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SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-68589; File No. SR-NYSEMKT-2012-89)

January 4, 2013

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Amex Options Fee Schedule with Respect to Regulatory Fees Related to the Central Registration Depository, Which are Collected by the Financial Industry Regulatory Authority, Inc.

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 December 21, 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 (the "Fee Schedule") with respect to regulatory fees related to the Central Registration Depository ("CRD system"), which are collected by the Financial Industry Regulatory Authority, Inc. ("FINRA"). The Exchange proposes to implement the fee changes on January 2, 2013. The text of the proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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1 15 U.S.C.78s(b)(1).

2 15 U.S.C. 78a.

3 17 CFR 240.19b-4.

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 the Fee Schedule with respect to regulatory fees related to the CRD system, which are collected by FINRA.[4] The Exchange proposes to implement the fee changes on January 2, 2013.

Certain of the regulatory fees provided in the Fee Schedule are collected and retained by FINRA via the CRD system for the registration of associated persons of ATP Holders that are not FINRA members ("Non-FINRA ATP Holders"). The Exchange originally adopted fees for use of the CRD system in 2003.[5] FINRA recently amended

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4 The CRD system is the central licensing and registration system for the U.S. securities industry. The CRD system enables individuals and firms seeking registration with multiple states and self-regulatory organizations to do so by submitting a single form, fingerprint card and a combined payment of fees to FINRA. Through the CRD system, FINRA maintains the qualification, employment and disciplinary histories of registered associated persons of broker-dealers.

5 See Securities Exchange Act Release No. 48066 (June 19, 2003), 68 FR 38409 (June 27, 2003) (SR-Amex-2003-49).

certain of the fees assessed for use of the CRD system, and those amendments will become effective January 2, 2013.[6]

The CRD system fees are user-based and there is no distinction in the cost incurred by FINRA if the user is a FINRA member or a Non-FINRA ATP Holder. Accordingly, the Exchange is proposing to amend the fees in the Fee Schedule to mirror those assessed by FINRA, which will be implemented concurrently with the amended FINRA fees on January 2, 2013.[7] The proposed changes are as follows:[8]

- Increasing the disclosure processing fee from $95 to $110;[9] and
- Increasing the manual fingerprint processing fee from $13 to $30.[10]

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6 See Securities Exchange Act Release No. 67247 (June 25, 2012), 77 FR 38866 (June 29, 2012) (SR-FINRA-2012-030).

7 The Exchange notes that it has only adopted the CRD system fees charged by FINRA to Non-FINRA ATP Holders when such fees are applicable. In this regard, certain FINRA CRD system fees and requirements are specific to FINRA members, but do not apply to NYSE Amex Options-only ATP Holders.

8 The Exchange is proposing to delete the current fees and descriptions in their entirety and replace them with the updated fees and descriptions in a separate table that will include all the fees applicable to Non-FINRA ATP Holders, as discussed further below (corresponding footnotes in the Fee Schedule would also be designated as "reserved"). In this regard, the Exchange is proposing a new subheading in the "Regulatory Fees" section of the Fee Schedule to differentiate between those fees that are applicable to all ATP Holders and those fees that are applicable only to Non-FINRA ATP Holders. The Exchange notes that ATP Holders that are also FINRA members are charged CRD system fees according to Section (4) of Schedule A to the FINRA By-laws.

9 See Section (4)(b)(3) of Schedule A to the FINRA By-laws effective on January 2, 2013. The updated description in the Fee Schedule for this fee would be "additional processing of each initial or amended Form U4, Form U5 or Form BD that includes the initial reporting, amendment, or certification of one or more disclosure events or proceedings." As noted below, this would incorporate the applicability of the fee to Form BD processing.

10 See Section (4)(b)(6) of Schedule A to the FINRA By-laws effective on January 2, 2013. The updated description in the Fee Schedule for this fee would be "processing and posting to the CRD system each set of fingerprint results and identifying information that have been processed through another self-regulatory

In addition to increasing the existing CRD system fees, FINRA adopted a new fee for the additional processing of each initial or amended Form BD that includes the initial reporting, amendment, or certification of one or more disclosure events or proceedings.[11] Broker-dealers use Form BD to, among other things, report disclosure matters in which they or a control affiliate have been involved. Prior to the adoption of the new fee, FINRA did not have a fee designed to cover the costs associated with the review of Form BD, notwithstanding that the review is similar to that performed of broker-dealers' Forms U4 and U5. Such reviews include confirming that the matter is properly reported, reviewing any documentation submitted and determining whether additional documentation is required, conducting any necessary independent research and, depending on the matter reported, analyzing whether the event or proceeding subjects the individual or firm to a statutory disqualification pursuant to Section 3(a)(39) of the Act.[12] FINRA adopted a $110 fee for the review of a Form BD, which mirrors the increased fee adopted for the review of Forms U4 and U5. As such, the Exchange is adopting the identical fee for FINRA's review of a Form BD submitted by Non-FINRA ATP Holders.[13]

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organization and submitted to FINRA." The Exchange also proposes to permanently remove the current $35 fee in the Fee Schedule for fingerprint processing. The fee for fingerprint processing by FINRA is addressed via the other fingerprint processing fees described herein and in the proposed changes to the Fee Schedule.

11 See Section (4)(b)(3) of Schedule A to the FINRA By-laws effective on January 2, 2013.

12 15 U.S.C. 78c(a)(39).

13 See supra note 9.

The Exchange also proposes to include in its Fee Schedule certain other fees that are charged by FINRA to FINRA members as well as Non-FINRA ATP Holders. These fees are as follows:[14]

- $100 for each initial Form U4 filed for the registration of a representative or principal;[15]
- $15 for processing and posting to the CRD system each set of fingerprints submitted electronically to FINRA, plus any other charge that may be imposed by the U.S. Department of Justice for processing each set of fingerprints;[16]
- $30 for processing and posting to the CRD system each set of fingerprint cards submitted in non-electronic format to FINRA, plus any other charge that may be imposed by the U.S. Department of Justice for processing each set of fingerprints;[17] and
- $45 annually for system processing for each registered representative and principal.[18]

The Exchange notes that the proposed change is not otherwise intended to address any other issues surrounding regulatory fees and that the Exchange is not aware of any

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14 Non-FINRA ATP Holders have been charged CRD system fees since 2003. See supra note 5.

15 See Section (4)(b)(1) of Schedule A to the FINRA By-laws effective on January 2, 2013. This fee is assessed when a Non-FINRA ATP Holder submits its first Initial, Transfer, Relicense, or Dual Registration Form U4 filing on behalf of a registered person. The current applicable fee is $85.

16 See Section (4)(b)(4) of Schedule A to the FINRA By-laws effective on January 2, 2013. The current applicable fee is $13.

17 See Section (4)(b)(5) of Schedule A to the FINRA By-laws effective on January 2, 2013. The current applicable fee is $13.

18 See Section (4)(b)(7) of Schedule A to the FINRA By-laws effective on January 2, 2013. The current applicable fee is $30. The proposed system processing fee would become effective for the 2013 Renewal Program. In this regard, as part of FINRA's 2013 Renewal Program, Preliminary Renewal Statements reflecting the proposed $45 system processing fee will be made available in the fourth quarter of 2012.

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,[19] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[20] 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 change is reasonable because the proposed fees are identical to those adopted by FINRA for use of the CRD system for disclosure and the registration of FINRA members and their associated persons. As FINRA noted in amending its fees, it believed that the fees are reasonable based on the increased costs associated with operating and maintaining the CRD system, and listed a number of enhancements made since the last fee increase, including (1) incorporation of various uniform registration form changes; (2) electronic fingerprint processing; (3) Web EFT™, which allows subscribing firms to submit batch filings to the CRD system; and (4) increases in the number and types of reports available through the CRD system. These increased costs are similarly borne by FINRA when a Non-FINRA ATP Holder uses the CRD system. FINRA further noted its belief that the proposed fees are reasonable because they help to ensure the integrity of the information in the CRD system, which is very important because the Securities and Exchange Commission ("Commission"),

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19 15 U.S.C. 78f(b).

20 15 U.S.C. 78f(b)(4) and (5).

FINRA, other self-regulatory organizations and state securities regulators use the CRD system to make licensing and registration decisions, among other things.

The Exchange also believes that the change is reasonable because it will provide greater specificity regarding the CRD system fees that are applicable to Non-FINRA ATP Holders. All similarly situated ATP Holders are subject to the same fee structure, and every ATP Holder must use the CRD system for registration and disclosure. Accordingly, the Exchange believes that the fees collected for such use should likewise increase in lockstep with the fees assessed to FINRA members, as is proposed by the Exchange. The proposed change, like FINRA's proposal, is equitable and not unfairly discriminatory because it will result in the same regulatory fees being charged to all ATP Holders required to report information to the CRD system and for services performed by FINRA, regardless of whether or not such ATP Holders are FINRA members.

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. Specifically, the Exchange believes that the proposed change will result in the same regulatory fees being charged to all ATP Holders required to report information to the CRD system and for services performed by FINRA, regardless of whether or not such ATP Holders are FINRA members.

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)[21] of the Act and subparagraph (f)(2) of Rule 19b-4[22] thereunder, because it establishes a due, fee, or other charge imposed by 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 e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEMKT-2012-89 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.

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21 15 U.S.C. 78s(b)(3)(A).

22 17 CFR 240.19b-4(f)(2).

All submissions should refer to File Number SR-NYSEMKT-2012-89. 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 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 NYSE's principal office or on the website at 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-2012-89, 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.[23]

Kevin M. O'Neill
Deputy Secretary

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[23] 17 CFR 200.30-3(a)(12).