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SECURITIES AND EXCHANGE COMMISSION  
[Release No. 34-73794; File No. SR-NYSEMKT-2014-98]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Amex Options Fee Schedule to Amend the Application of Routing Surcharge Fees

December 9, 2014.

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, 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”) to amend the application of Routing Surcharge fees. The Exchange proposes to implement the change on December 1, 2014. The text of the proposed rule change is available on the Exchange’s website 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

<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.

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 as it relates to the application of Routing Surcharge fees. The purpose of the proposed change is to account for recent changes introduced on other exchanges that impact the fees charged when routing orders.

The Exchange currently charges ATP Holders a Routing Surcharge when it routes orders to other exchanges for execution. The Routing Surcharge is comprised of an \$0.11 per contract fee, plus the applicable charges assessed by the away market for execution of the order (which the Exchange is able to discern from the away market fee schedule). If the executing exchange does not charge a transaction fee for the execution of a Customer order, the Routing Surcharge is waived.

Recently, the BOX Options Exchange LLC (“BOX”) adopted per contract pricing that varies based upon the counter party to the trade. This pricing change makes it impossible to know in advance of the execution what the charges will be for an order routed to BOX. For example, a Professional Customer order routed to BOX in a non-Penny option would be charged

\$0.35 per contract if it traded against another Professional Customer or Broker/Dealer, but would be charged \$0.94 per contract if it traded against a Customer.<sup>4</sup>

In order to provide ATP Holders with certainty regarding the routing fees for which they may be liable, the Exchange is proposing to amend the Fee Schedule as it relates to the application of Routing Surcharge fees, specifically endnote 7. The proposed amendment would specify that if the actual transaction fees assessed by the away exchange(s) cannot be determined prior to the execution, the Exchange would charge the \$0.11 per contract fee plus the highest per contract charge assessed by the away exchange(s) for the relevant option class and type of market participant (e.g., Customer, Firm, Broker/Dealer, Professional Customer or Market Maker).

The Exchange proposes to make a non-substantive changes [sic] to the Fee Schedule to replace the term “all actual charges” with the term “any transaction fees” as the Exchange believes that the term transaction fees better represents the applicable charges on away exchanges, and is consistent with existing rule text on the NYSE Arca, Inc. Options (“NYSE Arca”) Fee Schedule.

The Exchange notes that ATP Holders can avoid having their orders routed to away markets by utilizing specific, non-routable order types if they so choose.

## 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>5</sup> in general, and furthers the objectives of

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<sup>4</sup> See BOX Fee Schedule, Section 1 (as of November 2014), available here, [http://boxexchange.com/assets/BOX\\_Fee\\_Schedule.pdf](http://boxexchange.com/assets/BOX_Fee_Schedule.pdf).

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

Section 6(b)(4) of the Act,<sup>6</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 fee change is reasonable and equitable because charging market participants a set per contract rate in those instances when an order is routed to an away exchange provides market participants with certainty, which will enable them to make informed decisions regarding whether to continue to designate such orders as eligible for routing to away exchange. The Exchange further believes that the proposed fee change to charge the highest rate charged by the away exchange if the Exchange cannot discern the per contract charge in the option class in question in advance of the execution is reasonable and equitable because the Exchange cannot know in advance what the charge would be on the away exchange. If the Exchange charged the lowest feasible charge, the Exchange could end up bearing the costs of routing an order to an away exchange. The Exchange notes that – just as they do today – to avoid incurring any Routing Surcharge in preference of an execution on the Exchange, ATP Holders are able to designate their orders as non-routable.

The Exchange believes that the proposed non-substantive change to the Fee Schedule is reasonable and equitable because it conforms the terms used in the Fee Schedule to terms used by NYSE Arca and that better describe the applicable charges.

The Exchange further believes that this proposed change is not unfairly discriminatory either as it applies equally to all ATP Holders that send orders to the Exchange.

Finally, 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

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<sup>6</sup> 15 U.S.C. 78f(b)(4).

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. The Exchange believes the proposed fee change is reasonably designed to be fair and equitable, and therefore, will not unduly burden any particular group of market participants trading on the Exchange vis-à-vis another group (*i.e.*, Market Markers versus non-Market Makers) as it applies equally to all ATP Holders that send routable orders to the Exchange.

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.

**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>7</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>8</sup> thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

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<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(2).

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>9</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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEMKT-2014-98 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEMKT-2014-98. 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

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<sup>9</sup>

15 U.S.C. 78s(b)(2)(B).

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 Room, 100 F Street, NE, Washington, D.C. 20549 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-2014-98, 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.<sup>10</sup>

Kevin M. O'Neill,  
Deputy Secretary.

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<sup>10</sup> 17 CFR 200.30-3(a)(12).