

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-76935; File No. SR-NYSEMKT-2016-09)

January 20, 2016

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 13, 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 January 13, 2016.<sup>3</sup> 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

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> The Exchange originally filed this proposed rule change on January 04, 2016 under File No. SR-NYSEMKT-2016-01. The Exchange subsequently withdrew that filing on January 13, 2016 and filed this proposed rule change.

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 Sections I. A., C. and E of the Fee Schedule to adjust fees and credits payable, effective on January 13, 2016.

Section I.A. of the Fee Schedule sets forth the rates for Standard Option transactions. The Exchange is proposing to increase rates per contract for Electronic transactions. Specifically, the Exchange proposes to increase rates for Electronic transactions in issues in the Penny Pilot program from \$0.44 to \$0.50 for Broker Dealers, Professional Customers and Non-NYSE Amex Options Market Makers; from \$0.34 to \$0.42 for Firms; and \$0.23 to \$0.25 for DOMMs, e-Specialists, NYSE Amex Options Market Makers and Specialists. These rates are competitive with rates being charged on other exchanges for Electronic executions in Penny Pilot issues.<sup>4</sup>

The Exchange also proposes to increase rates per contract for Electronic transactions in

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<sup>4</sup> For example, Miami Securities International Exchange, LLC ("MIAX") charges \$0.45 to firms and \$0.47 to non-MIAX market makers, broker dealers and public customers other than priority customers for execution in Penny Pilot issues (see MIAX fee schedule, available here, <https://www.miaxoptions.com/content/fees>); and NASDAQ OMX PHLX LLC ("PHLX") charges \$0.48 to professional customers, broker dealers and firms for execution in Penny Pilot issues (see PHLX fee schedule, available here, <http://www.nasdaqtrader.com/Micro.aspx?id=PHLXPricing>). In addition, NYSE Arca, Inc. ("NYSE Arca"), NASDAQ Options Market LLC ("NOM") and BATS BZX Exchange ("BATS") all charge a \$0.50 take fee for removing liquidity in Penny Pilot issues. See NYSE Arca fee schedule, available here, [https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE\\_Arca\\_Options\\_Fee\\_Schedule.pdf](https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf); NOM fee schedule, available here, <http://www.nasdaqtrader.com/Micro.aspx?id=OptionsPricing>; and BATS fee schedule, available here, [http://www.batsoptions.com/support/fee\\_schedule/](http://www.batsoptions.com/support/fee_schedule/).

issues that are not part of the Penny Pilot program from \$0.58 to \$0.75 for Broker Dealers, Firms, Professional Customers and Non-NYSE Amex Options Market Makers; and \$0.23 to \$0.25 for DOMMs, e-Specialists, NYSE Amex Options Market Makers and Specialists. These rates are competitive with rates being charged on other exchanges for Electronic executions in non-Penny Pilot issues.<sup>5</sup>

Section I.C. of the Fee Schedule currently provides a discount to NYSE Amex Options Market Maker transaction fees based on a sliding volume scale (the “Sliding Scale” [sic]).<sup>6</sup> Specifically, an NYSE Amex Options Market Maker that has monthly volume on the Exchange of 0.10% or less of total industry Customer equity and exchange traded fund (“ETF”) options volume<sup>7</sup> is charged a base rate of \$0.23 and, these same market participants, upon reaching

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<sup>5</sup> For example, MIAX charges \$0.29 to MIAX market makers and \$0.75 to non-MIAX market makers, firms, broker dealers and public customers other than priority customers for executions in non-Penny Pilot issues (see id., MIAX fee schedule); PHLX charges \$0.25 to specialists and market makers and \$0.75 to professional customers, broker dealers and firms per execution in Non-Penny issues (see id., PHLX fee schedule); and CBOE charges \$0.75 to broker dealers, non-CBOE market makers and professionals per execution in non-Penny Pilot issues (see The Chicago Board Options Exchange, Inc. (“CBOE”) fee schedule, <http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf>). In addition, the BOX Options Exchange, LLC (“BOX”) assesses fees greater than \$1.00 to non-Customers for executions against Public Customer interest in non-Penny Pilot issues and NYSE Arca charges a \$0.99 take fee to lead market makers, market makers, firms and broker dealers for executions in non-Penny Pilot issues. See NYSE Arca fee schedule, available here, [https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE\\_Arca\\_Options\\_Fee\\_Schedule.pdf](https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf); and BOX fee schedule, available here, [http://boxexchange.com/assets/BOX\\_Fee\\_Schedule.pdf](http://boxexchange.com/assets/BOX_Fee_Schedule.pdf).

<sup>6</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>7</sup> The volume thresholds are based on an NYSE Amex Options Market Makers’ volume transacted Electronically as a percentage of total industry Customer equity and ETF options volumes as reported by the Options Clearing Corporation (the “OCC”). 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

certain volume thresholds, or Tiers, receive a reduction of this per contract rate.<sup>8</sup> The Exchange is proposing to raise these rates across all Tiers by \$0.02, which is competitive with base rates charged to market makers on other exchanges.<sup>9</sup> In addition, the Exchange is proposing to eliminate Tier 7 because Market Makers were not availing themselves of this Tier. With this change, Tier 6 would be the highest achievable Tier available to Market Makers that achieved Electronic volume of greater than 1.75% total industry Customer equity and ETF in a given month. Finally, the Exchange is proposing to offer an alternative means for Market Makers to qualify for the reduced per contract rate charged at each Tier of the Sliding Scale which is currently available to Market Makers that execute posting volumes in excess of 0.85% of Industry Customer Equity and ETF Option Volume.<sup>10</sup> The Exchange proposes to make the Sliding Scale rates available to those Market Makers participating in either of the Prepayment Programs offered by the Exchange.<sup>11</sup>

Section I.E. of the Fee Schedule describes the Exchange's ACE Program, which features five tiers expressed as a percentage of total industry Customer equity and ETF option average daily volume and provides two alternative methods through which Order Flow Providers may receive per contract credits for Electronic Customer volume that the OFP, as agent, submits to

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a security other than an equity or ETF security. See OCC Monthly Statistics Reports, available here, <http://www.theocc.com/webapps/monthly-volume-reports>.

<sup>8</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 n. 6.

<sup>9</sup> See supra nn. 4, 5.

<sup>10</sup> See supra n. 8.

<sup>11</sup> The Commission notes that, consistent with this change, the Exchange proposes to add cross-references to Section I.C. in Section I.D. of the Fee Schedule. See Fee Schedule, Section I.D. (describing both the 1- and 3- year Prepayment Programs), see supra n. 6.

the Exchange. The Exchange is proposing two amendments to Tier 2 of the Program. First, the Exchange proposes to increase the base rebate (i.e., Customer Volume Credits not tied to either Prepayment Program) from \$0.13 to \$0.14. Second, the Exchange proposes to offer an additional method for which OFPs can qualify for Tier 2. Specifically, as proposed, an ATP Holder may qualify for Tier 2 by increasing Customer Electronic ADV by 0.35% or more of Industry Customer Equity and ETF Options ADV from its volumes in October 2015. The Exchange's proposal is intended to incentivize OFPs to increase its [sic] Customer Electronic volumes even if they do not have the volumes equating to 0.60% Industry Customer Equity and ETF Options ADV (the current qualification basis to meet Tier 2).

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>12</sup> in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,<sup>13</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 the proposed change to the transaction rates for Electronic transactions are reasonable, equitable and not unfairly discriminatory because the 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>14</sup>

The Exchange believes the proposed change to the reduce [sic] rates per contract on the

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<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>14</sup> See supra nn. 4, 5.

Sliding Scale are reasonable, equitable and not unfairly discriminatory because the 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>15</sup> In addition, the Exchange believes that the proposal to make all Market Makers participating in one of the Exchange's Prepayment Programs eligible to avail themselves of the Sliding Scale is reasonable, equitable and not unfairly discriminatory because it may encourage additional market making firms to participate in one of these Programs, which could result in increased capital (and resulting liquidity) being committed to the Exchange to the benefit of all market participants. The proposed change would also incentivize Market Makers already enrolled in a Prepayment Program to increase posted liquidity on the Exchange, which would benefit all Exchange participants, including ATP Holders, through increased opportunities to trade as well as enhancing price discovery. The Exchange also believes that eliminating Tier 7 from the Sliding Scale is reasonable, equitable and not unfairly discriminatory because it removes an incentive that was never utilized, thereby adding clarity and transparency to the Fee Schedule.

Finally, the Exchange believes that the proposed changes to the ACE Program are reasonable, equitable and not unfairly discriminatory because the credits offered are based on the amount of business transacted on the Exchange. The Exchange believes the proposal to enable ATP Holders to be eligible for Tier 2 based on an increase in volume over their October 2015 volume is reasonable, equitable and not unfairly discriminatory because it encourages ATP Holders to maintain increased volumes executed on the Exchange. Moreover, the proposed alternative basis for achieving Tier 2 would enable those ATP Holders that are otherwise

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<sup>15</sup> See supra nn. 4, 5.

ineligible for the ACE Program tiers (i.e., because of insufficient monthly volume) to qualify by increasing or “stepping up” their own volume executed on the Exchange. The Exchange notes that offering so-called “step up” pricing or tiers that use a particular month as a benchmark for incentives is not new or novel.<sup>16</sup>

In addition, the Exchange believes that the proposed amendments to the ACE Program are reasonable, equitable and not unfairly discriminatory because they would enhance the incentives to Order Flow Providers to transact Customer orders on the Exchange, 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. Additionally, the Exchange believes the proposed changes to the ACE Program are consistent with the Act because they may attract greater volume and liquidity to the Exchange, which would benefit all market participants by providing tighter quoting and better prices, all of which perfects the mechanism for a free and open market and national market system.

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>17</sup> 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 acknowledges that the proposed

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<sup>16</sup> See BATS fee schedule, available here, [http://www.batsoptions.com/support/fee\\_schedule/](http://www.batsoptions.com/support/fee_schedule/) (offering a “Customer Step-Up Volume Tier” based on a member achieving “Options Step-Up Add TCV” as well as “NBBO Setter Tiers.”). See, e.g., Securities and Exchange Release No. 76411 (November 10, 2015), 80 FR 71892, 71893 (November 17, 2015) (SR-BATS-2015-98) (among other changes, adopting a Step-Up Volume Tier, which BATS characterized as being “[s]imilar to other pricing where the Exchange seeks to incentivize growth by providing tiered pricing based on a Member’s participation increase over time”).

<sup>17</sup> 15 U.S.C. 78f(b)(8).

changes relating to transaction charges and/or credits, including the Sliding Scale and ACE Program, may increase both intermarket and intramarket competition by incenting participants to direct their orders to the Exchange, which will enhance the quality of quoting and may increase the volume of contracts traded on the Exchange. To the extent this purpose is achieved, the Exchange believes the proposed amendments are pro-competitive and any resulting increase in volume and liquidity to the Exchange would benefit all of Exchange participants through increased opportunities to trade as well as enhancing price discovery.

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>18</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>19</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>18</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>19</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>20</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-2016-09 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-2016-09. 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>20</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-2016-09, 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>21</sup>

Brent J. Fields  
Secretary

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<sup>21</sup> 17 CFR 200.30-3(a)(12).