

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-74760; File No. SR-NYSEMKT-2015-29)

April 17, 2015

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Modifying the NYSE Amex Options Fee Schedule Relating to the Amex Customer Engagement Program

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 10, 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 modify the NYSE Amex Options Fee Schedule (“Fee Schedule”) related to the Amex Customer Engagement (“ACE”) Program. The Exchange proposes to implement the fee change effective April 10, 2015. The text of the proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend existing tiers and add a new tier to the ACE Program.

Section I.E. of the Fee Schedule describes the ACE Program,³ which currently features four tiers expressed as a percentage of total industry Customer equity and ETF option average daily volume ("ADV").⁴ Order Flow Providers ("OFPs") receive per contract credits solely for Electronic Customer volume that the OFP, as agent, submits to the Exchange.⁵ The ACE

³ See NYSE Amex Options Fee Schedule, available here, https://www.theice.com/publicdocs/nyse/markets/amex-options/NYSE_Amex_Options_Fee_Schedule.pdf.

⁴ In calculating ADV, the Exchange utilizes 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 calculates the total OCC volume for equity and ETF options that clear 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 (252,000,000/21= 12,000,000).

⁵ 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.

Program offers 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 average daily industry Customer equity and ETF options volume⁶ ;
or
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 average daily industry Customer equity and ETF option volume,⁷ with the further requirement that a specified percentage of the minimum volume required to qualify for the Tier must be Customer volume.

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.⁸

The Exchange proposes to:

- (a) lower the thresholds required to reach each tier;
- (b) introduce an additional tier, which would be an intermediate tier between current tiers 3 and 4; and

⁶ See supra n. 4

⁷ Id.

⁸ 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. In calculating an OFP's Electronic volume, certain volumes are excluded (e.g., QCC trades). See Fee Schedule (Section I.E.), supra n. 3.

(c) increase the credits available for the highest tier.

Specifically, the Exchange proposes to modify the ACE Program tiers as illustrated in the table below, with proposed additions appearing underscored and proposed deletions appearing in brackets:

| Tier | ACE Program - Standard Options | | Credits Payable On Customer Volume Only | | | |
|--------------|--|-----------|---|-------------------------------|---|---|
| | Customer Electronic ADV as a % of Industry Customer Equity and ETF Options ADV | | Total Electronic ADV (of which 20% or greater of the minimum qualifying volume for each Tier 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 <u>0.60%</u> [0.75%] | OR | N/A | \$0.00 | \$0.00 | \$0.00 |
| 2 | > <u>0.60%</u> [0.75%] to <u>0.80%</u> [1.00%] | | N/A | (\$0.13) | (\$0.13) | (\$0.13) |
| 3 | > <u>0.80%</u> [1.00%] to <u>1.25%</u> [2.00%] | | 1.50% to <u>2.50%</u> [3.50%] of which 20% or greater of 1.50% must be Customer | (\$0.14) | (\$0.16) | (\$0.18) |
| <u>4</u> | <u>≥ 1.25 to 1.75%</u> | | <u>> 2.50% to 3.50% of which 20% or greater of 2.50% must be Customer</u> | <u>(\$0.17)</u> | <u>(\$0.19)</u> | <u>(\$0.21)</u> |
| <u>5</u> [4] | > <u>1.75</u> [2.00%] | | > 3.50% of which 20% or greater of 3.5% must be Customer | <u>(\$0.19)</u> [(\$0.14)] | <u>(\$0.21)</u> [(\$0.16)] | <u>(\$0.23)</u> [(\$0.20)] |

The proposed amendments to the ACE Program are designed to make each of the tiers more achievable, through reduced volume requirements, while enhancing the rebates. When combined, the Exchange believes the proposed changes to the ACE Program would attract more volume and liquidity to the Exchange, which would benefit all Exchange participants through increased opportunities to trade as well as enhancing price discovery.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,¹⁰ 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.

Overall, the Exchange believes that the proposed changes to the ACE Program are reasonable, equitable and not unfairly discriminatory because the credits offered are based on the amount of business transacted on the Exchange. As proposed the ACE Program continues to enable an OFP to earn enhanced credits if the OFP has an Affiliated NYSE Amex Options Market Maker (i.e., the entities share “70% common ownership”¹¹) that has committed to either of the proposed Prepayment Programs, per Section I.D. of the Fee Schedule (each an “Affiliated OFP”). As the Exchange explained in further detail when it introduced the ACE Program in January 2015, it is not unreasonable, inequitable or unfairly discriminatory to offer to offer [sic]

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4) and (5).

¹¹ See Fee Schedule, Key Terms and Definitions, *supra* n. 3 (defining Affiliates as “a person that directly or indirectly through one or more intermediaries, has a 70% common ownership with, the person specified”).

Affiliated OFPs enhanced discounts or credits for several reasons.¹² In short, the Exchange believes that offering the ACE Program enhanced credits recognizes that such Affiliated OFPs have a shared economic interest with its affiliated Market Maker, which is subject to heightened obligations and costs.¹³ By contrast, non-Affiliated OFPs do not share economic interests with a Market Maker that is subject to higher obligations and costs. In addition, each non-Affiliated OFP has the opportunity to establish such an affiliation by several means, including but not limited to, a 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 proposed amendments to the ACE Program are reasonable, equitable and not unfairly discriminatory because they would enhance the incentives to OFPs to transact Customer orders on the Exchange, which would benefit all market participants by providing more trading opportunities and tighter spreads, even to those market participants that do not participate in the ACE Program. Additionally, the Exchange believes the proposed changes to the ACE Program are consistent with the Act because they may attract greater volume and liquidity to the Exchange, which would 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.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

¹² See Securities Exchange Act Release No. 74086 (January 16, 2015), 80 FR 3701, 3711-12 (January 23, 2015) (SR-NYSEMKT-2015-04) (Notice of Filing of fee change to adopt the ACE Program).

¹³ See, e.g., Rule 925.1NY(c) (setting forth requirement that Market Makers maintain active two-sided markets in the classes in which they are appointed, and must meet certain minimum quoting requirements). See also Fee Schedule, Sections III.A., C. and D., supra n. 3 (setting forth higher fixed costs imposed on Market Makers that are not assessed upon other market participants, including relatively more expensive ATP fees applicable to Market Makers, Rights Fees, and Premium Product Fees).

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,¹⁴ the Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed amendments to the ACE Program are pro-competitive as the proposed reduced volume thresholds and increased rebates may encourage OFPs to direct Customer order flow to the Exchange and any resulting increase in volume and liquidity to the Exchange would benefit all of Exchange participants through increased opportunities to trade as well as enhancing price discovery.

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.

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)¹⁵ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁶ thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

¹⁴ 15 U.S.C. 78f(b)(8).

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f)(2).

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)¹⁷ 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-2015-29 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.

All submissions should refer to File Number SR-NYSEMKT-2015-29. 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

¹⁷ 15 U.S.C. 78s(b)(2)(B).

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-2015-29, 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.¹⁸

Brent J. Fields
Secretary

¹⁸ 17 CFR 200.30-3(a)(12).