

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-72343; File No. SR-NYSEMKT-2014-50)

June 6, 2014

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Amex Options Fee Schedule

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 June 2, 2014, 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Amex Options Fee Schedule (“Fee Schedule”). The proposed changes will be operative on June 2, 2014. 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.

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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule as described below. The proposed changes will be operative on June 2, 2014.

The Exchange proposes to modify the existing tier, specifically Tier 1B, where Order Flow Providers ("OFPs") can qualify to earn a rebate under the OFP Electronic ADV Tiers. The Exchange is reducing the volume requirement under existing Tier 1B from .75% of Total Industry Customer equity and ETF option ADV to .45% of Total Industry Customer equity and ETF option ADV. No other changes are being proposed by the Exchange at this time.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)⁴ of the Act, in general, and Section 6(b)(4) and (5)⁵ of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Exchange believes that the proposal to modify the existing criteria used by OFPs to qualify and earn a rebate under Tier 1B of the OFP Customer Electronic ADV is reasonable, equitable and not unfairly discriminatory for the following reasons.

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(4) and (5).

First, the Exchange is making it easier for all OFPs to potentially earn a rebate on certain of their electronic volumes under the newly proposed criteria under Tier 1B by reducing the percentage of Total Industry Customer equity and ETF options ADV from .75% to .45%. By making the threshold lower, it should be easier for more OFPs to qualify for the rebate and in doing so will lower their overall cost of doing business on the Exchange, which may, in turn, lead to cost reductions for the clients of OFPs. The Exchange believes that offering OFPs a \$0.06 per contract rebate under the terms and conditions proposed in Tier 1B is also reasonable as the rebate is designed to attract additional Customer volumes along with Non-NYSE Amex Options Market Maker, Firm, Professional Customer and Broker Dealer volumes to the Exchange, which benefits all other participants by increasing the opportunities to trade, enhancing transparency and price discovery. Requiring a certain level and type of activity before qualifying for a rebate on a different type of activity is also not new or novel. Specifically, two other exchanges currently require participants to commit to a certain level and type of activity before qualifying for a rebate on other activity.⁶ The Exchange also believes that excluding certain volumes from being eligible for the rebate, specifically QCC volumes, electronic Customer Complex volumes, Strategy Executions and orders routed away in

⁶ See Chicago Board Options Exchange, Inc. (“CBOE”) Fee Schedule, [available here](http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf), <http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf> and the CBOE Proprietary Products Sliding Scale which offers Clearing Trading Permit Holders reduced rates in CBOE Proprietary Products (SPX, VIX, etc.) if the Clearing Trading Permit Holder achieves certain ADV thresholds in multiply-listed options. See also NASDAQ OMX PHLX Fee Schedule, [available here](http://www.nasdaqtrader.com/Micro.aspx?id=PHLXPricing), <http://www.nasdaqtrader.com/Micro.aspx?id=PHLXPricing> and the “Customer Rebate Program” and Tier 3 where, “The Exchange will pay a \$0.02 per contract rebate in addition to the applicable Tier 2 and 3 rebate to a Specialist or Market Maker or its member or member organization affiliate under Common Ownership provided the Specialist or Market Maker has reached the Monthly Market Maker Cap, as defined in Section II.”

conjunction with the Options Order Protection and Locked/Crossed Market Plan referenced in Rule 991NY, is also reasonable as these volumes are already eligible for either reduced rates, rebates or capped fees and offering additional discounts on these volumes is not desirable as to do so may lead to increased costs for other participants. Further, the Exchange notes that excluding such volumes is consistent with the existing fee schedule.⁷ As the proposed revision to the qualifying threshold under Tier 1B of the OFP Electronic ADV Tiers and the associated rebates will be available to all participants who route electronic Customer business, the Exchange believes the proposal is also equitable and not unfairly discriminatory.

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. The Exchange believes that the proposed changes will enhance the competitiveness of the Exchange relative to other exchanges. 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.

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.

⁷ See Securities and Exchange Commission Release No. 68036 (October 12, 2012) [sic], 77 FR 63900 (October 17, 2012) (SR-NYSEMKT-2012-50) (establishing OFP Rebates with exclusions for volume attributable to QCC orders, electronic Customer Complex volumes, Strategy Executions and orders routed away in conjunction with the Options Order Protection and Locked/Crossed Market Plan referenced in Rule 991NY).

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)⁸ of the Act and subparagraph (f)(2) of Rule 19b-4⁹ thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

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. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)¹⁰ of the Act to determine whether the proposed rule change should be approved or 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 Number SR-NYSEMKT-2014-50 on the subject line.

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(2).

¹⁰ 15 U.S.C. 78s(b)(2)(B).

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEMKT-2014-50. 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 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 Number SR-NYSEMKT-2014-50, 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.¹¹

Kevin M. O'Neill
Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).