

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-72865; File No. SR-NYSEMKT-2014-67)

August 19, 2014

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

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 August 8, 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”). The proposed changes will be operative on August 8, 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 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 15 U.S.C. 78a.

³ 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule as described below. The proposed changes will be operative on August 8, 2014.

The Exchange proposes to add language that excludes certain Customer-to-Customer activity from qualifying for any rebate under the Customer Electronic Complex Order ADV Tier rebate schedule. Presently, the Exchange pays rebates to Order Flow Providers (“OFP’s”) according to the table shown below.

Customer Electronic Complex Order ADV Tiers	Rebate Per Contract For All Customer Electronic Complex Orders (retroactive to the first contract traded during the month)
35,000 to 49,999	\$0.04
50,000 to 69,999	\$0.06
70,000 to 109,999	\$0.08
110,000 and greater	\$0.10

The Exchange is proposing to add language that would exclude certain types of activity from counting towards any portion of the rebate, to include both volume associated with the activity and any per contract rebate associated with the activity. Specifically, the Exchange

proposes to exclude volume from any Customer to Customer Electronic Complex executions.

Therefore, the Exchange proposes to amend the fee schedule to read as follows⁴:

Customer Electronic Complex Order ADV Tiers – <u>Excludes Volume From Customer to Customer Electronic Complex Executions</u>	Rebate Per Contract For [All] Customer Electronic Complex Orders <u>Excluding Customer to Customer Electronic Complex Executions</u> (retroactive to the first contract traded during the month)
35,000 to 49,999	\$0.04
50,000 to 69,999	\$0.06
70,000 to 109,999	\$0.08
110,000 and greater	\$0.10

As this fee is being filed for immediate effectiveness on August 8, 2014, for the month of August only, the Exchange will exclude Customer to Customer Electronic Complex Executions from the calculation of the proposed rebate only during the remaining trading days of August (i.e., excluding August 1,4-7 – the first five trading days) and any such volume executed prior to August 8, 2014 will apply to a Customer’s potential rebate.⁵ By calculating the August 2014 proposed rebate in this fashion, the Exchange believes that Customers seeking to meet the volume metric would have an opportunity to do so and would not be disadvantaged if trading volume prior to the effective date of this rule change did not meet the volume metric.

⁴ Text that the Exchange proposes to delete appears in brackets; text that the Exchange proposes to add appears underscored.

⁵ For example, if a OFP on behalf of a Customer achieved 50,000 contracts or greater volume of Customer to Customer Electronic Complex Executions during the first five trading days in August 2014 only, that activity will apply to that any potential rebate for August 2014. As proposed, Customer to Customer Electronic Complex Executions from August 8, 2014 forward will not apply to any potential rebate.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)⁶ of the Act, in general, and Section 6(b)(4) and (5)⁷ of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges 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 proposal to exclude certain activity from counting towards or earning the rebate paid under the existing Customer Electronic Complex Order ADV Tiers is reasonable, equitable and not unfairly discriminatory for the following reasons. First, the specific type of activity being excluded does not generate transaction fee revenue for the Exchange as Customers are charge a rate of \$0.00 per contract. As a result, the Customers who are engaging in the activity – Customer to Customer Electronic Complex Order executions – are not being charged transaction fees. The Exchange believes it is reasonable, equitable and not unfairly discriminatory to refrain from paying a rebate for activity that is already free for the participants involved. The Exchange also believes that the proposal is reasonable, equitable, and not unfairly discriminatory because it applies to all Customers equally. Finally, because the rebate only applies to Customer activity, the elimination of the rebate as proposed puts Customers on the same competitive footing for the excluded orders as other market participants, and therefore is reasonable, equitable and not unfairly discriminatory.

With respect to the proposed fee being applicable to the balance of August 2014, the Exchange believes the fee is reasonable because Customers are on notice of the proposed fee

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4) and (5).

and the rebate would be based only on the volume executed during the remaining trading days of August.

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 not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed fee change is reasonably designed to be fair and equitable, and therefore, will not unduly burden any particular group of market participants trading on the Exchange vis-à-vis another group. The Exchange notes that the rebate only applies to Customers and therefore the elimination of the rebate in the described situation puts Customers on the same competitive footing as other market participants. As such, no market participant would be entitled to a credit for these types of transactions. As noted above, the proposed fee change applies equally to all Customers, thus the proposed fee change does not pose an undue burden among Customers. The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed change only applies to trading on the Exchange.

The Exchange operates in a highly competitive market, comprised of many options exchanges, in which market participants can easily and readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or rebates to be inadequate. Accordingly, the fees that are assessed and the rebates paid by the Exchange described in the above proposal are influenced by these robust market forces and therefore must remain competitive with fees charged and rebates paid by other venues and therefore must continue to be reasonable and equitably allocated to those ATP Holders that opt to direct orders to the Exchange rather than competing venues.

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)⁸ of the Act and subparagraph (f)(2) of Rule 19b-4⁹ 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)¹⁰ 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-2014-67 on the subject line.

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(2).

¹⁰ 15 U.S.C. 78s(b)(2)(B).

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-2014-67. 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, D.C. 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 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-2014-67, 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.¹¹

Kevin M. O'Neill
Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).