

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68156; File No. SR-NYSEMKT-2012-57]

### Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the NYSE Amex Options Fee Schedule To Remove Dividend Spreads From the List of Strategy Executions for Which Fee Caps Apply

November 5, 2012.

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 October 24, 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 remove dividend spreads from the list of strategy executions for which fee caps apply. The text of the proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://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 its Fee Schedule to remove dividend spreads from the list of strategy executions for which fee caps apply. The proposed fee change will be operative on November 1, 2012.

Under the Exchange's current Fee Schedule, there is a \$750 cap on transaction fees for strategy executions involving (a) reversals and conversions,<sup>4</sup> (b) dividend spreads,<sup>5</sup> (c) box spreads,<sup>6</sup> (d) short stock interest spreads,<sup>7</sup> (e) merger spreads,<sup>8</sup> and (f) jelly rolls<sup>9</sup> ("Strategy Executions"). The cap applies to each Strategy Execution executed on the same trading day in the same option class. Transaction fees for Strategy Executions are further capped at \$25,000 per month per initiating firm. Manual Broker Dealer and Firm Proprietary Strategy trades that do not reach the \$750 cap are billed at \$0.25 per contract.<sup>10</sup>

The Exchange proposes to remove dividend spreads from the list of

<sup>4</sup> A "reversal" is established by combining a short security position with a short put and a long call position that shares the same strike and expiration. A "conversion" is established by combining a long position in the underlying security with a long put and a short call position that shares the same strike and expiration.

<sup>5</sup> A "dividend spread" is defined as transactions done to achieve a dividend arbitrage involving the purchase, sale and exercise of in-the-money options of the same class, executed prior to the date on which the underlying stock goes ex-dividend.

<sup>6</sup> A "box spread" is defined as transactions involving a long call option and a short put option at one strike, combined with a short call option and long put at a different strike, to create synthetic long and synthetic short stock positions, respectively.

<sup>7</sup> A "short stock interest spread" is defined as transactions done to achieve a short stock interest arbitrage involving the purchase, sale and exercise of in-the-money options of the same class.

<sup>8</sup> A "merger spread" is defined as transactions done to achieve a merger arbitrage involving the purchase, sale and exercise of options of the same class and expiration date, each executed prior to the date on which shareholders of record are required to elect their respective form of consideration, i.e., cash or stock.

<sup>9</sup> A "jelly roll" is created by entering into two separate positions simultaneously. One position involves buying a put and selling a call with the same strike price and expiration. The second position involves selling a put and buying a call, with the same strike price, but with a different expiration from the first position.

<sup>10</sup> All Royalty fees associated with Strategy Executions on Index and Exchange Traded Funds are passed through to trading participants on the Strategy Executions on a pro-rata basis. These Royalty fees are not included in the calculation of the \$750 per trade cap or the \$25,000 per month strategy fee cap. FLEX Option trades also are not eligible for strategy treatment. In addition, any qualifying Strategy Execution executed as a Qualified Contingent Cross order is ineligible for the fee caps.

Strategy Executions that are subject to the fee caps. The fee caps may provide an incentive to engage in the Strategy Executions. The Exchange has determined that it does not wish to continue to provide an incentive via its Fee Schedule to engage in dividend spread trading because this strategy may encourage high volumes of trading of certain securities near the ex-dividend date and present operational risks to market participants with respect to clearing, exercise, and assignment or other issues that may prevent the market participant from the timely exercise of call options and collecting the dividend owed. As such, the Exchange proposes to remove dividend spreads from the Strategy Executions fee caps.

The Exchange also proposes to specify that, as a result of removing dividend spreads from the list of Strategy Executions that are subject to the fee caps, the type of execution that the Exchange currently considers to be a dividend spread<sup>11</sup> would no longer be excluded when determining whether certain other caps and thresholds that exclude Strategy Executions have been satisfied, as described in the Fee Schedule. This would apply to (i) the \$350,000 cap and the volume threshold of 3,500,000 contracts described in endnote 5 in the Fee Schedule (ii) the \$100,000 fee cap described in endnote 6 of the Fee Schedule, (iii) the 75% volume threshold related to Market Maker ATP fees, (iv) the 120,000 average daily volume ("ADV") threshold related to Customer Electronic ADV Tiers, and (v) the 120,000 and 200,000 volume thresholds described in endnote 17 of the Fee Schedule as well as the rebate referenced therein.<sup>12</sup> Currently, all Strategy Executions, including dividend spreads, are excluded from these fee caps and volume thresholds. However, because dividend spreads would no longer be considered a Strategy Execution for purposes of billing on the Exchange, the caps and thresholds would no longer exclude such executions. However, the Exchange does not anticipate that this would result in a significant amount of such executions occurring on the Exchange. In this regard, the Exchange believes that the elimination of the \$750 fee cap would eliminate the incentive for market participants to effect such executions on the Exchange.

The proposed change is not otherwise intended to address any other matter, and the Exchange is not aware of any significant problem that the affected

<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.

<sup>11</sup> See *supra* note 5.

<sup>12</sup> The Exchange proposes to remove references to dividend spreads from endnotes 5 and 6.

market participants would have in complying with the proposed change.<sup>13</sup>

## 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"),<sup>14</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act,<sup>15</sup> in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed change is reasonable because the fee caps may provide an incentive to engage in dividend spreads and the Exchange has determined that it no longer wishes to offer any potential incentive via its Fee Schedule in light of the operational risks that dividend spreads may present. The Exchange also believes that the proposed change is equitable and not unfairly discriminatory because it would apply equally to all market participants and because the remaining Strategy Executions that would continue to be subject to the fee caps do not present the same type of potential operational risks.

Furthermore, it is reasonable to specify that the type of execution that the Exchange currently considers to be a dividend spread<sup>16</sup> would no longer be excluded from the fee caps and volume thresholds described in the Fee Schedule. Specifically, because dividend spreads would no longer be considered a Strategy Execution for purposes of billing on the Exchange, the fee caps and volume thresholds would no longer exclude such executions. However, the Exchange does not anticipate that this would result in a significant amount of such executions occurring on the Exchange. In this regard, the Exchange believes that the elimination of the \$750 fee cap would eliminate the incentive for market participants to effect such executions on the Exchange. This would also be equitable and not unfairly discriminatory because it would not differentiate between any particular market participants when determining whether the fee caps and volume thresholds have been reached with respect to the inclusion of the type of

execution that the Exchange currently considers to be a dividend spread.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. 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)<sup>17</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>18</sup> thereunder, because it establishes a due, fee, or other charge imposed by the NYSE MKT.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File

Number SR-NYSEMKT-2012-57 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-2012-57. This file number should be included on the subject line if email 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 Web site (<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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549-1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site 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-NYSEMKT-2012-57 and should be submitted on or before November 30, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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<sup>13</sup> The Exchange is proposing a minor non-substantive change to the Fee Schedule to correct the grammar of the existing text therein.

<sup>14</sup> 15 U.S.C. 78f(b).

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

<sup>16</sup> See *supra* note 5.

<sup>17</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>18</sup> 17 CFR 240.19b-4(f)(2).

<sup>19</sup> 17 CFR 200.30-3(a)(12).