

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF 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 MKT LLC (“NYSE MKT” or the “Exchange”), through NYSE Amex Options LLC (“NYSE Amex Options”), proposes to amend the NYSE Amex Options Fee Schedule (the “Fee Schedule”) to establish criteria for Order Flow Providers (“OFPs”)¹ to earn rebates based on the average daily volume (“ADV”) of Customer² electronic equity and exchange-traded fund (“ETF”) option contracts executed by an OFP on the Exchange. The Exchange proposes to implement these changes on October 1, 2012. The amended section of the Fee Schedule is attached as Exhibit 5. A copy of this filing is available on the Exchange’s website at www.nyse.com, at the Exchange’s principal office and at 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 is required under the Exchange’s governing documents. 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

The Exchange proposes to amend the Fee Schedule to establish criteria for OFPs

¹ An OFP is any ATP Holder that submits, as agent, orders to the Exchange. See Rule 900.2NY(57).

² The term “Customer” means an individual or organization that is not a broker-dealer. See Rule 900.2NY(18).

to earn rebates based on the ADV of Customer electronic equity and ETF option contracts executed by an OFP on the Exchange. The Exchange proposes to implement these changes on October 1, 2012.

The Exchange proposes to establish a rebate for OFPs based on the ADV of Customer electronic equity and ETF option contracts executed by an OFP on the Exchange (the “Tiers”) relative to the overall Total Industry Customer equity and ETF option ADV.³ In order to be eligible for the rebate, certain criteria must be met. Once all of the criteria have been met, the highest rebate earned will apply to all eligible volume for the particular month for the particular OFP. The criteria will be detailed in new endnote 17 to the Fee Schedule.

The first criterion is that an OFP must execute Customer electronic equity and ETF option volume on the Exchange that is equal to or greater than the percentage of Total Industry Customer equity and ETF option ADV shown in the table below (e.g., 2.7% of Total Industry Customer equity and ETF option ADV for the lowest tier). However, no rebate would be paid on Customer electronic equity and ETF option volume that is less than 120,000 ADV; thus, in a month where the Total Industry Customer equity and ETF option ADV as a whole drops substantially, it is possible that no rebates will be paid.

Volume from executions of Qualified Contingent Cross (“QCC”) Orders,⁴ Strategy Executions⁵ and orders that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan referenced in Rule 991NY (“routed orders” for purposes of this proposed rebate) would not count toward either the 120,000 Customer electronic equity and ETF option ADV minimum or any of the proposed Customer electronic equity and ETF option ADV Tiers. Volume from executions of Customer Electronic Complex Orders would not count toward the 120,000 Customer electronic equity

³ Total Industry Customer equity and ETF option ADV would be that which is reported for the month by OCC in the month in which the rebates may apply. For example, October 2012 Total Industry Customer equity and ETF option ADV will be used in determining what, if any, rebate an OFP may be eligible for based on the Customer electronic equity and ETF option ADV it transacts on the Exchange in October 2012. Total Industry Customer equity and ETF option ADV is comprised of those equity and ETF option contracts that clear in the customer account type at OCC and does not include contracts that clear in either the firm or market maker account type at OCC or contracts overlying a security other than an equity and ETF security.

⁴ A QCC Order is comprised of an order to buy or sell at least 1,000 contracts that is identified as being part of a qualified contingent trade, as that term is defined in Commentary .01 to Rule 900.3NY, coupled with a contra-side order to buy or sell an equal number of contracts. See Rule 900.3NY(y).

⁵ Strategy Executions are defined in endnote 8 of the Fee Schedule.

and ETF option ADV minimum, but would count toward any of the Customer electronic equity and ETF option ADV Tiers. Volume attributable to the execution of QCC Orders, Strategy Executions, Customer Electronic Complex Orders or routed orders would not receive a rebate.⁶

The second criterion that must be met in order for an OFP to qualify for the rebate is that an OFP must execute an ADV of at least 200,000 Customer electronic equity and ETF option contracts that specifically result from posting orders to the Exchange's Consolidated Order Book (also known as "making" liquidity). In calculating the 200,000 Customer electronic equity and ETF option ADV posting requirement, the Exchange would exclude volume attributable to QCC Orders, Strategy Executions, Electronic Customer Complex Orders and routed orders.

The proposed volume tiers and the corresponding per contract rebate would be as follows:

Customer Electronic Equity and ETF Option ADV Tiers	Rebate Per Contract For All Customer Electronic Equity and ETF Option Volume Over 120,000 ADV (excludes volume from QCC Orders, Strategy Executions, Complex Orders, and routed orders)
at least 2.7% of Total Industry Customer equity and ETF option ADV	\$0.07
at least 3.6% of Total Industry Customer equity and ETF option ADV	\$0.08
at least 4.4% of Total Industry Customer equity and ETF option ADV	\$0.09

(b) Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),⁷ in general, and furthers

⁶ The Exchange notes that both QCC Orders and Customer Electronic Complex Orders are currently eligible to earn rebates and that Strategy Executions are capped on both a per trade and a monthly basis. Additionally, the Exchange notes that in complying with the requirements of the Options Order Protection and Locked/Crossed Market Plan referenced in Rule 991NY, the Exchange incurs routing fees and clearing charges when it routes Customer orders to exchanges that in turn do not charge Customer fees, which the Exchange does not pass along to OFPs.

⁷ 15 U.S.C. 78f(b).

the objectives of Section 6(b)(4) of the Act,⁸ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The proposal to establish a tiered rebate for OFPs that execute the requisite ADV of Customer electronic equity and ETF option contracts on the Exchange is reasonable because it is designed to attract additional Customer electronic equity and ETF option volume to the Exchange, which would benefit all participants by offering greater price discovery, increased transparency and an increased opportunity to trade on the Exchange. Additionally, the Exchange believes that the proposed rebate is reasonable because it would incentivize OFPs to submit Customer electronic equity and ETF option orders to the Exchange and would result in a rebate that is reasonably related to an exchange's market quality that is associated with higher volumes. The Exchange also believes that proposed thresholds for the tiers are reasonable because they will reward OFPs with a greater rebate when they bring a larger number of equity and ETF option orders to the Exchange. Moreover, the Exchange believes that the proposed rebate is equitable and not unfairly discriminatory because it will be available to all OFPs that execute Customer electronic equity and ETF option orders on the Exchange on an equal and non-discriminatory basis. The Exchange also believes that the proposed rebate is not new or novel. Instead, the Exchange understands that at least two other option exchanges currently offer a rebate specifically for Customer volume.⁹ Further, the amount of the proposed per contract rebate is within the range of similar rebates on other exchanges.¹⁰

The Exchange believes that the proposal to exclude volume attributable to QCC Orders, Strategy Executions, Customer Electronic Complex Orders and routed orders from receiving the rebate is reasonable, equitable and not unfairly discriminatory for the following reasons. First, because all OFPs are treated

⁸ 15 U.S.C. 78f(b)(4).

⁹ For example, the Chicago Board Options Exchange ("CBOE") has a Volume Incentive Program that pays order flow providers on CBOE a tiered rebate, from \$0.00 to \$0.20 per contract, based on the number of Customer contracts per day that execute electronically on the exchange. This is described on page 3 of the CBOE fee schedule dated September 18, 2012, available at <http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf>. Additionally, NASDAQ OMX PHLX ("PHLX") has a Customer Rebate Program that pays tiered rebates that range from \$0.00 to \$0.12 per contract, as described in the PHLX fee schedule amended September 4, 2012, available at <http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLXTools/PlatformViewer.asp?selectednode=chp%5F1%5F4%5F1&manual=%2Fnasdaqomxphlx%2Fphlx%2Fphlx%2Drulesbrd%2F>.

¹⁰ See *id.*

equally in this regard, it is not unfairly discriminatory. Second, it is reasonable and equitable to exclude these volumes from receiving the rebate because QCC Orders and Customer Electronic Complex Orders already are eligible to receive separate rebates.¹¹ It is reasonable and equitable to exclude Strategy Executions because these transactions are already offered at a discounted rate of \$750 per day and further capped at \$25,000 per month per initiating firm. Additionally, it is reasonable and equitable to exclude routed orders because the Exchange often incurs a charge for routing Customer orders to away markets. Accordingly, excluding these volumes is both reasonable and equitable.

The Exchange believes that the proposal to only make a rebate available for Customer electronic equity and ETF option ADV in excess of 120,000 contracts is reasonable and equitable because it would reasonably ensure that the Exchange will derive sufficient revenue to continue to fund the rebates, for the benefit of all participants. Further this requirement is not unfairly discriminatory because it applies to all OFPs.

The Exchange believes that the requirement for an OFP to execute an ADV of at least 200,000 Customer electronic equity and ETF option contracts as a result of posting orders to the Consolidated Book (i.e., “making” liquidity) to be eligible for the rebate is reasonable, equitable and not unfairly discriminatory for the following reasons. This provision is designed to encourage OFPs to send orders to the Exchange, which will contribute to the Exchange’s depth of book as well as to the top of book liquidity. Encouraging the posting of orders is both reasonable and equitable because it enhances transparency, price discovery and liquidity for all participants on the Exchange, benefiting all investors. As the requirement will apply to all OFPs equally, it is also not unfairly discriminatory.

For these reasons, the Exchange believes that the entire proposal is reasonable, equitable and not unfairly discriminatory. Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

¹¹ The Exchange makes a rebate available to Floor Brokers for the execution of QCC Orders as well as a rebate available to OFPs for the execution of Customer Electronic Complex Orders, as described in the Exchange’s Fee Schedule, dated September 1, 2012, available at http://globalderivatives.nyx.com/sites/globalderivatives.nyx.com/files/nyse_amex_options_fee_schedule_09_01_12.pdf.

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)(ii) of the Act¹² because it establishes a due, fee, or other charge imposed by 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.

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

The proposed rule change is not based on the rules of another self-regulatory organization or of the Commission. However, the Exchange believes that the proposed rebate is not new or novel. Instead, the Exchange understands that at least two other option exchanges currently offer a rebate specifically for Customer Complex Order volume.¹³

9. Exhibits

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

Exhibit 5 – Text of the Proposed Rule Change

¹² 15 U.S.C. 78s(b)(3)(A)(ii).

¹³ See note 9, supra.

SECURITIES AND EXCHANGE COMMISSION
 (Release No. 34- ; File No. SR-NYSEMKT-2012-50)

[Date]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Amex Options Fee Schedule Relating to Criteria for Rebates to Order Flow Providers

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 September 28, 2012, NYSE MKT LLC (the “Exchange” or “NYSE MKT”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Amex Options Fee Schedule (the “Fee Schedule”) to establish criteria for Order Flow Providers (“OFPs”)⁴ to earn rebates based on the average daily volume (“ADV”) of Customer⁵ electronic equity and exchange-traded fund (“ETF”) contracts executed by an OFP on the Exchange. The text

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ An OFP is any ATP Holder that submits, as agent, orders to the Exchange. *See* Rule 900.2NY(57).

⁵ The term “Customer” means an individual or organization that is not a broker-dealer. *See* Rule 900.2NY(18).

of the proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it 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 establish criteria for OFPs to earn rebates based on the ADV of Customer electronic equity and ETF contracts executed by an OFP on the Exchange. The Exchange proposes to implement these changes on October 1, 2012.

The Exchange proposes to establish a rebate for OFPs based on the ADV of Customer electronic equity and ETF contracts executed by an OFP on the Exchange (the "Tiers") relative to the overall Total Industry Customer equity and ETF option ADV.⁶ In

⁶ Total Industry Customer equity and ETF option ADV would be that which is reported for the month by OCC in the month in which the rebates may apply. For example, October 2012 Total Industry Customer equity and ETF option ADV will be used in determining what, if any, rebate an OFP may be eligible for based on the Customer electronic equity and ETF option ADV it transacts on the Exchange in October 2012. Total Industry Customer equity and ETF option ADV is comprised of those equity and ETF option contracts that clear in the customer account type at OCC and does not include contracts that clear in either the firm or

order to be eligible for the rebate, certain criteria must be met. Once all of the criteria have been met, the highest rebate earned will apply to all eligible volume for the particular month for the particular OFP. The criteria will be detailed in new endnote 17 to the Fee Schedule.

The first criterion is that an OFP must execute Customer electronic equity and ETF option volume on the Exchange that is equal to or greater than the percentage of Total Industry Customer equity and ETF option ADV shown in the table below (e.g., 2.7% of Total Industry Customer equity and ETF option ADV for the lowest tier). However, no rebate would be paid on Customer electronic equity and ETF option volume that is less than 120,000 ADV; thus, in a month where the Total Industry Customer equity and ETF option ADV as a whole drops substantially, it is possible that no rebates will be paid.

Volume from executions of Qualified Contingent Cross (“QCC”) Orders,⁷ Strategy Executions⁸ and orders that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan referenced in Rule 991NY (“routed orders” for purposes of this proposed rebate) would not count toward either the 120,000 Customer electronic equity and ETF option ADV minimum or any of the proposed Customer electronic equity and ETF option ADV Tiers. Volume from executions of Customer Electronic Complex Orders would not count toward the 120,000

market maker account type at OCC or contracts overlying a security other than an equity and ETF security.

⁷ A QCC Order is comprised of an order to buy or sell at least 1,000 contracts that is identified as being part of a qualified contingent trade, as that term is defined in Commentary .01 to Rule 900.3NY, coupled with a contra-side order to buy or sell an equal number of contracts. *See* Rule 900.3NY(y).

⁸ Strategy Executions are defined in endnote 8 of the Fee Schedule.

Customer electronic equity and ETF option ADV minimum, but would count toward any of the Customer electronic equity and ETF option ADV Tiers. Volume attributable to the execution of QCC Orders, Strategy Executions, Customer Electronic Complex Orders or routed orders would not receive a rebate.⁹

The second criterion that must be met in order for an OFP to qualify for the rebate is that an OFP must execute an ADV of at least 200,000 Customer electronic equity and ETF contracts that specifically result from posting orders to the Exchange's Consolidated Order Book (also known as "making" liquidity). In calculating the 200,000 Customer electronic equity and ETF option ADV posting requirement, the Exchange would exclude volume attributable to QCC Orders, Strategy Executions, Electronic Customer Complex Orders and routed orders.

The proposed volume tiers and the corresponding per contract rebate would be as follows:

Customer Electronic Equity and ETF Option ADV Tiers	Rebate Per Contract For All Customer Electronic Equity and ETF Option Volume Over 120,000 ADV (excludes volume from QCC Orders, Strategy Executions, Complex Orders, and routed orders)
at least 2.7% of Total Industry Customer equity and ETF option ADV	\$0.07
at least 3.6% of Total Industry Customer equity and ETF option ADV	\$0.08

⁹ The Exchange notes that both QCC Orders and Customer Electronic Complex Orders are currently eligible to earn rebates and that Strategy Executions are capped on both a per trade and a monthly basis. Additionally, the Exchange notes that in complying with the requirements of the Options Order Protection and Locked/Crossed Market Plan referenced in Rule 991NY, the Exchange incurs routing fees and clearing charges when it routes Customer orders to exchanges that in turn do not charge Customer fees, which the Exchange does not pass along to OFPs.

at least 4.4% of Total Industry Customer equity and ETF option ADV	\$0.09
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2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),¹⁰ in general, and furthers the objectives of Section 6(b)(4) of the Act,¹¹ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The proposal to establish a tiered rebate for OFPs that execute the requisite ADV of Customer electronic equity and ETF contracts on the Exchange is reasonable because it is designed to attract additional Customer electronic equity and ETF volume to the Exchange, which would benefit all participants by offering greater price discovery, increased transparency and an increased opportunity to trade on the Exchange.

Additionally, the Exchange believes that the proposed rebate is reasonable because it would incentivize OFPs to submit Customer electronic equity and ETF option orders to the Exchange and would result in a rebate that is reasonably related to an exchange’s market quality that is associated with higher volumes. The Exchange also believes that proposed thresholds for the tiers are reasonable because they will reward OFPs with a greater rebate when they bring a larger number of equity and ETF orders to the Exchange. Moreover, the Exchange believes that the proposed rebate is equitable and not unfairly discriminatory because it will be available to all OFPs that execute Customer

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4).

electronic equity and ETF option orders on the Exchange on an equal and non-discriminatory basis. The Exchange also believes that the proposed rebate is not new or novel. Instead, the Exchange understands that at least two other option exchanges currently offer a rebate specifically for Customer volume.¹² Further, the amount of the proposed per contract rebate is within the range of similar rebates on other exchanges.¹³

The Exchange believes that the proposal to exclude volume attributable to QCC Orders, Strategy Executions, Customer Electronic Complex Orders and routed orders from receiving the rebate is reasonable, equitable and not unfairly discriminatory for the following reasons. First, because all OFPs are treated equally in this regard, it is not unfairly discriminatory. Second, it is reasonable and equitable to exclude these volumes from receiving the rebate because QCC Orders and Customer Electronic Complex Orders already are eligible to receive separate rebates.¹⁴ It is reasonable and equitable to exclude Strategy Executions because these transactions are already offered at a discounted rate of

¹² For example, the Chicago Board Options Exchange (“CBOE”) has a Volume Incentive Program that pays order flow providers on CBOE a tiered rebate, from \$0.00 to \$0.20 per contract, based on the number of Customer contracts per day that execute electronically on the exchange. This is described on page 3 of the CBOE fee schedule dated September 18, 2012, *available at* <http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf>. Additionally, NASDAQ OMX PHLX (“PHLX”) has a Customer Rebate Program that pays tiered rebates that range from \$0.00 to \$0.12 per contract, as described in the PHLX fee schedule amended September 4, 2012, *available at* <http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLXTools/PlatformViewer.asp?selectednode=chp%5F1%5F4%5F1&manual=%2Fnasdaqomxphlx%2Fphlx%2Fphlx%2Drulesbrd%2F>.

¹³ See id.

¹⁴ The Exchange makes a rebate available to Floor Brokers for the execution of QCC Orders as well as a rebate available to OFPs for the execution of Customer Electronic Complex Orders, as described in the Exchange’s Fee Schedule, dated September 1, 2012, *available at* http://globalderivatives.nyx.com/sites/globalderivatives.nyx.com/files/nyse_amex_options_fee_schedule_09_01_12.pdf.

\$750 per day and further capped at \$25,000 per month per initiating firm. Additionally, it is reasonable and equitable to exclude routed orders because the Exchange often incurs a charge for routing Customer orders to away markets. Accordingly, excluding these volumes is both reasonable and equitable.

The Exchange believes that the proposal to only make a rebate available for Customer electronic equity and ETF option ADV in excess of 120,000 contracts is reasonable and equitable because it would reasonably ensure that the Exchange will derive sufficient revenue to continue to fund the rebates, for the benefit of all participants. Further this requirement is not unfairly discriminatory because it applies to all OFPs.

The Exchange believes that the requirement for an OFP to execute an ADV of at least 200,000 Customer electronic equity and ETF contracts as a result of posting orders to the Consolidated Book (i.e., “making” liquidity) to be eligible for the rebate is reasonable, equitable and not unfairly discriminatory for the following reasons. This provision is designed to encourage OFPs to send orders to the Exchange, which will contribute to the Exchange’s depth of book as well as to the top of book liquidity. Encouraging the posting of orders is both reasonable and equitable because it enhances transparency, price discovery and liquidity for all participants on the Exchange, benefiting all investors. As the requirement will apply to all OFPs equally, it is also not unfairly discriminatory.

For these reasons, the Exchange believes that the entire proposal is reasonable, equitable and not unfairly discriminatory. Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an

environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)¹⁵ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁶ 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

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f)(2).

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-2012-50 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-2012-50. 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-2012-50 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.¹⁷

Kevin M. O'Neill
Deputy Secretary

¹⁷ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Additions underscored
 Deletions [bracketed]

NYSE AMEX OPTIONS FEE SCHEDULE*

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

Last Updated: [September] October 1, 2012

* * * * *

NYSE AMEX OPTIONS: TRADE-RELATED CHARGES

TRANSACTION FEE/CREDIT - PER CONTRACT

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Customer Electronic Complex Order ADV Tiers 35,000 to 49,999 50,000 to 69,999 70,000 to 109,999 110,000 and greater <u>Customer Electronic ADV Tiers¹⁷</u>	Rebate Per Contract For All Customer Electronic Complex Orders (retroactive to the first contract traded during the month) \$0.04 \$0.06 \$0.08 \$0.10 <u>Rebate Per Contract For All Customer Electronic Equity and ETF Option Volume Over 120,000 ADV (excludes volume from QCC Orders, Strategy Executions, Complex Orders and orders routed away in connection with the Options Order Protection and Locked/Crossed Market Plan referenced in Rule 991NY)</u>
<u>at least 2.7% of Total Industry Customer equity and ETF option ADV</u>	\$0.07
<u>at least 3.6% of Total Industry Customer equity and ETF option ADV</u>	\$0.08

at least 4.4% of Total Industry Customer equity and ETF option ADV \$0.09

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¹⁷ To be eligible, an OFP must meet the following minimum criteria. First, an OFP must execute an ADV of at least 120,000 Customer electronic equity and ETF option contracts. Volume from executions of QCC Orders, Strategy Executions and orders that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan referenced in Rule 991NY ("routed orders" for purposes of this rebate) shall not count toward either the 120,000 Customer electronic equity and ETF option ADV minimum or any of the Customer electronic equity and ETF option ADV Tiers. Volume from executions of Customer Electronic Complex Orders shall not count toward the 120,000 Customer electronic equity and ETF option ADV minimum, but shall count toward any of the Customer electronic equity and ETF option ADV Tiers. Volume attributable to the execution of QCC Orders, Strategy Executions, Customer Electronic Complex Orders or routed orders shall not receive a rebate. Second, an OFP must execute an ADV of at least 200,000 Customer electronic equity and ETF option contracts that specifically result from posting orders to the Exchange's Consolidated Order Book. In calculating the 200,000 Customer electronic equity and ETF option ADV posting requirement, the Exchange shall exclude volume attributable to QCC Orders, Strategy Executions, Electronic Customer Complex Orders and routed orders.

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Last Updated: [September] October 1, 2012