

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-79737; File No. SR-NYSEMKT-2016-127)

January 4, 2017

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

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on December 28, 2016, NYSE MKT LLC (“Exchange” or “NYSE MKT”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the NYSE Amex Options Fee Schedule. The proposed change is available on the Exchange’s website at [www.nyse.com](http://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.

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<sup>1</sup> 15 U.S.C.78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

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 modify the Fee Schedule to: (1) adjust the qualification thresholds and transaction fees for electronic transactions by NYSE Amex Options Market Makers (“Sliding Scale”);<sup>4</sup> and (2) modify the prepayment programs offered by the Exchange, including adding a new prepay option (the “Prepayment Programs”).<sup>5</sup>

Market Maker Sliding Scale

Section I.C. of the Fee Schedule sets forth the Sliding Scale of transaction fees charged to NYSE Amex Options Market Makers (referred to as Market Makers herein), which per contract fees decrease as Market Maker trades higher monthly volumes.<sup>6</sup> Currently, Market Makers that have monthly volume on the Exchange of 0.10% or less of total ICADV are charged a base rate of \$0.25 per contract and, these same market participants, upon reaching certain volume thresholds, or Tiers, receive a reduction of this per contract rate.<sup>7</sup> In addition, the Exchange

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<sup>4</sup> See Fee Schedule, Section I. C. (NYSE Amex Options Market Maker Sliding Scale - Electronic), available here, [https://www.nyse.com/publicdocs/nyse/markets/amex-options/NYSE\\_Amex\\_Options\\_Fee\\_Schedule.pdf](https://www.nyse.com/publicdocs/nyse/markets/amex-options/NYSE_Amex_Options_Fee_Schedule.pdf).

<sup>5</sup> See *id.*, Section I. D. (Prepayment Program).

<sup>6</sup> See Fee Schedule, *supra* note 4. The volume thresholds are based on an NYSE Amex Options Market Maker’s volume transacted Electronically as a percentage of total industry Customer equity and ETF options volumes (“ICADV”) as reported by the Options Clearing Corporation (the “OCC”). Total ICADV 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 security other than an equity or ETF security. See OCC Monthly Statistics Reports, available here, <http://www.theocc.com/webapps/monthly-volume-reports>.

<sup>7</sup> In calculating an NYSE Amex Options Market Maker Electronic volumes, the Exchange excludes 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 Fee Schedule Sections I.B., I.F., I.G., and I.J, respectively. See Fee Schedule, Section I.C, *supra* note 4.

charges a lower per contract rate to Market Makers that participate in one of the Prepayment Programs or that post monthly volume greater than 0.85% of total ICADV.

Effective January 3, 2017, the Exchange proposes to modify the qualification thresholds and associated transaction fees for all Market Makers as follows (with new rates/thresholds underlined and deleted rates/thresholds in brackets):

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<b>Tier</b>	<b>Market Maker Electronic Monthly Volume as a % of ICADV</b>	<b>Rate per Contract</b>	<b>Rate per Contract if Monthly Volume from Posted Volume is more than .85% of Total ICADV or for any NYSE Amex Market Maker participating in a Prepayment Program pursuant to Section I.D.</b>
1	0.00% to [ <del>0.10%</del> ] <u>0.15%</u>	\$0.25	<del>[\$0.20]</del> <u>\$0.23</u>
2	[ <del>&gt;0.10%</del> ] <u>&gt;0.15%</u> to 0.60%	\$0.22	<del>[\$0.17]</del> <u>\$0.18</u>
3	>0.60% to [ <del>1.25%</del> ] <u>1.10%</u>	<del>[\$0.12]</del> <u>\$0.14</u>	<del>[\$0.07]</del> <u>\$0.08</u>
4	[ <del>&gt;1.25%</del> to 1.40%] <u>&gt;1.10%</u> to 1.45%	\$0.10	\$0.05
5	[ <del>&gt;1.40%</del> to 1.75%] <u>&gt;1.45%</u> to 1.80%	\$0.07	<del>[\$0.02]</del> <u>\$0.04</u>
6	[ <del>&gt;1.75%</del> ] <u>&gt;1.80%</u>	\$0.05	<del>[\$0.00]</del> <u>\$0.02</u>

The proposed changes are designed to incent Market Makers to electronically trade a more meaningful percentage of ICADV by increasing the percentage of ICADV required for Tiers 2, 5 and 6, and to make Tier 4 more achievable by lowering the percentage of ICADV required.<sup>8</sup> In connection with the adjustment to the qualification thresholds for the various tiers, the Exchange proposes to increase the per contract rate for Tier 3, which is designed to both offset the lower threshold to Tier 4 and to encourage participants to achieve Tier 4. For those

<sup>8</sup> See proposed Fee Schedule, Section I.C.

participants that achieve Tier 4, as modified, the per contract rate differential remains the same (i.e., \$0.05 per contract for those who achieve 0.85% of IADV from Posted Volume, or participate in a Prepayment Program; as compared to \$0.10 per contract for anyone else that achieves Tier 4), which is designed to encourage Market Makers to qualify for the more easily achievable Tier 4 and to qualify for the enhanced rates by enrolling in a prepayment program or meeting the Posted Volume criterion. In addition, the Exchange proposes to increase the discounted per contract rates to Market Makers that participate in one of the Prepayment Programs or that trade more than 0.85% of total ICADV based on posted volume. The Exchange believes the proposed modifications would encourage Market Makers to execute more volume on the Exchange and provide additional incentive to enroll in one of the Prepayment Programs, including as modified herein.

#### Prepayment Program

In January 2015, the Exchange introduced a two Prepayment Programs – for a 1- or 3-year term – to allow Market Makers to prepay a portion of the charges incurred for transactions executed on the Exchange.<sup>9</sup> Although the 3-Year Prepayment Program, now in its final year, is closed to new entrants, the Exchange proposes to modify the terms of the 1 Year Prepayment Program, as well as to offer a new prepay option to be available throughout 2017.<sup>10</sup> The

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<sup>9</sup> See Exchange Act Release No. 74086 (January 16, 2015) 80 FR 3701 (January 23, 2015) (SR-NYSEMKT-2015-4). See also Fee Schedule, Section I.D (Prepayment Programs), *supra* at note 4 (describing the 1- and 3-Year Prepayment Programs, including requisite timelines for committing and prepaying as well as various conditions to opt out of the 3-Year Prepayment Program).

<sup>10</sup> See proposed Fee Schedule, Section I.D (Prepayment Programs) (modifying the description of the 3 Year Prepayment Program to make clear that it is closed to new participants, that one year remains for any Market Maker that enrolled in 2015, that participants retain the ability to opt out by the specified date, including because there are fewer than 4 participants in the 1- or 3-Year programs as of January 3, 2017, as well as to update the description of the program to reflect the current and upcoming calendar year).

proposed modifications to the Prepayment Program are designed to encourage broader participation by Market Maker firms.

The Exchange proposes to reduce the prepayment amount for the 1 Year Prepayment Program from \$4 million to \$3 million, which would align with the final prepayment for participants in the 3 Year Prepayment Program. The Exchange does not propose to alter any other aspects of the 1 Year Prepayment Program.<sup>11</sup> Participants in the 1 Year Prepayment Program would continue to qualify its Affiliated (or Appointed) OFP to be eligible to receive the enhanced credit(s) under the Amex Customer Engagement Program.<sup>12</sup> To enroll in the modified 1 Year Prepayment Program, a Market Maker would have until December 30, 2016 to notify the Exchange, and until January 31, 2017 to remit the \$3 million prepayment.<sup>13</sup>

The Exchange is also proposing to offer a new option, the “Balance of the Year” program, which would allow Market Makers to commit to prepay a portion of their transaction charges for some portion of the calendar year, for a maximum of three-quarters of the year. The

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The Exchange does not propose to modify the (\$3 million) amount of, or deadline (of January 31, 2017) for, the final payment in connection with the 3 Year Prepayment Program.

<sup>11</sup> See proposed Fee Schedule, Section I.C. (providing that 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 and, once the prepayment credit has been exhausted, the Exchange will invoice the NYSE Amex Options Market Maker at the appropriate rates, and noting that if 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).

<sup>12</sup> See Fee Schedule, Section I.E. (Amex Customer Engagement (“ACE”) Program – Standard Options).

<sup>13</sup> See proposed Fee Schedule, Section I.D (Prepayment Programs) (modifying the description of the 1 Year Prepayment Programs, including reducing the prepayment amount and updating the deadlines to reflect the current and upcoming calendar year). As is the case today, Market Makers would have until the last business day of 2016 to notify the Exchange of their commitment to the Program by sending an email the Exchange at [optionsbilling@nyse.com](mailto:optionsbilling@nyse.com).

prepayment amount and payment schedule for the proposed Balance of the Year Program would be based on the quarter in which the Market Maker joins, as set forth below:

	<b>2nd Quarter</b>	<b>3rd Quarter</b>	<b>4th Quarter</b>
<b>Prepayment Amount and Payment Schedule</b>	\$2,475,000, due by April 28	\$1,800,000, due by July 31	\$975,000, due by October 31

Similar to the current 1- and 3-Year Prepayment Programs, a Market Maker that participates in the Balance of the Year Program would receive a credit equal to its prepayment amount (i.e., \$2,475,000; \$1,800,000; or \$975,000, respectively) toward fees it incurs under Section I.C., I.G., and III.A.<sup>14</sup> As proposed, Market Makers that enroll in the Balance of the Year Program would be required to notify the Exchange by the last business day before the start of the new (following) quarter.<sup>15</sup> Thus, to participate for the last three-quarters of 2017, notice would have to be given by March 31, 2017 – the last business day of the first quarter.

The Exchange believes the proposed Balance of the Year Program would allow a Market Maker that had not committed to the 1- or 3- Year Prepayment Program the option to enroll at a later date, for a shorter duration, and to nonetheless receive the benefits of participating in the Prepayment Program for the duration of their commitment. Specifically, during the period of their participation, Market Makers enrolled in the Balance of the Year Program would be entitled

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<sup>14</sup> See proposed Fee Schedule, Section I.D (Prepayment Programs). Similarly, just as with the 1- and 3- Year Prepayment Programs, the Exchange would 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 would invoice the NYSE Amex Options Market Maker at the appropriate rates. In the event that a NYSE Amex Options Market Maker does not conduct sufficient activity to exhaust the entirety of their prepayment credit within the calendar year, there would be no refunds issued for any unused portion of their prepayment credit. See *id.*

<sup>15</sup> See *id.* (providing that Market Makers would be required to notify the Exchange of their commitment to the Program by sending an email the Exchange at [optionsbilling@nyse.com](mailto:optionsbilling@nyse.com)).

to qualify for the reduced per contract Sliding Scale rates (see supra note 8), and a discount on Rights Fees.<sup>16</sup> The Exchange likewise proposes to offer participants in the Balance of the Year Program enhanced ACE credits in the same amount as those available to participants in the 1 Year Prepayment Program, and to modify the Fee Schedule accordingly.<sup>17</sup> Although the prepay commitment rates for partial Balance of the Year participation is not proportional to the time left in the year (i.e., the later in the year a Market Maker joins, the higher his prepayment amount relative to the annual cost), the Exchange believes this cost structure would incentivize interested Market Makers to commit to the Program earlier in the year.

The Exchange is not proposing any other fee changes at this time.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>18</sup> in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,<sup>19</sup> 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.

The Exchange believes that the proposed modifications to the Sliding Scale are reasonable, equitable and not unfairly discriminatory for a number of reasons. First, the Sliding Scale is available to all NYSE Amex Options Market Makers and is based on the amount of business transacted on – and is designed to attract greater volume to – the Exchange. The

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<sup>16</sup> See Fee Schedule, Section III.C (e-Specialist, DOMM and Specialist Monthly Rights Fees) (describing Rights Fee Discount based on ACE tier achieved). See also infra, note 17.

<sup>17</sup> See proposed Fee Schedule, Section I.E. (modifying ACE Program to provide for “1 Year /Balance of the Year Program Enhanced Customer Volume Credits” in the same amount).

<sup>18</sup> 15 U.S.C. 78f(b).

<sup>19</sup> 15 U.S.C. 78f(b)(4) and (5).

proposed adjustments are designed to encourage Market Makers to commit to directing their order flow to the Exchange, which would increase volume and liquidity, to the benefit of all market participants by providing more trading opportunities and tighter spreads. Further, the proposed Sliding Scale thresholds and rates are competitive with fees charged by other exchanges and are designed to attract (and compete for) order flow to the Exchange, which provides a greater opportunity for trading by all market participants.<sup>20</sup>

The Exchange proposal to modify the Prepayment Programs, including by reducing the prepay commitment for the 1 Year Prepayment Program and adding the Balance of the Year Program, are also reasonable, equitable and not unfairly discriminatory for the following reasons. First, all of the Prepayment Programs offered on the Exchange are optional and Market Makers can elect to participate (or elect not to participate). In addition, the Exchange believes that reducing the prepay commitment for all participants in the 1 Year Prepayment Program, as well as offering Market Makers the flexibility to join at various points in the year, may encourage broader participation in the Prepayment Programs, which anticipated greater capital commitment and resulting liquidity on the Exchange would benefit all market participants (including non-Market Makers). Moreover, the Exchange notes that other options exchanges likewise offer Prepayment Programs to market makers that may be joined after the start of the year. For example, under CBOE's Liquidity Provider Sliding Scale, a CBOE market maker may be eligible for the lower rates associated with certain tiers by prepaying \$2.4 million in fees on an

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<sup>20</sup> 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"); and MIAX fee schedule, [available here](http://www.miaxoptions.com/sites/default/files/MIAX_Options_Fee_Schedule_11012016B.pdf), [http://www.miaxoptions.com/sites/default/files/MIAX\\_Options\\_Fee\\_Schedule\\_11012016B.pdf](http://www.miaxoptions.com/sites/default/files/MIAX_Options_Fee_Schedule_11012016B.pdf) ("Market Maker Sliding Scale").

annual basis, or prepaying \$200,000 in fees on a monthly basis.<sup>21</sup> The Exchange also notes that, similar to the Sliding Scale, the Prepayment Program is 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 tighter spreads, even to those market participants that are not eligible for the Programs. Thus, the Exchange believes the Prepayment Program, as modified, is reasonable, equitable and not unfairly discriminatory to others.

Finally, the Exchange is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

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

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

In accordance with Section 6(b)(8) of the Act,<sup>22</sup> the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed changes relating to the Sliding Scale and the Prepayment Program may increase both intermarket and intramarket competition by incenting participants to direct their orders to the Exchange, which would 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

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<sup>21</sup> CBOE fee schedule, at fn 10 (providing that 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), supra note 20.

<sup>22</sup> 15 U.S.C. 78f(b)(8).

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.

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.

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)<sup>23</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>24</sup> 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

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<sup>23</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>24</sup> 17 CFR 240.19b-4(f)(2).

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)<sup>25</sup> 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEMKT-2016-127 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-2016-127. 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

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<sup>25</sup> 15 U.S.C. 78s(b)(2)(B).

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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEMKT-2016-127 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.<sup>26</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>26</sup> 17 CFR 200.30-3(a)(12).