

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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. 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-FINRA-2014-005 and should be submitted on or before March 12, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷³

Kevin M. O'Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71531; File No. SR-NYSEMKT-2014-16]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Amex Options Fee Schedule in a Number of Different Ways

February 12, 2014.

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 January 31, 2014, 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") in a number of different ways. The proposed changes

will be operative on February 3, 2014. The text of the proposed rule change is available on the Exchange's Web site 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule in a number of different ways as described below. The proposed changes will be operative on February 3, 2014.

First, the Exchange proposes to eliminate the existing Professional Customer and Broker Dealer Electronic average daily volume ("ADV") Tiers For Taking Liquidity and the associated endnote 16. Instead, the Exchange will adopt a flat fee of \$0.32 per contract for electronically executed Professional Customer and Broker Dealer volumes. The fee of \$0.32 per contract is the same rate presently charged to Professional Customers and/or Broker Dealers for their electronic volumes up to and including 16,999 contracts of ADV in taking liquidity volume.⁴

Second, the Exchange proposes to make changes to what qualifies as a Firm Facilitation trade for purposes of the Fee Schedule by modifying Firm Facilitation to read as Firm Facilitation Manual and making edits to the associated endnote 6. Currently, Firm Facilitation trades are charged a rate of \$0.00 per contract and are defined in endnote 6 as follows: "The firm facilitation rate applies to trades that clear in the firm range (clearance account "F") and customer on the contra (clearance account "C") with the same clearing firm symbol on both sides of the trade". At this time, the Exchange

does not offer an electronic means for crossing a facilitation trade.⁵ Consequently, the only manner that a Facilitation Cross Transaction can be executed is by trading in open outcry.⁶ The Exchange proposes to revise endnote 6 to make clear that the Firm Facilitation rate of \$0.00 per contract will apply only to those Facilitation Cross Transactions executed manually or in open outcry. In addition, the Exchange proposes to capitalize and revise the term "firm facilitation" as it appears in endnote 6 to "Firm Facilitation Manual" to conform to the amended Fee Schedule.

Third, the Exchange proposes to eliminate the Firm Proprietary Electronic ADV Tiers. Instead, the Exchange proposes to adopt a flat fee of \$0.32 per contract for electronically executed Firm Proprietary volumes. The fee of \$0.32 per contract is the same rate presently charged to Firms Proprietary trades for their electronic volumes up to and including .21% of Total Industry Customer equity and Exchange-Traded Funds ("ETF") option ADV.⁷

Fourth, the Exchange proposes a non-substantive change to the Fee Schedule designed to make it easier to navigate. The Exchange recently submitted a filing to adopt a Market Access and Connectivity Subsidy (the "MAC Subsidy").⁸ In proposing the MAC

⁵ Although the Exchange does not currently offer an electronic means of executing Facilitation Cross Transactions, Firms have in the past received the Firm Facilitation rate for electronic trades by sheer happenstance, which would happen when an electronic Firm Proprietary order traded with an electronic Customer order where both sides of the trade had the same clearing firm symbol. When this has occurred, the Firm did not receive any participation entitlements or priority advantages, etc. that would normally be associated with a Facilitation Cross Transaction. The Exchange believes that, when this has occurred, it appropriately charged any Firms the Firm Facilitation rate of \$0.00 for electronic trades and the Exchange will continue to charge this rate under these circumstances, until the effective date of this filing. Upon the effective date of this filing, if an electronic Firm Proprietary order were to execute against an electronic Customer order, where the same clearing firm symbol is present on both sides of the trade, the Firm Proprietary order would be subject to the Firm Proprietary Electronic charge of \$0.32 per contract, as proposed herein and discussed below, and the electronic Customer order would be subject to the current Non BD Customer Electronic charge of \$0.00 per contract.

⁶ See Rule 934.1NY (Facilitation Cross Transactions).

⁷ See Securities Exchange Act Release 34-71275 (January 9, 2014), 79 FR 2723 (January 15, 2014) (SR-NYSEMKT-2014-04).

⁸ See SR-NYSEMKT-2014-12. Because the Exchange has previously filed the MAC Subsidy filing, which is immediately effective upon filing, the Exchange has not included as new rule text in the accompanying Exhibit 5 the subsection entitled "NYSE AMEX OPTIONS: TRADE-RELATED REBATES OR SUBSIDIES FOR STANDARD

Continued

⁷³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ See Securities and Exchange Release No. 34-68407 (December 11, 2012), 77 FR 74710 (December 17, 2012) (SR-NYSEMKT-2012-74).

Subsidy, the Exchange added a new section to the end of the Fee Schedule entitled, “NYSE AMEX OPTIONS: TRADE-RELATED REBATES OR SUBSIDIES FOR STANDARD OPTIONS”. The Exchange believes that creating this separate section for trade-related rebates and subsidies would make it easier for participants to navigate and locate the relevant parts of the Fee Schedule. Accordingly, the Exchange is proposing to move the existing subsection entitled “Customer Electronic Complex Order ADV Tiers” and the associated per contract rebates

to this recently added section of the Fee Schedule (i.e., “NYSE AMEX OPTIONS: TRADE-RELATED REBATES OR SUBSIDIES FOR STANDARD OPTIONS”), with no other change to either the qualifying volumes, the tiers, or the rebate per contract, per tier associated with the existing Customer Electronic Complex Order ADV Tiers. As proposed, the Customer Electronic Complex Order ADV Tiers and the associated per contract rebates would appear directly below the Mac [sic] Subsidy rebate in the Fee Schedule.

Fifth, the Exchange proposes to modify the existing criteria and tiers used by Order Flow Providers (“OFPs”) to qualify and earn a rebate under the Customer Electronic ADV Tiers. The Exchange proposes to eliminate the existing Customer Electronic ADV Tiers and will instead adopt a single tier (Tier 1) with two parts—A and B—each of which provides OFPs an alternate means of earning a rebate. The newly proposed Tier 1A and Tier 1B, and language describing the qualifying criteria and the associated rebate is shown below:

OFP Electronic ADV Tiers	Rebate Per Contract For Certain Electronic Equity and ETF Option Volume (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).
TIER 1A—Electronic Customer volume of at least 2.0% of Total Industry Customer equity and ETF option ADV—rebate paid on Customer electronic contract volumes in excess of 200,000 ADV only.	\$0.06.
OR	
TIER 1B—Electronic volume of at least .75% of Total Industry Customer equity and ETF option ADV where 40% of the electronic volume consists of Non-NYSE Amex Options Market Maker, Firm, Professional Customer and/or Broker Dealer—rebate paid on all Customer electronic contract volumes.	\$0.06.

The Exchange proposes that both Tier 1A and Tier 1B would be based on the Total Industry Customer equity and ETF option ADV, as is current practice.⁹ For reference, the 3-month average of Total Industry Customer equity and ETF option ADV as of December 31, 2013 was 11,867,765 contracts. Under the current proposal, an OFP would be eligible to earn a rebate under one of the two tiers. First, to be eligible to receive the \$0.06 per contact rebate under Tier 1A, an OFP would need to have executed electronic Customer ADV of at least 2.0% of Total Industry Customer equity and ETF options volume or 237,355 contracts ADV. Under Tier 1A, the rebate would only be paid on electronic Customer volumes in excess of 200,000 contracts ADV. Alternatively, to be eligible to receive the \$0.06 per contact rebate under Tier 1B, an OFP would need to have executed electronic ADV of at least .75% of Total Industry Customer equity and ETF options volume or 89,008 contracts ADV and, of those 89,008 contracts ADV executed electronically, the OFP must have 40%—or at least 35,603 contracts—of electronic ADV executed on behalf of

any combination of Non-NYSE Amex Options Market Maker, Firm Proprietary, Professional Customer or Broker Dealer business. As proposed, provided the foregoing criteria are met, the rebate under Tier 1B would be paid on all Customer electronic volumes.

As with the existing Customer Electronic ADV Tiers, as proposed, volumes attributable to Qualified Contingent Cross (“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 would not count toward achieving either Tier 1A or Tier 1B and would not be eligible for the per contract rebate that might be paid under Tier 1A or Tier 1B. In the event that an OFP qualifies for a rebate under both Tier 1A and Tier 1B, the Exchange proposes that the OFP would only be paid under the Tier—A or B—that yields the greatest total rebate and the Exchange proposes to reflect this change in a revised endnote 17. In addition, the Exchange proposes to move the modified Customer Electronic ADV Tiers to the end of the newly proposed

subsection of the Fee Schedule entitled “NYSE AMEX OPTIONS: TRADE-RELATED REBATES OR SUBSIDIES FOR STANDARD OPTIONS”¹⁰ and retitle that section “OFP Electronic ADV Tiers” to more accurately reflect how different types of electronic volumes will now be capable of earning a rebate for the OFP on certain types of electronic Customer volumes.

Finally, the Exchange is proposing to eliminate the service fee for any capped participants who are trading as part of a QCC. Currently, the Exchange assesses a service fee or surcharge for Firms, Specialists, e-Specialists, and Market Makers (both Directed and non-Directed) who have exceeded their monthly fee cap. The amount of the service fee is the same for all enumerated participants and only varies based on whether the contra party is a Customer, in which case the service fee is \$0.10, or a non-Customer in which case the service fee is \$0.05. With this proposed change, the service fee would be eliminated such that any Firm, Specialist, e-Specialist or Market Maker (Directed or non-Directed) that has exceeded their applicable monthly fee

OPTIONS”, even though the MAC Subsidy is not operative until February 3, 2014.

⁹ Total Industry Customer equity and ETF option ADV will be that which is reported for the month by The Options Clearing Corporation (“OCC”) in the month in which the OFP may earn a rebate for certain electronic volumes. For example, February

2014 Total Industry Customer equity and ETF option ADV will be used in determining what, if any, rebate a qualifying OFP may be eligible for on select electronic Customer volumes it executes in February 2014 relative to Total Industry Customer equity and ETF option ADV. Total Industry Customer equity and ETF option ADV comprises

those equity and ETF 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 or ETF security.

¹⁰ See *supra* note 8.

cap¹¹ would not pay any incremental service fee when they participate in a QCC trade. Concurrent with this change, the Exchange would also adopt language to limit the amount of the Floor Broker Rebate for Executed QCC orders to a maximum of \$375,000 per month per Floor Brokerage firm, which changes would be reflected in the section for "NYSE AMEX OPTIONS: QUALIFIED CONTINGENT CROSS ("QCC") FEES" and related endnotes 5, 6 and 15.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)¹² of the Act, in general, and Section 6(b)(4) and (5)¹³ of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Exchange believes that the proposal to eliminate the existing Professional Customer and Broker Dealer Electronic ADV Tiers For Taking Liquidity and to instead adopt flat, per contract, pricing of \$0.32 is reasonable, equitable and not unfairly discriminatory for the following reasons. First, the Exchange notes that the proposed per contract fee of \$0.32 is within the range of fees charged by other exchanges for Professional Customers and Broker Dealers.¹⁴ Further, the Exchange notes that the proposed \$0.32 fee is the same fee that the Exchange currently charges for Professional Customers and Broker Dealers who execute electronically less than 17,000 contracts per day in taking liquidity volume, and, as noted by the Exchange when it adopted the fee, the fee is reasonable, equitable and not unfairly discriminatory.¹⁵ For these reasons, the Exchange believes that the proposal to charge \$0.32 per contract for

electronic volumes from Professional Customers and Broker Dealers while eliminating volume-based tiers at the same time is reasonable, equitable and not unfairly discriminatory, particularly as it will apply equally to all Professional Customers and Broker Dealers electronically executed volumes on the Exchange.

In addition, the Exchange believes that the proposal to modify the criteria for what qualifies as a Firm Facilitation trade for purposes of the Fee Schedule is reasonable given that the change will make clear that Firms wishing to qualify for the Firm Facilitation charge of \$0.00 per contract must do so using the procedures of Rule 934.1NY Facilitation Cross Transactions. Further, the Exchange believes this proposed change is also equitable and not unfairly discriminatory as it will apply equally to all Firms that trade on the Exchange. The Exchange notes that other exchanges that offer open outcry trading have also limited the application of the Firm Facilitation rate to those trades effected in open outcry.¹⁶ For these reasons the Exchange believes the proposal to limit the application of the Firm Facilitation rate to those transactions executed in open outcry utilizing the procedures set forth in Rule 934.1NY are reasonable, equitable and not unfairly discriminatory.

The Exchange likewise believes that the proposal to eliminate the existing Firm Proprietary Electronic ADV Tiers and to adopt flat per contract pricing of \$0.32 per contract is reasonable, equitable and not unfairly discriminatory for the following reasons. First, the Exchange notes that the proposed per contract fee of \$0.32 is within the range of fees charged by other exchanges for Firm Proprietary Electronic volumes.¹⁷ Further, the Exchange notes that the proposed fee is the same fee that the Exchange currently charges for Firms that execute electronically less than .21% of Total

Industry Customer equity and ETF option ADV, and, as noted by the Exchange when it adopted the fee, the fee is reasonable, equitable and not unfairly discriminatory.¹⁸ For these reasons, the Exchange believes that the proposal to charge \$0.32 per contract for electronic volumes from Firms and to eliminate volume-based tiers at the same time is reasonable, equitable and not unfairly discriminatory, particularly as it will apply equally to all Firm Proprietary electronically executed volumes on the Exchange.

The Exchange believes that the proposal to re-locate the existing Customer Electronic Complex Order ADV Tiers to a new section of the Fee Schedule, entitled "NYSE AMEX OPTIONS: TRADE RELATED REBATES OR SUBSIDIES FOR STANDARD OPTIONS" is reasonable, equitable and not unfairly discriminatory as it will make it easier for participants to locate all standard options rebates and/or subsidies within the Fee Schedule. The Exchange further notes that there are no changes, aside from the location of the text describing the existing Customer Electronic Complex Order ADV Tiers and, as the Exchange noted when it adopted these volume-based tiers, the rebates are reasonable, equitable and not unfairly discriminatory.¹⁹

The Exchange believes that the proposal to modify the existing criteria and tiers used by Order Flow Providers ("OFPs") to qualify and earn a rebate under the Customer Electronic ADV Tiers by the adoption of Tier 1A and Tier 1B is reasonable, equitable and not unfairly discriminatory for the following reasons.

First, the Exchange is providing OFPs with two alternate means of potentially earning a rebate on certain of their electronic Customer volumes. Under the first, Tier 1A, an OFP would need to have executed electronic Customer ADV of at least 2.0% of Total Industry Customer equity and ETF options volume, in which case they would be eligible for a rebate of \$0.06 per contract on certain Customer electronic volumes over 200,000 contracts ADV. Under the second, Tier 1B, an OFP would need to have executed electronic ADV of at least .75% of Total Industry Customer equity and ETF options volume, of which 40% must be comprised of any combination of Non-NYSE Amex Options Market Maker, Firm, Professional Customer or Broker Dealer business in order to qualify for the rebate of \$0.06 per

¹¹ See NYSE Amex Options Fee Schedule available here https://globalderivatives.nyx.com/sites/globalderivatives.nyx.com/files/nyse_amex_options_fee_schedule_for_1-8-14.pdf at endnotes 5 and 6 (describing Market Maker and Firm monthly fee caps).

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(4) and (5).

¹⁴ See Chicago Board of Options ("CBOE") Fee Schedule available at <http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf> (charging a \$0.30 per contract for Professional Customers and either \$0.45 or \$0.60 per contract in Penny/Non-Penny issues for Broker Dealers). See also Nasdaq Options Market ("NOM") Fee Schedule available at <http://www.nasdaqtrader.com/Micro.aspx?id=OptionsPricing> (charging \$0.49 per contract in Penny issues and \$.89 per contract in Non-Penny issues to both Professional Customers and Broker Dealers who take liquidity).

¹⁵ See *supra* note 4.

¹⁶ See NASDAQ OMX PHLX ("PHLX") Fee Schedule available at <http://www.nasdaqtrader.com/Micro.aspx?id=PHLXPricing> ("The Firm Floor Options Transaction Charges will be waived for members executing facilitation orders pursuant to Exchange Rule 1064 [Crossing, Facilitation and Solicited Orders] when such members are trading in their own proprietary account (including 'Cabinet Options Transaction Charges')").

¹⁷ See International Securities Exchange ("ISE") Fee Schedule, available at http://www.ise.com/assets/documents/OptionsExchange/legal/fee/ISE_fee_schedule.pdf (charging a flat fee of \$0.30 per contract for Firm Proprietary transactions in Non-Select Symbols). See also NOM Fee Schedule, available at <http://www.nasdaqtrader.com/Micro.aspx?id=OptionsPricing> (charging a flat fee of \$0.49 per contract in Penny issues and \$0.89 per contract in Non-Penny issues to Firms who take liquidity).

¹⁸ See *supra* note 7.

¹⁹ See Securities and Exchange Release No. 34-67635 (August 9, 2012), 77 FR 49035 (August 15, 2012) (SR-NYSEMKT-2012-34).

contract for their electronic Customer volumes. Offering OFPs an alternate means to earn a rebate is nothing new or novel. In fact, at least one exchange offers OFPs three different ways to earn the same rebate per contract.²⁰ The Exchange believes that offering OFPs a \$0.06 per contract rebate under the terms outlined in Tier 1A—beyond the level of 200,000 contracts ADV—is reasonable as the rebate is designed to attract additional Customer volumes to the Exchange which benefits all other participants by increasing the opportunities to trade, enhancing transparency and price discovery. By only offering the rebate to qualifying OFPs for Customer electronic volumes in excess of 200,000 contracts ADV the Exchange is intending to attract new business to the Exchange and to avoid paying for existing business, which the Exchange believes is a reasonable approach lest the Exchange risk raising costs for other participants to fund a rebate for existing business.

Similarly, the Exchange believes that offering OFPs a \$0.06 per contract rebate under the terms and conditions outlined in Tier 1B is also reasonable as the rebate is designed to attract additional Customer volumes along with Non-NYSE Amex Options Market Maker, Firm Proprietary, Professional Customer and Broker Dealer volumes to the Exchange which benefits all other participants by increasing the opportunities to trade, enhancing transparency and price discovery. Requiring a certain level and type of activity before qualifying for a rebate on a different type of activity is also not new or novel and has not been viewed as being unreasonable, inequitable or unfairly discriminatory. Specifically, the Exchange notes the fee arrangements available on two other exchanges that require participants to commit to a certain level and type of activity before qualifying for a rebate on other activity.²¹

²⁰ See NOM Fee Schedule available here: <http://www.nasdaqtrader.com/Micro.aspx?id=OptionsPricing> and Tiers 4, 5, and 6 (The Customer and Professional Rebate to Add Liquidity in Penny Pilot Options) (offering alternate means of achieving a \$0.45 rebate for NOM participants with Customer and Professional volumes that add liquidity).

²¹ See CBOE Fee Schedule available here: <http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf> (offering the CBOE Proprietary Products Sliding Scale which provides Clearing Trading Permit Holders reduced rates in CBOE Proprietary Products (SPX, VIX, etc.) if the Clearing Trading Permit Holder achieves certain ADV thresholds in multiply-listed options). See also PHLX Fee Schedule available here <http://www.nasdaqtrader.com/Micro.aspx?id=PHLXPricing> (offering the Customer Rebate Program and Tier 3 where, “The Exchange

In addition, the Exchange believes that excluding certain volumes from being eligible for the rebate, specifically QCC volumes, electronic Customer Complex volumes, Strategy Executions and orders routed away in conjunction with the Options Order Protection and Locked/Crossed Market Plan referenced in Rule 991NY is also reasonable as these volumes are already eligible for either reduced rates, rebates or capped fees and offering additional discounts on these volumes is not desirable as to do so may lead to increased costs for other participants.

As the Exchange noted when it established OFP Rebates with exclusions for the above-described volumes, excluding such volumes is reasonable, equitable and not unfairly discriminatory as well.²² The Exchange also believes that paying OFPs that qualify under both Tier 1A and Tier 1B from the tier that generates the largest rebate for the OFP is also reasonable, as to do otherwise might result in having to raise fees for other participants in order to fund a rebate for any participant who qualified for both Tier 1A and Tier 1B. As the proposed OFP Electronic ADV Tiers and the associated rebates will be available to all participants who route electronic Customer business, the Exchange believes the proposal is also equitable and not unfairly discriminatory.

The Exchange believes that the proposal to eliminate the service fee of either \$0.10 or \$0.05 per contract for any capped participants who are trading as part of a QCC is also reasonable, equitable and not unfairly discriminatory. First, the Exchange notes that other exchanges that offer QCC trading do not charge a service fee for capped participants who are party to a QCC trade.²³ The Exchange believes that the elimination of the service fee for capped participants will better enable our Floor Broker participants to compete for QCC orders, enhancing the competitiveness of the Exchange relative to those exchanges that either do not charge a service fee for capped participants engaged in QCC trades or those that pay a higher per contract

will pay a \$0.02 per contract rebate in addition to the applicable Tier 3 rebate to a Specialist or Market Maker or its member or member organization affiliate under Common Ownership provided the Specialist or Market Maker has reached the Monthly Market Maker Cap, as defined in Section II”).

²² See Securities and Exchange Release No. 34–68036 (October 11, 2012), 77 FR 63900 (October 17, 2012) (SR–NYSEMKT–2012–50).

²³ See PHLX Fee Schedule available here <http://www.nasdaqtrader.com/Micro.aspx?id=PHLXPricing> (QCC Transaction Fees).

rebate for QCC volumes.²⁴ To enhance the competitiveness of the Exchange is reasonable, as higher overall volume levels on the Exchange can benefit all participants potentially in the form of more complete information and enhanced price discovery. The Exchange also believes that the elimination of the of the [sic] service fee for capped participants that are party to a QCC trade is also equitable and not unfairly discriminatory as all capped participants are being treated the same in this regard.

Finally, the Exchange believes that adopting a maximum Floor Broker Rebate for QCC trades of \$375,000 per month is reasonable, particularly in light of the elimination of the service fee for capped participants who are party to a QCC trade. The Exchange believes that absent a cap on the maximum to be paid under the monthly QCC rebate program, costs of the program may need to be shared by other participants on the Exchange, even those who do not engage in QCC trading. As such, the Exchange believes it is reasonable and equitable to adopt such a cap. The Exchange further notes that at least one other exchange with a QCC rebate has also adopted a similar cap or maximum rebate to be paid.²⁵ As the proposed monthly maximum rebate to be paid under the Floor Broker Rebate program for QCC is applying to all ATP Holders acting as Floor Brokers equally, the Exchange believes the proposal is also equitable and not unfairly discriminatory.

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. The Exchange believes that the proposed changes will enhance the competitiveness of the Exchange relative to other exchanges. 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

²⁴ See ISE Fee Schedule available here http://www.ise.com/assets/documents/OptionsExchange/legal/fee/ISE_fee_schedule.pdf (offering QCC rebates up to \$0.11 per contract compared to \$0.10 on NYSE Amex). See also *supra* note 20 [sic].

²⁵ See *supra* note 20 [sic] (PHLX Fee Schedule, regarding QCC Transaction Fees, “The maximum QCC Rebate to be paid in a given month will not exceed \$375,000.”).

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)²⁶ of the Act and subparagraph (f)(2) of Rule 19b-4²⁷ 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)²⁸ 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. Please include File Number SR-NYSEMKT-2014-16 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-2014-16. 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-2014-16, and should be submitted on or before March 12, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁹

Kevin M. O'Neill,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71545; File No. SR-FINRA-2014-006]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to per Share Estimated Valuations for Unlisted DPP and REIT Securities

February 12, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 31, 2014, Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities

Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. 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

FINRA is proposing to amend the provisions addressing per share estimated valuations for unlisted direct participation program ("DPP") and real estate investment trust ("REIT") securities. The text of the proposed rule change is available on FINRA's Web site at <http://www.finra.org>, at the principal office of FINRA 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, FINRA 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 these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

FINRA proposes to amend (1) NASD Rule 2340 (Customer Account Statements) to modify the requirements relating to the inclusion of a per share estimated value for unlisted DPP and REIT securities on a customer account statement; and (2) FINRA Rule 2310 (Direct Participation Programs) to modify the requirements applicable to members' participation in a public offering of DPP or REIT securities.

Proposed Amendments to NASD Rule 2340 (Customer Account Statements)

NASD Rule 2340 generally requires that general securities members³

³ NASD Rule 2340(d)(2) defines "general securities member" as any member that conducts a general securities business and is required to calculate its net capital pursuant to the provisions of Rule 15c3-1(a) under the Act. A member that does not carry customer accounts and does not hold

²⁶ 15 U.S.C. 78s(b)(3)(A).

²⁷ 17 CFR 240.19b-4(f)(2).

²⁸ 15 U.S.C. 78s(b)(2)(B).

²⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.