

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-78548; File No. SR-NYSEMKT-2016-74)

August 11, 2016

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

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

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

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. A. of the Fee Schedule to adjust certain Marketing Charges for Electronic Executions in standard options contracts, effective on August 1, 2016.<sup>4</sup>

The Exchange assesses a Marketing Charge to all NYSE Amex Options Market Makers, which includes Specialists, e-Specialists and Directed Order Market Makers (collectively, “Market Makers”) for contracts they execute Electronically when the contra-party to the execution is a Customer.<sup>5</sup> Currently, the Exchange collects a Marketing Charge from Market Makers of \$0.25 per contract in Penny Pilot Issues, and \$0.65 per contract on in non-Penny Pilot Issues.<sup>6</sup> The Exchange proposes to modify the Marketing Charge for transactions in non-Penny Pilot Issues to \$0.70 per contract, which is comparable to the marketing fees charged by competing options exchanges.<sup>7</sup>

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<sup>4</sup> See Fee Schedule, Section I. A. (Rates for Standard Options Transactions), 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>5</sup> As specified in the Fee Schedule, the Exchange acts as an administrator in collecting and re-distributing all monies collected from the Marketing Charges. See *id.*, Note 3 to Section I. A.

<sup>6</sup> The term “non-Penny Pilot Issues” applies to those option issues that are not in the Penny Pilot pursuant to Rule 960NY, Commentary .02.

<sup>7</sup> See, e.g., Chicago Board Options Exchange (“CBOE”) fee schedule, available here, <http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf> (charging

The Exchange also proposes to correct certain typographical errors in Note 3 to Section I.A. of the Fee Schedule, which would add clarity and transparency to the Fee Schedule.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,<sup>9</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 notes that the U.S. options markets are highly competitive, and the Marketing Charge is intended to provide an incentive for order flow providers (“OFPs”) to route Customer orders to the Exchange. To the extent the proposed fees permit the Exchange to continue to attract greater volume and liquidity, the proposed change would also strengthen the Exchange’s market quality for all market participants.

The Exchange also believes that its proposed increase to the Marketing Charge for Non-Penny Pilot Issues is reasonable and not unfairly discriminatory since it is the same as the amount charged by competing options exchanges for Non-Penny Pilot Issues.<sup>10</sup>

The Exchange believes the correction of certain typographical errors in Note 3 to Section I.A. of the Fee Schedule are reasonable because the corrections would add clarity

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[a marketing fee of \\$0.70 per contract for non-Penny Pilot Issues](http://www.nasdaqtrader.com/Micro.aspx?id=phlxpricing)); Nasdaq OMX PHLX (“PHLX”) fee schedule, [available here, http://www.nasdaqtrader.com/Micro.aspx?id=phlxpricing](http://www.nasdaqtrader.com/Micro.aspx?id=phlxpricing) (same).

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

<sup>9</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>10</sup> See supra note 7.

and transparency to the Fee Schedule.

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>11</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. The Exchange believes the proposed increase in certain Marketing Charges are pro-competitive as the proposed increase allows the Exchange to fund a program that competes on an equal basis with programs on other exchanges,<sup>12</sup> and 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 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.

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<sup>11</sup> 15 U.S.C. 78f(b)(8).

<sup>12</sup> See supra note 7.

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>13</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>14</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 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>15</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-2016-74 on the subject line.

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<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(2).

<sup>15</sup> 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-2016-74. 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 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-2016-74 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>16</sup>

Robert W. Errett  
Deputy Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).