

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-79558; File No. SR-NYSEMKT-2016-114)

December 14, 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)<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 December 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 December 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

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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.

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. E. of the Fee Schedule,<sup>4</sup> effective December 1, 2016.

Section I.E. of the Fee Schedule describes the Exchange’s ACE Program. The ACE Program features five tiers, expressed as a percentage of total industry Customer equity and Exchange Traded Fund (“ETF”) option average daily volume (“CADV”)<sup>5</sup> and provides two alternative methods through which Order Flow Providers (each an “OFP”) may receive per contract credits for Electronic Customer volume that the OFP, as agent, submits to the Exchange.

The Exchange proposes to make the following changes to the ACE Program:

- First, the Exchange proposes to add a credit tier and re-designate current Tier 1 as the “Base Tier.”<sup>6</sup> Currently, to achieve any credit under the ACE Program, an OFP must achieve Tier 2 (which offers an \$0.18 per contract credit). To qualify for Tier 2, an OFP must execute at least 0.75% to 1.00% of CADV or 0.35% over October 2015 CADV. The Exchange

<sup>4</sup> See Fee Schedule, Section I. E. (Amex Customer Engagement (“ACE”) Program – Standard Options), 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> The volume thresholds are based on an OFP’s Customer volume transacted Electronically as a percentage of total industry CADV as reported by the Options Clearing Corporation (the “OCC”). See OCC Monthly Statistics Reports, available here, <http://www.theocc.com/webapps/monthly-volume-reports>.

<sup>6</sup> The Exchange notes that that the qualification basis for the proposed Base Tier remains the same as it is under current Tier 1 (i.e., an OFP must execute at least 0.00% to 0.75 % of CADV) and there are still no credits available under this tier.

proposes a new Tier 1, for which an OFP to qualify would have to execute at least 0.20% over October 2015 CADV.

- Second, OFPs that qualify for proposed new Tier 1 would be eligible to receive a \$0.14 per contract credit. As with all other current tiers of the ACE Program, the take liquidity multiplier would also apply to proposed new Tier 1.<sup>7</sup>
- Third, the Exchange proposes that OFPs qualifying for new Tier 1 would also be eligible for the ACE Initiating Participant Rebate, which is currently available to OFPs that achieve Tiers 2-5 of the ACE Program.<sup>8</sup>
- Fourth, the Exchange proposes that OFPs that achieve Tier 2 would receive a \$0.19 per contract credit on electronic Customer Complex Orders. In this regard, the Exchange proposes to define Complex Order in the Key Terms and Definitions section of the Fee Schedule, as “...any order involving the simultaneous purchase and/or sale of two or more different option series in the same underlying security, for the same account, in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00) and for the purpose of executing a particular investment strategy, per Rule 900.3NY(e).” OFPs that achieve

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<sup>7</sup> See Fee Schedule, Section I. E., supra note 4 (“In calculating an OFP’s Electronic volume, each Customer order that takes liquidity will be weighted as 50% greater (i.e., 1.5 times the contract volume) for determining Customer Electronic ADV and Total Electronic ADV”).

<sup>8</sup> See proposed Fee Schedule, Section I. G. at n.2 (“The ACE Initiating Participant Rebate is applied to each of the first 5,000 Customer contracts of a CUBE Order executed in a CUBE Auction. This Rebate is in addition to any additional credits set forth above. Only ATP Holders who qualify for Tiers 1, 2, 3, 4 or 5 of the ACE Program are eligible to receive the Rebate”).

Tier 2 would continue to receive a \$0.18 per contract credit on electronic Customer volume (i.e., non-Complex Customer order flow).

The Exchange is not proposing any other changes to the alternative ACE Program Credit Tiers at this time.<sup>9</sup>

The proposed additional Tier would not impact the Firm Monthly Fee Cap of \$100,000 per month per Firm, but the Exchange proposes to add reference to the Base Tier in Section I of the Fee Schedule to add clarity and transparency to Exchange fees.<sup>10</sup>

The proposed modifications to the tiers of the ACE Program as well as the additional rebate for electronic Customer Complex Orders are designed to further encourage OFPs to direct additional order flow to the Exchange, which additional volume and liquidity would benefit all Exchange participants through increased opportunities to trade as well as enhancing price discovery.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>11</sup> in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,<sup>12</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.

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<sup>9</sup> OFPs that achieve a qualification level in one tier, and achieve an alternative qualification level in another tier, will continue to be paid a credit based on the highest achieved tier. See Fee Schedule, Section I.E., supra note 4.

<sup>10</sup> See Fee Schedule, Section I. I. (Firm Monthly Fee Cap), supra note 4. The Monthly Firm Fee Cap decreases if Firms achieve Tiers 2-5 of the ACE Program (i.e., greater than the Base Tier or Tier 1).

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

<sup>12</sup> 15 U.S.C. 78f(b)(4) and (5).

The Exchange believes that the proposed addition of new Tier 1 is reasonable, equitable, and not unfairly discriminatory because it provides an alternative means of achieving a rebate, which should attract more volume and liquidity to the Exchange to the benefit of market participants through increased opportunities to trade as well as enhancing price discovery.

The Exchange also believes the additional credit on Complex Orders is reasonable, equitable, and not unfairly discriminatory, as it provides an additional incentive to achieve the ACE Program Tier 2, which should attract more volume and liquidity to the Exchange to the benefit of market participants through increased opportunities to trade as well as enhancing price discovery.

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 OFPs to transact Customer orders, including Complex 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>13</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 amendments to the ACE Program are pro-competitive as the proposed new qualification tier and incentive 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. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the degree to which fee changes in this market may impose any burden on competition is extremely limited. 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>14</sup> of

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<sup>13</sup> 15 U.S.C. 78f(b)(8).

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

the Act and subparagraph (f)(2) of Rule 19b-4<sup>15</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>16</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-2016-114 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-2016-114. This file number should be included on the subject line if e-mail is used. To help the Commission process and review

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<sup>15</sup> 17 CFR 240.19b-4(f)(2).

<sup>16</sup> 15 U.S.C. 78s(b)(2)(B).

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 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-2016-114, 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>17</sup>

Robert W. Errett  
Deputy Secretary

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