

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-71532; File No. SR-NYSEMKT-2014-12)

February 12, 2014

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Amex Options Fee Schedule by Adopting a Market Access and Connectivity Subsidy

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on February 3, 2014, NYSE MKT LLC (the “Exchange” or “NYSE MKT”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend the NYSE Amex Options Fee Schedule (“Fee Schedule”) by adopting a Market Access and Connectivity Subsidy. The proposed change will be operative on February 3, 2014. The text of the proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to adopt a Market Access and Connectivity Subsidy ("MAC Subsidy") to be paid to ATP Holders that provide access and connectivity to the Exchange to other ATP Holders and/or utilize such access themselves. The proposed change will be operative on February 3, 2014.

The Exchange proposes to enter into a subsidy arrangement with those ATP Holders that provide access and connectivity to the Exchange for the purposes of electronic order routing either to other ATP Holders and/or utilize such access themselves.⁴ The MAC Subsidy would be paid to qualifying ATP Holders for certain executed electronic volumes – as described in more detail below – that are delivered to the Exchange by the qualifying ATP Holders' connection(s) to the Exchange. In order to qualify for the MAC Subsidy, ATP Holders would

⁴ The Exchange notes that under this arrangement it will be possible for one ATP Holder to be eligible for the MAC Subsidy while another ATP Holder might potentially be liable for transaction charges associated with the execution of the order. Consider the following example, both A and B are ATP Holders but A does not utilize its own connections to route orders to the Exchange, and instead utilizes B's connections. Under this program, B will be eligible for the MAC Subsidy while A is liable for any transaction charges resulting from the execution of orders that originate from A, arrive at the Exchange via B's connectivity, and subsequently execute and clear at OCC, where A is the valid executing clearing member or give up on the transaction. Similarly, where B utilizes its own connections to execute transactions, B will be eligible for the MAC Subsidy, but would also be liable for any transaction resulting from the execution of orders that originate from B, arrive at the Exchange via B's connectivity, and subsequently execute and clear at OCC, where B is the valid executing clearing member or give up on the transaction.

need to be able to interface with the Exchange System.⁵ Further, in order to qualify, ATP Holders would be required to provide the Exchange with a list of each of the unique connections over which the ATP Holder would be sending orders to enable the Exchange to identify the qualifying order flow. The ATP Holder would be required to furnish this list of unique connections to the Exchange via email no later than the last business day of the month in which the ATP Holder would like to receive the MAC Subsidy.⁶

The MAC Subsidy would be paid on volume from electronically executed orders for Non-NYSE Amex Options Market Makers, Firms Proprietary, Professional Customers and Broker Dealers. The amount of the per contract MAC Subsidy paid to qualifying ATP Holders would vary based on the average daily volume (“ADV”) of electronically executed Non-NYSE Amex Options Market Maker, Firm Proprietary, Professional Customer and Broker Dealer contract volumes relative to the Total Industry Customer equity and Exchange-Traded Funds (“ETF”) ADV⁷ according to the proposed schedule below:

⁵ See Rule 900.2NY (38) (defining “Exchange System” as “the Exchange’s electronic order delivery, execution and reporting system for designated option issues through which orders and quotes of Users are consolidated for execution and/or display”).

⁶ The ATP Holder would email the Exchange at optionsbilling@nyx.com. Thus, for example, an ATP Holder that wishes to qualify for the MAC Subsidy for executed volume routed over its connections in February must email the Exchange no later than the last business day in February and the email must identify the ATP Holder seeking the MAC Subsidy and must list of the unique connections utilized by the ATP Holder to provide Exchange System access to other ATP Holders and/or itself. Any subsidy payments would be made with a one month lag (i.e., a subsidy earned for activity in February would be paid to the qualifying ATP Holder in conjunction with the reconciliation of March invoices).

⁷ Total Industry Customer equity and ETF option ADV will be that which is reported for the month by The Options Clearing Corporation (“OCC”) in the month in which the MAC Subsidy might apply. For example, February 2014 Total Industry Customer equity and ETF option ADV will be used in determining what, if any, MAC Subsidy a qualifying ATP Holder may be eligible for on its electronic Non-NYSE Amex Options Market Maker, Firm Proprietary, Professional Customer and Broker Dealer transactions based on the amount of electronic Non-NYSE Amex Options Market Maker, Firm

Non-NYSE Amex Options Market Maker, Firm Proprietary, Professional Customer and Broker Dealer Electronic Contract ADV Tiers (excludes mini options and volumes associated with QCC trades)	Per Contract MAC Subsidy – Retroactive To All Qualifying Contract Volumes Upon Achieving A Higher ADV Tier (excludes mini options and volume associated with QCC trades)
At least .45% of Total Industry Customer equity and ETF option ADV	\$0.04
At least .85% of Total Industry Customer equity and ETF option ADV	\$0.06
At least 1.25% of Total Industry Customer equity and ETF ADV	\$0.08

The MAC Subsidy would be retroactive to all qualifying contract volumes upon achievement of a higher ADV tier. For example, if, in February, Total Industry Customer equity and ETF ADV is 11,867,765 contracts, the first tier of .45% of Total Industry Customer equity and ETF ADV would correspond to volume of 53,405. Thus, if in February, a qualifying ATP Holder has electronically executed ADV for any combination of Non-NYSE Amex Options Market Maker, Firm Proprietary, Professional Customer or Broker Dealer transactions of 63,000 contracts, the ATP Holder would be paid \$0.04 for all qualifying contract volumes, not just those in excess of the tier – which in this example is 53,405. Continuing with this example, if this same qualifying ATP Holder had, in February, electronically executed ADV for any combination

Proprietary, Professional Customer and Broker Dealer volume it executes in February 2014 relative to Total Industry Customer equity and ETF option ADV. Total Industry Customer equity and ETF option ADV comprises 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. For reference, the 3-month average as of December 31, 2013 of Total Industry Customer equity and ETF ADV was 11,867,765 contracts.

of Non-NYSE Amex Options Market Maker, Firm Proprietary, Professional Customer or Broker Dealer transactions of 43,000 contracts, the ATP would be paid nothing (\$0.00) because the ATP Holder would have failed to achieve the minimum volume necessary to qualify for the MAC Subsidy.

In calculating the ADV of electronic Non-NYSE Amex Options Market Maker, Firm Proprietary, Professional Customer or Broker Dealer transactions, the Exchange would exclude volume from mini options and volume associated with QCC trades as both mini options and QCC trades are subject to their own pricing and/or rebates on the Fee Schedule. Similarly, volumes from mini options and volumes associated with QCC trades would not be eligible for the MAC Subsidy, as they too are subject to separate pricing and/or rebates on the Fee Schedule.

The Exchange proposes to add the MAC Subsidy to the Fee Schedule within a new section, at the end of the Fee Schedule, entitled “NYSE AMEX OPTIONS: TRADE-RELATED REBATES OR SUBSIDIES FOR STANDARD OPTIONS”. The Exchange believes that creating this new section specific to any rebates or subsidies offered by the Exchange is warranted as it will enable participants to more readily locate all such rebates or subsidies within the Fee Schedule as opposed to including them elsewhere, for example, under “NYSE AMEX OPTIONS: TRADE-RELATED CHARGES FOR STANDARD OPTIONS,” which the Exchange believes could be misleading or confusing for participants.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)⁸ of the Act, in general, and Section 6(b)(4) and (5)⁹ of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4) and (5).

among its members and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Exchange believes that the MAC Subsidy is reasonable because it is designed to attract higher volumes of electronic equity and ETF volume to the Exchange from Non-NYSE Amex Options Market Makers, Firms Proprietary, Professional Customers and Broker Dealers, which will benefit all participants by offering greater price discovery, increased transparency, and an increased opportunity to trade on the Exchange. Encouraging Non-NYSE Amex Options Market Makers, Firms Proprietary, Professional Customers and Broker Dealers to send higher volumes of orders to the Exchange will contribute to the Exchange's depth of book as well as to the top of book liquidity. Moreover, the Exchange believes that the proposed volume-based MAC Subsidy is both equitable and not unfairly discriminatory because any qualifying ATP Holder that offers market access and connectivity to the Exchange and/or utilize such functionality themselves will each be able to earn the MAC Subsidy based on the amount of electronic Non-NYSE Amex Options Market Maker, Firm Proprietary, Professional Customer and/or Broker Dealer business that an ATP Holder executes on the Exchange, at each tier, on an equal and non-discriminatory basis. The sole basis for differentiation among the tiers will be participant volume on the Exchange.

The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to pay the proposed MAC Subsidy to the ATP Holder that is providing Market Access and Connectivity, even when a different ATP Holder may be liable for transaction charges resulting from the execution of the orders upon which the subsidy might be paid. The Exchange notes that this sort of arrangement already exists within the Industry and even on the Exchange. First, the Exchange would point out that the existing Floor Broker Rebate for Executed QCC Orders

results in a situation where the Floor Broker is earning a rebate and one or more different ATP Holders are potentially liable for the Exchange transaction charges applicable to QCC trades. In establishing the Floor Broker Rebate, the Exchange stated,

In light of the fact that the Exchange does not offer a front-end for order entry, unlike some of the competing exchanges, the Exchange believes it is necessary from a competitive standpoint to offer this rebate to the executing Floor Broker on a QCC order. The Exchange expects that the rebate offered to executing Floor Brokers will allow them to price their services at a level that will enable them to attract QCC order flow from participants who would otherwise utilize an existing front-end order entry mechanism offered by the Exchange's competitors instead of incurring the cost in time and money to develop their own internal systems to be able to deliver QCC orders directly to the Exchange systems.¹⁰

The Exchange's rationale for offering the MAC Subsidy in the manner proposed is very much the same. The Exchange, lacking a front-end for order entry, is seeking to subsidize those ATP Holders that develop and maintain one for their own use and/or make it available to other ATP Holders. This sort of arrangement has been effective in the past – paying one ATP Holder a rebate or subsidy based on another ATP Holder's activity – and has not been found to be unreasonable, inequitable nor unfairly discriminatory by virtue of the Floor Broker Rebate not being subject to suspension. Second, the Exchange notes that the Chicago Board of Options ("CBOE") offers an Order Routing Subsidy ("ORS") which, like the current proposal, allows CBOE to enter into subsidy arrangements with CBOE Trading Permit Holders ("TPHs") that

¹⁰ See Securities and Exchange Act Release No. 34-65472 (October 3, 2011), 76 FR 62887 (October 11, 2011) (SR-NYSEAmex-2011-72).

provide certain order routing functionalities to other CBOE TPHs and/or use such functionalities themselves.¹¹ However, the CBOE also offers an ORS in which both CBOE members and CBOE non-members are eligible for a rebate. Specifically, under CBOE's program, CBOE members are eligible to receive exchange transaction fees on transactions that earn a non-CBOE member a subsidy payment.¹² The Exchange notes that this subsidy arrangement where both members and non-members may be eligible to earn a subsidy based on a different members activity, has not been deemed unreasonable, inequitable nor unfairly discriminatory.

The Exchange also believes that the proposed MAC Subsidy is reasonable because it is designed to enhance the competitiveness of the Exchange, particularly with respect to those exchanges that offer their own front-end order entry system or one they subsidize in some manner.¹³

The Exchange believes that excluding the volumes attributable to QCC executions and mini options is reasonable, equitable, and not unfairly discriminatory. QCC volumes are already

¹¹ See Securities Exchange Act Release No. 34-55629 (April 13, 2007), 72 FR 19992 (April 20, 2007) (SR-CBOE-2007-34) (describing CBOE Order Router Subsidy ("ORS") Program, which allows CBOE to enter into subsidy arrangements with CBOE TPHs that provide certain order routing functionalities to other CBOE TPHs and/or use such functionalities themselves); CBOE Fee Schedule, available at <https://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf> (which also describes CBOE's ORS Program).

¹² See Securities and Exchange Act No. 34-63631 (January 3, 2011), 76 FR 1203 (January 11, 2011) [sic] (SR-CBOE-2010-117) (extending the Order Routing Subsidy program to establish such subsidy arrangements with broker-dealers that are not CBOE TPH (each, a "Participating Non-CBOE TPH" or "Participant") and to extend the program to permit a Participant to receive subsidy payments for providing an order routing functionality to broker-dealers that are not CBOE TPHs.)

¹³ See, e.g., supra note 10; Securities Exchange Act Release No. 34-54121 (July 10, 2006), 71 FR 40566 (July 17, 2006) (SR-ISE-2006-31) (describing PrecISE, which is a front-end, order entry application for trading options utilized by International Securities Exchange ("ISE"). PrecISE is also described on ISE's website, available at <http://www.ise.com/options/precise/>.

counted toward a separate rebate that the Exchange pays to Floor Brokers who transact QCC trades.¹⁴ If the Exchange were to count QCC volumes towards the volume tiers for the MAC Subsidy, the Exchange may have to raise fees for all other participants. The Exchange does not believe such a result would be reasonable or equitable. Mini options are subject to their own separate pricing on the fee schedule and feature a maximum rate per contract of \$0.09 for electronic executions. The Exchange believes that this rate is attractive enough already and does not wish to pay an additional rebate or subsidy on top of the already discounted rate for mini options. Because all ATP Holders seeking to qualify for the MAC Subsidy would be treated equally with respect to QCC volume and mini options volume, the proposal to exclude these volumes from the tiers is not inequitable or unfairly discriminatory.

The Exchange further notes that while the MAC Subsidy is only being offered to qualifying ATP Holders for electronically executed Non-NYSE Amex Options Market Makers, Firms Proprietary, Professional Customers and Broker Dealers volumes and not, for example, on the electronic volumes of NYSE Amex Options Market Makers or Customers, this too is both reasonable, equitable and not unfairly discriminatory. The Exchange notes that both NYSE Amex Options Market Maker and Customer volumes already have the opportunity to be used to earn rebates,¹⁵ discounts or fee caps. Further the Exchange notes that currently, Customers are charged \$0.00 per contract for both electronic and manual or outcry executions on the Exchange. As noted, Customer volumes are already eligible for various rebates on the Exchange,

¹⁴ See Securities Exchange Act Release No. 65472 (Oct. 3, 2011), 76 FR 62887 (Oct. 11, 2011) (SR-NYSEAmex-2011-72).

¹⁵ See NYSE Amex Options Fee Schedule, nn5 & 17 (describing the NYSE Amex Options Market Maker volume discounts and monthly fee cap; and the rebate program for Customer electronic equity and ETF volumes, respectively), available at https://globalderivatives.nyx.com/sites/globalderivatives.nyx.com/files/nyse_amex_options_fee_schedule_for_1-8-14.pdf.

specifically the Customer Electronic Complex Order ADV Tiers which establishes a rebate paid to Order Flow Providers (“OFPs”) for electronically executed Customer Complex Orders; the Customer Electronic ADV Tiers, which establishes a rebate paid to OFPs for electronically executed simple or non-Complex Customer Orders; and lastly, the Floor Broker Rebate for Executed QCC Orders establishes a rebate paid to Floor Brokers for executed QCC Orders, including those where one side of the QCC Order is a Customer. The Exchange believes that the availability of these rebates for Customer volumes does not warrant paying an additional rebate or subsidy on Customer volumes at this time and the Exchange is therefore excluding Customer volumes from the proposed MAC Subsidy.¹⁶

With respect to NYSE Amex Options Market Makers, as noted above, the Exchange already offers them volume-based discounts and the ability to trade at a nominal rate of \$0.01 per contract upon hitting a monthly fee cap of \$350,000. The Exchange believes that the volume-based discounts, coupled with the monthly fee cap, already provide ample incentive for attracting NYSE Amex Options Market Maker volumes to the Exchange and that no further subsidy is warranted at this time. The proposed MAC Subsidy is designed to attract higher margin business to the Exchange, business which at present has no opportunity to transact at rates anywhere close to the rate charged to Customers (\$0.00) or NYSE Amex Options Market Makers (\$0.01 for capped Market Makers). To offer the proposed MAC Subsidy on NYSE Amex Options Market Maker and Customer electronic volumes would require funding from some other source, such as

¹⁶ The Exchange notes that while the CBOE Order Routing Subsidy does not exclude Customer volumes from the subsidy, the CBOE does charge Customer transaction fees, which the Exchange does not (see supra note 12 (CBOE Fee Schedule, which details the transaction charges applicable to Customers for transactions in options on ETF’s and ETN’s)). The Exchange believes that the lack of transaction fees and myriad other rebates available to Customers on the Exchange justifies excluding them from the MAC Subsidy.

raising fees for other participants. As a result, the Exchange believes it is appropriate to offer the MAC Subsidy on just Non-NYSE Amex Options Market Makers, Firms Proprietary, Professional Customers and Broker Dealers that are charged higher per contract transaction fees than either NYSE Amex Options Market Makers or Customers.¹⁷ The Exchange notes that it is commonplace within the options industry for exchanges to charge different rates and/or offer different rebates depending upon the capacity in which a participant is trading. For these reasons, the Exchange believes that the proposed change to offer a MAC Subsidy to qualifying ATP Holders on certain electronic volumes is reasonable, equitable and not unfairly discriminatory.

Finally, the Exchange believes that adding a new subsection to the end of the Fee Schedule entitled, “NYSE AMEX OPTIONS: TRADE-RELATED REBATES OR SUBSIDIES FOR STANDARD OPTIONS” is reasonable as it will make finding such rebates or subsidies easier for all participants. For this same reason the Exchange believes it is also equitable and not unfairly discriminatory.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed change will enhance the competitiveness of the Exchange relative to other exchanges that offer their own front-end order entry system or one they

¹⁷ For example, the base rate charged to the Non-NYSE Amex Options Market Makers, Firms Proprietary, Professional Customers and Broker Dealers for electronic executions is \$0.43, \$0.32, \$0.32 and \$0.32, respectively; whereas the base rate charged to NYSE Amex Options Market Makers for electronic executions range from \$0.13 for Specialist and e-Specialists; to \$0.20 for NYSE Amex Options Market Makers who trade with Non-Directed order flow; to \$0.00 for Customers. See id. (“NYSE Amex Options Trade-Related Charges for Standard Options Contracts”).

subsidize in some fashion.¹⁸ The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

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)¹⁹ of the Act and subparagraph (f)(2) of Rule 19b-4²⁰ 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)²¹ of the Act to determine whether the proposed rule change should be approved or disapproved.

¹⁸ See supra note 13.

¹⁹ 15 U.S.C. 78s(b)(3)(A).

²⁰ 17 CFR 240.19b-4(f)(2).

²¹ 15 U.S.C. 78s(b)(2)(B).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEMKT-2014-12 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NYSEMKT-2014-12. 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 at 100 F Street, NE, Washington, DC 20549-1090 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the

Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEMKT-2014-12, 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.²²

Kevin M. O'Neill
Deputy Secretary

²² 17 CFR 200.30-3(a)(12).