Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2016–018. This file number should be included on the subject line if email 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 Web site (*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 Web site 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 FINRA. 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–FINRA–2016–018 and should be submitted on or before July 6, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[40]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–14084 Filed 6–14–16; 8:45 am]

BILLING CODE 8011–01–P

[40] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78029; File No. SR–NYSEMKT–2016–45]

Self-Regulatory Organizations; NYSE MKT LLC; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Modify the NYSE Amex Options Fee Schedule With Respect to Fees, Rebates, and Credits for Transactions in the Customer Best Execution Auction

June 9, 2016.

I. Introduction

On April 11, 2016, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change (File No. SR–NYSEMKT–2016–45) to modify the NYSE Amex Options Fee Schedule with respect to fees, rebates, and credits relating to the Exchange's Customer Best Execution Auction (''CUBE Auction''),[3] and to increase credits available under the Exchange's Amex Customer Engagement Program (''ACE Program'').[4] The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[5] Notice of filing of the proposed rule change was published in the **Federal Register** on April 26, 2016.[6] Under Section 19(b)(3)(C) of the Act,[7] the Commission is (1) hereby temporarily suspending File No. SR–NYSEMKT–2016–45, and (2) instituting proceedings to determine whether to approve or disapprove File No. SR–NYSEMKT–2016–45.

II. Summary of the Proposed Rule Change

The Exchange's proposal amended certain fees, rebates, and credits relating to executions through its CUBE Auction. First, the proposal increased the fees assessed by the Exchange for RFR Responses (*i.e.,* orders and quotes submitted during a CUBE Auction that are executed against the agency order).[8] Specifically, the Exchange increased RFR Response fees for Non-Customers (including Market Makers) from $0.12 to $0.70 for classes subject to the Penny Pilot[9] (''Penny classes'') and from $0.12 to $1.05 for classes not subject to the Penny Pilot (''Non-Penny classes'').

Further, the proposal increased a rebate available to Initiating Participants in CUBE Auctions (*i.e.,* ATP Holders that initiate such auctions)[10] under the Exchange's ACE Program. Specifically, the proposal increased the rebate paid to Initiating Participants that meet certain tiers of the ACE Program from $0.05 to $0.18 (the ''ACE Initiating Participant Rebate'') for each of the first 5,000 Customer contracts of an agency order executed in a CUBE Auction.[11]

Finally, the proposal increased the credit paid by the Exchange to Initiating Participants (the ''break-up credit'') for each contract in the contra-side order that is paired with the agency order that does not trade with the agency order because it is replaced in the auction. Prior to the proposal, the credit granted was $0.05 per contract in all classes. The proposal raised it to $0.35 for Penny classes and $0.70 for Non-Penny classes.[12]

In its filing, the Exchange stated that the changes to the CUBE Auction transaction fees are reasonable, equitable and not unfairly 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The CUBE Auction is a mechanism in which an Exchange ATP Holder submits an agency order on behalf of a customer for price improvement, paired with a contra-side order guaranteeing execution of the agency order at or better than the National Best Bid or Offer (''NBBO'') depending on the circumstances. The contra-side order could be for the account of the ATP Holder that initiated the CUBE Auction (''Initiating Participant''), or an order solicited from another participant. The agency order is exposed for a random period of time between 500 and 750 milliseconds in which other ATP Holders submit competing interest at the same price as the initial price or better (''RFR Responses''). The Initiating Participant is guaranteed at least 40% of any remainder of the order (after public customers and better-priced RFR Responses) at the final price for the CUBE order. *See* NYSE MKT Rule 971.1NY.

[4] Under the ACE Program, credits are available to ATP Holders that bring customer orders to the Exchange based on the percentage (by tier) of national industry customer volume those customer orders comprise. *See* NYSE Amex Options Fee Schedule Section I.E.

[5] 15 U.S.C. 78s(b)(3)(A).

[6] *See* Securities Exchange Act Release No. 77658 (April 20, 2016), 81 FR 24674 (''Notice'').

[7] 15 U.S.C. 78s(b)(3)(C).

[8] *See supra* note 3 and NYSE Amex Options Fee Schedule, Section I.G.

[9] *See* Commentary .02 to NYSE MKT Rule 960NY. *See also* Securities Exchange Act Release No. 75281 (June 24, 2015), 80 FR 37338 (June 30, 2015) (SR–NYSEMKT–2015–43) (extending the Penny Pilot through June 30, 2016).

[10] *See supra* note 3.

[11] *See* NYSE Amex Options Fee Schedule, Section I.G.

[12] *See id.* Separate from its proposed changes to CUBE Auction fees and credits, the Exchange's proposal also increased certain credits available through its ACE Program with respect to non-CUBE transactions. *See* Notice, *supra* note 6, at 24674–75. *See also* NYSE Amex Options Fee Schedule, Section I.E.

are not unfairly discriminatory.'' [13] The Exchange also took the position, with regard specifically to the ACE Initiating Participant Credit, that the change is reasonable, equitable, and not unfairly discriminatory because it is ''designed to attract more volume and liquidity to the Exchange generally, and to CUBE Auctions specifically,'' which, according to the Exchange, ''would benefit all market participants . . . through increased opportunities to trade at potentially improved prices as well as enhancing price discovery.'' [14] The Exchange believes that its proposal is reasonable because it is similar to the fee and credit structures previously applied to the CUBE Auction and to fees charged for similar auctions on other exchanges.[15] The Exchange further stated that the proposal ''would improve the Exchange's overall competitiveness and strengthen its market quality for all market participants.'' [16] Finally, the Exchange does not believe the proposal would impose any unnecessary or inappropriate burden on competition because it is ''pro-competitive'' and ''designed to incent increases in the number of CUBE Auctions brought to the Exchange,'' thereby ''benefit[ting] all Exchange participants through increased opportunities to trade as well as enhancing price discovery.'' [17]

The Commission has received no comment letters on the Exchange's proposed rule change.

III. Suspension of SR–NYSEMKT–2016–45

Pursuant to Section 19(b)(3)(C) of the Act,[18] at any time within 60 days of the date of filing a proposed rule change pursuant to Section 19(b)(1) of the Act,[19] the Commission summarily may temporarily suspend the change in the rules of a self-regulatory organization 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.

The Commission is concerned about the potential effect the proposal may have on the operation of the CUBE Auction and its potential to provide price improvement to customers, as well as on competition among participants initiating CUBE Auctions and those responding to them. The Commission notes that the proposal raised the RFR Response fee for Non-Customer auction responders to $0.70 per executed contract in Penny classes ($1.05 in Non-Penny classes) while leaving the fee for the Initiating Participant at $0.05 per executed contract, the same as it was prior to the proposed rule change.[20] In temporarily suspending the proposal, the Commission intends to further assess whether the new RFR Response fees for Non-Customers are consistent with the statutory requirements applicable to a national securities exchange under the Act. In addition, the Commission intends to further assess whether the differential between the new RFR Response fees and the net fees or rebates applicable to Initiating Participants are consistent with the statutory requirements applicable to a national securities exchange under the Act. In particular, the Commission will assess, among other things, whether the proposal satisfies the statutory provisions that require exchange rules to: (1) Provide for the equitable allocation of reasonable fees among members, issuers, and other persons using its facilities; [21] (2) perfect the mechanism of a free and open market and a national market system, protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers; [22] and (3) not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[23]

Therefore, the Commission finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act, to temporarily suspend the proposed rule change.

IV. Proceedings To Determine Whether To Approve or Disapprove SR–NYSEMKT–2016–45

The Commission is instituting proceedings pursuant to Sections 19(b)(3)(C) [24] and 19(b)(2) of the Act [25] to determine whether the proposed rule change should be approved or disapproved. Institution of proceedings is appropriate at this time in view of the significant legal and policy issues raised by the proposal as discussed below. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described in greater detail below, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change to inform the Commission's analysis of whether to disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[26] the Commission is providing notice of the following grounds for disapproval that are under consideration:

- Section 6(b)(4) of the Act, which requires that the rules of a national securities exchange ''provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities,'' [27]
- Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be ''designed to perfect the operation of a free and open market and a national market system'' and ''protect investors and the public interest,'' and not be ''designed to permit unfair discrimination between customers, issuers, brokers, or dealers,'' [28] and
- Section 6(b)(8) of the Act, which requires that the rules of a national securities exchange ''not impose any burden on competition not necessary or

[13] *See* Notice, *supra* note 6, at 24675.

[14] *See id.* at 24675–76.

[15] *See id.* at 24675 & n.10.

[16] *See id.* at 24676. The Exchange stated that the CUBE fee and credit adjustments established by the instant proposal are consistent with the fees and credits that were in place for the same items in its Fee Schedule prior to February 2016. *See id.* at 24675 n.6.

[17] *See id.* at 24676. The Exchange also noted that it operates in a highly-competitive market. *See id.*

[18] 15 U.S.C. 78s(b)(3)(C).

[19] 15 U.S.C. 78s(b)(1).

[20] *See* Notice, *supra* note 6, at 24675. The amended fees thus create a fee differential between the Initiating Participant and certain auction responders of $0.65 in Penny classes and $1.00 in Non-Penny classes. Taking into consideration that the ACE rebate that may be available to an Initiating Participant submitting the agency order into the CUBE Auction is increased to $0.18 (*see* text accompanying *supra* notes 10–11), this fee differential may be widened further. For example, under the proposal, an Initiating Participant that executes 100% of the agency order in a Penny class is charged a $0.05 per contract transaction fee and, if applicable, receives a $0.18 per contract rebate (subject to a 5,000 contract cap). This results potentially in a net fee that awards a $0.13 per contract rebate to an Initiating Participant that executes 100% of its customer's order. In contrast, an auction responder in a Penny class is charged a $0.70 per contract transaction fee, also its net fee. Comparing the net fees charged to the Initiating Participant and Non-Customer auction responders, the potential disparity in Penny classes is $0.83 per contract.

[21] 15 U.S.C. 78f(b)(4).

[22] 15 U.S.C. 78f(b)(5).

[23] 15 U.S.C. 78f(b)(8).

[24] 15 U.S.C. 78s(b)(3)(C). Once the Commission temporarily suspends a proposed rule change, Section 19(b)(3)(C) of the Act requires that the Commission institute proceedings under Section 19(b)(2)(B) to determine whether a proposed rule change should be approved or disapproved.

[25] 15 U.S.C. 78s(b)(2).

[26] 15 U.S.C. 78s(b)(2)(B). Section 19(b)(2)(B) of the Act also provides that proceedings to determine whether to approve or disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. *Id.* The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding. *Id.*

[27] 15 U.S.C. 78f(b)(4).

[28] 15 U.S.C. 78f(b)(5).

appropriate in furtherance of the purposes of [the Act].'' [29]

As discussed above, the proposal, among other things, increased the RFR Response fee for Non-Customer auction responders from $0.12 to $0.70 for Penny classes, and from $0.12 to $1.05 for Non-Penny classes, while leaving the fee for Initiating Participants unchanged at $0.05 per executed contract. At the same time, the proposal increased the rebate available to an Initiating Participant from $0.05 to $0.18 per executed contract so that, when it qualifies for this rebate, the Initiating Participant receives a net payment of $0.13 per contract to participate in the CUBE Auction.[30] Accordingly, the fee differential between Non-Customer auction responders and Initiating Participants can be $0.83 per executed contract for Penny classes, and $1.18 per contract for Non-Penny classes. Further, the Exchange increased the break-up credit payable to an Initiating Participant that does not execute all of the agency order it brings to a CUBE Auction, due to the participation of an auction responder, from $0.05 to $0.35 in Penny classes, and from $0.05 to $0.70 in Non-Penny classes, for each contract not executed.

The Exchange justifies the proposal on the grounds that it would create incentives for Initiating Participants to bring customer orders to the Exchange, and thereby benefit all members by providing more trading opportunities, potential price improvement, tighter spreads, and enhanced market quality. The Commission acknowledges that increasing the rebates and break-up credits provided to Initiating Participants likely would strengthen their incentives to bring customer orders to the Exchange. On the other hand, substantially increasing the fees paid by Non-Customer auction responders would appear to deter them from participating in CUBE Auctions. In Penny classes, for example, the fee charged Non-Customer auction responders would exceed one-half the minimum trading increment, and the economic differential between such auction responders and the Initiating Participants with whom they are competing would be even more. Accordingly, the Commission believes questions are raised as to whether the proposal would in fact provide the additional trading opportunities for non-Initiating Participants and other market quality benefits suggested by the Exchange.

[29] 15 U.S.C. 78f(b)(8).

[30] *See supra* note 20 and accompanying text.

As to the specific statutory standards, the Exchange takes the position that its proposed fee changes are reasonable, equitable, and not unfairly discriminatory because they apply to all members that choose to participate in the CUBE Auction, and that access to the Exchange is offered on terms that are not unfairly discriminatory. The Exchange's justification, however, does not address a key aspect of its proposal, namely the fact that it would substantially exacerbate the differences in the fees assessed by the Exchange on Initiating Participants and non-Initiating Participants, raising issues, among other things, as to whether the proposal is equitable and not unfairly discriminatory *among* Exchange members. While the Exchange states that the proposal also would provide all members additional trading opportunities and other market quality benefits, as discussed above, the reasoning behind this assertion is not clear and the Exchange has offered no supporting data. Furthermore, the Exchange does not address in any detail the increases in the break-up credit payable to Initiating Participants for *not* executing transactions on the Exchange, and why that payment is reasonable, equitable, and not unfairly discriminatory.

With respect to the statutory requirement that the proposal not impose any unnecessary or inappropriate burden on competition, the Exchange makes similar arguments, asserting that its proposal is pro-competitive because it would incent Initiating Participants to bring customer orders to the Exchange, provide more trading opportunities, and improve market quality, all within the competitive environment in which the Exchange does business. The Exchange's justification, however, does not address the potential burden on competition that its proposed fee changes would have on competition between Initiating Participants and non-Initiating Participants, and the prospect that, by substantially increasing the auction response fees paid by non-Initiating Participants, competition in CUBE Auctions could be impaired.

The Commission believes that the concerns discussed herein raise questions as to whether the proposed fees are consistent with the Act, and specifically, with its requirements that exchange fees be reasonable and equitably allocated; be designed to perfect the mechanism of a free and open market and the national market system, protect investors and the public interest, and not be unfairly discriminatory; or not impose an unnecessary or inappropriate burden on competition.[31]

V. Commission's Solicitation of Comments

The Commission requests written views, data, and arguments with respect to the concerns identified above as well as any other relevant concerns. Such comments should be submitted by July 5, 2016. Rebuttal comments should be submitted by July 19, 2016. Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[32]

The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment and data on the following:

- The impact of the proposed fee changes on incentives for non-Initiating Participants to respond in the CUBE Auction;
- The impact of the proposed fee changes on incentives for non-Initiating Participants that respond in the CUBE Auction to offer price improvement;
- The impact of the proposed fee changes on incentives for Initiating Participants to submit Customer orders in the CUBE Auction;
- The impact of the proposed fee changes on the prices at which Initiating Participants submit Customer orders in the CUBE Auction;
- The impact of the proposed fee changes on the quoting behavior of market makers on the Exchange;
- The impact of the proposed fee changes on Exchange market quality;
- Whether the Commission should undertake a broader review of the fee structures applied by the options exchanges to their price improvement auctions;
- Whether the Commission should view a specific auction response fee level for Penny classes, such as an amount exceeding half the minimum trading increment, as presumptively

[31] *See* 15 U.S.C. 78f(b)(4), (5), and (8).

[32] 15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Act grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

unreasonable, unfairly discriminatory, imposing an unnecessary or inappropriate burden on competition, or otherwise inconsistent with the Act;

• Whether transaction fees that exceed half of the minimum trading increment in Penny classes make participation uneconomical for potential auction responders, given that they may not be able to compete with the Initiating Participant at the same trading increment due to the impact of such fees;

• Whether there should be a specific auction response fee level that, for Non-Penny classes, should be viewed as presumptively inconsistent with the Act and, if so, what that fee level should be;

• Whether the Commission should view a specific differential in the net fees imposed by an exchange on Initiating Participants and potential auction responders as presumptively inconsistent with the Act and, if so, what that differential should be; and

• Whether the Commission should view break-up credits, which are paid to Initiating Participants for not executing a transaction, as presumptively inconsistent with the Act.

Interested persons are invited to submit written data, views, and arguments concerning the proposed rule change, 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 email to *rule-comments@sec.gov*. Please include File Number SR–NYSEMKT–2016–45 on the subject line.

Paper Comments

• Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2016–45. This file number should be included on the subject line if email 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 Web site (*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 Web site 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–2016–45 and should be submitted on or before July 5, 2016. Rebuttal comments should be submitted by July 19, 2016.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(3)(C) of the Act,[33] that File No. SR–NYSEMKT–2016–45 be and hereby is, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule change should be approved or disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–14086 Filed 6–14–16; 8:45 am]

BILLING CODE 8011–01–P

[33] 15 U.S.C. 78s(b)(3)(C).

[34] 17 CFR 200.30–3(a)(57) and (58).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78024; File No. SR–BOX–2016–23]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule To Make Non-Substantive Clerical Amendments

June 9, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 31, 2016, BOX Options Exchange LLC (the "Exchange") 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 Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. 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 the Substance of the Proposed Rule Change

The Exchange is filing with the Securities and Exchange Commission ("Commission") a proposed rule change to amend the Fee Schedule to make non-substantive clerical amendments. While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on June 1, 2016. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://boxexchange.com.*

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 Exchange 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 these 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 aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Non-Auction Transactions

The Exchange proposes to amend Section I (Non-Auction Transactions) of the BOX Fee Schedule to clarify what volume on BOX will count towards the monthly volume tier in Section I.A.1 of the Box Fee Schedule. The Exchange proposes to add language to the first paragraph of Section I.A.1 to clarify that percentage thresholds will be calculated on a monthly basis by totaling the Market Maker or Public Customer's executed Auction and Non-Auction

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).