SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-74956; File No. SR-NYSEMKT-2015-38)

May 13, 2015

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Modifying the NYSE Amex Options Fee Schedule Related to Fees and Credits Associated with the Customer Best Execution Auction

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 May 1, 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 fees and credits associated with the Customer Best Execution Auction ("CUBE Auction" or "Auction"). The Exchange proposes to implement the fee change effective May 1, 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

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

2 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend Section I.G. of the Fee Schedule[3] to modify existing CUBE fees and credits and to add a new rebate for CUBE participants who qualify for Tiers 2, 3, 4 or 5 of the Amex Customer Engagement ("ACE") Program.[4] The Exchange proposes to implement the fee change effective May 1, 2015.

The Exchange proposes to increase the fees associated with RFR Responses participating in the Auction by $0.05 – from $0.55 to $0.60 for Non-Customers in Penny Pilot issues; and from $0.90 to $0.95 for Non-Customers in non-Penny Pilot issues. In addition, the Exchange proposes to decrease the Initiating Participant Credit by $0.05 for Penny Pilot issues – from $0.40 to $0.35; and $0.10 for non-Penny Pilot issues – from $0.80 to $0.70. The Exchange also proposes to introduce a rebate for certain Initiating Participants that qualify for the ACE Program. Specifically, as proposed, those ATP Holders who qualify for Tiers 2, 3, 4 or 5 of the ACE Program would receive a $0.12 per contract rebate for up to 5,000 Customer contracts per CUBE Order executed in a CUBE Auction (the "ACE Initiating Participant Rebate" or "Rebate"). The proposed Rebate is payable in addition to any other fees or credits accrued from the CUBE Auction (e.g., in addition to the Initiating Participant Credit for both Penny and non-

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3 See Fee Schedule, Section I.G., available at, https://www.theice.com/publicdocs/nyse/markets/amex-options/NYSE_Amex_Options_Fee_Schedule.pdf.

4 See id., Section I.E.

Penny Pilot issues). Thus, as proposed, the maximum potential CUBE credit for Penny Pilot issues is $0.47 ($0.12 Rebate + $0.35 Initiating Participant Credit) and for non-Penny Pilot issues is $0.82 ($0.12 Rebate + $0.70 Initiating Participant Credit). The ACE Initiating Participant Rebate is available regardless of whether the CUBE Order trades with the Contra Order or RFR Response(s), whereas the current Initiating Participant Credits are payable only for each CUBE Order contract that does not trade with the Contra Order.

The proposed amendments to CUBE Auction pricing are designed to incentivize market participants that have committed a certain amount of volume to the Exchange to provide even more liquidity through CUBE Auctions. This additional volume and liquidity would benefit all Exchange participants through increased opportunities to trade as well as enhancing price discovery and price improvement.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[6] 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 changes to CUBE Auction fees are reasonable, equitable and not unfairly discriminatory. First, the proposal to increase the fees associated with RFR Responses that participate in the CUBE applies equally to all non-Customer ATP Holders that choose to participate in the CUBE, and access to the Exchange is offered on terms that are not unfairly discriminatory. In addition, the proposed RFR Response fees are within the range of

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5 15 U.S.C. 78f(b).

6 15 U.S.C. 78f(b)(4) and (5).

fees charged to non-Customers on other exchanges for executions within similar electronic crossing mechanisms. For example, the BOX Options Exchange LLC ("BOX") charges Professional Customers and Broker Dealers who respond to an auction with Improvement Orders $0.72 per contract in Penny issues and $1.12 per contract in non-Penny issues, while charging BOX Market Makers who respond either $0.55 in Penny issues or $0.95 in non-Penny issues.[7]

The Exchange believes that the proposal to reduce the current Initiating Participant Credits are reasonable, equitable and non-discriminatory because they apply equally to all ATP Holders that choose to participate in the CUBE, and access to the Exchange is offered on terms that are not unfairly discriminatory. Finally, the proposed CUBE Auction credits for Penny and non-Penny issues to be paid to Initiating Participants for each CUBE Order contract that does not trade with the Contra Order are within the range of rebates paid on other exchanges for executions within similar electronic crossing mechanisms. For example, the International Securities Exchange, LLC ("ISE") pays a Price Improvement Mechanism ("PIM") Break-up Rebate of $0.35 per contract in Select Symbols (i.e., Penny Pilot issues) and $0.80 per contract in Non-Select Symbols (i.e., non-Penny Pilot issues) for contracts submitted to a PIM that do not trade with their contra order.[8]

Similarly, the proposed changes to CUBE Auction credits are reasonable, equitable and not unfairly discriminatory. Specifically, the ACE Initiating Participant Rebate is based on the

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7 See BOX fee schedule, available at, http://boxexchange.com/assets/BOX_Fee_Schedule.pdf. The BOX fee schedule has several parts that must be taken collectively to arrive at the all-in cost of responding to an auction. For example, a Broker Dealer who responds to an auction with an Improvement Order will pay $0.72 per contract in Penny issues. The $0.72 fee represents the Improvement Order fee of $0.37 from Section I of the fee schedule, plus the $0.35 fee to add liquidity in Penny issues quoted with an MPV of $0.01 from Section II of the schedule.

8 See ISE fee schedule, available at, http://www.ise.com/assets/documents/OptionsExchange/legal/fee/ISE_fee_schedule.pdf.

amount of business transacted on the Exchange and is designed to attract more volume and liquidity to the Exchange generally, and to CUBE Auctions specifically, which will benefit all market participants (including those that do not participate in the ACE Program) through increased opportunities to trade at potentially improved prices as well as enhancing price discovery. Furthermore, the proposed Rebate is reasonably designed and not unfairly discriminatory because it [sic] available regardless of the parties that trade with the CUBE Order (i.e., whether the CUBE Order trades with the Contra Order or otherwise).

In addition, the proposal to offer an additional incentive to participate in the CUBE Auction to those ATP Holders that have achieved certain monthly volume thresholds is also not new or novel. For example, the MIAX Options Exchange ("MIAX") offers an additional per contract rebate on certain agency orders executed in its electronic auction mechanism ("PRIME"), which provides for a maximum credit of $0.12 per contract, based on a member achieving certain monthly volume thresholds.[9] In addition, the proposal to cap the Rebate at 5,000 Customer contracts per CUBE Order is likewise consistent with the practice of other exchanges. For example, the Chicago Board of Options Exchange ("CBOE") caps the number of contracts submitted to its price improvement auction that are eligible for additional volume rebates at 1,000 contracts.[10] The Exchange notes that although the proposed Rebate applies

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9 See MIAX fee schedule, Priority Customer Rebate Program, available at, http://www.miaxoptions.com/content/fees (providing a $0.10 per contract rebate for all Priority Customer orders executed in the PRIME Auction and providing that any Member or applicable affiliate that qualifies for MIAX's Priority Customer Rebate Program volume tiers 3, 4, or 5 will be credited an additional $0.02 per contract for each Priority Customer order executed in the PRIME Auction as a PRIME Agency Order over a threshold of 1,500,000 contracts in a month, subject to certain enumerated exceptions).

10 See CBOE fee schedule, Volume Incentive Program ("VIP"), available at, http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf (providing that VIP credits on orders executed electronically in Automated Improvement Mechanism will be

solely to Customer orders, it is nonetheless equitable and not unfairly discriminatory because it would enhance the incentives to ATP Holders to transact Customer orders on the Exchange and an increase in Customer order flow would bring greater volume and liquidity to the Exchange. Increased volume to the Exchange benefits 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 are consistent with the Act because they may attract greater volume and liquidity to the Exchange, which would improve its 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 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 CUBE Auction pricing are pro-competitive as the fees are to incentivize increases in volume and liquidity to the Exchange, which would benefit all of Exchange participants through increased opportunities to trade as well as enhancing price discovery. The Exchange also believes that the proposed ACE Initiating Participant Rebate would enhance the competiveness of the Exchange relative to other exchanges that offer similar rebates tied to volume incentives.[12]

The Exchange notes that it operates in a highly competitive market in which market

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capped at 1,000 contracts per order for simple executions and 1,000 contracts per leg for complex executions).

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

[12] See supra n. 9, 10.

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 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:

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

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

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

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-2015-38 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-2015-38. 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-2015-38, 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

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