NASDAQ and, to the extent the order would not be filled by such available shares, NASDAQ would simultaneously route the remainder of the order to other venues, according to NASDAQ's System routing table, in a manner consistent with Regulation NMS (*i.e.,* satisfying all displayed protected quotes). In the event that the amount of shares on other markets is insufficient to completely fill the order, or the order fails to completely execute, NASDAQ would then post the remaining shares on the NASDAQ book or cancel the remaining shares per the routed order's instructions. NASDAQ believes that this simultaneous execution against NASDAQ available shares and routing to other venues' shares will avoid the deleterious effect of market impact discussed above and result in overall faster and better executions of its members' routable orders.

NASDAQ noted, in its proposal, that it is not changing the execution and routing sequence of all routable orders. The TFTY, SAVE, SOLV, and CART orders are designed to execute serially as part of their strategies, which is generally to reduce the blended fees associated with transacting on multiple markets. As such, simultaneous routing of such orders would not result in a better execution in terms of the goals of these routable order types.

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[6] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[7] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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 proposed rule change meets these requirements in that it promotes efficiency in the market, and should, as represented by NASDAQ, increase the likelihood that a routable order will receive faster and better executions. As a result, the proposed rule change could improve NASDAQ's ability to effectively process routable orders. For these reasons, the Commission believes that the proposed change is consistent with Section 6(b)(5) of the Act.[8]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–NASDAQ–2012–071) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

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[6] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67635; File No. SR–NYSEMKT–2012–34]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the NYSE Amex Options Fee Schedule Regarding a Rebate for Order Flow Providers, an Increase in the Service Fee Applicable to Market Makers, and a Fee for Market Maker Executions of SPY Options

August 9, 2012.

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 July 31, 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 proposes to [sic] amend the NYSE Amex Options Fee Schedule to (i) Establish a rebate for Order Flow Providers ("OFPs")[4] based on the average daily volume ("ADV") of Customer[5] Electronic Complex Orders[6] executed by an OFP on the Exchange; (ii) increase the service fee applicable to NYSE Amex Options Market Makers[7] that have reached the monthly Market Maker fee cap, from $0.05 per contract to $0.10 per contract for executions of Electronic Complex Orders; and (iii) establish a fee of $0.10 per contract for NYSE Amex Options Market Maker executions of SPY options as part of an Electronic Complex Order. 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to (i) Establish a rebate for OFPs based on the ADV of Customer Electronic Complex Orders executed by an OFP on the Exchange; (ii) increase the service fee applicable to NYSE Amex Options Market Makers that have reached the monthly Market Maker fee cap, from $0.05 per contract to $0.10 per contract for executions of Electronic Complex Orders; and (iii) establish a fee of $0.10 per contract for NYSE Amex Options Market Maker executions of SPY options as part of an Electronic Complex Order. The Exchange proposes to implement these changes on August 1, 2012.

The Exchange proposes to establish a rebate for OFPs based on the ADV of Customer Electronic Complex Orders

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

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] An OFP is any ATP Holder that submits, as agent, orders to the Exchange. *See* Rule 900.2NY(57).

[5] The term "Customer" means an individual or organization that is not a broker-dealer. *See* Rule 900.2NY(18).

[6] *See* Rule 980NY.

[7] References herein to Market Makers include Specialists and e-Specialists. *See* Rule 900.2NY(76). *See also* Rule 927.4NY.

executed by an OFP on the Exchange. An OFP would be required to execute an ADV of at least 35,000 contracts of Customer Electronic Complex Orders to qualify for the rebate. The proposed volume tiers and the corresponding per contract rebate would be as follows: [8]

Customer electronic complex order ADV tiers	Rebate per contract for all customer electronic complex orders (retroactive to the first contract traded during the month)
35,000 to 49,999	$0.04
50,000 to 69,999	0.06
70,000 to 109,999	0.08
110,000 and greater	0.10

In addition to this proposed rebate, the Exchange proposes to amend the rate for the incremental service fee charged to NYSE Amex Options Market Makers that have reached the monthly fee cap for their executions of Electronic Complex Orders. Currently, and as described in endnote 5 to the Fee Schedule, NYSE Amex Options Market Maker fees are aggregated and capped at $350,000 per month. An incremental service fee of $0.01 per contract applies for NYSE Amex Options Market Maker volume executed in excess of 3,500,000 contracts per month. However, the incremental service fee is $0.05 for an execution of an Electronic Complex Order. The Exchange is proposing to increase this incremental service fee for Electronic Complex Order executions from $0.05 per contract to $0.10 per contract.

The Exchange is also proposing to implement a fee of $0.10 per contract for any NYSE Amex Options Market Maker executions of SPY options as part of an Electronic Complex Order. NYSE Amex Options Market Makers that execute Electronic Complex Orders in options other than SPY would continue to pay the existing transaction charges, as provided in the Fee Schedule.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(4) of the Act,[9] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The proposal to establish a tiered rebate for OFPs that execute the requisite ADV of Customer Electronic Complex Orders on the Exchange is reasonable because it is designed to attract additional Customer Electronic Complex Order volume to the Exchange, which would benefit all participants by offering greater price discovery, increased transparency and an increased opportunity to trade on the Exchange. Additionally, the Exchange believes that the rates proposed for the rebate are reasonable because they would incentivize OFPs to submit Customer Electronic Complex Orders to the Exchange and would result in a rebate that is reasonably related to an exchange's market quality that is associated with higher volumes. The Exchange also believes that the proposed thresholds for the tiers are reasonable because they will reward OFPs with a greater rebate when they bring a larger number of orders to the Exchange. The Exchange also believes that retroactively applying the highest rebate amount achieved by an OFP to all Customer Electronic Complex Orders executed by the OFP during the calendar month is reasonable because it will increase the incentive for OFPs to achieve a higher tier. Moreover, the Exchange believes that the proposed rebate is equitable and not unfairly discriminatory because it will be available to all OFPs that execute Customer Electronic Complex Orders on the Exchange on an equal and non-discriminatory basis. The Exchange also believes that the proposed rebate is reasonable because it is not new or novel. Instead, the Exchange understands that at least two other option exchanges currently offer a rebate specifically for Customer Complex Order volume.[10]

The Exchange believes that the proposal to increase the capped NYSE Amex Market Maker service fee from $0.05 to $0.10 for executions of Electronic Complex Orders is reasonable because the capped NYSE Amex Options Market Maker would still be incentivized to continue to trade sufficient volume once it has achieved the fee cap, thereby lowering the effective rate for its executions over the course of the month. Specifically, the Exchange believes that the proposed new rate is reasonable because, among other things, the new rate would be factored into an NYSE Amex Options Market Maker's overall transaction costs, including the rebate proposed herein for Customer Electronic Complex Order executions. The Exchange also believes that the proposed new rate is reasonable because the anticipated increase in Customer Electronic Complex Order volume that would result from the proposed rebate will directly benefit capped NYSE Amex Options Market Makers, as they will have an increased opportunity to trade. The Exchange believes that the increased opportunity to trade reasonably balances the proposed increase in the service fee, which would continue to be less than the rate that the NYSE Amex Options Market Maker

[8] The Exchange proposes that the highest rebate amount achieved by an OFP for the calendar month would apply retroactively to all Customer Electronic Complex Orders executed by the OFP during such calendar month.

[9] 15 U.S.C. 78f(b)(4).

[10] For example, the International Securities Exchange (''ISE'') Schedule of Fees provides that a rebate of $0.32 per contract per leg will apply to Priority Customer Complex orders in the Select Symbols (excluding SPY) that trade with non-Priority Customer orders in the ISE Complex Order book; provided, however, that a greater rebate shall apply to an ISE Member during a calendar month that achieves a certain ADV of Priority Customer Complex Order contracts executed during the calendar month, as follows: if the ISE Member achieves an ADV of 75,000 Priority Customer Complex Order contracts, the rebate amount shall be $0.33 per contract per leg; if the ISE Member achieves an ADV of 125,000 Priority Customer Complex Order contracts, the rebate amount shall be $0.34 per contract per leg; and if the ISE Member achieves an ADV of 250,000 Priority Customer Complex Order contracts, the rebate amount shall be $0.35 per contract per leg. Similar to the Exchange's proposal, the highest rebate amount achieved by the ISE Member for a calendar month applies retroactively to all contracts executed by the ISE Member during such month. *See* endnote 3 [sic] of the ISE Schedule of Fees. Similarly, NASDAQ OMX PHLX (''PHLX'') provides a rebate for Customer Complex Orders. *See* Section I, Part B of the PHLX Pricing Schedule.

would pay if it was not capped. In this regard, the Exchange believes that the proposed rate is reasonable because it would continue to incentivize NYSE Amex Options Market Makers to trade sufficient volume to achieve the fee cap. The Exchange believes that this aspect of the proposed rule change is equitable and not unfairly discriminatory because it will apply to all capped NYSE Amex Options Market Makers on an equal and non-discriminatory basis.

The Exchange believes that the proposal to charge $0.10 per contract to all NYSE Amex Options Market Makers that execute SPY options as part of an Electronic Complex Order is reasonable because the rate is set at a level that the Exchange believes may attract greater Market Maker participation in the Exchange's Complex Order Book for SPY options. Additionally, the Exchange notes that NYSE Amex Options Market Makers will continue to be assessed Marketing Charges when they execute SPY options as part of an Electronic Complex Order where the contra party is a Customer. The Marketing Charges for SPY options are currently $0.25 per contract, which, when coupled with the proposed $0.10 per contract rate, results in a $0.35 per contract charge. This all-in cost is reasonable because it is comparable to what other participants on the Exchange will pay under the proposal, ranging from $0.20 per contract for firms trading electronically to $0.43 per contract for non-NYSE Amex Options Market Makers trading electronically. In this regard, the fee is equitable and not unfairly discriminatory, particularly when considering the quoting obligations that NYSE Amex Options Market Makers must satisfy. The Exchange notes that Market Maker quotes establish the Exchange's best bid and best offer, which serve as an important price discovery tool for participants that enter Complex Orders into the Exchange's Complex Order Book. Accordingly, the Exchange believes that the proposed change is reasonable, equitable and not unfairly discriminatory. The Exchange also believes that the proposed rule change is equitable and not unfairly discriminatory because it will apply to all NYSE Amex Options Market Makers on an equal and non-discriminatory basis.

For these reasons, the Exchange believes that the entire proposal is reasonable, equitable and not unfairly discriminatory. Finally, 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 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.

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)[11] of the Act and subparagraph (f)(2) of Rule 19b–4[12] 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 email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2012–34 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–2012–34. 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 Section, 100 F Street NE., Washington, DC 20549–1090 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the Exchange's principal office and on its Internet Web site 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–2012–34 and should be submitted on or before September 5, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

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[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(2).

[13] 17 CFR 200.30–3(a)(12).