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September 26, 2014

Kevin O'Neill  
Deputy Secretary  
U.S. Securities and  
Exchange Commission  
100 F. Street N.E.  
Washington D.C. 205549-0609

Re: File No. SR-NYSEMKT-2014-66

Dear Mr. O'Neill,

NYSE MKT LLC, on behalf of NYSE Amex Options (“NYSE Amex” or “Exchange”), submits this letter to supplement its immediately effective proposal, SR-NYSEMKT-2014-66 (“Rule Proposal”).<sup>1</sup> This proposal amended the Exchange Fee Schedule by: (1) increasing the fees for Firms transacting electronically in Penny Pilot options from \$0.32 to \$0.34 per contract; and (2) increasing the fees charged to Broker Dealers, Professional Customers, and Non NYSE Amex Options Market Makers transacting electronically in Penny Pilot options to \$0.44. Prior to the Rule Proposal, Broker Dealers and Professional Customers had been charged \$0.32 per contract for electronic transactions in Penny Pilot options and Non NYSE Amex Options Market Makers had been charged \$0.43 per contract for electronic transactions in Penny Pilot options.

In the Rule Proposal, the Exchange stated that the fee differential proposed between Firms and Broker Dealers, Professional Customers and Non NYSE Amex Options Market Makers was reasonable, equitable and not unfairly discriminatory, “because, among other reasons (discussed below), the rate differential falls within the range that already exists in the industry. For example, Clearing Trading Permit Holder Proprietary (the equivalent of a Firm Proprietary transaction on NYSE Amex) electronic transactions on the Chicago Board Options Exchange (‘CBOE’) are charged \$0.35 per contract in Penny Pilot issues, while Professionals, Voluntary Professionals, JBO Participants, Broker Dealers and Non-Trading Permit Holder Market Makers on the CBOE are charged \$0.45 per contract for electronic transactions in Penny Pilot issues.”<sup>2</sup> Thus, the

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<sup>1</sup> See Securities and Exchange Act Release No. 72790 (August 7, 2014), 79 FR 47485 (August 13, 2014) (SR-NYSEMKT-2014-66).

<sup>2</sup> See the CBOE fee schedule as of, July 1, 2014, located here:  
<http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf>.

Exchange believes that imposing a fee differential similar to one in existence on a competing exchange – on similar market participants, for the same types of transactions – is likewise reasonable, equitable and not unfairly discriminatory.”<sup>3</sup>

Additionally, in the Rule Proposal, the Exchange noted that Firms, as permit holders on the Exchange, incur monthly ATP Permit fees that are not charged to Broker Dealers, Professional Customers and Non NYSE Amex Options Market Makers. Instead, Broker Dealers, Professional Customers and Non NYSE Amex Options Market Makers, as non-members, access the Exchange through an ATP Holder.<sup>4</sup> Accordingly, it is reasonable to assess Firms a lower fee than other market participants.

The Exchange also noted in the Rule Proposal that another competing exchange, the Miami International Options Exchange (“MIAX”), had recently adopted a monthly Firm fee cap for electronic Firm transactions. In statements MIAX made with respect to why it was reasonable, equitable and not unfairly discriminatory, MIAX said, “Providing a fee cap for Firms and not for other types of transactions is not unfairly discriminatory, because it is intended as a competitive response to create an additional incentive for Firms to send order flow to the Exchange in a manner consistent with other exchanges. Firms that value such incentives will have another venue to send their order flow. To the extent that there is additional competitive burden on non-Firm Members, the Exchange believes that this is appropriate because the proposal should incent Members to direct additional order flow to the Exchange and thus provide additional liquidity that enhances the quality of its markets and increases the volume of contracts traded here. To the extent that this purpose is achieved, all the Exchange’s market participants should benefit from the improved market liquidity. Enhanced market quality and increased transaction volume that results from the anticipated increase in order flow directed to the Exchange will benefit all market participants and improve competition on the Exchange.”<sup>5</sup> The Exchange agreed with those statements saying it, “believes the proposed fee change is not unfairly discriminatory as it is designed to attract order flow to the Exchange in a manner consistent with other exchanges, which will, in turn, increase liquidity and enhance the quality of the market to the benefit of the investing public. For the forgoing reasons, the Exchange believes that the proposal to charge \$0.44 per contract to Broker Dealers, Professional Customers, Non NYSE Amex Options Market Makers and \$0.34 to Firms for electronic transactions in Penny Pilot issues is reasonable, equitable and not unfairly discriminatory.”<sup>6</sup>

The Exchange believes that all of the reasons and rationales elucidated in the Rule Proposal for why the proposal to charge Firms a lower rate than the rate charged to Broker Dealers, Professional Customers and Non NYSE Amex Options Market Makers are still true. In addition,

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<sup>3</sup> See supra n. 1, at 47486.

<sup>4</sup> See supra n. 1, at 47486, FN9.

<sup>5</sup> See Securities and Exchange Release No. 72583 (July 10, 2014), 79 FR 41612 at 41613 (July 16, 2014) (SR-MIAX-2014-37).

<sup>6</sup> See supra n. 1, at 47486-7.

the Exchange is supplementing its basis to support the differential rates described above and in the Rule Proposal.

Of the participants affected by the Rule Proposal, only Firms are ATP Holders on the Exchange. Specifically, they are broker dealers who have incurred the costs associated with becoming a permit holder on the Exchange. When an ATP Holder on the Exchange has its transactions clear in the “firm” range at The Options Clearing Corporation, they are treated as a Firm for purposes of the Exchange’s Fee Schedule. A Firm transacting electronically on the Exchange will also incur additional costs – beyond just the monthly ATP permit fee(s) – in the form of systems development to the Exchange’s order entry API and establishing connectivity to the Exchange. The other participants – Broker Dealers, Professional Customers and Non NYSE Amex Options Market Makers – are not members or permit holders on the Exchange. As such, they do not have the same costs that a Firm does because they do not pay the full cost of a monthly ATP permit fee(s) nor do they pay the costs associated with systems development to the Exchange’s order entry API and establishing connectivity, which is necessary to send electronic orders to the Exchange. Instead, as non-members, Broker Dealers, Professional Customers and Non NYSE Amex Options Market Makers benefit from being able to utilize an ATP Holder’s connectivity. The Exchange further notes that as the activity of Broker Dealers, Professional Customers and Non NYSE Amex Options Market Makers must come through an ATP Holder on the Exchange, the ATP Holder, as the last person to “touch” the order, is obligated to perform the various risk checks required under Rule 15c3-5. Given these additional costs incurred by Firms, the Exchange believes the per contract difference charged to Firms compared to Broker Dealers, Professional Customers and Non NYSE Amex Options Market Makers is reasonable, equitable and not unfairly discriminatory.

The Exchange further believes that, similar to MIAX, CBOE and NASDAQ OMX PHLX, LLC, it should be permitted to charge Firms lower fees as compared to Broker Dealers, Professional Customers and Non NYSE Amex Options Market Makers. The Exchange believes that the Rule Proposal does not impose an undue burden on competition because it is intended as a competitive response to create an additional incentive for Firms to send order flow to the Exchange in a manner consistent with other exchanges. Firms that value such incentives will have another venue in which to send their order flow. To the extent that there is an additional competitive burden on non-Firm members, the Exchange believes that this is not an undue burden because the Rule Proposal should incentivize members to direct additional order flow to the Exchange and thus provide additional liquidity that enhances the quality of its markets and increases the volume of contracts traded here. To the extent that this purpose is achieved, all the Exchange’s market participants should benefit from the improved market liquidity. The Securities and Exchange Commission (“Commission”) has for many years accepted such differentiations as that proposed in the Rule Proposal.

In summary, NYSE Amex respectfully submits that the Commission should not institute proceedings, but rather permit the Rule Proposal to remain effective and permit the Exchange to compete with other options exchanges which already have such fees in place.

The Rule Proposal is consistent with many years of past practice as reflected in dozens of rule filings by multiple options exchanges. To depart from this history to invalidate one exchange rule while permitting similar rules to stand would be arbitrary and capricious.

Sincerely,

A handwritten signature in blue ink that reads "Elizabeth K. King". The signature is written in a cursive style with a prominent initial "E" and a long, sweeping underline.

Elizabeth King