

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, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of BSECC. 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-BSECC-2013-001 and should be submitted on or before January 2, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>40</sup>

**Kevin M. O'Neill,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71015; File No. SR-NYSEMKT-2013-98]

### Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Amex Options Fee Schedule To Include FLEX Option Transactions in the Strategy Execution Fee Cap

December 6, 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 November 26, 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 ("Fee Schedule") to include FLEX Option transactions in the strategy execution fee cap. The Exchange proposes to implement the fee change effective December 1, 2013.<sup>4</sup> 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 Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to amend the Fee Schedule to include FLEX Option transactions in the strategy execution fee cap. The Exchange proposes to implement the fee change effective December 1, 2013.

A \$750 cap currently applies to transaction fees for strategy executions involving (a) reversals and conversions, (b) box spreads, (c) short stock interest spreads, (d) merger spreads, and (e) jelly rolls.<sup>5</sup> Transaction fees for strategy

<sup>4</sup> The Exchange notes that it has previously filed with the Securities and Exchange Commission a proposed rule change to amend the Fee Schedule relating to co-location fees (File No. SR-NYSEMKT-2013-97). Exhibit 5 to SR-NYSEMKT-2013-97 specified an effective date for the revised Fee Schedule of December 3, 2013 (changed from November 8, 2013). Exhibit 5 to the instant proposed rule change specifies an effective date of December 1, 2013 (changed from November 8, 2013). On December 1, 2013, the Exchange will update the Fee Schedule to reflect the fee change reflected in the instant proposed rule change, with an effective date of December 1, 2013. On December 3, 2013, the Exchange, subject to effectiveness of SR-NYSEMKT-2013-97, will further update the Fee Schedule to reflect the changes set forth in SR-NYSEMKT-2013-97, with an effective date of December 3, 2013.

<sup>5</sup> A "reversal" is established by combining a short security position with a short put and a long call

executions are further capped at \$25,000 per month per initiating firm. The fee cap generally applies to all strategy executions executed in standard option contracts (as opposed to mini option contracts) on the same trading day in the same option class. However, several types of transactions are excluded from the fee cap, including transactions in FLEX Options.<sup>6</sup>

The Exchange proposes to eliminate the exclusion of FLEX Option transactions from the strategy execution fee cap. As a result, a FLEX Option transaction that is part of a strategy execution and that is not otherwise excluded would be included in the fee cap. The proposed change is designed to encourage ATP Holders to engage in both additional FLEX Option transactions and strategy executions on the Exchange. The proposed change is also designed to compete with other markets that apply similar fee caps but that do not exclude FLEX Option transactions from such fee caps.<sup>7</sup>

The proposed change is not otherwise intended to address any other issues, and the Exchange is not aware of any problems that ATP Holders 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>8</sup> in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,<sup>9</sup> in particular, because it provides for the equitable allocation of reasonable dues, fees, and

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. 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. 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. 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. 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>6</sup> A FLEX Option is a customized options contract. See, e.g., NYSE Amex Options Rule 900G.

<sup>7</sup> For example, the Exchange understands that the Chicago Board Options Exchange, Incorporated ("CBOE") includes FLEX Option transactions in certain of the fee caps that apply on that market.

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

<sup>9</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>40</sup> 17 CFR 200.30-3(a)(12).

<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.

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 including FLEX Option transactions in the strategy execution fee cap may encourage ATP Holders to execute additional FLEX Options and strategy executions on the Exchange. The proposed change would therefore result in greater amounts of liquidity on the Exchange, which should benefit the quality of the Exchange's market and investors, generally. This proposed change is further reasonable because the Exchange understands that other option markets similarly include FLEX Option transactions in certain fee caps applicable to strategy executions on such other markets.<sup>10</sup> The Exchange believes that the proposed change is equitable and not unfairly discriminatory because FLEX Options are not differentiated from other transactions for purposes of other pricing categories within the Fee Schedule. The proposed change would therefore eliminate a potential disincentive for ATP Holders to transact in FLEX Options on the Exchange while at the same time encouraging ATP Holders to engage in additional strategy executions.

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.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

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

In accordance with Section 6(b)(8) of the Act,<sup>11</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. The proposed change could increase competition on the Exchange by including FLEX Option transactions in the strategy execution fee cap. This could result in ATP Holders engaging in both additional FLEX Option transactions and strategy executions in order to reach the fee cap levels. The proposed change could also increase competition between the Exchange and other option markets by making the Exchange a more desirable market with

respect to pricing for FLEX Option transactions and strategy executions.

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>12</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>13</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>14</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 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-2013-98 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-2013-98. 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-2013-98, and should be submitted on or before January 2, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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<sup>10</sup> See *supra* note 7.

<sup>11</sup> 15 U.S.C. 78f(b)(8).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(2).

<sup>14</sup> 15 U.S.C. 78s(b)(2)(B).

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