

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-67895; File No. SR-NYSEMKT-2012-47)

September 20, 2012

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Rule Change to Amend the NYSE Amex Options LLC Members Agreement to Empower the Volume Dispute Committee to Establish Principles for Determining Whether the Exchange Has Experienced a Bona Fide Systems Problem and to Adjust Certain Volume Measurements Accordingly

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 September 7, 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 LLC Members Agreement to empower the Volume Dispute Committee to establish principles for determining whether the Exchange has experienced a bona fide systems problem and to adjust certain volume measurements accordingly. 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, on the Commission’s website at <http://www.sec.gov>, 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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 NYSE Amex Options LLC Members Agreement to empower the Volume Dispute Committee to establish principles for determining whether the Exchange has experienced a bona fide systems problem and to adjust certain volume measurements accordingly.

Background

In 2011, NYSE MKT established NYSE Amex Options LLC (“Company”), a Delaware limited liability company formed by NYSE Euronext, NYSE MKT, and seven Founding Firms,⁴ and jointly owned by NYSE MKT and the Founding Firms, to operate an options facility of the Exchange.⁵ The governance structure of the Company is reflected in a Limited Liability Company Agreement and a Members Agreement.

Under Article II, Section 2.1 of the Members Agreement, for a certain period, each Founding Firm must satisfy certain minimum volume requirements with respect to trading on the options facility. Under the Volume-Based Equity Plan, for each measurement period, the

⁴ The Founding Firms are Banc of America Strategic Investments Corporation, Barclays Electronic Commerce Holdings Inc., Citadel Securities LLC, Citigroup Financial Strategies, Inc., Goldman, Sachs & Co., Datek Online Management Corp., and UBS Americas Inc.

⁵ Securities Exchange Act Release No. 64742 (June 24, 2011), 76 FR 38436 (June 30, 2011) (SR-NYSEAmex-2011-18).

Company issues Annual Incentive Shares. Each Founding Firm is entitled to receive, for no additional consideration, a portion of the Annual Incentive Shares such that it dilutes, maintains or increases its equity interest in the Company (relative to the other Founding Firms) based on the degree to which the Founding Firm has failed to achieve, achieved or exceeded its “Individual Target” during the measurement period. A Founding Firm’s Individual Target is its pro rata portion of an aggregate Founding Firm target contribution to the annual volume of the options facility.

Under Article I, Section 1.1 of the Members Agreement, the Individual Target is defined as the product of (i) the Founding Firm aggregate target market share for such measurement period multiplied by (ii) such Founding Firm’s Initial Class B Common Interests multiplied by (iii) the Industry Volume for such measurement period. Industry Volume is defined, with respect to any period, as the product of (x) the aggregate U.S. listed securities option exchange volume of cleared transactions in the Products (a contract that is listed for trading on the Exchange) during such period, as reported by the OCC, that are executed and cleared during such period multiplied by (y) two. However, Industry Volume excludes (i) the volume of cleared transactions in the Products during trading days on which trading on the Exchange is halted for certain periods, and (ii) Strategic Transaction Volume, which is designed to exclude certain strategy-based transactions.⁶

Article II, Section 2.4 of the Members Agreement authorizes the Company to establish a Volume Dispute Committee, which has 15 members, one chosen by each of the seven Founding Firms and the remaining eight chosen by the Exchange. Article II, Section 2.4 empowers the Volume Dispute Committee to (i) establish principles for determining the types of transactions

⁶ See Article II, Section 2.1(h) of the Members Agreement.

for which the Founding Firms are not eligible to receive credit; (ii) establish principles for determining how transaction credits should be allocated among or between the Founding Firms; (iii) review and approve the Strategic Transaction Volume; and (iv) otherwise determine certain other matters with respect to volume-related disputes.

Proposed Rule Change

The Exchange believes that if it is experiencing a bona fide systems problem, then there may be situations in which such volume should not be included in calculating Individual Targets or Industry Volume. A bona fide systems problem could include, but is not limited to, an erroneous input that causes the generation of quotes that are substantially away from the quoted national best bid and offer or a problem that causes severe latencies that do not rise to the level of a trading halt but that interfere with a Founding Firm's ability to quote or route orders. Because system problems can take many forms and may not be predictable, the Exchange does not propose to attempt to define what a systems problem is for this purpose. Rather, the Exchange believes that the Volume Dispute Committee should be empowered to establish principles for determining whether a bona fide systems problem occurred on the options facility and for what time period. The Exchange believes that providing the Volume Dispute Committee with such authority will provide the necessary flexibility and structure to resolve disputes about what volume should be counted in such situations.⁷

Thus, the Exchange proposes to amend Article II, Section 2.4(a) of the Members Agreement to empower the Volume Dispute Committee to establish principles for determining

⁷ The Exchange notes that while it has procedures for adjusting or busting certain trades under Rule 957NY [sic], there may be certain instances in which bona fide systems issues have occurred but where certain trades fall outside of this Rule or otherwise are permitted to stand under the Rule, it would be inequitable to include such trades in calculating Industry Volume or a Founding Firm's Individual Target.

whether the Exchange has experienced a bona fide systems problem, and the time period of such bona fide systems problem. In Article 1, Section 1.1 of the Members Agreement, the Exchange also proposes to amend the definition of Industry Volume to provide that the computation of volume would exclude the volume of cleared transactions in the Products during a period of time in which the Exchange experienced a bona fide systems problem. Finally, the Exchange proposes to amend Section 2.3(a), which establishes a methodology for determining whether a Founding Firm has met its Individual Target, to provide that credits would not be awarded for any transactions executed during a period of time in which the Exchange experienced a bona fide systems problem.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (“Act”),⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁹ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change would promote just and equitable principles of trade by making the calculations of Individual Target and Industry Volume fairer by authorizing the Volume Dispute Committee to establish principles for excluding transactions that occurred while bona fide systems problems were occurring. The Exchange believes that such principles will help to foster cooperation among the Founding Firms

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

and remove impediments to a free and open market, further encouraging the Founding Firms to bring order flow to the Exchange and thus promoting liquidity for all investors.

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.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be 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. Please include File No. SR-NYSEMKT-2012-47 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 No. SR-NYSEMKT-2012-47. 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, DC 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 No. SR-NYSEMKT-2012-47 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.¹⁰

Kevin M. O'Neill
Deputy Secretary

¹⁰ 17 CFR 200.30-3(a)(12).