

public interest, to adopt the proposed amendments to Rule 7240(b)(3)(iii).

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

The Exchange does not believe the proposed rule change represents any undue burden on competition or will impose any burden on competition among exchanges in the listed options marketplace not necessary or appropriate in furtherance of the purposes of the Act. The features of the proposed rule change will apply equally to all Participants and are available to all Participants.

Submitting a Complex Order is entirely voluntary and Participants will determine which type of order they wish to submit, if any, to the Exchange. The Exchange operates in a highly competitive marketplace with other competing exchanges and market participants can readily direct their Complex Order flow to any these exchanges if they so choose.

#### *C. 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 comments on the proposed rule change.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

### **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-BOX-2013-38 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-BOX-2013-38. 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 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BOX-2013-38, and should be submitted on or before August 26, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-70071; File No. SR-NYSEMKT-2013-65]

### **Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Amex Options Fee Schedule To Increase the Royalty Fees Applicable to Non-Customer Transactions in Options on the Russell 2000 Index**

July 30, 2013.

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 July 19, 2013, 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 the Substance of the Proposed Rule Change**

The Exchange proposes to amend the NYSE Amex Options Fee Schedule to increase the Royalty Fees applicable to non-Customer transactions in options on the Russell 2000 Index ("RUT"). 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.

<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>18</sup> 17 CFR 200.30-3(a)(12).

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

1. Purpose

The Exchange proposes to amend the NYSE Amex Options Fee Schedule to increase the Royalty Fees applicable to non-Customer transactions in options on RUT from \$0.15 to \$0.40 per contract. Royalty Fees charged by the Exchange reflect the pass-through charges associated with the licensing of certain products, including RUT. The proposed increase in the Royalty Fee for RUT from \$0.15 to \$0.40 per contract is a reflection of the increased cost the Exchange has incurred in securing a license agreement from the index provider. Absent the license agreement, the Exchange and its participants would be unable to trade RUT options and would lose the ability to hedge small cap securities with a large notional value, European-style cash-settled index option.

The proposed change will be operative on August 1, 2013.

The proposed change is not otherwise intended to address any other issues relating to Royalty Fees and the Exchange is not aware of any problems that market participants would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>4</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>5</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 increase in the Royalty Fee from \$0.15 to \$0.40 for options on RUT is reasonable because Royalty Fees charged by the Exchange reflect the pass-through charges associated with the licensing of certain products, including RUT. The proposed increase is therefore a direct result of an increase in the licensing fee charged to the Exchange by the index provider and the owner of the intellectual property associated with the index.

The Exchange believes that the proposed increase in the Royalty Fee from \$0.15 to \$0.40 for options on RUT is equitable and not unfairly

discriminatory because Royalty Fees are assessed only on those non-Customer participants who choose to transact in a product that requires the Exchange to obtain a licensing agreement based on the intellectual property rights associated with the product, as is the case with RUT. The Exchange further believes that this is equitable and not unfairly discriminatory because RUT has some products that can give participants a similar economic exposure without an associated Royalty Fee. In particular, there are exchange-traded fund ("ETF") options that are based on RUT, such as the iShares Russell 2000 ETF traded under the symbol IWM. This means that participants that would be liable for the Royalty Fees can avoid them by transacting in alternative products, if they so choose.

The Exchange assesses the Royalty Fees on non-Customer participants such as NYSE Amex Market Makers, non-NYSE Amex Market Makers, ATP Firms, Professional Customers, and Broker Dealers.<sup>6</sup> The Exchange believes that it is equitable and not unfairly discriminatory to continue to not charge Royalty Fees to Customers, which has been the case since the Exchange implemented Royalty Fees, because the Exchange is attempting to continue to attract Customer order flow in RUT options, which in turn can interact with other participants' order flow on the Exchange to their benefit.<sup>7</sup>

For the reasons given above, the Exchange believes that the proposed increase from \$0.15 to \$0.40 for the Royalty Fee charged to non-Customer transactions in RUT options is reasonable, equitable, and not unfairly discriminatory. Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

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

In accordance with Section 6(b)(8) of the Act,<sup>8</sup> 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. By providing all participants on the Exchange with the ability to hedge via RUT options, the Exchange is not placing any burden on competition among its various participants. The

Exchange further notes that the licensing agreement it has secured is not an exclusive agreement as at least two other option exchanges continue to trade RUT options and charge a fee related to such license.<sup>9</sup> As such, there is no burden on competition among exchanges for the trading of RUT options.

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.

*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>10</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>11</sup> thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>12</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and

<sup>9</sup> See Chicago Board Options Exchange ("CBOE") Fee Schedule, available at <http://www.cboe.com/TradingResources/FeeSchedule.aspx>. The Exchange's affiliate NYSE Arca, Inc. also has proposed to increase its Royalty Fee for RUT options from \$0.15 to \$0.40 per contract. See SR-NYSEArca-2013-76.

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

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

<sup>12</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>6</sup> See endnote 11 of the Fee Schedule.

<sup>7</sup> See Securities Exchange Act Release No. 53968 (June 9, 2006), 71 FR 34971 (June 16, 2006) (SR-Amex-2006-56).

<sup>8</sup> 15 U.S.C. 78f(b)(8).

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

<sup>5</sup> 15 U.S.C. 78f(b)(4) and (5).

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-2013-65 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-2013-65. 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 at 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 such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEMKT-2013-65, and should be submitted on or before August 26, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-70067; File No. SR-NYSEARCA-2013-74]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Modifying the Content of the NYSE Arca Trades Digital Media Data Feed

July 30, 2013.

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 July 18, 2013, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II 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 revise the description of the NYSE Arca Trades Digital Media data feed. 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.

<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.

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

##### 1. Purpose

The Exchange proposes to revise the description of the NYSE Arca Trades Digital Media data feed.

In 2009, the Securities and Exchange Commission ("Commission") approved the NYSE Arca Trades data feed and certain fees for it.<sup>4</sup> NYSE Arca Trades is a NYSE Arca-only market data feed that allows a vendor to redistribute on a real-time basis the same last sale information that the Exchange reports under the Consolidated Tape Association ("CTA") Plan for inclusion in the CTA Plan's consolidated data streams and certain other related data elements.

Specifically, NYSE Arca Trades includes the real-time last sale price, time, size, and bid/ask quotations for each security traded on the Exchange and a stock summary message. The stock summary message updates every minute and includes NYSE Arca's opening price, high price, low price, closing price, and cumulative volume for the security.

In April 2013, the Exchange began offering a new version of NYSE Arca Trades called "NYSE Arca Trades Digital Media," which was described as including the real-time last sale price, time, size, and stock summary message for each security traded on the Exchange, but not including access to the bid/ask quotation included with the NYSE Arca Trades product.<sup>5</sup> At that time, the Exchange believed that it could efficiently remove the bid/ask information from the feed but has since determined that the time and resources required to do so would be significant and not commensurate with the need for the change. As such, the NYSE Arca Trades Digital Media product is offered with the bid/ask component included, and as such does not have different content than the regular NYSE Arca Trades data fee. The only difference between the products is the permitted distribution channels. NYSE Arca Trades Digital Media permits market data vendors, television broadcasters, Web site and mobile device service providers, and others to distribute the data product to their customers for viewing via television, Web site, and mobile devices. They are not be [sic] permitted to provide NYSE Arca Trades

<sup>4</sup> See Securities Exchange Act Release No. 59598 (Mar. 18, 2009), 74 FR 12919 (Mar. 25, 2009) (SR-NYSEARCA-2009-05).

<sup>5</sup> See Securities Exchange Act Release No. 69274 (Apr. 2, 2013), 78 FR 20986 (Apr. 8, 2013) (SR-NYSEARCA-2013-30).

<sup>13</sup> 17 CFR 200.30-3(a)(12).