the NYSE Amex Options Fee Schedule (“Fee Schedule”) to increase the per contract execution costs for certain participants. The proposed change will be operative on March 1, 2012. The text of the proposed rule change is attached as Exhibit 5 and is available on the Exchange’s website, at the Exchange’s principal office, and in the Public Reference Room of the Securities and Exchange Commission (“Commission”).
- (b) The Exchange does not believe that the proposed rule change will have any direct effect, or any significant indirect effect, on any other Exchange rule in effect at the time of this filing.
- (c) Not applicable.

2. Procedures of the Self-Regulatory Organization

Senior management has approved the proposed rule change pursuant to authority delegated to it by the Board of the Exchange. No further action by the Board of Directors or the membership of the Exchange is required. Therefore, the Exchange’s internal procedures with respect to the proposed rule change are complete.

The persons on the Exchange staff prepared to respond to questions and comments on the proposed rule change are:

Martha Redding  
Chief Counsel  
NYSE Euronext  
(212) 656-2938

Michael Babel  
Managing Director  
NYSE Euronext  
(212) 656-4744

3. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

The Exchange proposes to amend the Fee Schedule to increase the per contract execution costs for certain participants. The Exchange believes the proposed fees will better reflect the costs associated with supporting a larger number of option classes, option series, and overall transaction volumes that have grown over time.

First, the Exchange proposes an increase of \$.03 per contract applicable to all NYSE Amex Options Market Maker participants. In conjunction with this increase, NYSE Amex Options Market Maker participants will have the ability to earn back the lower existing rate by executing as a NYSE Amex Options Market

Maker 50,000 contracts or more on average each day in a month, excluding either Strategy Executions or QCC trades. The existing monthly fee cap applicable to NYSE Amex Options Market Makers will continue to apply.<sup>1</sup>

NYSE Amex Options Specialists and eSpecialists currently pay \$.10 per contract in transaction fees. Under the proposal, the charge applicable to NYSE Amex Options Specialist and eSpecialists would increase to \$.13 per contract. If, however, a NYSE Amex Options participant executes on average at least 50,000 contracts each day in a month as a Market Maker, then the rate per contract applicable to those NYSE Amex Options Specialist or eSpecialist transactions would be reduced to \$.10 per contract for that month.

NYSE Amex Options Market Makers that trade with directed order flow currently pay \$.15 per contract in transaction fees. Under the proposal the charge applicable to NYSE Amex Options Market Makers trading with directed order flow would increase to \$.18 per contract. If, however, a NYSE Amex Options participant executes on average at least 50,000 contracts each day in a month as a Market Maker, then the rate per contract applicable to those transactions in which a NYSE Amex Options Market Maker traded with directed order flow would be reduced to \$.15 per contract for that month.

NYSE Amex Options Market Makers who trade with non-directed order flow currently pay \$.17 per contract in transaction fees. Under the proposal the charge applicable to NYSE Amex Options Market Makers trading with non-directed order flow would increase to \$.20 per contract. If, however, a NYSE Amex Options participant executes on average at least 50,000 contracts each day in a month as a Market Maker, then the rate per contract applicable to those transactions in which a NYSE Amex Options Market Maker traded with non-directed order flow would be reduced to \$.17 per contract for that month.

For purposes of calculating the 50,000 contract average daily volume (“ADV”)<sup>2</sup> threshold, the Exchange will aggregate all of a NYSE Amex Options participant’s Market Maker activity. For example, a NYSE Amex Options participant in one month trades 30,000 contracts ADV as a NYSE Amex Options Specialist, 20,000 contracts ADV as a NYSE Amex Options eSpecialist, 15,000 contracts as a NYSE Amex Options Market Maker trading with directed order flow, and 15,000 contracts ADV trading as a NYSE Amex Options Market Maker trading with non-directed order flow. This NYSE Amex Options participant will be credited with 80,000 contracts ADV attributable to NYSE Amex Options Market Maker activity and as such will be eligible for the reduced rate for those transactions that

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<sup>1</sup> See NYSE Amex Options Fee Schedule dated 2/1/12, endnote 5, available at [http://globalderivatives.nyx.com/sites/globalderivatives.nyx.com/files/nyseamexoptionsfeeschedule\\_020112.pdf](http://globalderivatives.nyx.com/sites/globalderivatives.nyx.com/files/nyseamexoptionsfeeschedule_020112.pdf).

<sup>2</sup> In calculating ADV, the Exchange will consider all trading days in a month, regardless of the length of the trading day.

month. Additionally, in the calculation of the 50,000 contract or more ADV threshold, the Exchange will exclude both Strategy Trades and QCC trades.

Professional Customers presently pay a fee of \$.20 per contract for electronically executed transactions. Under the proposal, the charge applicable to electronically executed transactions on behalf of a Professional Customer will increase to \$.23 per contract. The rate for manually executed or open outcry transactions for Professional Customers will remain unchanged at \$.25 per contract.

Non-NYSE Amex Options Market Makers presently pay a fee of \$.40 per contract for electronically executed transactions. Under the proposal the charge applicable to electronically executed transactions on behalf of a Non-NYSE Amex Options Market Maker will increase to \$.43 per contract. The rate for manually executed or open outcry transactions for Non-NYSE Amex Options Market Makers will remain unchanged at \$.25 per contract.

In addition, for purposes of consistency and clarity, in footnote five of the NYSE Amex Options Fee Schedule the Exchange is amending “e-Specialist” to “eSpecialist,” consistent with its use elsewhere in the Fee Schedule.

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

(b) Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)<sup>3</sup> of the Securities Exchange Act of 1934 (the “Act”), in general, and Section 6(b)(4)<sup>4</sup> 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 increase the fee for NYSE Amex Specialists, eSpecialists, Market Makers who trade with directed and non-directed order flow, Professional Customers and Non-NYSE Amex Options Market Makers transacting on the Exchange is reasonable, given the growth in volumes over the past two years. The Exchange notes that ADV on the Exchange has increased from 1,653,156 contracts in January 2010 to 2,267,022 contracts ADV in January 2012, or an increase of over 37%. The proposed per contract increases range from a 7.5% increase for Non-NYSE Amex Options Market Makers to a 30% increase for Specialists and eSpecialists. The growth in trading volumes, option classes and messaging traffic has compelled the Exchange to continually invest in software, hardware and personnel, the cost of which can reasonably be expected to be borne by participants on the Exchange that consume the majority of those resources as evidenced by the volume of messages for

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<sup>3</sup> 15 U.S.C. 78f(b).

<sup>4</sup> 15 U.S.C. 78f(b)(4).

quotes, orders and trades. For these reasons the Exchange believes it is reasonable to increase the per contract rate for NYSE Amex Specialists, eSpecialists, Market Makers that trade with directed and non-directed order flow, Professional Customers, and Non-NYSE Amex Options Market Makers.

The Exchange believes that the proposed change to increase the fee for NYSE Amex Specialists, eSpecialists, Market Makers who trade with directed and non-directed order flow, Professional Customers and Non-NYSE Amex Options Market Makers is equitable and not unfairly discriminatory since the fees as noted are generally tied to an overall increase in activity on the Exchange. This heightened activity results in greater costs to the Exchange, which in turn is being passed back through to those participants who utilize the resources of the Exchange. The Exchange notes, for example, that Customers are prohibited from engaging in activity that can be construed as market making, and as such Customers do not use quotes to trade nor do they enter more than 390 orders per day on average, unlike the participants subject to the proposed fee change, resulting in less capacity usage than the participants subject to the proposed fee change.<sup>5</sup> For these reasons, the Exchange believes that the proposed \$.03 per contract increase for NYSE Amex Specialists, eSpecialists, Market Makers who trade with directed and non-directed order flow, Professional Customers and Non-NYSE Amex Options Market Makers is both equitable and not unfairly discriminatory.

The Exchange notes that the proposed \$.03 per contract increase is not applicable to Firm Proprietary electronic transactions or Broker Dealer electronic transactions. As noted above, the fee increase is designed to offset the higher costs associated with the growth in trading volumes, option classes and messaging traffic and is specifically targeted at those users who consume the majority of those resources. The Exchange has found that, historically and at present, both Firm Proprietary electronic transactions and Broker Dealer electronic transactions comprise a small portion of the electronic transactions relative to the electronic transactions of the participants affected by this fee change. In fact, the majority of Firm Proprietary and Broker Dealer volumes on the Exchange are executed in open outcry and therefore place little burden on the infrastructure of the Exchange. For these reasons the Exchange feels that it is reasonable, equitable and not unfairly discriminatory to increase the fees as proposed, while leaving the fees for Firm Proprietary and Broker Dealer electronic transactions as they are.

The Exchange believes that the ability for NYSE Amex Specialists, eSpecialists, and Market Makers that trade with directed and non-directed order flow to earn back the lower rate by executing more than 50,000 contracts ADV each day in a month is reasonable, equitable and not unfairly discriminatory for several reasons. First, NYSE Amex Specialists, eSpecialists, and Market Makers that trade with directed and non-directed order flow all subject themselves to various

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<sup>5</sup> See NYSE Amex Rule 995NY(b).

obligations,<sup>6</sup> including quoting obligations that compel them to put themselves at risk to trade with any and all interest in a large number of options at any one time. The Exchange believes it is important to continue to incentivize NYSE Amex Options Market Makers to obligate themselves to accept the risk of trading with any and all interest and as such it is warranted in permitting NYSE Amex Options Market Makers, which undertake those obligations as evidenced by their trading volumes, to earn back a lower per contract rate. Conversely, Professional Customers and Non-NYSE Amex Options Market Makers have no obligation whatsoever to post a bid or offer but rather can react selectively to the bids and offers posted by NYSE Amex Options Market Makers who do have obligations. It is these differing levels of obligations that cause the Exchange to believe that granting NYSE Amex Specialists, eSpecialists, and Market Makers that trade with directed and non-directed order flow the ability to earn back a lower rate by generating at least 50,000 contracts ADV each day in a month as a Market Maker is warranted. Further, the Exchange believes that excluding both Strategy Executions and QCC trades from the calculation of the 50,000 contract ADV threshold is appropriate since Strategy Trades are already subject to a lowered rate and are in turn capped while QCC trades can be effected without risk of trading with an unknown party. The Exchange does not believe that including QCC trades in the calculation of the 50,000 contract ADV threshold is appropriate, given the Exchange's desire to continue to incentivize NYSE Amex Options Market Makers to continue to provide firm quotes accessible by all participants. For these reasons, the Exchange believes the proposed change is reasonable, equitable and not unfairly discriminatory.

The Exchange also believes that the fees being proposed are reasonable because they are within the range of fees presently charged by other exchanges. For example, the International Stock Exchange ("ISE") charges Non-ISE Market Makers \$.45 per contract,<sup>7</sup> as well as a \$.29 fee for Professional Customers in select symbols.<sup>8</sup> Additionally, NASDAQ OMX PHLX LLC charges market makers a rate of either \$.22 or \$.23 per contract depending on whether the option is part of the penny pilot or not.<sup>9</sup>

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<sup>6</sup> See NYSE Amex Rules 925NY, 925.1NY(b), 972NY(c), and 927.5NY.

<sup>7</sup> See ISE fee schedule dated 2/1/2012, page 1 of 22, available at [http://www.ise.com/assets/documents/OptionsExchange/legal/fee/fee\\_schedule.pdf](http://www.ise.com/assets/documents/OptionsExchange/legal/fee/fee_schedule.pdf).

<sup>8</sup> *Id.* at 22.

<sup>9</sup> See NASDAQ OMX PHLX LLC Fee Schedule dated 2/6/2012, page 6 of 39, available at <http://nasdaqomxtrader.com/content/marketregulation/membership/phlx/feesched.pdf>.

The Exchange operates in a highly competitive environment in which participants can not only move their business elsewhere, but also, if they choose, change the manner in which they access the Exchange. For example, Non-NYSE Amex Options Market Makers can avail themselves of the lower rates applicable to NYSE Amex Specialists, eSpecialists, and Market Makers that trade with directed and non-directed order flow by becoming NYSE Amex Options Market Makers. Likewise, a Professional Customers could either send fewer than 390 orders on average to begin trading as a Customer or they could register as a broker-dealer to trade on the Exchange as a Firm Proprietary trader or even a NYSE Amex Options Market Maker.

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

4. 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.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)<sup>10</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>11</sup> thereunder, because it establishes a due, fee, or other charge imposed by the Exchange. 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.

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(2).

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Exhibits

Exhibit 1 – Form of Notice of Proposed Rule Change for Federal Register

Exhibit 5 – Text of Proposed Rule Change

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

[Date]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Implementing Changes to the Per Contract Execution Costs for Certain Participants

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 February 29, 2012, NYSE Amex LLC (the “Exchange” or “NYSE Amex”) 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 (“Fee Schedule”) to increase the per contract execution costs for certain participants. The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and [www.nyse.com](http://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

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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.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to increase the per contract execution costs for certain participants. The Exchange believes the proposed fees will better reflect the costs associated with supporting a larger number of option classes, option series, and overall transaction volumes that have grown over time.

First, the Exchange proposes an increase of \$.03 per contract applicable to all NYSE Amex Options Market Maker participants. In conjunction with this increase, NYSE Amex Options Market Maker participants will have the ability to earn back the lower existing rate by executing as a NYSE Amex Options Market Maker 50,000 contracts or more on average each day in a month, excluding either Strategy Executions or QCC trades. The existing monthly fee cap applicable to NYSE Amex Options Market Makers will continue to apply.<sup>4</sup>

NYSE Amex Options Specialists and eSpecialists currently pay \$.10 per contract in transaction fees. Under the proposal, the charge applicable to NYSE Amex Options Specialist and eSpecialists would increase to \$.13 per contract. If, however, a NYSE

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<sup>4</sup> See NYSE Amex Options Fee Schedule dated 2/1/12, endnote 5, available at [http://globalderivatives.nyx.com/sites/globalderivatives.nyx.com/files/nyseamexoptionsfeeschedule\\_020112.pdf](http://globalderivatives.nyx.com/sites/globalderivatives.nyx.com/files/nyseamexoptionsfeeschedule_020112.pdf).

Amex Options participant executes on average at least 50,000 contracts each day in a month as a Market Maker, then the rate per contract applicable to those NYSE Amex Options Specialist or eSpecialist transactions would be reduced to \$.10 per contract for that month.

NYSE Amex Options Market Makers that trade with directed order flow currently pay \$.15 per contract in transaction fees. Under the proposal the charge applicable to NYSE Amex Options Market Makers trading with directed order flow would increase to \$.18 per contract. If, however, a NYSE Amex Options participant executes on average at least 50,000 contracts each day in a month as a Market Maker, then the rate per contract applicable to those transactions in which a NYSE Amex Options Market Maker traded with directed order flow would be reduced to \$.15 per contract for that month.

NYSE Amex Options Market Makers who trade with non-directed order flow currently pay \$.17 per contract in transaction fees. Under the proposal the charge applicable to NYSE Amex Options Market Makers trading with non-directed order flow would increase to \$.20 per contract. If, however, a NYSE Amex Options participant executes on average at least 50,000 contracts each day in a month as a Market Maker, then the rate per contract applicable to those transactions in which a NYSE Amex Options Market Maker traded with non-directed order flow would be reduced to \$.17 per contract for that month.

For purposes of calculating the 50,000 contract average daily volume (“ADV”)<sup>5</sup> threshold, the Exchange will aggregate all of a NYSE Amex Options participant’s Market Maker activity. For example, a NYSE Amex Options participant in one month trades

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<sup>5</sup> In calculating ADV, the Exchange will consider all trading days in a month, regardless of the length of the trading day.

30,000 contracts ADV as a NYSE Amex Options Specialist, 20,000 contracts ADV as a NYSE Amex Options eSpecialist, 15,000 contracts as a NYSE Amex Options Market Maker trading with directed order flow, and 15,000 contracts ADV trading as a NYSE Amex Options Market Maker trading with non-directed order flow. This NYSE Amex Options participant will be credited with 80,000 contracts ADV attributable to NYSE Amex Options Market Maker activity and as such will be eligible for the reduced rate for those transactions that month. Additionally, in the calculation of the 50,000 contract or more ADV threshold, the Exchange will exclude both Strategy Trades and QCC trades.

Professional Customers presently pay a fee of \$.20 per contract for electronically executed transactions. Under the proposal, the charge applicable to electronically executed transactions on behalf of a Professional Customer will increase to \$.23 per contract. The rate for manually executed or open outcry transactions for Professional Customers will remain unchanged at \$.25 per contract.

Non-NYSE Amex Options Market Makers presently pay a fee of \$.40 per contract for electronically executed transactions. Under the proposal the charge applicable to electronically executed transactions on behalf of a Non-NYSE Amex Options Market Maker will increase to \$.43 per contract. The rate for manually executed or open outcry transactions for Non-NYSE Amex Options Market Makers will remain unchanged at \$.25 per contract.

In addition, for purposes of consistency and clarity, in footnote five of the NYSE Amex Options Fee Schedule the Exchange is amending “e-Specialist” to “eSpecialist,” consistent with its use elsewhere in the Fee Schedule.

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

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)<sup>6</sup> of the Securities Exchange Act of 1934 (the “Act”), in general, and Section 6(b)(4)<sup>7</sup> 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 increase the fee for NYSE Amex Specialists, eSpecialists, Market Makers who trade with directed and non-directed order flow, Professional Customers and Non-NYSE Amex Options Market Makers transacting on the Exchange is reasonable, given the growth in volumes over the past two years. The Exchange notes that ADV on the Exchange has increased from 1,653,156 contracts in January 2010 to 2,267,022 contracts ADV in January 2012, or an increase of over 37%. The proposed per contract increases range from a 7.5% increase for Non-NYSE Amex Options Market Makers to a 30% increase for Specialists and eSpecialists. The growth in trading volumes, option classes and messaging traffic has compelled the Exchange to continually invest in software, hardware and personnel, the cost of which can reasonably be expected to be borne by participants on the Exchange that consume the majority of those resources as evidenced by the volume of messages for quotes, orders and trades. For these reasons the Exchange believes it is reasonable to increase the per contract rate for NYSE Amex Specialists, eSpecialists, Market Makers that trade with directed and non-directed order flow, Professional Customers, and Non-NYSE Amex Options Market Makers.

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<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(4).

The Exchange believes that the proposed change to increase the fee for NYSE Amex Specialists, eSpecialists, Market Makers who trade with directed and non-directed order flow, Professional Customers and Non-NYSE Amex Options Market Makers is equitable and not unfairly discriminatory since the fees as noted are generally tied to an overall increase in activity on the Exchange. This heightened activity results in greater costs to the Exchange, which in turn is being passed back through to those participants who utilize the resources of the Exchange. The Exchange notes, for example, that Customers are prohibited from engaging in activity that can be construed as market making, and as such Customers do not use quotes to trade nor do they enter more than 390 orders per day on average, unlike the participants subject to the proposed fee change, resulting in less capacity usage than the participants subject to the proposed fee change.<sup>8</sup> For these reasons, the Exchange believes that the proposed \$.03 per contract increase for NYSE Amex Specialists, eSpecialists, Market Makers who trade with directed and non-directed order flow, Professional Customers and Non-NYSE Amex Options Market Makers is both equitable and not unfairly discriminatory.

The Exchange notes that the proposed \$.03 per contract increase is not applicable to Firm Proprietary electronic transactions or Broker Dealer electronic transactions. As noted above, the fee increase is designed to offset the higher costs associated with the growth in trading volumes, option classes and messaging traffic and is specifically targeted at those users who consume the majority of those resources. The Exchange has found that, historically and at present, both Firm Proprietary electronic transactions and Broker Dealer electronic transactions comprise a small portion of the electronic

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<sup>8</sup> See NYSE Amex Rule 995NY(b).

transactions relative to the electronic transactions of the participants affected by this fee change. In fact, the majority of Firm Proprietary and Broker Dealer volumes on the Exchange are executed in open outcry and therefore place little burden on the infrastructure of the Exchange. For these reasons the Exchange feels that it is reasonable, equitable and not unfairly discriminatory to increase the fees as proposed, while leaving the fees for Firm Proprietary and Broker Dealer electronic transactions as they are.

The Exchange believes that the ability for NYSE Amex Specialists, eSpecialists, and Market Makers that trade with directed and non-directed order flow to earn back the lower rate by executing more than 50,000 contracts ADV each day in a month is reasonable, equitable and not unfairly discriminatory for several reasons. First, NYSE Amex Specialists, eSpecialists, and Market Makers that trade with directed and non-directed order flow all subject themselves to various obligations,<sup>9</sup> including quoting obligations that compel them to put themselves at risk to trade with any and all interest in a large number of options at any one time. The Exchange believes it is important to continue to incentivize NYSE Amex Options Market Makers to obligate themselves to accept the risk of trading with any and all interest and as such it is warranted in permitting NYSE Amex Options Market Makers, which undertake those obligations as evidenced by their trading volumes, to earn back a lower per contract rate. Conversely, Professional Customers and Non-NYSE Amex Options Market Makers have no obligation whatsoever to post a bid or offer but rather can react selectively to the bids and offers posted by NYSE Amex Options Market Makers who do have obligations. It is these differing levels of obligations that cause the Exchange to believe that granting

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<sup>9</sup> See NYSE Amex Rules 925NY, 925.1NY(b), 972NY(c), and 927.5NY.

NYSE Amex Specialists, eSpecialists, and Market Makers that trade with directed and non-directed order flow the ability to earn back a lower rate by generating at least 50,000 contracts ADV each day in a month as a Market Maker is warranted. Further, the Exchange believes that excluding both Strategy Executions and QCC trades from the calculation of the 50,000 contract ADV threshold is appropriate since Strategy Trades are already subject to a lowered rate and are in turn capped while QCC trades can be effected without risk of trading with an unknown party. The Exchange does not believe that including QCC trades in the calculation of the 50,000 contract ADV threshold is appropriate, given the Exchange's desire to continue to incentivize NYSE Amex Options Market Makers to continue to provide firm quotes accessible by all participants. For these reasons, the Exchange believes the proposed change is reasonable, equitable and not unfairly discriminatory.

The Exchange also believes that the fees being proposed are reasonable because they are within the range of fees presently charged by other exchanges. For example, the International Stock Exchange ("ISE") charges Non-ISE Market Makers \$.45 per contract,<sup>10</sup> as well as a \$.29 fee for Professional Customers in select symbols.<sup>11</sup> Additionally, NASDAQ OMX PHLX LLC charges market makers a rate of either \$.22 or \$.23 per contract depending on whether the option is part of the penny pilot or not.<sup>12</sup>

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<sup>10</sup> See ISE fee schedule dated 2/1/2012, page 1 of 22, available at [http://www.ise.com/assets/documents/OptionsExchange/legal/fee/fee\\_schedule.pdf](http://www.ise.com/assets/documents/OptionsExchange/legal/fee/fee_schedule.pdf).

<sup>11</sup> *Id.* at 22.

<sup>12</sup> See NASDAQ OMX PHLX LLC Fee Schedule dated 2/6/2012, page 6 of 39, available at <http://nasdaqomxtrader.com/content/marketregulation/membership/phlx/feesched.pdf>.

The Exchange operates in a highly competitive environment in which participants can not only move their business elsewhere, but also, if they choose, change the manner in which they access the Exchange. For example, Non-NYSE Amex Options Market Makers can avail themselves of the lower rates applicable to NYSE Amex Specialists, eSpecialists, and Market Makers that trade with directed and non-directed order flow by becoming NYSE Amex Options Market Makers. Likewise, a Professional Customers could either send fewer than 390 orders on average to begin trading as a Customer or they could register as a broker-dealer to trade on the Exchange as a Firm Proprietary trader or even a NYSE Amex Options Market Maker.

For the reasons noted above, the Exchange believes that the proposed fee changes 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)<sup>13</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>14</sup> thereunder, because it

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<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

establishes a due, fee, or other charge imposed by the NYSE Amex.

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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEAMEX-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.

All submissions should refer to File Number SR- NYSEAMEX-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

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<sup>14</sup> 17 CFR 240.19b-4(f)(2).

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 inspection and copying in the Commission's Public Reference Section, 100 F Street, NE, Washington, DC 20549-1090. Copies of the filing will also be available for inspection and copying at the NYSE'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-NYSEAMEX-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.<sup>15</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(12).

**Exhibit 5**

Additions underlined.  
Deletions [bracketed].

**NYSE AMEX OPTIONS FEE SCHEDULE\***

\*NYSE Amex Options is the options trading facility of NYSE Amex, LLC

**Last Updated: [February] March 1, 2012**

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**NYSE AMEX OPTIONS: TRADE-RELATED CHARGES**

TRANSACTION FEE - PER CONTRACT	Rate Per Contract
Order Type	
Specialists, eSpecialists <sup>5</sup>	\$0.1[0]3
<u>Specialist, eSpecialists with 50,000 or more contracts ADV each day in a month<sup>5</sup></u>	<u>\$0.10</u>
NYSE Amex Options Market Maker – Non Directed <sup>5</sup>	\$0.[17]20
<u>NYSE Amex Options Market Maker – Non Directed with 50,000 or more contracts ADV each day in a month<sup>5</sup></u>	<u>\$0.17</u>
NYSE Amex Options Market Maker – Directed <sup>5</sup>	\$0.1[5]8
<u>NYSE Amex Options Market Maker – Directed with 50,000 or more contracts ADV each day in a month<sup>5</sup></u>	<u>\$0.15</u>
Non-NYSE Amex Options Market Maker Electronic <sup>14</sup>	\$0.4[0]3
Non-NYSE Amex Options Market Maker Manual <sup>14</sup>	\$0.25
Broker Dealer Electronic	\$0.20
Broker Dealer Manual	\$0.25
Professional Customer Electronic	\$0.2[0]3
Professional Customer Manual	\$0.25
Non BD Customer Electronic	\$0.00
Non BD Customer Manual	\$0.00
Firm Proprietary Electronic <sup>6</sup>	\$0.20
Firm Proprietary Manual <sup>6</sup>	\$0.25
Firm Facilitation <sup>6</sup>	\$0.00

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<sup>5</sup>Specialist, e[-]Specialist, and Market Maker (both Directed and non-Directed) fees will be 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, except for the execution of an Electronic Complex Order, or the execution of a QCC order against a non-Customer, in which case the incremental service fee is \$.05, or the execution of a QCC order against a Customer, in which case the incremental service fee is \$.10. Any fees or volume associated with a Strategy Trade (reversals and conversions, dividend spreads, box spreads, short stock interest spreads, merger spreads, and jelly rolls) will

not be counted towards either the \$350,000 cap, or the volume threshold of 3,500,000 contracts. Royalty Fees will continue to be charged and do not count toward the \$350,000 fee cap. Specialist, eSpecialist, and Market Maker (both Directed and non-Directed) participants that execute 50,000 or more contracts ADV each day during the month will be eligible for the lower per contract rate described in the fee schedule under the section on "NYSE Amex Options: Trade-Related Charges." In calculating this threshold of 50,000 or more contracts, the Exchange will exclude both Strategy Trades and QCC trades.

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**Last Updated: [February] March 1, 2012**