SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-78297; File No. SR-NYSEMKT-2016-67)

July 12, 2016

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Change to Modify the NYSE Amex Options Fee Schedule effective July 1, 2016

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 July 1, 2016, 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"). The Exchange proposes to implement the fee change effective July 1, 2016. The proposed 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.

1 15 U.S.C. 78s(b)(1).

2 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 amend Section I. E. of the Fee Schedule[3] to adjust qualification levels for certain credit tiers and modify how certain volumes are weighted. The Exchange proposes to implement these changes effective on July 1, 2016.

Section I.E. of the Fee Schedule describes the Exchange's ACE Program, which features five tiers (each a "Tier") expressed as a percentage of total industry Customer equity and Exchange Traded Fund ("ETF") option average daily volume[4] and provides two alternative methods through which Order Flow Providers (each an "OFP") may receive per contract credits for Electronic Customer volume that the OFP, as agent, submits to the Exchange.[5] The Exchange proposes to adjust the Customer Electronic ADV volume thresholds of the ACE

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3 See Fee Schedule, Section I. E. (Amex Customer Engagement ("ACE") Program – Standard Options), available here, https://www.nyse.com/publicdocs/nyse/markets/amex-options/NYSE_Amex_Options_Fee_Schedule.pdf.

4 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.

5 The first method for determining whether an OFP should receive credit is 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 volume. The second method for determining whether an OFP should receive credit is 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, with the further requirement that a specified percentage of the minimum volume required to qualify for the Tier must be Customer volume. See supra n. 3.

Program by raising the qualification level for two of the five Tiers as well as to modify how volumes are calculated for all five of the Tiers under both methods.

Currently, to qualify for Tier 2 on Customer Electronic ADV, the Customer Electronic ADV entered by an OFP must exceed 0.60% of Industry Customer Equity and ETF Options ADV ("ICADV"). The Exchange proposes to raise the qualification level for Tier 2 on Customer Electronic ADV to be greater than 0.75% of ICADV and, for consistency, to likewise increase Tier 1, for which there are no credits, to a maximum volume threshold of 0.75% of ICADV. Currently, to qualify for Tier 3 on Customer Electronic ADV, the Customer Electronic ADV entered by an OFP must exceed 0.80% of ICADV. The Exchange proposes to raise the qualification level for Tier 3 to be greater than 1.00% of ICADV. The Exchange does not proposes [sic] any changes to the credits associated with each Tier. Nor does the Exchange propose any changes to the alternative Tier Qualifications based on Total Electronic ADV.

The Exchange periodically re-evaluates the competitive landscape and, given the rebate the Exchange currently provides to OFPs achieving Tiers 2 and 3, the Exchange believes it would be appropriate to increase certain of the volume thresholds associated with those Tiers. For example, for OFPs that achieve Tier 2 on Customer Electronic ADV, the Exchange currently provides an $0.18 per contract rebate based on a volume threshold of greater than 0.60% of ICADV. While another competing options exchange – the Chicago Board Options Exchange Inc. ("CBOE") – that offers a program similar to ACE provides a $0.15 per contract credit for simple options transactions at its highest tier, with a volume requirement of greater than 3.00% of National Customer Volume in All Underlying Symbols, with certain exclusions.[6] Thus, the

6 See, e.g., CBOE fee schedule, available here, http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf, at p. 4, Volume Incentive Program (featuring four tiers based on Percentage Thresholds of National

Exchange is providing a greater (credit) benefit than some of its competitors for a lower (volume) ask. Given the level of the benefit the Exchange is offering at Tiers 2 and 3, it believes the proposed upward adjustment to certain of the volume thresholds is more reflective of the competitive environment such that the volume requirements are more commensurate with the benefit offered.

To mitigate the increased qualification standards for ACE Tiers 2 and 3 based on an OFP's Customer volume transacted Electronically as a percentage of total industry Customer equity and ETF options, and to encourage additional order flow to the Exchange such that more OFPs qualify for each of the Tier [sic], the Exchange proposes to apply a proposed volume multiplier to certain volumes, which would increase the volumes towards the calculation of the Customer ADV on all ACE Tiers. Specifically, the Exchange proposes to amend the ACE Program to provide that "[i]n calculating an OFP's Electronic volume, each Customer order that takes liquidity will be weighted as 50% greater (i.e., 1.5 times the contract volume) for determining Customer Electronic ADV and Total Electronic ADV.[7] The Exchange believes that applying a higher weighting to Customer orders that take liquidity should encourage OFPs to direct more liquidity taking orders to the Exchange. In addition, with regard to the proposed increases to Tiers 2 and 3, the Exchange believes the proposed volume multiplier would provide additional incentive to OFP's that are currently achieving – or close to achieving – Tiers 2 and 3 to send additional order flow to the Exchange. While the Exchange is making it more difficult to achieve these tiers, qualifying OFPs will receive an additional benefit as a result.

Customer Volume in All Underlying Symbols (with certain exclusions) and, for example, providing that tier 2 requires monthly volumes of at least 0.75% to 1.80% for a $0.12 credit on simple options transactions and tier 3 requires monthly volumes of at least 1.80% to 3.00% for a $0.10 credit on simple options transactions).

7 See proposed Fee Schedule, Section I. E. (Amex Customer Engagement ("ACE") Program – Standard Options).

Further, the Exchange believes this increase in order flow should incentivize market makers that may be rewarded with additional trading opportunities to route to lit markets and post better size, which would result in better markets (tighter market maker quotes) on the Exchange.

The proposed modifications to the ACE Program are designed to encourage OFPs to direct additional order flow to the Exchange, which additional volume and liquidity 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,[8] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[9] 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 amendments to the ACE Program are reasonable, equitable and not unfairly discriminatory because the proposed changes are designed to enhance the competitiveness of the Exchange while continuing to encourage additional volumes be directed to the Exchange.[10] Specifically, given the level of the benefit the Exchange is offering at Tiers 2 and 3, it believes the proposed upward adjustment to certain of the volume thresholds is more reflective of the competitive environment such that the volume requirements are more commensurate with the benefit offered.

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8 15 U.S.C. 78f(b).

9 15 U.S.C. 78f(b)(4) and (5).

10 See supra n. 6.

The Exchange believes that applying the proposed volume multiplier to certain volumes is reasonable, equitable and not unfairly discriminatory as it would mitigate the proposed increases to the volume thresholds for achieving Tiers 2 and 3, and would increase the volumes towards the calculation of the Customer ADV on all ACE Tiers, which should encourage OFPs to direct more liquidity taking orders to the Exchange. Further, the Exchange believes this increase in order flow should incentivize market makers that may be rewarded with additional trading opportunities to route to lit markets and post better size, which would result in better markets (tighter market maker quotes) on the Exchange.

The Exchange believes that these proposed changes to the ACE Program, taken together, would attract more volume and liquidity to the Exchange– including taker liquidity, 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 or have not yet been able to qualify for any of the Tiers. With regard to the proposed increases to Tiers 2 and 3, the Exchange believes the proposed volume multiplier would provide additional incentive to OFP's that are currently achieving – or close to achieving – Tiers 2 and 3 to send additional order flow to the Exchange. While the Exchange is making it more difficult to achieve these tiers, qualifying OFPs will receive an additional benefit as a result.

Finally, the Exchange believes the proposed changes are consistent with the Act because, to the extent the modifications permit the Exchange to continue to attract greater volume and liquidity, the proposed changes would improve the Exchange's overall competitiveness and strengthen its market quality for all market participants.

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,[11] 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 the proposed amendments to the ACE Program are pro-competitive as the proposed increased qualifications, which make the tiers more competitive[12], together with the enhanced weighting factor may encourage OFPs to direct Customer order flow, particularly taking liquidity, to the Exchange and any resulting increase in volume and liquidity to the Exchange would benefit all Exchange participants through increased opportunities to trade as well as enhancing price discovery, even to those market participants that do not participate in the ACE Program or have not yet been able to qualify for any of the tiers.

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)[13] of

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11 15 U.S.C. 78f(b)(8).

12 See supra n. 6.

13 15 U.S.C. 78s(b)(3)(A).

the Act and subparagraph (f)(2) of Rule 19b-4[14] 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)[15] 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-2016-67 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-2016-67. This file number should be included on the subject line if e-mail is used. To help the Commission process and review

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14 17 CFR 240.19b-4(f)(2).

15 15 U.S.C. 78s(b)(2)(B).

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 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-2016-67, 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.[16]

Robert W. Errett
Deputy Secretary

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[16] 17 CFR 200.30-3(a)(12).