

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-80262; File No. SR-NYSEMKT-2017-15)

March 16, 2017

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)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on March 9, 2017, 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 March 9, 2017. The proposed 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to modify the Fee Schedule to:

- (i) provide Order Flow Providers (each an “OFP”) that achieve certain tiers of the Amex Customer Enhancement (“ACE”) Program the opportunity to receive an additional credit for Customer Complex Orders; and
- (ii) establish a surcharge on any Electronic non-Customer Complex Order that executes against a Customer Complex Order.

The ACE Program features five tiers, expressed as a percentage of total industry Customer equity and Exchange Traded Fund option average daily volume (“TCADV”)⁴ and provides two alternative methods for OFPs to receive per contract credits for Electronic Customer volume that the OFP, as agent, submits to the Exchange.⁵ Currently, the Exchange incentivizes OFPs to achieve Tier 2 of the ACE Program by offering an \$0.18 per contract credit on Electronic Customer volume or a slightly higher credit of \$0.19 per contract on Customer Complex Orders.⁶

⁴ The volume thresholds are based on an OFP’s Customer volume transacted Electronically as a percentage of total industry TCADV as reported by the Options Clearing Corporation (the “OCC”). See OCC Monthly Statistics Reports, available here, <http://www.theocc.com/webapps/monthly-volume-reports>.

⁵ 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.

⁶ See id. at n.1. The Exchange proposes to correct a typographical error by capitalizing the defined term Electronic as it is used in note 1 to Section I.E. See proposed Fee Schedule,

The Exchange proposes to offer OFPs that achieve Tier 4 or 5 of the ACE Program a credit of \$0.25 per contract, per leg for Electronic executions of Customer Complex Orders, provided the OFP executes more than 0.50% of TCADV in initiating CUBE Orders in a calendar month (the “Credit”). The Credit would be paid regardless of whether the Complex Order trades against interest in the Complex Order Book or “legs out” and trades with individual orders and quotes in the Consolidated Book. An OFP that achieves Tier 4 or 5 would remain eligible to receive the applicable per contract credit on Electronic Customer volume, which range from \$0.20 - \$0.24, but would be eligible to receive the slightly higher per contract credit of \$0.25 for its Complex Customer volume provided the OFP meets the criteria for the Credit. For example, an OFP that achieved Tier 4 and also met the criteria for the Credit would receive at least \$0.20 per contract for non-Complex Electronic Customer volume and \$0.25 per contract for Electronic Complex Customer volume.

The Exchange also proposes to establish a \$0.05 surcharge on any Electronic Non-Customer Complex Order that executes against a Customer Complex Order (the “Surcharge”).⁷ The Surcharge would apply to all such Complex executions, including Complex Orders executed in the Exchange’s single-sided Complex Order Auction (“COA”). The CUBE Auction is not available for Complex Orders and therefore the proposed Surcharge would not apply to

Section I. E., n. 1.

⁷ See proposed Fee Schedule, at Section I. A., n.6. Per the Fee Schedule, a “Customer” is an individual or organization that is not a Broker-Dealer, per Rule 900.2NY(18); and is not a Professional Customer; and a “Non-Customer” is anyone who is not a Customer. See Fee Schedule, “Key Terms and Definitions,” *supra* note 5. Thus, Non-Customer includes Specialists, e-Specialists, Directed Order Market Makers, Firms, Broker Dealers, and Professional Customers. The Exchange notes that Firm Facilitation trades are not electronic and are therefore not subject to the proposed surcharge.

executions in a CUBE Auction.⁸ The Exchange notes that the proposed Surcharge is consistent with charges imposed by other options exchanges.⁹

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,¹¹ 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 Credit on Complex Orders is reasonable, equitable, and not unfairly discriminatory, as it provides OFPs with an additional incentive to achieve the highest two tiers of the ACE Program – Tier 4 or 5. The Exchange believes that incentivizing OFPs to route orders to the Exchange would attract more volume and liquidity to the Exchange, which 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.

The Exchange believes that the proposed Surcharge is reasonable, equitable, and not unfairly discriminatory, as it applies to all Non-Customer orders. Applying the Surcharge to all

⁸ See Rule 971.1NY (Electronic Cross Transactions) for a description of the CUBE Auction, which is an electronic crossing mechanism for single-leg orders with a price improvement auction.

⁹ See Miami Securities International Exchange, LLC (“MIAX”) fee schedule, available here, https://www.miaxoptions.com/sites/default/files/page-files/MIAX_Options_Fee_Schedule_03012017B.pdf (imposing a \$0.10 on certain complex orders). See also The Chicago Board Options Exchange, Inc. (“CBOE”) fee schedule, available here, <http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf>, at n. 35 (same).

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4) and (5).

market participant orders except Customer orders is equitable and not unfairly discriminatory because Customer order flow enhances liquidity on the Exchange for the benefit of all market participants. Specifically, Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in the activity of Specialists and Market Makers in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

In addition, the proposed surcharge is reasonable, equitable, and not unfairly discriminatory as it is consistent with fees charged by other options exchanges.¹²

Specifically, MIAX imposes a \$0.10 “Per Contract Surcharge for Removing Liquidity Against A Resting Priority Customer Complex Order on the Strategy Book” for all option classes), which may result in an overall per contract fee of \$0.60.¹³ Similarly, CBOE imposes a \$0.10 “Complex Surcharge” on certain “noncustomer complex order executions that remove liquidity,” but caps at \$0.50 per contract “auction responses in COA.”¹⁴ The Exchange notes that the proposed Surcharge of \$0.05 per contract is \$0.05 less than – or half the amount of – the surcharges imposed on both MIAX and CBOE, and is therefore competitive. In addition, the Exchange believes that the proposed surcharge is not new or novel as it incorporates aspects of the (higher) surcharges that are already imposed on MIAX and CBOE.

¹² See supra note 9.

¹³ See MIAX fee schedule, supra note 9 (providing for a potential total per contract fee of \$0.60 for Market Makers, which includes a “Complex Per Contract Fee for Penny Classes,” a per contract “Marketing Fee,” and a \$0.10 “Per Contract Surcharge for Removing Liquidity Against a Resting Priority Customer Complex Order on the Strategy Book for Penny and Non-Penny Classes”). The Exchange believes that MIAX does not subject transactions in COA to any fee cap.

¹⁴ See CBOE fee schedule, supra note 8 (regarding the Complex Surcharge, providing that “[a]uction responses in COA and AIM for noncustomer complex orders in Penny classes will be subject to a cap of \$0.50 per contract, which includes the applicable transaction fee, Complex Surcharge and Marketing Fee (if applicable)).”

Further, the proposed change to capitalize the defined term Electronic, would add clarity and internal consistency to the Fee Schedule by correcting a typographical error.

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 changes 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,¹⁵ 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 Credit is pro-competitive as it would incent OFPs to direct Complex Order flow to the Exchange, and thus provide additional liquidity that enhances the overall market quality and increases the volume of contracts traded on the Exchange. The proposed Surcharge would not impose an unfair burden on competition as it is consistent with fees charged by other exchanges.¹⁶ To the extent that the proposed changes make NYSE Amex a more attractive marketplace for market participants at other exchanges, such market participants are welcome to become NYSE Amex Options ATP Holders.

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

¹⁵ 15 U.S.C. 78f(b)(8).

¹⁶ See supra notes 9, 13, 14.

exchanges. Because competitors are free to modify their own fees and credits 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)¹⁷ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁸ 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)¹⁹ of the Act to determine whether the proposed rule change should be approved or disapproved.

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f)(2).

¹⁹ 15 U.S.C. 78s(b)(2)(B).

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-2017-15 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-2017-15. 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-2017-15, 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.²⁰

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Assistant Secretary

²⁰ 17 CFR 200.30-3(a)(12).