

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-74086; File No. SR-NYSEMKT-2015-04)

January 16, 2015

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 (“Act”),² and Rule 19b-4 thereunder,³ notice is hereby given that on January 14, 2015, NYSE MKT LLC (the “Exchange” or “NYSE MKT”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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 Fee Schedule (“Fee Schedule”) to: (1) make certain changes to transaction fees for Standard Options; (2) provide a discount to NYSE Amex Options Market Makers for transaction fees based on a sliding volume scale; (3) offer to NYSE Amex Options Market Makers the opportunity to prepay a portion of certain transaction fees; (4) eliminate the Order Flow Provider (“OFP”) Electronic average daily volume (“ADV”) Tiers as well as the Customer Electronic Complex Order ADV Tiers and replace them with a new Amex Customer Engagement Program, which would provide credits payable to an OFP for certain Electronic Customer volume; and (5) reformat and reorganize the Fee Schedule. The Exchange proposes to implement the changes on January 2, 2015. The text of

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 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: (1) make certain changes to transaction fees for Standard Options; (2) provide a discount to NYSE Amex Options Market Makers for transaction fees based on a sliding volume scale; (3) offer to NYSE Amex Options Market Makers the opportunity to prepay a portion of certain transaction fees; (4) eliminate the OFP Electronic ADV Tiers as well as the Customer Electronic Complex Order ADV Tiers and replace them with a new Amex Customer Engagement Program, which would provide credits payable to an OFP solely for certain Electronic Customer volume; and (5) reformat and reorganize the Fee Schedule. The Exchange proposes to implement the changes on January 2, 2015.

As a general matter, the Exchange notes that it has proposed to reorganize certain content within and reorder certain sections of the current Fee Schedule. For example, as will be discussed further below, the Exchange has proposed to eliminate Endnotes and instead include notes relevant to each Section within that Section, often using the text that is contained in the current Endnotes within each new Section. If the Exchange revises any text in the Endnotes

when moving it to notes within relevant Sections, including for non-substantive reasons, we will explain in more detail below. The Exchange believes this structure will make the Fee Schedule easier to comprehend.

The Exchange describes below each of the sections, together with any changes, in the proposed Fee Schedule.

Table of Contents, Preface, Definitions and Terms.

The Exchange proposes to amend its Fee Schedule by adding a Table of Contents, using numbered and lettered headings and subheadings that list the various transaction fees and credits offered by the Exchange. The Exchange believes that including a Table of Contents would make the Fee Schedule easier to navigate and assist market participants in locating fees and/or credits related to those transactions in which they may be most interested.

Following the Table of Contents, the Exchange proposes to add a Preface that includes information about the Exchange's billing and rounding practices and that sets forth key terms and definitions. First, the Exchange proposes to include information about Billing Disputes, as the first part of the Preface. The current Fee Schedule describes how the Exchange handles Billing Disputes under "NYSE Amex Options General,"⁴ and this description will be incorporated into the proposed Preface verbatim.

Second, the Exchange proposes to add a description of its rounding practices. Specifically, the Exchange proposes to include the following language,

Any per contract fees that are less than \$0.01 will be handled in the following manner. All volume for the month will be summed and the applicable rate applied. In those cases where a fractional cent occurs, the Exchange will round up to the nearest whole cent for purposes of

⁴ This information appears at the end of the current Fee Schedule, right before the Endnotes.

computing the invoice. For example, if the monthly volume is 3,001 contracts and the applicable rate is \$0.055 per contract, the result is \$165.055 which will be rounded to \$165.06 in computing the invoiced amount.

The Exchange believes that including this information in the Fee Schedule would better inform Exchange members about how the Exchange bills them for transactions executed on the Exchange.

Next, the Exchange proposes to add a new section that sets forth Key Terms and Definitions to make clear to members the meaning of certain terms used throughout the Fee Schedule. The Exchange believes this proposed change would make the Fee Schedule more comprehensive, thereby better informing members. Unless otherwise noted below, the proposed Key Terms and Definitions are non-substantive as they have been excerpted from the rules of the Exchange.⁵

The Exchange proposes to add a definition of Affiliate, which incorporates the “Affiliate” standard in Endnote 12 of the current Fee Schedule. The proposed definition of “Affiliate” states, in part, that the Exchange “will apply a 70% common ownership test” to determine affiliation for purposes of aggregating routing and market making activity. Although Endnote 12 relates solely to a determination of affiliation for purposes of Excessive Bandwidth Fees, the Exchange proposes to apply the Affiliate definition (i.e., 70% common ownership) more broadly in the proposed Fee Schedule.⁶ The Exchange notes that this proposed definition of Affiliate is consistent with that of other options exchanges, and at least two other options exchanges apply a

⁵ See proposed Fee Schedule, Key Terms and Definitions; see, e.g., Rule 900.2NY (Definitions).

⁶ The Exchange proposes to import the balance of the information contained in current Endnote 12 into Section II (“Monthly Excessive Bandwidth Utilization Fees”) of the proposed Fee Schedule as discussed below.

75% common ownership threshold for affiliation and that there is at least one other exchange that does not specify the level of common ownership or common control required in order to have the activity of affiliates aggregated for purposes of the fee schedule.⁷

The Exchange has proposed to add a “Non-Customer” definition for purposes of the proposed Fee Schedule. The definition of “Non-Customer” would be any market participant that is not a Customer. Because the definition of Customer in proposed Fee Schedule would be any individual or organization that is not a Broker-Dealer and is not a Professional Customer, as defined in Rule 900.2NY(18)(A), a Non-Customer would be defined as any individual or organization that is either a Broker-Dealer or Professional Customer.

In addition, the Exchange proposes to add the definition of Standard Option contracts, which it defines as any option other than a Mini Option contract, as described in Rule 901, Commentary .01.

The Exchange notes that the other proposed Key Terms and Definitions are non-substantive. Specifically, the proposed definitions related to the CUBE Auction – CUBE Order, Contra Order, and Initiating Participant – are taken directly from the CUBE Auction fee filing

⁷ See, e.g., NASDAQ OMX PHLX LLC (“PHLX”) fee schedule, [available here](#), <http://www.nasdaqtrader.com/Micro.aspx?id=PHLXPricing> (defining the term “Common Ownership” as meaning “members or member organizations under 75% common ownership or control”); see also The Chicago Board Options Exchange, Inc. (“CBOE”) fee schedule, [available here](#), <http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf> (defining “affiliate” as “having at least 75% common ownership” between the two entities in question); see also BATS BZX Exchange (“BATS”) fee schedule, [available here](#), http://cdn.batstrading.com/resources/regulation/rule_book/BZX_Fee_Schedule.pdf (defining the term “ADAV” to specify, “a Member may aggregate ADAV or ADV with other Members that control, are controlled by, or are under common control with such Member”).

and are, therefore, non-substantive proposed changes.⁸ Also, the proposed addition of the terms Electronic and Manual to differentiate these types of transactions on the Exchange are non-substantive as this information can be found in Exchange rules, as well as in the current Fee Schedule. Specifically, Rule 900.2NY(29) explains that Floor Market Maker quotations may be entered “(A) manually, by public outcry, and (B) electronically through an auto-quoting device.” Similarly, Endnote 6 to the current Fee Schedule states that “Manual trades are those trades executed in open outcry.” Further, the Exchange notes that there are references to Manual and Electronic transactions throughout the current (and proposed) Fee Schedule. Thus, the Exchange believes it would be logical to add these definitions to explain these transaction types to market participants.

Finally, the Exchange also proposes non-substantive additions to the Key Terms and Definitions by importing the information from current Endnotes 6 and 14, which contain the definitions of Firm Proprietary, Firm Facilitation and Non-NYSE Market Maker, respectively (with slight stylistic wording changes to these definitions). In particular, the Exchange proposes to simplify the term “Firm Proprietary” to “Firm” throughout the proposed Fee Schedule. The proposed definition of “Firm” includes information from current Endnote 6 together with the definition from Rule 900.2NY(28).⁹

Except as otherwise indicated above, the Exchange believes the addition of this Key Terms and Definitions section is a non-substantive addition that will aid its members in navigating and understanding certain terms consistently used through the Fee Schedule.

⁸ See Securities Exchange Act Release No. 72469 (June 25, 2014), 79 FR 37380 (July 1, 2014) (NYSE-MKT-2014-52).

⁹ In addition, the Exchange proposes to import the balance of the information contained in current Endnote 6 into Section I.I (“Firm Monthly Fee Cap”) of the proposed Fee Schedule as discussed below.

Section I. Options Transactions Fees and Credits

A. Rates for Standard Option Contracts Transactions – Electronic and Manual

The current Fee Schedule sets forth the rates for Standard Option¹⁰ contracts in a table under “NYSE Amex Options: Trade-Related Charges for Standard Options.”¹¹ The Exchange proposes to set forth the per contract rate Electronic and Manual transactions in Standard Options under new Section I.A. in a table (with related notes to immediately follow).¹²

With the following exceptions, the Exchange is not proposing to change the rates for Standard Option contracts:

- The Exchange proposes a new rate of \$0.23 per contract for e-Specialists, Specialists, Directed Options Market Makers (“DOMMs”), and NYSE Amex Options Market Makers for Electronic transactions in Standard Option contracts.¹³ This rate is competitive with rates being charged on other

¹⁰ Where applicable, capitalized terms used herein have the meanings set forth in the proposed Fee Schedule in the Key Terms and Definitions section.

¹¹ In the current Fee Schedule, the table of fees for Standard Options includes several Endnotes. The information contained in Endnote 5 will be discussed in this Section and again in proposed Section I.C. (NYSE Amex Market Maker Sliding Scale). As noted above, existing Endnotes 6 and 14 describe the terms Firm Proprietary, Firm Facilitation, and Non-NYSE Market Maker, respectively, and the Exchange proposes the non-substantive change of relocating these terms to the Key Terms and Definitions section of the proposed Fee Schedule, although Firm Proprietary has been simplified to Firm; the proposed definition of Firm includes information from Endnote 6 together with the definition from Rule 900.2NY(28).

¹² The Exchange will describe the proposed notes after discussing the distinctions between the fees.

¹³ In adopting the new \$0.23 base rate for Electronic transactions for e-Specialists, Specialists, DOMMs, and NYSE Amex Options Market Makers – Non Directed, the Exchange will no longer offer differentiated pricing for the Electronic transactions of these participants. Thus, these participants will be collectively referred to as “NYSE Amex Options Market Makers” for purposes of the proposed Fee Schedule and will be subject to the same rates for Electronic transactions.

exchanges.¹⁴ The new base rate of \$0.23 per contract represents an increase in fees charged to market participants. Under the current Fee Schedule, each market participant is charged a per contract fee for Electronic transactions (described below), which rate is subject to a three-cent per contract discount if the market participant trades 50,000 contracts ADV or greater for each day of the month. Thus, the current undiscounted per contract charges for Standard Options are as follows: Specialists and e-Specialists are charged \$0.13 per contract; DOMMs are charged \$0.18 per contract, and NYSE Amex Options Market Makers – Non Directed are charged \$0.20 per contract. Although this proposal represents an increase across the board in the per contract rate charged for Electronic transactions, as noted above, the proposed rate is consistent with other exchanges. Further, the Exchange proposes to afford these market participants an opportunity to pay lower per contract rates for their Electronic executions under the proposed Sliding Scale, as discussed in Section I.C. below.

- In conjunction with the proposed base rate change, the Exchange proposes to eliminate the three-cent per contract discount (noted above) for e-Specialists, Specialists, DOMMs, and NYSE Amex Options Market Makers that execute 50,000 or more contracts ADV for each day of the month. For example, under the

¹⁴ See, e.g., CBOE fee schedule, [available here](http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf), <http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf> (the “Liquidity Provider Sliding Scale”); PHLX fee schedule, [available here](http://www.nasdaqtrader.com/Micro.aspx?id=PHLXPricing), <http://www.nasdaqtrader.com/Micro.aspx?id=PHLXPricing> (per the “Multiply Listed Options Fees,” charging Specialists and Market Makers \$0.22 or \$0.25 per contract for Penny and Non-Penny electronic transactions); Boston Options Exchange LLC (“BOX”) fee schedule, [available here](http://boxexchange.com/assets/BOX_Fee_Schedule.pdf), http://boxexchange.com/assets/BOX_Fee_Schedule.pdf (per Section IA – Non Auction Transaction Fees, charging Market Makers a variable rate between \$0.00 and \$0.90 per contract depending upon whether they are making or taking liquidity and which participant type counterparty (e.g., Customer, Firm, etc.)).

current Fee Schedule, a Specialist or e-Specialist that does not execute more than 50,000 contracts ADV is charged \$0.13 per contract, but if they meet the volume threshold they are charged only \$0.10 per contract. The Exchange undiscounted rate of \$0.13 per contract for Specialists and e-Specialists and \$0.20 per contract for NYSE Amex Options Market Makers would continue to apply to these members' Manual transactions in Standard Option contracts.¹⁵ Current Endnote 5 describes the calculation used in determining whether a Specialist, e-Specialist, DOMM or NYSE Amex Options Market Maker has reached the 50,000 contract ADV threshold, which calculation excludes volumes from Mini Options and CUBE Auctions. In conjunction with eliminating the discount associated with achieving the 50,000 contract ADV threshold, the Exchange also proposes to eliminate the portions of current Endnote 5 relating to the 50,000 contract ADV threshold.

- The Exchange is also proposing to eliminate the \$0.10 per contract charge for SPY Electronic Complex executions for NYSE Amex Options Market Makers. The Exchange proposes that these transactions will be charged the same rate as any other Electronic Standard Option transaction by a NYSE Amex Market Maker going forward.
- Finally, the Exchange proposes to eliminate the \$350,000 per month fee cap on NYSE Amex Options Market Makers, and the associated service fees of \$0.01 per contract for volumes in excess of 3,500,000 contracts or the \$0.10 per contract service fee for Complex volumes as described in Endnote 5 to the current Fee

¹⁵ DOMMs do not execute Manual transactions.

Schedule. Endnote 5 to the current Fee Schedule contains a description of the manner in which the \$350,000 per month fee cap works and also includes a description of the application of the \$0.01 per contract service fee for all Specialist, e-Specialist and Market Maker volume executed in excess of 3,500,000 contracts per month, as well as the exception for the execution of an Electronic Complex Order, in which case the incremental service fee is \$0.10 per contract. Current Endnote 5 also describes transactions that are excluded from ADV volume calculations, such as Mini Options contract charges and executions resulting from CUBE Auctions. As the \$350,000 per month fee cap is being eliminated, the Exchange also proposes to eliminate those portions of Endnote 5 relating to the \$350,000 per month fee cap. Consequently, in conjunction with the changes described in the bullet above, the Exchange proposes to eliminate Endnote 5 to the current Fee Schedule its entirety.

In addition, immediately following the proposed fee table, there are four notes designed to amplify certain information in the table in Section I.A. The first, second, and fourth notes refer to fees and/or credits that may apply and which will be discussed in greater detail below in Sections I.K. (Royalty Fees), I.C. (NYSE Amex Options Market Maker Sliding Scale), and I.I. (Firm Monthly Fee Cap), respectively. The third note relates to Marketing Charges and is related to the column “Marketing Charges Per Contract for Electronic Transactions.”

The third note contains the same information that appears on the current Fee Schedule under “Marketing Charge,”¹⁶ together with the two associated Endnotes 9 and 10.¹⁷ The

¹⁶ The Marketing Charge entry is found right below the “Limit on Strategy Executions” [sic] section in the current Fee Schedule, which comes after the heading “NYSE Amex Options: Trade-Related Charges for Mini Options.”

Exchange proposes to include information about the assessment and distribution of the Marketing Charges in the third note to the table of transaction fees for Standard Options contracts, which lists the Marketing Charges per contract for Electronic transactions. In addition, the Exchange is proposing to make changes to the language in the current Fee Schedule under “Marketing Charges” and in Endnotes 9 and 10. As proposed to be included in the third note, the proposed description of the manner in which the Marketing Charges are assessed and distributed would be clearer than in the current Fee Schedule. The Exchange is not, however, proposing to make any substantive changes to the manner in which Marketing Charges are assessed or distributed. Specifically, NYSE Amex Options Market Makers who are counterparties to an Electronic Trade with a Customer would continue to be assessed a Marketing Charge. The Exchange is proposing to remove the statement that Marketing Charges will not be assessed against executed QCC or CUBE orders because the table in which proposed note 3 appears only relates to Standard Options contracts. Further, the pool of monies resulting from the collection of Marketing Charges on Electronic non-Directed Orders would continue to be controlled by the Specialist or e-Specialist with superior volume performance over previous quarter. An ATP Holder that submits an Electronic non-Directed Order would continue to be able to designate a any NYSE Amex Options Market Maker to control Marketing Charges collected in connection with such non-Directed Order. And, Marketing Charges on Electronic Directed Orders would continue to be controlled by the NYSE Amex Options Market Maker to which the order was directed. In all cases, the Exchange would continue to distribute any monies to payment accepting firms as directed by the appropriate NYSE Amex Options Market Maker.

¹⁷ The Exchange notes that while it has imported the information from current Endnotes 9 and 10, the language has been streamlined to make the text more concise and comprehensible.

Finally, the Exchange proposes a non-substantive change with respect to the proposed table in Section I.A. The proposed table has separate columns for transaction type (Electronic v. Manual) and “Marketing Charges Per Contract for Electronic Transactions as well as separate rows to distinguish between whether the option is for a Penny or Non-Penny option.”¹⁸ The Exchange believes that the re-formatted table provides the same information but in a manner that is easier to navigate.

Section I.B. Rates for Mini Option Contracts Transactions – Electronic and Manual.

The current Fee Schedule sets forth the rates for Mini Option contracts in a table under “NYSE Amex Options: Trade-Related Charges for Mini Options.”¹⁹ The Exchange proposes to include the per contract rate for Electronic and Manual transactions in Mini Options under new Section I.B. in a table (with a related note to immediately follow).²⁰ The Exchange is not proposing any change to the rates charged for Mini Options. The Exchange is proposing two non-substantive changes to the presentation of charges related to Mini Options. First, the Exchange proposes to omit the fees and credits for QCC trades involving Mini Options from the table and to instead relocate this information to Section I.F. (QCC Fees & Credits). The Exchange believes it is logical to include all QCC-related fees and credits for Standard and Mini Options in one place on the Fee Schedule and believes that this change would aid participants in

¹⁸ “Penny” option and “Non-Penny” option would be defined in the proposed new “Key Terms and Definitions” section.

¹⁹ The current table of fees for Mini Options includes several Endnotes. The Exchange proposes to move the information discussed in current Endnote 17 to proposed Section I.E. (Amex Customer Engagement Program), which is discussed below. As noted above, supra n. 11, current Endnote 6 describes the term Firm and this term is now included in the proposed Fee Schedule in the Key Terms and Definitions section.

²⁰ Note 1 to the proposed table relates to Marketing Charges, which, as noted in Section I.A. above, is information that was imported directly from the current Fee Schedule, with changes as noted herein (see supra n. 17), and therefore represents a non-substantive change.

QCC trades in locating information relating to these transactions. Second, the Exchange proposes to delete the column for fees applicable to “Electronic Complex Order Executions” in Mini Options from the table of charges for Mini Options as it appears in the current Fee Schedule²¹ because the rates for simple (or single-legged) executions and Complex (or multi-legged) executions is (and will remain) the same and therefore this separate column is not needed. The Exchange believes eliminating this superfluous column will add clarity to the Fee Schedule.

Section I.C. – NYSE Amex Options Market Maker Sliding Scale – Electronic.

The Exchange is proposing to provide a discount to NYSE Amex Options Market Makers²² for transaction fees based on a sliding volume scale. This proposed Sliding Scale discount is designed to replace the \$350,000 per month fee cap, and related \$0.01 per contract service fee for all NYSE Amex Options Market Maker volume executed in excess of 3,500,000 contracts per month, except for the execution of an Electronic Complex Order, in which case the incremental service fee is \$0.10. The proposed sliding scale is also designed to replace the 50,000 contract ADV threshold which results in a \$0.03 per contract discount for NYSE Amex Options Market Makers, which, as discussed in Section I.A. above, the Exchange proposes to eliminate.²³

The proposed Sliding Scale discount in the table in Section 1.C. would apply to Electronic transactions in Standard Options by NYSE Amex Options Market Makers. An NYSE

²¹ See Current Fee Schedule, “NYSE Amex Options: Trade-Related Charges for Mini Options.”

²² See supra n. 13.

²³ The current \$350,000 per month fee cap is found in Endnote 5 of the current Fee Schedule, which also describes the \$0.01 and \$0.10 service fee for single leg and complex volumes in excess of the cap.

Amex Options Market Maker that has monthly volume on the Exchange of less than 0.10% of total industry Customer equity and exchange traded fund (“ETF”) options volume²⁴ would be charged the proposed base rate of \$0.23, as discussed above. The Exchange proposes to offer these same market participants a reduction of this per contract rate upon reaching certain volume thresholds as shown in the table below. The rates shown are applicable to monthly volume within a given tier such that the lower per contract rate applies only to volume levels within that higher tier. For example, assume that an NYSE Amex Options Market Maker achieves monthly volume of 6,000,000 contracts Electronically at a time when total industry Customer equity and ETF Option volume in the same month is 252,000,000 contracts. Under the proposed Sliding Scale, this Market Maker would pay \$0.23 per contract on the first 252,000 contracts (Tier 1); \$0.20 per contract on contracts 252,001 through 1,512,000 (Tier 2); \$0.10 per contract on contracts 1,512,001 through 3,150,000 (Tier 3), \$0.08 per contract on contracts 3,150,001 through 3,528,000 (Tier 4), \$0.05 per contract on contracts 3,528,001 through 4,410,000 (Tier 5), \$0.03 per contract on contracts 4,410,001 through 5,040,000 (Tier 6), and \$0.02 per contract on

²⁴ The volume thresholds are based on an NYSE Amex Options Market Makers’ volume transacted Electronically as a percentage of total industry Customer equity and ETF options volumes as reported by the Options Clearing Corporation (the “OCC”). Total industry Customer equity and ETF option volume is comprised of those equity and ETF contracts that clear in the Customer account type at OCC and does not include contracts that clear in either the Firm or Market Maker account type at OCC or contracts overlying a security other than an equity or ETF security. See OCC Monthly Statistics Reports, available here, <http://www.theocc.com/webapps/monthly-volume-reports>.

contracts 5,040,001 through 6,000,000 (Tier 7).²⁵ The Exchange believes this change will enable it to compete more effectively with other options exchanges that offer similar pricing.²⁶

Proposed Table Showing Sliding Scale of Market Maker Fees – Electronic

Tier	Market Maker Monthly Electronic Volume as a % of Industry Customer Equity and ETF Option Volume	Rate per Contract
1	0.00% to 0.10%	\$0.23
2	>0.10% to 0.60%	\$0.20
3	>0.60% to 1.25%	\$0.10
4	>1.25% to 1.40%	\$0.08
5	>1.40% to 1.75%	\$0.05
6	>1.75% to 2.00%	\$0.03
7	>2.00%	\$0.02

Section I.D. – Prepayment Program

The Exchange is proposing to offer prepayment programs to NYSE Amex Options Market Makers. The proposed Prepayment Program would allow a NYSE Amex Options Market Makers the option to commit to either a 1-year or 3-year term (the “1 Year Prepayment Program” or “3 Year Prepayment Program,” respectively) under which it could prepay a portion of the charges it incurs under proposed Sections I.C., I.G., or III.A. of the Fee Schedule.²⁷ The

²⁵ In calculating an NYSE Amex Options Market Maker Electronic volumes, the Exchange proposes to exclude any volumes attributable to Mini Options, QCC trades, CUBE Auctions, and Strategy Execution Fee Caps, as these transactions are subject to separate pricing described in proposed Fee Schedule Sections I.B., I.F., I.G., and I.J, respectively.

²⁶ See, e.g., CBOE fee schedule, [available here](http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf), <http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf> (the “Liquidity Provider Sliding Scale”); BOX fee schedule, [available here](http://boxexchange.com/assets/BOX_Fee_Schedule.pdf), http://boxexchange.com/assets/BOX_Fee_Schedule.pdf (the “Tiered Volume Rebate for Market Makers”); MIAX fee schedule, [available here](http://www.miaxoptions.com/sites/default/files/MIAX_Options_Fee_Schedule_12012014.pdf), http://www.miaxoptions.com/sites/default/files/MIAX_Options_Fee_Schedule_12012014.pdf (“Market Maker Sliding Scale”).

²⁷ The Exchange will apply the prepayment as a credit against charges incurred under Section I.C., I.G., or III.A. of the Fee Schedule. Once the prepayment credit has been exhausted, the Exchange will invoice the NYSE Amex Options Market Maker at the

1 Year Prepayment Program would require an upfront payment of \$4 million, payable by January 30, 2015. The 3 Year Prepayment Program would require a commitment of \$9 million, payable in three equal, annual installments of \$3 million, with the first payment due by January 30, 2015, the second payment due by January 29, 2016 and the final payment due by January 31, 2017. Any NYSE Amex Options Market Maker that elects to participate in either of the Prepayment Programs would qualify its Affiliated OFP to be eligible to receive the enhanced credit(s) under the Amex Customer Engagement (“ACE”) Program (described below) in proposed Section I.E. of the Fee Schedule.

To participate in the 1 Year or 3 Year Prepayment Programs, interested NYSE Amex Options Market Makers would have to notify the Exchange in writing no later than January 15, 2015 indicating to which prepayment term they are committing.²⁸ The 3 Year Prepayment Program would not be available after January 15, 2015. However, NYSE Amex Options Market Maker firms could opt into the 1 Year Prepayment Program for 2016 or 2017 by sending an email to the Exchange by 4:00 p.m. ET on the last business day in December of either 2015 or 2016, provided the Exchange continues to offer the 1 Year Prepayment Program at that time.

The Exchange is proposing to allow NYSE Amex Options Market Makers in the 3 Year Prepayment Program to “opt out” under certain circumstances, thereby relieving the Market

appropriate rates under Section I.C., I.G., or III.A. In the event that the NYSE Amex Options Market Maker does not conduct sufficient activity to exhaust the entirety of their prepayment credit within the calendar year, there will be no refunds issued for any unused portion of their prepayment credit.

²⁸ The NYSE Amex Market Maker would be required to send an email to the Exchange at optionsbilling@nyse.com. The email to enroll in the Prepayment Program must originate from an officer of the NYSE Amex Options Market Maker firm and, except as provided for below, represents a binding commitment for the 1- or 3-year term to which the NYSE Amex Options Market Making firm commits, requiring payment according to the schedule described above.

Maker of any remaining payment obligations.²⁹ NYSE Amex Options Market Makers would be permitted to “opt out” only if:

1. NYSE Amex Options equity and ETF options market share over any consecutive 3-month period during 2015 falls below 7.5% of total equity options and ETF options volume ;³⁰ or
2. NYSE Amex Options equity and ETF options market share over any consecutive 3-month period during 2016 falls below 7.0% of total equity options and ETF options volume; or
3. the Exchange reduces the transaction fees in Tiers 1 through 6 in Section I.C. by 70% or more compared to the rates as of January 2, 2015;³¹ or

²⁹ To effectuate early termination, an NYSE Amex Options Market Making firm must send an email to optionsbilling@nyse.com requesting to opt out. The opt out request must be submitted by 4:00 p.m. ET at least five business days preceding the date(s) on which payment is due for any year(s) for which the NYSE Amex Options Market Maker wishes to opt out. Specifically, to opt out for 2016, the request must be submitted by 4:00 p.m. ET on January 22, 2016 and to opt out for 2017, the request must be submitted by 4:00pm ET on January 24, 2017. Anytime a NYSE Amex Options Market Making firm opts out, they would also forfeit the ability for an OFP Affiliate to earn the enhanced credit(s) described below in proposed Section I.E. for any subsequent year(s) in which they have opted out. Opting out does not entitle a NYSE Amex Options Market Making firm to any refund of monies already paid under the Prepayment Program, but only relieves them of the obligation to make remaining payments, if any, if they opted into the 3 Year Prepayment Program.

³⁰ Market share is determined based on cleared volumes statistics for both equity and ETF options volumes as reported by the OCC. See OCC Monthly Statistics Reports, [available here, http://www.theocc.com/webapps/monthly-volume-reports](http://www.theocc.com/webapps/monthly-volume-reports) (including for equity options and ETF options volume, subtotaled by exchange, along with OCC total industry volume). Relying on OCC data, the Exchange will compute market share by using NYSE Amex Options total equity and ETF option volumes for the most recent, prior three-months as the numerator and OCC equity and ETF option volumes (across all options markets) for the same three months as the denominator. Any time this calculation yields a result less than 7.5% during 2015 or 7.0% during 2016, rounding to the nearest tenth (i.e., one place to the right of the decimal) and using standard rounding by Microsoft Excel®, a NYSE Options Market Maker in the 3 Year Prepayment Program would be eligible to opt out.

4. the Exchange reduces each and every fee in Section I.G. charged to NYSE Amex Options Market Makers by 70% or more compared to the rates as of January 2, 2015;³² or
5. as of January 4, 2016 or January 3, 2017 there are fewer than 4 participants in the 1 Year and 3 Year Prepayment Programs combined.³³

³¹ For example, as previously described in proposed Section I.C., a NYSE Amex Options Market Maker will be charged for Electronic transactions according to the Sliding Scale. In the example set forth above in the description of Section I.C., the NYSE Amex Options Market Maker that transacted 6,000,000 contracts in a month with industry Customer equity and ETF option volume of 252,000,000 contracts would qualify for the rates inclusive of Tiers 1 through 7. Tier 7 covers volumes in excess of 2.00% of industry Customer equity and ETF option volume and is an infinite Tier with no upper bound on volume. Therefore, in calculating the 70% reduction in fees charged under Section I.C., the Exchange will only consider fees for transactions charged under Tiers 1 through 6. Anytime the aggregate fees charged for all of the volumes associated with Tiers 1 through 6 are reduced by 70% or more when compared with the aggregate fees charged for all of the volumes for Tiers 1 through 6 as of January 2, 2015, a NYSE Amex Options Market Maker would be eligible to opt out.

The amount of volume represented by Tiers 1 to 6 will likely change from month to month, as those tiers are expressed as a percentage of total monthly industry Customer equity option and ETF option volume. In the initial example, Tiers 1 to 6 represent volume of 5,040,000 contracts (2% of 252,000,000), which would cost each NYSE Amex Options Market Maker transacting 5,040,000 contracts \$567,000. If the Exchange were to reduce the cost to trade 5,040,000 contracts (in a month when total industry Customer equity option and ETF option volume was 252,000,000 contracts) by at least 70% or \$396,900, then a valid opt out opportunity would exist.

Continuing the example, if, in a subsequent month, total industry Customer and equity option and ETF option volume is 200,000,000 contracts, Tiers 1 to 6 would represent contract volume of 4,000,000 contracts (2% of 200,000,000). Under the Sliding Scale in effect as of January 2, 2015, any NYSE Amex Options Market Maker would have been charged \$450,000 to transact 4,000,000 during a month in which total industry Customer equity option and ETF option volume is 200,000,000. If the Exchange were to reduce the cost to trade 4,000,000 contracts (in a month when total industry Customer equity option and ETF option volume was 200,000,000 contracts) by at least 70% or \$315,000, then a valid opt out opportunity would exist.

³² As of January 2, 2015, a NYSE Amex Options Market Maker transacting in CUBE Auctions would pay the rates assessed to Non-Customers, which includes a CUBE Order Fee of \$0.20, a Contra Order Fee of \$0.05, and a RFR Response Fee of \$0.55 for Penny Pilot and \$0.90 for Non-Penny Pilot. A 70% reduction in each and every one of these rates would be required in order for that Market Maker to be eligible to opt out.

Once opted out of the 3 Year Prepayment Program, a Market Making firm cannot opt back into the 3 year Prepayment Program, but may opt into the 1 Year Prepayment Program provided they email the Exchange by the last business day of December of 2015 or 2016, and provided that the Exchange continues to offer the 1 Year Prepayment Program at that time.

The Exchange believes the proposed Prepayment Programs will enable it to compete more effectively with other options exchanges that offer similar programs.³⁴

Section I.E. – Amex Customer Engagement (“ACE”) Program – Standard Options.

The current Fee Schedule includes OFP Electronic ADV Tiers (Tiers 1A and Tier 1B) as well as Customer Electronic Complex Order ADV Tiers (collectively, the “Tiers”) and rebates per contract for certain Electronic equity and ETF options volume under “NYSE Amex Options: Trade-Related Rebates or Subsidies for Standard Options.”³⁵ Current Endnote 17 provides information about how an OFP qualifies to meet the criteria set forth in the Tiers. The Exchange is proposing to eliminate the existing Tiers and related Endnote 17 and to instead adopt the Amex Customer Engagement (“ACE”) Program.

³³ Upon request, the Exchange will provide any participant a count of the total participants in the 1 Year and 3 Year Prepayment Programs combined, as of either January 4, 2016 or January 3, 2017. Should there be fewer than 4 participants in the 1 Year and 3 Year Prepayment Programs combined, an NYSE Amex Options Market Maker in the 3 Year Prepayment Program may opt out. Under no circumstances will the identity of any participant in either the 1 Year or the 3 Year Prepayment Program be disclosed to any other participant.

³⁴ See, e.g., CBOE fee schedule, [available here, http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf](http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf) (the “Liquidity Provider Sliding Scale”); see also Securities Exchange Act Release No. 70498 (September 25, 2013), 78 FR 60348 (October 1, 2013) (SR-MIAX-2013-43) (immediate effectiveness of program allowing participating members to prepay certain transaction fees).

³⁵ On the current Fee Schedule this is the second to last section right before “NYSE Options: General.”

Under the current Fee Schedule, OFPs earn rebates based on achieving certain volume thresholds. The current Customer Electronic Complex Order ADV Tiers are fixed tiers based on set numerical ranges. For example, Tier 1 is a volume threshold of 35,000 to 49,999 contracts – paying a rebate of \$0.04 per contract; Tier 2 is a volume threshold of 50,000 to 69,999 – paying a rebate of \$0.06 per contract; Tier 3 is a volume threshold of 70,000 to 109,999 – paying a rebate of \$0.08 per contract; and Tier 4 is a volume threshold of 110,000 and greater – paying a rebate of \$0.10 per contract.

The proposed ACE Program likewise features four tiers. However, the proposed tiers would be expressed as a percentage of total industry Customer equity and ETF option ADV.³⁶ The Exchange believes that expressing the tiers as a percentage rather than a fixed numerical range would be more easily understood by market participants given the widespread use of this metric among other exchanges.³⁷ The current OFP ADV Tier 1A and Tier 1B are more similar

³⁶ In calculating ADV, the Exchange will utilize monthly reports published by the OCC for equity options and ETF options that show cleared volume by account type. See OCC Monthly Statistics Reports, available here, <http://www.theocc.com/webapps/monthly-volume-reports> (including for equity options and ETF options volume, subtotaled by exchange, along with OCC total industry volume). The Exchange will calculate the total OCC volume for equity and ETF options that cleared in the Customer account type and divide this total by the number of trading days for that month (i.e., any day the Exchange is open for business). For example, in a month having 21 trading days where there were 252,000,000 equity option and ETF option contracts that cleared in the Customer account type, the calculated ADV would be 12,000,000.

³⁷ See, e.g., MIAX fee schedule, available here, http://www.miaxoptions.com/sites/default/files/MIAX_Options_Fee_Schedule_12012014.pdf (offering Priority Customer Rebate Program that features tiers based on a Percentage Thresholds of National Customer Volume in Multiply-Listed Options Classes Listed on MIAX); CBOE fee schedule, available here, <http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf> (offering a Volume Incentive Program that features tiers based on Percentage Thresholds of National Customer Volume in All Underlying Symbols (with certain exclusions)); and PHLX fee schedule, available here, <http://www.nasdaqtrader.com/Micro.aspx?id=PHLXPricing> (offering a Customer Rebate Program based on Percentage Thresholds of National

to the structure of the proposed ACE Program as these tiers are expressed as a percentage of total industry Customer equity and ETF option volume, as opposed to being based on fixed numerical ranges.

As proposed, the ACE Program would offer the potential to earn a higher per contract credit for Customer volumes than is possible under any of the existing Tiers, due in part to the proposed ability of an OFP to aggregate its volume with any affiliates under the ACE Program. For example, the proposed credits under the ACE Program would range from \$0.13 for qualifying volumes that reach Tier 2, to as high as \$0.20 per contract for qualifying volumes that reach Tier 4 for those OFPs that have an Affiliated NYSE Amex Options Market Maker participating in the 3 Year Prepayment Program previously described.³⁸ Specifically, the proposed ACE Program would consist of a four-tiered schedule of per contract credits payable to an OFP solely for Electronic Customer volume that the OFP, as agent, submits to the Exchange.³⁹ The ACE Program would offer the following two methods for OFPs to receive credits:

1. By calculating, on a monthly basis, the average daily Customer contract volume an OFP executes Electronically on the Exchange as a percentage of total industry Customer equity and ETF options ADV⁴⁰; or

Customer Volume in Multiply-Listed Equity and ETF Options Classes, excluding SPY Options).

³⁸ By contrast, the highest credit possible under the Customer Electronic Complex ADV Tiers is \$0.10 per contract and the highest credit under Tier 1A or Tier 1B of the OFP ADV Tiers is \$0.06 per contract.

³⁹ Electronic Customer volume is volume executed electronically through the Exchange System, on behalf of an individual or organization that is not a Broker-Dealer and who does not meet the definition of a Professional Customer.

⁴⁰ See supra n. 36.

2. By calculating, on a monthly basis, the average daily contract volume an OFP executes Electronically in all participant types (i.e., Customer, Firm, Broker-Dealer, NYSE Amex Options Market Maker, Non-NYSE Amex Options Market Maker, and Professional Customer) on the Exchange, as a percentage of total industry Customer equity and ETF options ADV⁴¹, of which at least 20% must be Customer volume executed Electronically.

Upon reaching a higher tier, an OFP would receive for all eligible Customer volume the per contract credit associated with the highest tier achieved, retroactive to the first contract traded each month, regardless of which of the two calculation methods the OFP qualifies under. In the event that an OFP is eligible for credits under both calculation methods, the OFP would benefit from whichever criterion results in the highest per contract credit for all the OFP's eligible ADV. For example, if an OFP's Customer Electronic ADV is 1.51% of total industry Customer equity and ETF option ADV, it would receive the Tier 3 credits for each qualifying Customer Standard Option contract the OFP executes, as agent. Alternatively, if an OFP has total Electronic ADV which falls into Tier 3 (1.50% to 3.50% of total industry customer equity and ETF option ADV), of which 20% or more is Customer volume, the OFP will be eligible to earn the Tier 3 credits for their eligible Customer volumes. The tiers and associated per contract credits that apply to Electronic transactions are shown in the table below.

⁴¹

Id.

Proposed Table Showing Amex Customer Engagement Program – Electronic

	ACE Program – Standard Options		Credits Payable On Customer Volume Only			
Tier	Customer Electronic ADV as a % of Industry Customer Equity and ETF Options ADV	OR	Total Electronic ADV (of which 20% or greater must be Customer) as a % of Industry Customer Equity and ETF Options ADV	Customer Volume Credits	1 Year Enhanced Customer Volume Credits	3 Year Enhanced Customer Volume Credits
1	0.00% to 0.75%		N/A	\$0.00	\$0.00	\$0.00
2	> 0.75% to 1.00%		N/A	(\$0.13)	(\$0.13)	(\$0.13)
3	>1.00% to 2.00%		1.50% to 3.50%	(\$0.14)	(\$0.16)	(\$0.18)
4	>2.00%		>3.50%	(\$0.14)	(\$0.16)	(\$0.20)

In calculating an OFP's Electronic volume for purposes of determining which tier of credits (if any) the OFP may be eligible, the Exchange would:

- Exclude any volume resulting from Mini Options and QCC trades as these transactions are subject to separate fees and/or credits (discussed in Sections I.B. and I.F.);
- Exclude any volume attributable to orders routed away in connection with the Options Order Protection and Locked/Crossed Market Plan referenced in Rule 991NY;
- Include any volume from CUBE Auction executions⁴²;

⁴² Though included in an OFP's Electronic volume calculation, contracts executed in CUBE Auctions would not be eligible to earn any credits under the proposed ACE Program, as there are separate credits paid for certain CUBE Auction volumes. See Section I. G. below.

- Include any Electronic volume of Affiliates of the OFP, such as when an OFP has an Affiliated NYSE Amex Options Market Making firm, provided proper notice has been given to the Exchange⁴³;
- Any day the Exchange is open, regardless of length, will count as a full day when calculating ADV.

The Exchange notes that the credits shown under the “1 Year Enhanced Customer Volume Credits” and the “3 Year Enhanced Customer Volume Credits” are only available to those OFPs that have an Affiliated NYSE Amex Options Market Making firm that has committed to either the 1 Year Prepayment Program or the 3 Year Prepayment Program, as described in proposed Section I.D.⁴⁴

The proposed ACE Program is designed to simplify the existing rebate programs (by combining the current Customer Electronic Complex ADV Tiers with the current OFP ADV Tiers), while also remaining competitive with rebate programs offered on other exchanges.⁴⁵ At

⁴³ In order to have an Affiliate’s trading activity included with its own, an OFP must email the Exchange at optionsbilling@nyse.com with such request and provide the Exchange with a list of the OFP’s Affiliated entities. The Exchange defines an “Affiliate”, or person “affiliated” with a specific person, as “a person that directly or indirectly through one or more intermediaries, has a 70% common ownership with, the person specified.” See proposed Fee Schedule, Key Terms and Definitions.

⁴⁴ Thus, if a NYSE Amex Options Market Making firm that has committed to the 3 Year Prepayment Program opts out before 4 p.m. ET on January 22, 2016, the OFP Affiliated with that NYSE Amex Options Market Maker will be ineligible to earn the 3 Year Enhanced Customer Volume Credits for their activity during any part of calendar years 2016 or 2017. If, however, the same firm were to subsequently opt into a 1 Year Prepayment Program, its OFP Affiliate would be eligible to earn the 1 Year Enhanced Customer Volume Credits for the calendar year in which the firm opted in.

⁴⁵ See *supra* n. 37. See e.g., CBOE fee schedule, [available here](#), <http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf> (the “Volume Incentive Program”, pays rebates as high as \$0.17 per contract for complex volumes under tier 4); PHLX fee schedule, [available here](#), <http://www.nasdaqtrader.com/Micro.aspx?id=PHLXPricing> (“Customer Rebate

the same time, the Exchange believes the proposed ACE Program would attract more volume and liquidity to the Exchange, which will benefit all Exchange participants through increased opportunities to trade as well as enhancing price discovery.

Section I.F. – QCC Fees & Credits – Standard and Mini Options.

The current fees for Qualified Contingent Cross trades are set forth in a table under “NYSE Amex Options: Qualified Contingent Cross (“QCC”) Fees.” The Exchange proposes to modify its QCC fees and credits and reformat the table in the Fee Schedule under Section I. F.

The Exchange proposes to eliminate the discounted rate per contract for e-Specialists and Specialists that transact 50,000 contracts or more ADV.⁴⁶ Consequently, e-Specialists and Specialists that receive an execution as part of a QCC trade would be charged the rate for a Standard Options Manual transaction, or \$0.13 per contract.

The Exchange also proposes non-substantive changes to the current table illustrating QCC pricing. Specifically, as noted in Section I.B. above, the Exchange proposes to incorporate the information regarding the fees and credits for QCC trades involving Mini Options into the existing table for QCC transactions so that all information regarding QCC transactions are in one place and also to include the information from existing Endnote 15 regarding Floor Brokers as note 1 to immediately follow the table, with slight stylistic, non-substantive textual changes.

Program”, Program pays rebates as high as \$0.19 per contract under tier 5 for Category B rebates); MIAX fee schedule, [available here, http://www.miaxoptions.com/sites/default/files/MIAX_Options_Fee_Schedule_12102014.pdf](http://www.miaxoptions.com/sites/default/files/MIAX_Options_Fee_Schedule_12102014.pdf) (“Priority Customer Rebate Program”, pays rebates as high as \$0.20 per contract in Select Symbols, under tier 5).

⁴⁶ As previously discussed, the Exchange proposes to eliminate Endnote 5. See discussion in Section I.A.

Section I.G. – CUBE Auction Fees & Credits – Standard Options.

The current Fee Schedule sets forth a table of the fees associated with executions in a CUBE Auction under “NYSE Amex Options: CUBE Auction Fees.”⁴⁷ The Exchange is not proposing any substantive change to the fees for contracts executed in CUBE Auctions for Standard Options, but the Exchange is moving the existing CUBE Auction Rebates found under “NYSE Amex Options: Trade-Related Rebates or Subsidies for Standard Options” to this section so all CUBE related fees and credits are located in one place.

The Exchange also proposes to add introductory language, taken from the existing CUBE Auction Rebates, to precede this table, which states, in relevant part, “Credits are payable to the Initiating Participant for each contract in an order paired with a CUBE Order that does not trade with the CUBE Order because it is replaced in the auction. The table below shows the credits payable to the Initiating Participant for executions associated with a CUBE Auction.”⁴⁸ The Exchange believes that this proposed language would add clarity to the Fee Schedule and aid in market participants’ comprehension as to how fees and credits are applied in CUBE Auctions

Section I. H. – Market Access and Connectivity (“MAC”) Subsidy.

The current Fee Schedule includes the MAC Subsidy under “NYSE Amex Options: Trade-Related Rebates or Subsidies for Standard Options.” In connection with its reorganization of the Fee Schedule, the Exchange is proposing to move the description and schedule of the MAC Subsidy to Section I.H. of the Fee Schedule. The Exchange is not proposing any substantive changes to the MAC Subsidy.

⁴⁷ On the current Fee Schedule, this section immediately follows “NYSE Amex Options: Qualified Contingent Cross (“QCC”) Fees.”

⁴⁸ See proposed Section I.G. of the Fee Schedule.

Section I.I. – Firm Monthly Fee Cap

In connection with its reorganization of the Fee Schedule, the Exchange is proposing to move the description of the Firm Monthly Fee Cap from Endnote 6 to Section I.I. of the Fee Schedule. The current Fee Schedule sets forth the Firm Monthly Fee cap in Endnote 6. The Exchange is not proposing any substantive changes to this Fee Cap, but has made some stylistic changes to the text that previously appeared in Endnote 6, including streamlining the text so that it is more clear and concise.

Section I.J. – Strategy Execution Fee Cap

The current Fee Schedule includes information about the proposed Strategy Execution Fee Cap under “Limits on Option Strategy Executions.”⁴⁹

The Exchange is not proposing any substantive changes for the Strategy Execution Fee Cap. The Exchange is proposing several non-substantive changes, including incorporating the information from the related Endnotes 8 (a) – (e) into the section, as well as making some stylistic changes to the text, including streamlining the text so that it is more clear and concise.

Section I.K. Royalty Fees.

In connection with its reorganization of the Fee Schedule, the Exchange is proposing to move the description of Royalty Fees, together with related information in Endnote 11, to Section I.K. of the Fee Schedule. The current Fee Schedule sets forth the Royalty Fees assessed by the Exchange under a heading of the same name.⁵⁰ The Exchange is not proposing any substantive changes to its Royalty Fees; rather it is proposing to modify the table that illustrates

⁴⁹ This section appears in the current Fee Schedule immediately below the Routing Surcharge and immediately above the Marketing Charge.

⁵⁰ This section appears in the current Fee Schedule immediately below the Marketing Charge.

the applicable per contract rate for each participant type by incorporating text currently referenced in Endnote 11.

Section I.L. Routing Surcharge

The Exchange is not proposing any changes with respect to the existing Routing Surcharge or related information in Endnote 7. The only non-substantive change that affects proposed Section I.L. relates to the re-ordering and reorganization of the Fee Schedule as a whole.

Section II. Monthly Excessive Bandwidth Utilization Fees

In connection with its reorganization of the Fee Schedule, the Exchange is proposing to move the description of order to trade ratio fees and message to contract traded ratio fees, together with referenced information in Endnote 12, to Section II. Proposed Section II would have two Subparts. Subpart A would set forth the monthly charge for order to trade ratios that exceed certain levels. Subpart B would set forth the fees assessed by the Exchange to ATP Holders per message that exceed certain ratios of messages to contracts traded.

The current Fee Schedule includes these fees under “NYSE Options: Excessive Bandwidth Utilization Fees.” Endnote 12 is referenced in applying these fees. The Exchange is not proposing any substantive changes to these fees. The only non-substantive changes the Exchange is proposing are some stylistic changes to the text, including streamlining the text so that it is more clear and concise.

Section III, A. Monthly ATP Fees

The current Fee Schedule sets forth the monthly fees for trading permits (“ATPs”) under “NYSE Options: General Options and Trading Permits (ATP) Fees, ATP Trading Participants Rights.” In connection with its reorganization of the Fee Schedule, the Exchange is proposing to

move the description of these fees to Section III.A. The Exchange does not propose any substantive changes to these fees, but is proposing to provide the fee information in table format, which the Exchange believes will make the information easier to digest and aid in the goal of enhancing the overall comprehensibility of the proposed Fee Schedule. The Exchange is also proposing to include details of how the “Bottom 45%”⁵¹ of issues traded is calculated for purposes of the application of certain monthly fees to NYSE Amex Options Floor Market Makers in the text prior to the fee table. This information is currently in the Fee Schedule, but appears after the ATP fees.

Section III.B. Floor Access Fee

In connection with its reorganization of the Fee Schedule, the Exchange is proposing to move the Floor Access Fee description to Section III.B. The current Fee Schedule sets forth this fee under “NYSE Options: General Options and Trading Permits (ATP) Fees, ATP Trading Participants Rights, Floor Access Fee.” The Exchange does not propose any substantive changes to this information. The only non-substantive changes that affects this section relates to the capitalization of “Floor,” as it is now a defined term in the proposed Key Terms and Definitions.⁵²

Section III.C. e-Specialist, DOMM and Specialist Monthly Rights Fees

In connection with its reorganization of the Fee Schedule, the Exchange is proposing to move the e-Specialist, DOMM and Specialist Monthly Rights Fees to Section III.C. The current Fee Schedule sets forth these fees under “NYSE Options: General Options and Trading Permits

⁵¹ See Securities Exchange Act Release No. 67764 (August 31, 2012), 77 FR 55254 (September 7, 2012) (SR-NYSEMKT-2012-44).

⁵² The Exchange defines “Floor” or “Trading Floor” as “the options trading floor located at 11 Wall Street, New York, NY.” See proposed Fee Schedule, Key Terms and Definitions.

(ATP) Fees, Specialist / e-Specialist/ DOMM Rights Fee,” and related Endnote 1. The Exchange is not proposing any substantive changes to these fees. The Exchange proposes the non-substantive formatting change of incorporating the information that is in Endnote 1 as introductory text to this section, with slight stylistic changes to the text for streamlining and consistency purposes. The Exchange also proposes to include note 1 to the fee table in this section regarding the “grandfathering” of certain options issues after mid-2012, the text of which is consistent with the language is the asterisk in the current Fee Schedule.

Section III.D. NYSE Amex Options Market Maker Monthly Premium Product Fee

In connection with its reorganization of the Fee Schedule, the Exchange is proposing to move the NYSE Amex Options Market Maker Monthly Premium Product Fee to Section III.D. The current Fee Schedule includes the fees in a one-row table entitled “Premium Product Issue List – Monthly NYSE Amex Options Market Maker Participation Fee.” The Exchange does not propose any substantive changes to these fees. The only change the Exchange proposes is to put the fees in table format, which the Exchange believe will make the information easier to digest and aid in the goal of enhancing the overall comprehensibility of the proposed Fee Schedule.

Section IV. Monthly Floor Communication, Connectivity, Equipment and Booth or Podia Fees

In connection with its reorganization of the Fee Schedule, the Exchange is proposing to move the description of Floor Communication, Connectivity, Equipment and Booth or Podia monthly fees to Section IV. Currently, these fees are set forth under “NYSE Amex Options: Floor and Equipment Fees” and “NYSE Amex Options: Connectivity Charges.” The Exchange is not proposing any changes to these fees. The Exchange is proposing to show these fees in table format, which the Exchange believes would make the information easier to digest and aid in the

goal of enhancing the overall comprehensibility of the proposed Fee Schedule. The Exchange notes that the two “Connectivity” charges from the existing Fee Schedule are represented as the second and third charges in the proposed table (i.e., Login and Transport charges).

Section V. Technology & System Access Fees

A. Port Fees and B. Co-Location Fees

In connection with its reorganization of the Fee Schedule, the Exchange is proposing to move the fees of Ports and Co-Location services to Section V of the Fee Schedule. The current Fee Schedule includes these fees in a table entitled “Port Fees” and a series of tables following the heading “Co-Location Fees.” The Exchange is not proposing any changes to its Port and Co-Location Fees. The Exchange is proposing to include the text from the asterisks in as language preceding the respective tables for port and co-location fees.

Section VI. Report Fees

In connection with its reorganization of the Fee Schedule, the Exchange is proposing to move the fees for reports to Section VI of the Fee Schedule. The current Fee Schedule includes these fees under “Report Fees.” The Exchange is not proposing any changes to these fees.

Section VII. Regulatory Fees

A. Options Regulatory Fee and B. Other Regulatory Fees

The current Fee Schedule includes this information under “Regulatory Fees.” The Exchange is not proposing any substantive changes to this section of the Fee Schedule and there are no related Endnotes. The only non-substantive change that affects this section relates to the reordering and reorganization of the Fee Schedule as a whole.

Section VIII. Service Fees

A. Post-Trade Adjustments

The current Fee Schedule includes this information under “Service Fees.” The Exchange is not proposing any substantive changes to this section of the Fee Schedule and there are no related Endnotes. The only non-substantive change that affects this section relates to the reordering and reorganization of the Fee Schedule as a whole.

Elimination of the Specialist Options Issue Transfer Fee.

Finally, the Exchange presently charges a fee of \$100 per issue for each option a Specialist transfers to another NYSE Amex Options Market Making firm that is acting as a Specialist. The fee is charged to the transferor. At this time the Exchange is proposing to eliminate this fee because the Exchange believes this fee may operate as a disincentive against the transfer of options. Typically, option issues are transferred as a result of a firm re-organizing or exiting the Specialist business. In such instances, the Exchange would prefer that the options be transferred as opposed to delisted so that other Exchange participants may continue to trade the option in question.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),⁵³ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁵⁴ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

⁵³ 15 U.S.C. 78f(b).

⁵⁴ 15 U.S.C. 78f(b)(4) and 78f(b)(5).

Non-Substantive Changes

The Exchange believes that the non-substantive changes to the Fee Schedule, which include re-formatting, reorganization (including adding a Table of Contents section), importing text from the current Fee Schedule and streamlining certain text, is reasonable, equitable and not unfairly discriminatory because the changes are designed to make the Fee Schedule more logical and comprehensive and, therefore, easier for market participants to navigate and digest, which is in the public interest.

Substantive Changes

The Exchange believes that adopting the Preface and Key Terms and Definitions sections in the proposed Fee Schedule is reasonable, equitable and not unfairly discriminatory because the changes are designed to enable market participants to better understand how the Exchange defines various transactions and market participants as well as how the Exchange imposes fees and credits on each market participants, which should make the overall Fee Schedule more transparent and comprehensive to the benefit of the investing public.

The Exchange believes that adopting a base rate of \$0.23 per contract for NYSE Amex Market Maker Electronic transactions is reasonable, equitable and not unfairly discriminatory for the following reasons. First, the proposed change applies equally to all NYSE Amex Options Market Makers. Second, the proposed rate falls within the range of fees charged to market makers on other exchanges.⁵⁵ For example, the base rate for market makers in equity options on the CBOE is also \$0.23.⁵⁶ The Exchange notes that the newly proposed base rate is an increase in the rate(s) charged to each of Specialists, e-Specialists, DOMMs and NYSE Amex Options

⁵⁵ See supra n. 14.

⁵⁶ See CBOE fee schedule, available here, <http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf> (the “Liquidity Provider Sliding Scale”).

Market Makers (regardless of whether each is trading more or less than 50,000 contracts ADV) and, while this proposed base rate increase would not impact other Exchange participants directly, the Exchange believes the rate increase would have an indirect benefit on other market participants. For example, some proceeds from this increase would fund the credits made available under the ACE Program. Because the ACE Program is designed to attract more volume and liquidity to the Exchange, the Exchange believes this rate increase will benefit all Exchange participants through increased opportunities to trade as well as enhancing price discovery. For these reasons, the Exchange believes that the proposal to adopt a base rate of \$0.23 per contract for Electronic NYSE Amex Options Market Maker transactions is reasonable, equitable and not unfairly discriminatory.

The Exchange also believes that eliminating the \$0.10 per contract charge for SPY Electronic Complex executions for NYSE Amex Options Market Makers such that the cost of these Electronic option transactions would at times be greater than the flat rate (e.g., as much as \$0.23 per contract under proposed Section I.A.) or lower (e.g., as low as \$0.02 per contract under proposed Section I.C.) is reasonable, equitable and not unfairly discriminatory because this change would simplify the Exchange's pricing structure, which benefits investors, and apply equally to all NYSE Amex Options Market Makers.

The Exchange believes the proposals to eliminate the \$350,000 per month Market Maker fee cap ("350K cap") and the associated \$0.01 or \$0.10 service fees⁵⁷ as well as the \$0.03 per contract discount offered to NYSE Amex Options Market Makers that transact at least 50,000 contracts ADV during a month (the "\$0.03 discount") are reasonable, equitable and not unfairly

⁵⁷ Currently, capped Market Makers pay either an incremental service fee of \$.01 per contract for volumes over 3,500,000 contracts per month or \$0.10 per contract for Complex volumes upon reaching the \$350K cap.

discriminatory because, as discussed below, the Exchange proposes to replace these two Exchange-offered discounts with the NYSE Amex Options Market Maker Sliding Scale – Electronic (“Sliding Scale”). The proposed Sliding Scale provides the opportunity for NYSE Amex Options Market Makers to earn volume-based discounts for transactions on the Exchange, as they do today, using a different methodology. The \$350K cap is a fixed, “all or nothing” threshold that enabled Market Makers that hit the cap to immediately become eligible to trade for as little as \$0.01 per contract, whereas Market Makers that did not hit the cap continued to either trade at their respective base rates (i.e., Specialist or e-Specialist rates versus DOMM and Non-DOMM rates) or to trade at their base rates discounted by \$.03, if that Market Maker achieved at least 50,000 contract ADV. The Exchange believes the proposed Sliding Scale is a fair and reasonable replacement for the current volume discounts offered by the Exchange. The Sliding Scale would provide a volume discount to NYSE Amex Options Market Makers on a more graduated basis than the current fee cap and discounts. The Exchange believes that the Sliding Scale methodology for providing volume based discounts is fair and reasonable in the same way that the current volume discounts are. Further, the proposal is equitable because the elimination of the \$350K cap, \$0.01 or \$0.10 service fees, and the \$0.03 discount, would apply equally to all NYSE Amex Options Market Makers and the Sliding Scale would, likewise, apply to NYSE Amex Options Market Makers. In addition, as discussed below, the Exchange believes it is fair and reasonable to offer the Sliding Scale solely to Market Makers because of the heightened obligations imposed on Market Makers, including continuous quoting obligations.

The Exchange believes that adopting the Sliding Scale is reasonable, equitable and not unfairly discriminatory for the following reasons. First, all NYSE Amex Market Makers are eligible to avail themselves of the Sliding Scale, which sets forth objective criteria for earning

lower rates based on reaching stated volume thresholds on the Exchange. Second, the Exchange believes it is reasonable and appropriate that Market Makers be charged fees on the Exchange that may be comparably lower than other market participants in certain circumstances when they provide greater volumes of liquidity to the market because Market Makers have obligations that other market participants do not. In particular, they must maintain active two-sided markets in the classes in which they are appointed, and must meet certain minimum quoting requirements.⁵⁸ Further the Exchange notes that Market Makers are also subject to higher fixed costs, not assessed upon other market participants, such as the relatively more expensive ATP fees applicable to Market Makers, Rights Fees, and Premium Product Fees.⁵⁹

In addition, the Sliding Scale is based on the amount of business transacted on – and is designed to attract greater volume to – the Exchange. The Exchange believes an increase in volume and liquidity would benefit all market participants by providing more trading opportunities and tighter spreads, even to those market participants that are not eligible for the Sliding Scale (i.e., non-NYSE Amex Market Makers). Additionally, the Exchange believes the Sliding Scale is consistent with the Act because, as described above, the Program is designed to bring greater volume and liquidity to the Exchange, which will benefit all market participants by providing tighter quoting and better prices, all of which perfects the mechanism for a free and open market and national market system. In addition, the Exchange also notes that several competing option exchanges currently offer a tiered or sliding scale to market makers. For example, the CBOE currently offers a sliding scale to their market makers that ranges from \$0.23 down to \$0.03 per contract based on volume, which is comparable to the proposed Sliding Scale,

⁵⁸ See, e.g., Rule 925.1NY(c).

⁵⁹ See proposed Sections III.A.,C. and D., respectively.

which ranges from \$0.23 down to \$0.02 per contract and is also based on volume.⁶⁰ Similarly, both the Boston Options Exchange LLC (“BOX”) and Miami Securities International Exchange, LLC (“MIAX”) offer tiered or sliding scale rates for market makers.⁶¹ For the foregoing reasons, the Exchange believes the proposed adoption of the Sliding Scale is reasonable, equitable and not unfairly discriminatory.

The Exchange proposal to adopt “Prepayment Programs” that allow NYSE Amex Options Market Makers to prepay a portion of certain Exchange transaction fees or charges (for a one- or three-year period) is also reasonable, equitable and not unfairly discriminatory for the following reasons. First, the proposal is reasonable, equitable and not unfairly discriminatory because all NYSE Amex Options Market Makers may elect to participate (or elect not to participate) in either of the Prepayment Programs. In addition, the Exchange notes that other options exchanges likewise offer Prepayment Programs, available only to market makers. For example, under CBOE’s Liquidity Provider Sliding Scale, a CBOE market maker may be eligible for the lower rates associated with tiers 3 through 5 by prepaying \$2.4 million in fees.⁶² Moreover, similar to the proposed Sliding Scale, the Prepayment Programs are designed to incent Market Makers to commit to directing their order flow to the Exchange, which would benefit all market participants by expanding liquidity, providing more trading opportunities and

⁶⁰ See supra n. 56.

⁶¹ See BOX fee schedule, available here, http://boxexchange.com/assets/BOX_Fee_Schedule.pdf (“Tiered Volume Rebate for Market Makers”); MIAX fee schedule, available here, http://www.miaxoptions.com/sites/default/files/MIAX_Options_Fee_Schedule_12102014.pdf (“Market Maker Sliding Scale”).

⁶² See CBOE fee schedule, available here, <http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf>, footnote 10 (a market maker may be permitted to pay a pro-rated amount of the \$2.4 million if, for example, they join the program mid-year).

tighter spreads, even to those market participants that are not eligible for the Programs. Thus, the Exchange believes the Prepayment Programs are reasonable, equitable and not unfairly discriminatory to other market participants because non-Market Makers and other market participants will benefit from the anticipated greater capital commitment and resulting liquidity on the Exchange. Additionally, the Exchange believes the Prepayment Programs are consistent with the Act because they may bring greater volume and liquidity to the Exchange, which will benefit all market participants by providing tighter quoting and better prices, all of which perfects the mechanism for a free and open market and national market system. In addition, the Exchange notes that, similar to the Prepayment Programs, at least two other exchanges have offered market makers the ability to prepay a portion of their transaction fees.⁶³

In addition, the Exchange believes it is reasonable, equitable and not unfairly discriminatory to allow only Market Makers to prepay certain of their Exchange fees in exchange for receiving certain benefits because Market Makers have obligations that other market participants do not. In particular, they must maintain active two-sided markets in the classes in which they are appointed, and must meet certain minimum quoting requirements.⁶⁴ Further the Exchange notes that Market Makers are also subject to higher fixed costs, not assessed upon other market participants, such as the relatively more expensive ATP fees applicable to Market Makers, Rights Fees, and Premium Product Fees.⁶⁵

The Exchange proposal to require NYSE Amex Options Market Makers who opt into the 3 Year Prepayment Program to pay \$3 million per year for 3 years compared to those opting into the 1 Year Prepayment Program who will pay \$4 million per year is reasonable, equitable and

⁶³ See supra n. 34.

⁶⁴ See supra n. 58

⁶⁵ See supra n. 59.

not unfairly discriminatory. As explained above, the Prepayment Program is a credit against certain Exchange fees and charges. Any activity that exceeds the amount of the Prepayment credit will be invoiced at the applicable rates in Sections I.C, I.G., or III.A. of the fee schedule. As such, all NYSE Amex Options Market Makers (those who do not participate in the Prepayment Program, those who participate in the 1 Year Prepayment Program and those who participate in the 3 Year Prepayment Program) will incur the same level of fees and/or charges if they conduct the same level of activity. Further, assessing a prepayment that is 25% smaller on an annual basis on firms willing to commit to the 3 Year Prepayment Program is reasonable, equitable, and not unfairly discriminatory because those firms are committing 125% more capital and are entering a multi-year arrangement that the Exchange believes will increase liquidity (which ultimately will provide ATP Holders more opportunities for trading and price discovery).

The Exchange proposal to replace the existing OFP Electronic ADV Tiers and Customer Electronic Complex Order ADV Tiers (collectively “Tiers”) with the ACE Program is also reasonable, equitable and not unfairly discriminatory for the following reasons. First, the ACE Program is replacing the Tiers in that both pay a per contract credit to qualifying OFPs. The Exchange believes the credits offered under the ACE Program are reasonable and appropriate in that they are based on the amount of business transacted on the Exchange. Per the ACE Program, as discussed above, an OFP may earn enhanced credits if they have an Affiliated NYSE Amex Options Market Maker (i.e., the entities share “70% common ownership”⁶⁶) that has committed to either of the proposed Prepayment Programs. The Exchange notes that allowing an entity to earn an enhanced discount or credit in exchange for committing to a

⁶⁶ The Exchange defines “Affiliates” as “a person that directly or indirectly through one or more intermediaries, has a 70% common ownership with, the person specified. See proposed Fee Schedule, Key Terms and Definitions.

prepayment of certain fees is not new or novel.⁶⁷ Nor is it new or novel to offer affiliates enhanced discounts or credits based on the affiliates' activity, even if conducted in different capacities (e.g., market maker volume versus customer volume). Notably both the NASDAQ Options Market LLC ("NOM") and NASDAQ OMX PHLX LLC ("PHLX") offer enhanced credits to Market Makers and PHLX offers enhanced credits to affiliates of Market Makers on certain volumes based on an affiliate's activity. NOM aggregates the activity of affiliates and makes the availability of higher credits or rebates to NOM Market Maker's contingent upon volume conducted by an affiliate.⁶⁸ Specifically, NOM offers its Participants a Rebate to Add Liquidity In Penny Pilot Options based on monthly volume as set forth in a tier structure. Tiers 5 and 6 are available to NOM Market Makers that have an affiliate that qualifies for Tier 7 or Tier 8 of their Customer and Professional Rebate to Add Liquidity in Penny Pilot Options.⁶⁹ In its filing with the Commission, NOM noted its belief that "its proposal to permit Participants under Common Ownership to aggregate their volume is reasonable, equitable and not unfairly discriminatory because the Exchange would permit all Participants the ability to aggregate for purposes of the rebates if certain Participants chose to operate under separate entities."⁷⁰

⁶⁷ See supra n. 62.

⁶⁸ See NOM fee schedule, available here, <http://www.nasdaqtrader.com/Micro.aspx?id=OptionsPricing>

⁶⁹ See id. (stating that "[f]or purposes of applying any options transaction fee or rebate where the fee assessed, or rebate provided, by NOM depends upon the volume of an Options Participant's activity, references to an entity (including references to a 'Options Participant') shall be deemed to include the entity and its affiliates that have been approved for aggregation").

⁷⁰ See Securities Exchange Act Release No. 69132 (March 13, 2013), 78 FR 16898, 16902-16903 (March 19, 2013) (SR-NASDAQ-2013-041) (justifying higher rebate to NOM Market Makers because they "add value through continue quotations and the commitment of capital" and this fee structure would incentivize Participants to post NOM Market Maker liquidity on NOM).

Similarly, PHLX provides for an enhanced rebate on Customer volumes only for those participants that have an affiliated Specialist or Market Making firm under “Common Ownership”.⁷¹ Specifically, PHLX offers a tiered Customer Rebate Program that qualifies either a Specialist or Market Maker or its affiliate under Common Ownership to an additional rebate provided the Specialist or Market Maker has reached the Monthly Market Maker Cap in accordance with PHLX’s fee schedule.⁷² In its filing with the Commission, PHLX noted its belief that this additional rebate was equitable and not unfairly discriminatory because, among other reasons, Specialists and Market Makers “have burdensome quoting obligations,” to the market that other market participants do not; are subject to higher transaction costs and incur higher costs related to market making activities; and “also serve an important role on the Exchange with regard to order interaction and they provide liquidity in the marketplace.”⁷³ Thus, PHLX noted that the “proposed differentiation as between Specialists and Market Makers as compared to other market participants recognizes the differing contributions made to the trading environment on the Exchange by these market participants.”

Thus, consistent with the rationales articulated by NOM and PHLX when justifying similar fee changes implemented on their exchanges, the Exchange believes that its proposal to allow affiliated OFP firms enhanced credits by having a NYSE Options Market Maker participate in one of the Prepayment Programs is reasonable, equitable and not unfairly

⁷¹ See PHLX fee schedule, [available here](http://www.nasdaqtrader.com/Micro.aspx?id=PHLXPricing), <http://www.nasdaqtrader.com/Micro.aspx?id=PHLXPricing> (defining the term “Common Ownership” as meaning “members or member organizations under 75% common ownership or control”).

⁷² See *id.* (Section II, Monthly Market Maker Cap). See also Securities Exchange Act Release No. 70969 (December 3, 2013), 78 FR 73906 [sic] (December 9, 2013) (SR-Phlx-2013-114).

⁷³ See Securities Exchange Act Release No. 70969 (December 3, 2013), 78 FR 73906 [sic], 73908 (December 9, 2013) (SR-Phlx-2013-114).

discriminatory. First, as discussed above, unlike other market participants, Market Makers have burdensome quoting obligation to the market that do not apply to Customers, Professionals Customers, Firms and Broker-Dealers.⁷⁴ Market Makers serve an important role on the Exchange with regard to order interaction, capital commitment, and the provision of liquidity in the marketplace. Additionally, as discussed above, Market Makers incur costs unlike other market participants including, but not limited to, more expensive ATP fees applicable to Market Makers, Rights Fees, and Premium Product Fees and other costs associated with market making activities, which results in a higher average cost per execution as compared to Firms, Broker-Dealers and Professional Customers.⁷⁵ The proposed differentiation as between Market Makers as compared to other market participants recognizes the differing contributions made to the trading environment on the Exchange by these market participants.

The Exchange also believes that allowing firms enhanced credits based on the activities of their Affiliates (i.e., by having a NYSE Options Market Maker participate in one of the Prepayment Programs) is also reasonable, equitable and not unfairly discriminatory for several reasons. First, the Exchange believes that OFPs affiliated (i.e., have a 70% common ownership) with NYSE Amex Options Market Makers may qualify to earn enhanced credits in recognition of their shared economic interest, which includes the heightened obligations and costs imposed on Market Makers.⁷⁶ OFPs unaffiliated with a NYSE Amex Options Market Maker do not share the same type of economic interests with a Market Maker that bears higher obligations and costs. Second, because each OFP that is not affiliated with a NYSE Amex Options Market Maker has the opportunity to establish such an affiliation by several means, including but not limited to, a

⁷⁴ See supra n. 58.

⁷⁵ See supra n. 59.

⁷⁶ See supra nn. 58, 59.

business combination (e.g., merger or acquisition) or the establishment of their own market making operation, which as a Broker-Dealer, each OFP has the potential to establish.

In addition, the Exchange believes that the ACE Program will encourage OFPs with an Affiliated NYSE Amex Options Market Maker to direct order flow to the Exchange (especially Customer orders) in order to receive the enhanced volume credits. The Exchange believes that incentivizing OFPs to route orders to the Exchange may result in an increase in volume and liquidity to the Exchange that would benefit all market participants by providing more trading opportunities and tighter spreads, even to those market participants that do not participate in the Program, including participants other than NYSE Amex Options Market Makers, such as Firms, Professional Customers, etc. Additionally, the Exchange believes the Program is consistent with the Act because they may bring greater volume and liquidity to the Exchange, which will benefit all market participants by providing tighter quoting and better prices, all of which perfects the mechanism for a free and open market and national market system. The Exchange believes that those OFPs that do not have an Affiliated NYSE Amex Options Market Maker that has committed to a Prepayment Program would benefit from the increased order flow that those OFPs with an Affiliated NYSE Amex Options Market Maker may be incented to bring to the Exchange. The Exchange notes that it is not increasing fees for OFPs nor does it charge a fee for Customer transactions. The Exchange believes that by offering OFPs the ability to qualify to earn credits on Electronically executed Customer volumes, based solely on Customer volumes or on all Electronic volumes, the Exchange may experience an increase in the number of orders routed to the Exchange for potential execution as OFPs seek to qualify for the credits under the ACE Program. This increase in orders routed to the Exchange will lead to enhanced price discovery, increased market transparency and greater opportunities to trade, which benefits all

participants on the Exchange, including those who may not be eligible to earn the credits under the ACE Program.

For the above reasons, the Exchange believes the program ACE Program is also reasonable, 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 acknowledges that the proposed changes relating to transaction charges and/or credits, including the Sliding Scale and the Prepayment Programs, may increase both intermarket and intramarket competition by incenting participants to direct their orders to the Exchange, which will enhance the quality of quoting and may increase the volume of contracts traded on the Exchange. To the extent that there is an additional competitive burden on non-NYSE Amex Market Makers, the Exchange believes that this is appropriate because the proposal should incent market participants 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 of 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.

The Exchange does not believe that offering OFPs affiliated (i.e., have a 70% common ownership) with NYSE Options Market Makers the ability to qualify to earn enhanced credits would impose any unnecessary or inappropriate burden on competition for several reasons. First, OFPs that are not affiliated with a market making firm would benefit from any increase in

volume and liquidity on the Exchange as a consequence of the proposed enhanced credits, which would provide tighter quoting and better prices to unaffiliated OFPs. The Exchange believes that any burden on competition on unaffiliated OFPs would be outweighed by this benefit. Second, the Exchange believes it does not create an inappropriate burden on competition on unaffiliated OFPs for the Exchange to provide affiliated OFPs that share common control and shared economic interest with market making firms the ability to qualify for enhanced credits because these affiliated OFPs share the heightened obligations and fees of their affiliated Market Makers.⁷⁷ Moreover, the Exchange would permit all OFPs the ability to aggregate for purposes of the rebates if certain OFPs chose to operate under separate entities.⁷⁸

Given the robust competition for volume among options markets, many of which offer the same products, implementing programs to attract order flow similar to the ones being proposed in this filing, are consistent with the above-mentioned goals of the Act. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. 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.

⁷⁷ See supra nn. 58, 59.

⁷⁸ See, e.g., Securities Exchange Act Release No. 69132 (March 13, 2013), 78 FR 16898, 16902-16903 (March 19, 2013) (SR-NASDAQ-2013-041) (justifying allowing affiliates to aggregate their volume to receive rebates because all Participants on the exchange have the ability to aggregate if certain Participants chose to operate under separate entities).

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)⁷⁹ of the Act and subparagraph (f)(2) of Rule 19b-4⁸⁰ 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)⁸¹ 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-2015-04 on the subject line.

Paper comments:

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

⁷⁹ 15 U.S.C. 78s(b)(3)(A).

⁸⁰ 17 CFR 240.19b-4(f)(2).

⁸¹ 15 U.S.C. 78s(b)(2)(B).

All submissions should refer to File Number SR-NYSEMKT-2015-04. 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 offices 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-2015-04, 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.⁸²

Brent J. Fields
Secretary

⁸² 17 CFR 200.30-3(a)(12).