



July 12, 2016

**Via Electronic Mail ([rule-comments@sec.gov](mailto:rule-comments@sec.gov))**

Robert W. Errett, Deputy Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

Re: File No. SR-NYSEMKT-2016-045; Self-Regulatory Organizations; NYSE MKT LLC; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Modify the NYSE Amex Options Fee Schedule With Respect to Fees, Rebates, and Credits for Transactions in the Customer Best Execution Auction

Dear Mr. Errett:

The Securities Industry and Financial Markets Association (“SIFMA”)<sup>1</sup> appreciates the opportunity to comment on the above referenced filing to determine whether to approve or disapprove a proposed rule change filed with the Securities and Exchange Commission (“SEC” or “Commission”) by NYSE MKT LLC (“MKT”).<sup>2</sup> The SEC has suspended MKT’s initial proposal and initiated proceedings to approve or disapprove MKT’s proposal to modify rates for per contract fees and credits for executions associated with a CUBE auction. For the reasons outlined below, SIFMA recommends that the SEC disapprove MKT’s proposal.

In MKT’s initial filing<sup>3</sup> the exchange stated that “the proposed changes are designed to increase incentives for submission of CUBE Orders, which should maximize price improvement opportunities for Customers.”<sup>4</sup> MKT also states that “The Exchange believes that the proposed changes to CUBE Auction fees are reasonable, equitable and not unfairly discriminatory. Specifically, the proposed increases to both the Initiating Participant Credits (for both Penny Pilot and Non-Penny Pilot) as well as the fees associated with RFR Responses that participate in the CUBE are reasonable, equitable and nondiscriminatory because they apply equally to all ATP Holders that choose to participate in the CUBE, and access to the Exchange is offered on terms that are not unfairly discriminatory.”<sup>5</sup> The SEC response, which suspends SR-NYSEMKT-2016-45, states that “the Commission is concerned about

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<sup>1</sup> The Securities Industry and Financial Markets Association (SIFMA) brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.

<sup>2</sup> See Securities Exchange Act Release No. 34-78029 (June 9, 2016), 81 FR 39089 (June 15, 2016)

<sup>3</sup> See Securities Exchange Act Release No. 34-77658 (April 20, 2016), 81 FR 24674 (April 26, 2016)

<sup>4</sup> See FR at 24674

<sup>5</sup> See FR at 39090

the potential effect the proposal may have on the operation of the CUBE auction and its potential to provide price improvement to customers, as well as on competition among participants initiating CUBE Auctions and those responding to them.”<sup>6</sup>

SIFMA agrees with the SEC response to initiate proceedings to approve or disapprove the rule proposal and agrees that approval of the rule could result in unintended consequences on competition between initiating participants and non-initiating participants “and the prospect that, by substantially increasing the auction response fees paid by non-Initiating Participants, competition in CUBE Auctions could be impaired.”<sup>7</sup> As a general principle, SIFMA members concur that competition amongst market makers in the listed-options market is positive since it can result in tighter quoted spreads, larger display sizes and more market makers quoting at the National NBBO. SIFMA also is in agreement that price improvement mechanisms such as CUBE are positive if customer orders trade at improved prices and enhance the price discovery process.

#### **Responses to Specific Commission Requests for Comment:**

##### **Question - The impact of the proposed fee changes on incentives for non-Initiating Participants to respond in the CUBE Auction.**

SIFMA members do not support exchange pricing which may be designed to promote exclusivity and strengthen incentives to help internalizing facilitators execute “clean crosses” of retail flow whereby a firm’s full or almost full contra-side cross order is filled. High internalization rates, which may be promoted by fee schedules such as the one proposed by MKT, could result in a deterioration of the tight and liquid market maker quotes and an overall decline in the execution quality of options.

##### **Question - The impact of the proposed fee changes on incentives for non-Initiating Participants that respond in the CUBE Auction to offer price improvement.**

Exchanges with high responder or ‘break-up’ fees, typically result in auctions that cross at the NBBO, providing customers with minimal price improvement given the higher cost to respond. That higher cost makes it less likely that the non-initiating respondent will either respond, or be able to improve the price for the customer. Accordingly, many exchanges with high break-up fees may inadvertently promote wider spreads and result in executions whereby a customer order is only price improved to the National BBO.

##### **Question - The impact of the proposed fee changes on the quoting behavior of market makers on the Exchange.**

SIFMA notes that high break-up fees provide a disincentive for firms to respond to CUBE auctions to offer price improvement to a customer order. Since high break-up fees can result in fewer opportunities to compete for order flow, market makers could modify their quoting behavior to reduce the risk associated with providing tight and liquid markets to attract customer order flow.

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

**Question - Whether the Commission should undertake a broader review of the fee structures applied by the options exchanges to their price improvement auctions.**

Yes, the Commission should undertake not only a broader review of the fee structures applied by the options exchanges to their price improvement auctions, but also a holistic review of those price improvement auctions that are still in the pilot phase as many functional enhancements and pricing schemes have been implemented since the first auction went live. In its filing, the SEC itself questions whether the proposed fees “are consistent with the Act, and specifically, with its requirements that exchange fees be reasonable and equitably allocated; be designed to perfect the mechanism of a free and open market and the national market system, protect investors and the public interest, and not be unfairly discriminatory; or impose an unnecessary or inappropriate burden on competition.”<sup>8</sup> Given the strong language used by the SEC to articulate its concerns regarding MKT’s CUBE pricing proposal, it seems appropriate that the SEC review not only pricing, but also functionality. A thorough review of pricing and functionality will allow the SEC to determine whether there are other aspects of price improvement auctions which should be altered to ensure that they promote a free and open market.

For the reasons set forth above, SIFMA does not support MKT’s proposed rule and recommends that the SEC disapprove the filing.

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SIFMA greatly appreciates the SEC’s consideration of SIFMA’s comments in reference to the above. If you have any questions, please do not hesitate to contact me at [REDACTED] or [REDACTED].

Respectfully Submitted,



Ellen Greene  
Managing Director

cc: Mary Jo White, Chairman  
Michael S. Piwowar, Commissioner  
Kara M. Stein, Commissioner

Stephen Luparello, Director, Division of Trading and Markets  
Gary Goldsholle, Deputy Director, Division of Trading and Markets  
David S. Shillman, Associate Director, Division of Trading and Markets

Thomas Farley, President, NYSE Group

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<sup>8</sup> See FR 39091