

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-77106; File No. SR-NYSEMKT-2016-18)

February 10, 2016

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed 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 February 1, 2016, NYSE MKT LLC (the “Exchange” or “NYSE MKT”) filed with the Securities and Exchange Commission (“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 February 1, 2016. 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 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.

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

<sup>2</sup> 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 Sections I. E. and G. of the Fee Schedule<sup>3</sup> to adjust fees and credits payable, effective on February 1, 2016.

Proposed changes to ACE Program

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 Exchange Traded Fund (“ETF”) option average daily volume<sup>4</sup> 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 the Exchange.

The Exchange proposes to modify the ACE Program by increasing certain of the credits available for Tiers 2, 3 and 4 as illustrated in the table below, with proposed additions appearing in italics and proposed deletions appearing in brackets:

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<sup>3</sup> See Fee Schedule, Sections I.E.(Amex Customer Engagement (“ACE”) Program – Standard Options) and I.G. (CUBE Auction Fees & Credits), 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>4</sup> The volume thresholds are based on an NYSE Amex Options Market Makers’ [sic] 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 a security other than an equity or ETF security. See OCC Monthly Statistics Reports, available here, <http://www.theocc.com/webapps/monthly-volume-reports>.

	<b>ACE Program – Standard Options</b>		<b>Credits Payable On Customer Volume Only</b>			
<b>Tier</b>	<b>Customer Electronic ADV as a % of Industry Customer Equity and ETF Options ADV</b>	<b>OR</b>	<b>Total Electronic ADV (of which 20% or greater of the minimum qualifying volume for each Tier must be Customer) as a % of Industry Customer Equity and ETF Options ADV</b>	<b>Customer Volume Credits</b>	<b>1 Year Enhanced Customer Volume Credits</b>	<b>3 Year Enhanced Customer Volume Credits</b>
1	0.00% to 0.60%	<b>OR</b>	N/A	\$0.00	\$0.00	\$0.00
2	> 0.60% to 0.80% or ≥ 0.35% over October 2015 volumes		N/A	[( <u>\$0.14</u> ) ( <u>\$0.16</u> )	[( <u>\$0.15</u> ) ( <u>\$0.16</u> )	(\$0.16)
3	>0.80% to 1.25%		1.50% to 2.50% of which 20% or greater of 1.50% must be Customer	[( <u>\$0.14</u> ) ( <u>\$0.17</u> )	[( <u>\$0.16</u> ) ( <u>\$0.18</u> )	[( <u>\$0.18</u> ) ( <u>\$0.19</u> )
4	> 1.25 to 1.75%		> 2.50% to 3.50% of which 20% or greater of 2.50% must be Customer	[( <u>\$0.17</u> ) ( <u>\$0.18</u> )	(\$0.19)	(\$0.21)
5	>1.75%		>3.50% of which 20% or greater of 3.5% must be Customer	(\$0.19)	(\$0.21)	(\$0.23)

The proposed amendments to the ACE Program are designed to enhance the rebates, which the Exchange believes would attract more volume and liquidity to the Exchange to the benefit of Exchange participants through increased opportunities to trade as well as enhancing price discovery.

### Proposed changes to CUBE Pricing

Section I.G. of the Fee Schedule sets forth the rates for per contract fees and credits for executions associated with a CUBE Auction. The Exchange is proposing to reduce rates for RFR Response fees and Initiating Credits and Rebates. Specifically, the Exchange proposes to reduce RFR Response fees for Non-Customers to \$0.12, down from \$0.60 for symbols in the Penny Pilot and down from \$0.95 for symbols not in the Penny Pilot. The Exchange also proposes to reduce Initiating Participant credits and rebates to \$0.05 down from \$0.35 for symbols in the Penny Pilot, \$0.70 for symbols not in the Penny Pilot and down from \$0.12 for the ACE Initiating Participant Rebate.

The proposed changes are designed to address concerns expressed to the Exchange by Market Makers about “imposing oversized transaction fees on market makers (MMs) when they compete with the facilitation side to pre-matched auction crosses,” including the CUBE Auction.<sup>5</sup> Specifically, the Market Makers claim that this so-called “break-up fee” is “designed to hamper traders (primarily MMs) from competing on auction crosses.”<sup>6</sup> The Exchange believes the proposed changes to CUBE pricing, particularly the reduction in the RFR Response Fee addresses the concerns raised and, as a result, may attract greater volume and liquidity to the Exchange, which would improve its overall competitiveness and strengthen its market quality for all market participants. The Exchange notes that the proposed changes would also provide the concerned Market Makers to have a platform on which they can provide proof of concept.

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<sup>5</sup> See Letter from Gerald D. O'Connell, CRO, Susquehanna International Group, LLP; John Kinahan, CEO, Group One Trading, LP; Daniel Overmyer, Head of Compliance, IMC Financial Markets LLC; Edward Haravon, Chief Operating Officer, SpotTrading L.L.C.; Frank Bednarz, President, CTC, L.L.C.; Kurt Eckert, Principal, Wolverine Trading LLC; and Sebastiaan KoeHng, CEO, Optiver US, LLC to Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, dated October 13, 2014, available at, <http://www.sec.gov/comments/sr-nysemkt-2014-52/nysemkt201452-1.pdf>.

<sup>6</sup> See id. at 1.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,<sup>8</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 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.

In addition, the Exchange believes that the proposed changes to CUBE Auction fees are reasonable, equitable and not unfairly discriminatory. First, the proposed reductions to both the Initiating Participant Credits (for all issues) as well as the fees associated with RFR Responses that participate in the CUBE 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.

The Exchange likewise believes the proposed reduction of the ACE Initiating Participant

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<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(4) and (5).

Credit is reasonable, equitable and not unfairly discriminatory for the following reasons. First, the ACE Initiating Participant Rebate is based on the 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 would 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 Exchange notes that the ACE Initiating Participant Rebate is equitable and not unfairly discriminatory because it would continue to incentivize 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.

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 change 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,<sup>9</sup> 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. To the contrary, the proposed changes to CUBE pricing are designed to address concerns raised by Market Makers that so-called "break-

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<sup>9</sup> 15 U.S.C. 78f(b)(8).

up fees” imposed in price improvement auctions like CUBE are anti-competitive. To that end, the Exchange believes the proposed amendments to CUBE Auction pricing are pro-competitive as the fees and credits are designed 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.

Further, the Exchange believes the proposed amendments to the ACE Program are pro-competitive as the proposed increased rebates may encourage OFPs to direct Customer order flow to the Exchange 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>10</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>11</sup> thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(2).

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)<sup>12</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-2016-18 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-2016-18. 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

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<sup>12</sup> 15 U.S.C. 78s(b)(2)(B).

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-2016-18, 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>13</sup>

Brent J. Fields  
Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).