OMB APPROVAL
OMB Number: 3235-0045 Estimated average burden hours per response.....38

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 23

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No.* SR - 2012 - * 44
Amendment No. (req. for Amendments *)

Proposed Rule Change by NYSE MKT LLC.

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
☑	☐	☐	☐	☑	☐

Rule

Pilot	Extension of Time Period for Commission Action *	Date Expires *	19b-4(f)(1)	19b-4(f)(2)	19b-4(f)(3)	19b-4(f)(4)	19b-4(f)(5)	19b-4(f)(6)
☐	☐		☐	☐	☐	☐	☐	☑

Exhibit 2 Sent As Paper Document ☐

Exhibit 3 Sent As Paper Document ☐

Description

Provide a brief description of the proposed rule change (limit 250 characters, required when Initial is checked *).

Proposal to amend the NYSE Amex Options Fee Schedule to change the number of Amex Trading Permits required by NYSE Amex Market Makers based on the number of options in their appointment

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 * Michael Last Name * Cavalier

Title * Chief Counsel

E-mail * mcavalier@nyx.com

Telephone * (212) 656-2474 Fax (212) 656-8101

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 08/24/2012

By Janet McGinness (Name *)

Corporate Secretary (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.

NYX Janet McGinness,

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) Add Remove View	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) Add Remove View	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 Add Remove View 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 Add Remove View 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 Add Remove View	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 Add Remove View	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 Add Remove View	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 MKT LLC ("NYSE MKT" or the "Exchange"), on behalf of NYSE Amex Options LLC ("NYSE Amex Options"), proposes to amend the NYSE Amex Options Fee Schedule ("Fee Schedule") to change the number of Amex Trading Permits ("ATP") required by NYSE Amex Market Makers based on the number of options in their appointment. The text of the proposed rule change is attached as Exhibit 5 and is available on the Exchange's website at www.nyse.com, at the Exchange's principal office, and in the Public Reference Room of the Securities and Exchange Commission (the "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:

Michael Cavalier Chief Counsel NYSE Euronext (212) 656-2474	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

NYSE MKT proposes to amend the Fee Schedule to change the number of Amex Trading Permits ("ATP") required by NYSE Amex Market Makers based on the number of options in their electronic appointment.

Currently, NYSE Amex Options Market Makers are free to apply to have any number of option classes in their trading appointment, subject to the following schedule:

(1) Market Makers with one ATP may have up to 100 option issues included in their electronic appointment;

(2) Market Makers with two ATPs may have up to 250 option issues included in their electronic appointment;

(3) Market Makers with three ATPs may have up to 750 option issues included in their electronic appointment; and

(4) Market Makers with four ATPs may have all option issues traded on the Exchange included in their electronic appointment.

Under the proposal, NYSE Amex Options Market Makers (which include Floor Market Makers) will be free to apply to have any number of option classes in their electronic trading appointment, subject to the following schedule:

One ATP = 60 issues, plus the bottom 45% of issues traded on the Exchange by volume;

Two ATPs = 150 issues, plus the bottom 45% of issues traded on the Exchange by volume;

Three ATPs = 500 issues, plus the bottom 45% of issues traded on the Exchange by volume;

Four ATPs = 1,100 issues, plus the bottom 45% of issues traded on the Exchange by volume; and

Five ATPs = All issues traded on the Exchange.

The “bottom 45%” of issues traded on the Exchange refers to the least actively traded issues on the Exchange, ranked by industry volume, as reported by the OCC for each issue during the calendar quarter. Each calendar quarter, with a one-month lag, the Exchange will publish on its website a list of the bottom 45% of issues traded by industry volume. For example, based on industry volume for April, May, and June 2012, the Exchange will rank all options traded on the Exchange as of the last day of that period, which will then become the bottom 45% of issues for the period beginning August 1, 2012. As of June 30, 2012, there were 2,196 options traded on the Exchange, so the bottom 45% would total 988 options for that period. The Exchange will recalculate this list using industry volumes for July, August, and September 2012 for the period beginning November 1, 2012, and so on. Any newly listed issues will automatically become part of the bottom 45% until the next evaluation period, at which time they may or may not remain part of the bottom 45% list depending upon their trading volumes and resultant rank among all issues traded on the Exchange.

The proposed rule change is effective upon filing and will not become operative until 30 days after the date of this filing, or such shorter time as the Commission may designate. The Exchange has requested that the Commission waive all or a portion of the 30-day operative delay period so that it may implement the proposed change on September 1, 2012. If the Commission does not waive all or a portion of the 30-day operative delay period, the proposed changes will be implemented on October 1, 2012.

(b) Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)[1] of the Securities Exchange Act of 1934 (the "Act"), in general, and furthers the objectives of Section 6(b)(5)[2] 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 mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest.

In making the proposed changes, the Exchange's objective is to better align the Fee Schedule with the level of activity on the Exchange while properly incenting Market Makers to quote in a broad range of options, including less liquid and active names, to promote transparency and price discovery in those names, which will benefit all Exchange participants and the public interest.[3]

The proposal to change the number of ATPs required for a certain number of appointments will promote just and equitable principles of trade and will remove impediments to and perfect the mechanisms of a free and open market for the following reasons. First, the proposed rule change allows Market Makers affordable access to all issues traded on the Exchange when viewed in light of the cost for a market maker on at least two other exchanges to obtain a sufficient number of trading permits or rights to quote a similar number of names. For example, on the International Securities Exchange ("ISE"), a Competitive Market Maker ("CMM") is required to have nine CMM Trading Rights in order to quote all issues on the ISE.[4] CMM Trading Rights on the ISE are fixed in terms of the number that are available and must be bought or leased from someone who possesses them. The last sale for a CMM Trading Right on the ISE was for

---

1 15 U.S.C. 78f(b).

2 15 U.S.C. 78f(b)(5).

3 The Exchange notes that it has adequate systems capacity to accommodate any increase in quoting.

4 See ISE Rule 802(c) and http://www.ise.com/WebForm/viewPage.aspx?categoryId=563.

$1,550,000 on November 30, 2009.[5] As of July 17, 2012, there appeared to be a total of seven CMM Trading Rights available for sale or lease, which are two fewer than the number required to quote all issues on the ISE.[6] The Exchange estimates that the monthly lease cost is somewhere in the range of $7,000 to $11,000 per month.[7] Assuming the best-case scenario of being able to obtain a lease at the most favorable price for each of the nine CMM Trading Rights needed to quote every name on ISE, the Exchange estimates that it would cost a market maker approximately $63,000 per month in rights fees. By comparison, under the proposal, a NYSE Amex Options Market Maker will pay $26,000 per month in rights fees to quote the entire universe of names on the Exchange.

A further comparison may be made with the Chicago Board Options Exchange ("CBOE") and the trading permit costs for a market maker to create an assignment there. CBOE has a sliding scale for Trading Permit Holders ("TPHs") who are acting as market makers. The sliding scale is $5,500 per month for permits one to 10, $4,000 per month for permits 11 to 20, and $2,500 for permits 21 and higher. The discounted permit rates of $4,000 and $2,500 are only available to TPHs who commit to a full year of that number of permits. In configuring an appointment on CBOE, a market maker incurs an appointment cost for each option in its appointment based on various tiers.[8] The appointment cost can be calculated using an "appointment calculator" provided to TPHs.[9] The Exchange used the appointment calculator dated July 10, 2012 to calculate the cost to construct a market maker appointment consisting of all 2,196 options traded on the Exchange as of June 30, 2012. The result shows that a total of 28 trading permits would be required to create a market maker appointment on CBOE that consisted of all options traded on the Exchange.[10] Assuming the best-case scenario in which a market maker committed to a full year of utilizing 28 permits, a market maker on CBOE would pay $115,000 per month in permit costs

---

5 See Secondary Market Sales after May 1, 2002, available at http://www.ise.com/WebForm/viewPage.aspx?categoryId=222.

6 See http://www.ise.com/WebForm/viewPage.aspx?categoryId=563.

7 Based on the last reported sale of $1,550,000, if one uses five-year straight-line depreciation, the monthly cost of a single CMM Trading Right is $25,833. In light of this, coupled with decreased volumes in the industry, the Exchange believes that a lease rate of between $7,000 and $11,000 per month per CMM Trading Right is a reasonable estimate and has confirmed that estimate informally with market participants.

8 See CBOE Rule 8.3.

9 The appointment calculator is available at https://www.cboe.org/publish/SeatCalculator/SeatCalcUpdated071012.xlt.

10 Of the 2,196 options traded on the Exchange as of June 30, 2012, 2,000 were trading on the CBOE, and it would require 28 TPHs to create an appointment in those names.

or $89,000 more per month than an NYSE Amex Options Market Maker would pay under the proposal.

The Exchange further notes that by virtue of the limited number of CMM Trading Rights available for sale or lease on ISE and the Class Quoting Limit ("CQL")[11] on CBOE, the barriers to entry on both exchanges for a market maker are quite high in that it may not be possible to create a market maker appointment of one's choosing due to either a lack of available CMM Trading Rights on ISE or a CQL on CBOE that has been reached. Under the Exchange's proposal, no such artificial barrier to entry will be created, and coupled with the relatively lower monthly cost to acquire ATPs, the proposal will remove certain impediments to trade on the options markets.

In designing the proposal, the Exchange wanted to encourage market making in less liquid and active option issues. This is beneficial to all Exchange participants and market participants generally. Under the proposal, the first ATP permits an NYSE Amex Options Market Maker to create an appointment for submitting quotes electronically that will consist of 60 options of its choosing, plus the bottom 45% of options traded on the Exchange. As of June 30, 2012, there were 2,196 options on the Exchange, which means that the bottom 45% consists of 988 options. Under the proposal, this means that a NYSE Amex Options Market Maker with one ATP will be able to create an assignment consisting of 1,048 options, far greater than the 100 options permitted under the current Fee Schedule. The proposal increases the total number of ATPs required to quote all options on the Exchange from four to five and increases the monthly cost for an NYSE Amex Options Market Maker from $23,000 to $26,000 per month. Again, viewed in light of the costs to establish a similar assignment on at least two other exchanges, the proposed rule change is just, equitable, and removes impediments to a free and open market, particularly since the proposal is designed to encourage greater quoting in less liquid names that will benefit the marketplace through increased price discovery. The proposal is consistent with just and equitable principles of trade since it will apply to all NYSE Amex Options Market Makers equally.

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.

---

[11] See CBOE Rule 8.3A.

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 proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b-4(f)(6) thereunder.[13]

The Exchange asserts that the proposed rule change (i) will not significantly affect the protection of investors or the public interest, (ii) will not impose any significant burden on competition, and (iii) by its terms, will not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest. Additionally, the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of the filing, or such shorter time as designated by the Commission.

The Exchange believes that the proposed rule change would not significantly affect the protection of investors or the public interest because it is designed to better align the Fee Schedule with the level of activity on the Exchange. The proposed rule change will incent Market Makers to quote in a broad range of options, including less liquid and active names, to promote transparency and price discovery in those names, which will promote liquidity and benefit investors and the public interest.

The Exchange further believes that the proposed rule change would not impose a burden on competition because the Exchange 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 addition, the proposed rule change would encourage more sources of liquidity, particularly in thinly traded issues, which may reduce volatility on the Exchange and will encourage competition among the options exchanges.

The Exchange respectfully requests a waiver from all or a portion of the

---

12 15 U.S.C. 78s(b)(3)(A).

13 17 CFR 240.19b-4(f)(6).

requirement of a 30-day operative delay period for "non-controversial" proposals. As noted above, the Exchange believes the proposed rule change will provide an incentive to Market Makers to quote in a broad range of options, including less liquid and active names, which will promote transparency and price discovery in those names. In addition, although the proposed changes will increase the cost to quote all issues traded on the Exchange, the Exchange believes the proposal has the potential to reduce artificial barriers to entry in the options markets and will impose a relatively lower monthly cost to acquire ATPs compared to other options exchanges. The proposal, therefore, is consistent with the protection of investors and the public interest and waiver of all or a portion of the 30-day operative delay period would ensure that the Exchange can implement the proposed rule change on September 1, 2012.

For the foregoing reasons, this rule filing qualifies for immediate effectiveness as a "non-controversial" rule change under paragraph (f)(6) of Rule 19b-4.[14] 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.

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

[14] 17 CFR 240.19b-4(f)(6).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-NYSEMKT-2012-44)

[Date]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Amex Options Fee Schedule to Change the Number of Amex Trading Permits Required by NYSE Amex Market Makers Based on the Number of Options in Their Appointment

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 August 23, 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 ("Fee Schedule") to change the number of Amex Trading Permits ("ATP") required by NYSE Amex Market Makers based on the number of options in their appointment. 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 15 U.S.C. 78a.

3 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE MKT proposes to amend the Fee Schedule to change the number of Amex Trading Permits ("ATP") required by NYSE Amex Market Makers based on the number of options in their electronic appointment.

Currently, NYSE Amex Options Market Makers are free to apply to have any number of option classes in their trading appointment, subject to the following schedule:

(1) Market Makers with one ATP may have up to 100 option issues included in their electronic appointment;

(2) Market Makers with two ATPs may have up to 250 option issues included in their electronic appointment;

(3) Market Makers with three ATPs may have up to 750 option issues included in their electronic appointment; and

(4) Market Makers with four ATPs may have all option issues traded on the Exchange included in their electronic appointment.

Under the proposal, NYSE Amex Options Market Makers (which include Floor Market Makers) will be free to apply to have any number of option classes in their electronic trading appointment, subject to the following schedule:

One ATP = 60 issues, plus the bottom 45% of issues traded on the Exchange by volume;

Two ATPs = 150 issues, plus the bottom 45% of issues traded on the Exchange by volume;

Three ATPs = 500 issues, plus the bottom 45% of issues traded on the Exchange by volume;

Four ATPs = 1,100 issues, plus the bottom 45% of issues traded on the Exchange by volume; and

Five ATPs = All issues traded on the Exchange.

The "bottom 45%" of issues traded on the Exchange refers to the least actively traded issues on the Exchange, ranked by industry volume, as reported by the OCC for each issue during the calendar quarter. Each calendar quarter, with a one-month lag, the Exchange will publish on its website a list of the bottom 45% of issues traded by industry volume. For example, based on industry volume for April, May, and June 2012, the Exchange will rank all options traded on the Exchange as of the last day of that period, which will then become the bottom 45% of issues for the period beginning August 1, 2012. As of June 30, 2012, there were 2,196 options traded on the Exchange, so the bottom 45% would total 988 options for that period. The Exchange will recalculate this list using industry volumes for July, August, and September 2012 for the period beginning November 1, 2012, and so on. Any newly listed issues will automatically

become part of the bottom 45% until the next evaluation period, at which time they may or may not remain part of the bottom 45% list depending upon their trading volumes and resultant rank among all issues traded on the Exchange.

The proposed rule change is effective upon filing and will not become operative until 30 days after the date of this filing, or such shorter time as the Commission may designate. The Exchange has requested that the Commission waive all or a portion of the 30-day operative delay period so that it may implement the proposed change on September 1, 2012. If the Commission does not waive all or a portion of the 30-day operative delay period, the proposed changes will be implemented on October 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 furthers the objectives of Section 6(b)(5)[5] 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 mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest.

In making the proposed changes, the Exchange's objective is to better align the Fee Schedule with the level of activity on the Exchange while properly incenting Market Makers to quote in a broad range of options, including less liquid and active names, to promote transparency and price discovery in those names, which will benefit all

---

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

Exchange participants and the public interest.[6]

The proposal to change the number of ATPs required for a certain number of appointments will promote just and equitable principles of trade and will remove impediments to and perfect the mechanisms of a free and open market for the following reasons. First, the proposed rule change allows Market Makers affordable access to all issues traded on the Exchange when viewed in light of the cost for a market maker on at least two other exchanges to obtain a sufficient number of trading permits or rights to quote a similar number of names. For example, on the International Securities Exchange ("ISE"), a Competitive Market Maker ("CMM") is required to have nine CMM Trading Rights in order to quote all issues on the ISE.[7] CMM Trading Rights on the ISE are fixed in terms of the number that are available and must be bought or leased from someone who possesses them. The last sale for a CMM Trading Right on the ISE was for $1,550,000 on November 30, 2009.[8] As of July 17, 2012, there appeared to be a total of seven CMM Trading Rights available for sale or lease, which are two fewer than the number required to quote all issues on the ISE.[9] The Exchange estimates that the monthly lease cost is somewhere in the range of $7,000 to $11,000 per month.[10]

---

6 The Exchange notes that it has adequate systems capacity to accommodate any increase in quoting.

7 See ISE Rule 802(c) and http://www.ise.com/WebForm/viewPage.aspx?categoryId=563.

8 See Secondary Market Sales after May 1, 2002, available at http://www.ise.com/WebForm/viewPage.aspx?categoryId=222.

9 See http://www.ise.com/WebForm/viewPage.aspx?categoryId=563.

10 Based on the last reported sale of $1,550,000, if one uses five-year straight-line depreciation, the monthly cost of a single CMM Trading Right is $25,833. In light of this, coupled with decreased volumes in the industry, the Exchange believes that a lease rate of between $7,000 and $11,000 per month per CMM

Assuming the best-case scenario of being able to obtain a lease at the most favorable price for each of the nine CMM Trading Rights needed to quote every name on ISE, the Exchange estimates that it would cost a market maker approximately $63,000 per month in rights fees. By comparison, under the proposal, a NYSE Amex Options Market Maker will pay $26,000 per month in rights fees to quote the entire universe of names on the Exchange.

A further comparison may be made with the Chicago Board Options Exchange ("CBOE") and the trading permit costs for a market maker to create an assignment there. CBOE has a sliding scale for Trading Permit Holders ("TPHs") who are acting as market makers. The sliding scale is $5,500 per month for permits one to 10, $4,000 per month for permits 11 to 20, and $2,500 for permits 21 and higher. The discounted permit rates of $4,000 and $2,500 are only available to TPHs who commit to a full year of that number of permits. In configuring an appointment on CBOE, a market maker incurs an appointment cost for each option in its appointment based on various tiers.[11] The appointment cost can be calculated using an "appointment calculator" provided to TPHs.[12] The Exchange used the appointment calculator dated July 10, 2012 to calculate the cost to construct a market maker appointment consisting of all 2,196 options traded on the Exchange as of June 30, 2012. The result shows that a total of 28 trading permits would be required to create a market maker appointment on CBOE that consisted of all

---

Trading Right is a reasonable estimate and has confirmed that estimate informally with market participants.

[11] See CBOE Rule 8.3.

[12] The appointment calculator is available at https://www.cboe.org/publish/SeatCalculator/SeatCalcUpdated071012.xlt.

options traded on the Exchange.[13] Assuming the best-case scenario in which a market maker committed to a full year of utilizing 28 permits, a market maker on CBOE would pay $115,000 per month in permit costs or $89,000 more per month than an NYSE Amex Options Market Maker would pay under the proposal.

The Exchange further notes that by virtue of the limited number of CMM Trading Rights available for sale or lease on ISE and the Class Quoting Limit ("CQL")[14] on CBOE, the barriers to entry on both exchanges for a market maker are quite high in that it may not be possible to create a market maker appointment of one's choosing due to either a lack of available CMM Trading Rights on ISE or a CQL on CBOE that has been reached. Under the Exchange's proposal, no such artificial barrier to entry will be created, and coupled with the relatively lower monthly cost to acquire ATPs, the proposal will remove certain impediments to trade on the options markets.

In designing the proposal, the Exchange wanted to encourage market making in less liquid and active option issues. This is beneficial to all Exchange participants and market participants generally. Under the proposal, the first ATP permits an NYSE Amex Options Market Maker to create an appointment for submitting quotes electronically that will consist of 60 options of its choosing, plus the bottom 45% of options traded on the Exchange. As of June 30, 2012, there were 2,196 options on the Exchange, which means that the bottom 45% consists of 988 options. Under the proposal, this means that a NYSE Amex Options Market Maker with one ATP will be able to create an assignment consisting of 1,048 options, far greater than the 100 options permitted under the current

---

13 Of the 2,196 options traded on the Exchange as of June 30, 2012, 2,000 were trading on the CBOE, and it would require 28 TPHs to create an appointment in those names.

14 See CBOE Rule 8.3A.

Fee Schedule. The proposal increases the total number of ATPs required to quote all options on the Exchange from four to five and increases the monthly cost for an NYSE Amex Options Market Maker from $23,000 to $26,000 per month. Again, viewed in light of the costs to establish a similar assignment on at least two other exchanges, the proposed rule change is just, equitable, and removes impediments to a free and open market, particularly since the proposal is designed to encourage greater quoting in less liquid names that will benefit the marketplace through increased price discovery. The proposal is consistent with just and equitable principles of trade since it will apply to all NYSE Amex Options Market Makers equally.

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[15] and Rule 19b-4(f)(6) thereunder.[16] Because the 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

[15] 15 U.S.C. 78s(b)(3)(A)(iii).

[16] 17 CFR 240.19b-4(f)(6).

prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)[17] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[18] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

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-2012-44 on the subject line.

---

[17] 17 CFR 240.19b-4(f)(6).

[18] 17 CFR 240.19b-4(f)(6)(iii).

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-2012-44. 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 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. 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-2012-44 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.[19]

---

[19] 17 CFR 200.30-3(a)(12).

Kevin M. O'Neill
Deputy Secretary

Exhibit 5

Additions underlined.
Deletions [bracketed].

NYSE AMEX OPTIONS FEE SCHEDULE*

*NYSE Amex Options is the options trading facility of NYSE MKT LLC

NYSE AMEX OPTIONS GENERAL OPTIONS and TRADING PERMIT (ATP) FEES

ATP TRADING PARTICIPANT RIGHTS

*****

NYSE Amex Options Market Makers	1st ATP = $8,000 per month
	2nd ATP = $6,000 per month
	3rd ATP = $5,000 per month
	4th ATP = $4,000 per month
	5th ATP = $3,000 per month
	Additional ATPs = $2,000 per month each
	The ATP fee is calculated using the maximum number of ATPs held by an ATP Holder during a calendar month.
	A Floor Market Maker that purchases no more than two ATPs per month may purchase them for $5,000 each ("Floor Market Maker ATP Fee") if the Floor Market Maker transacts at least 75% of its volume, excluding Qualified Contingent Cross and Strategy Executions, manually, by public outcry.
	Each ATP conveys the right to a certain number of issues permitted in a Market Maker's electronic appointment as detailed

below:

1 ATP = 60 issues plus the bottom 45% of issues traded on the Exchange by volume

2 ATPs = 150 issues plus the bottom 45% of issues traded on the Exchange by volume

3 ATPs = 500 issues plus the bottom 45% of issues traded on the Exchange by volume

4 ATPs = 1,100 issues plus the bottom 45% of issues traded on the Exchange by volume

5 ATPs = All issues traded on the Exchange

The bottom 45% of issues traded on the Exchange means the least actively traded issues on the Exchange, ranked by industry volume, as reported by the OCC for each issue during the calendar quarter. Each calendar quarter, with a one-month lag, the Exchange will publish on its website a list of the bottom 45% of issues traded. Any newly listed issues will automatically become part of the bottom 45% until the next evaluation period, at which time they may or may not remain part of the bottom 45% list depending upon their trading volumes and resultant rank among all issues traded on the Exchange.

[(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 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.]

*****