

PCAOB to further develop their understanding of the PCAOB's budget and operations. During the course of this review, Commission staff relied upon representations and supporting documentation from the PCAOB. Based on this review, the Commission issued a "pass back" letter to the PCAOB. On November 17, 2016, the PCAOB approved its 2017 budget during an open meeting, and subsequently submitted that budget to the Commission for approval.

After considering the above, the Commission did not identify any proposed disbursements in the 2017 budget adopted by the PCAOB that are not properly recoverable through the annual accounting support fee, and the Commission believes that the aggregate proposed 2017 annual accounting support fee does not exceed the PCAOB's aggregate recoverable budget expenses for 2017. The Commission also acknowledges the PCAOB's updated strategic plan and encourages the PCAOB to continue keeping the Commission and its staff apprised of significant new developments. The Commission looks forward to providing views to the PCAOB as future updates are made to the plan. In addition, the PCAOB should submit its 2016 annual report to the Commission by April 1, 2017.

We understand that the Board continues to take steps to implement improvements to the performance and management of the PCAOB's standard-setting process. The Commission directs the PCAOB to continue to provide timely updates throughout the year on the progress of this initiative as well as on any significant recommended or anticipated changes to processes or funding.

The Commission emphasizes the importance of the PCAOB's identifying efficiencies, process improvements, and cost savings wherever possible. Accordingly, the Commission directs the Board to conduct a study assessing its operational efficiency and budgetary needs and submit a supplemental report to the Commission of the Board's assessment in connection with the start of the 2018 budget cycle. The report should identify any areas where specific savings may be achieved while continuing to enable the PCAOB to fully perform its mission. The PCAOB should submit the report to the Commission along with its 2018 budgetary outlook letter.

As part of its review of the 2017 budget, the Commission notes that the Board's management of the Center for Economic Analysis ("Center") should continue to advance the PCAOB's

mission. The Commission directs the PCAOB during 2017 to continue providing quarterly updates to the Commission on the Center's activities and progress towards its stated goals.

The Commission directs the Board during 2017 to continue to provide in its quarterly reports to the Commission detailed information about the state of the PCAOB's information technology ("IT") program, including planned, estimated, and actual costs for IT projects, and the level of involvement of consultants. These reports also should continue to include: (a) A discussion of the Board's assessment of the IT program; and (b) the quarterly IT report that is prepared by PCAOB staff and submitted to the Board.

The Commission also directs the Board during 2017 to continue to include in its quarterly reports to the Commission information about the PCAOB's inspections program. Such information is to include: (a) Statistics relative to the numbers and types of firms budgeted and expected to be inspected in 2017, including by location and by year the inspections are required to be conducted in accordance with the Sarbanes-Oxley Act and PCAOB rules; (b) information about the timing of the issuance of inspections reports for domestic and non-U.S. inspections; and (c) updates on the PCAOB's efforts to establish cooperative arrangements with respective non-U.S. authorities for inspections required in those countries.

The Commission understands that the Office of Management and Budget ("OMB") has determined the 2017 budget of the PCAOB to be sequesterable under the Budget Control Act of 2011.<sup>4</sup> For 2016, the PCAOB sequestered \$16 million. That amount will become available in 2017. For 2017, the sequestration amount will be \$17 million. Accordingly, the PCAOB should submit a revised spending plan for 2017 reflecting a \$1 million reduction to budgeted expenditures as a result of the increase in sequestration amount from 2016 to 2017.

The Commission has determined that the PCAOB's 2017 budget and annual accounting support fee are consistent with Section 109 of the Sarbanes-Oxley Act. Accordingly,

It is ordered, pursuant to Section 109 of the Sarbanes-Oxley Act, that the PCAOB budget and annual accounting support fee for calendar year 2017 are approved.

<sup>4</sup> See "OMB Report to the Congress on the Joint Committee Reductions for Fiscal Year 2017", Appendix page 15 of 16 at: [https://www.whitehouse.gov/sites/default/files/omb/assets/legislative\\_reports/sequestration/jc\\_sequestration\\_report\\_2017\\_house.pdf](https://www.whitehouse.gov/sites/default/files/omb/assets/legislative_reports/sequestration/jc_sequestration_report_2017_house.pdf).

By the Commission.

**Brent J. Fields,**  
*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79549; File No. SR-BX-2016-067]

### Self-Regulatory Organizations; NASDAQ BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 4770 (Compliance With Regulation NMS Plan To Implement a Tick Size Pilot)

December 14, 2016.

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 November 30, 2016, NASDAQ BX, Inc. ("BX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II 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 amend BX Rule 4770 to modify the Web site data publication requirements relating to the Regulation NMS Plan to Implement a Tick Size Pilot Program ("Plan") and to clarify the timing and format of publishing Market Maker registration statistics.

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaqbx.cchwallstreet.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 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

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

<sup>2</sup> 17 CFR 240.19b-4.

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

On August 25, 2014, BX, and several other self-regulatory organizations (the "Participants") filed with the Commission, pursuant to Section 11A of the Act<sup>3</sup> and Rule 608 of Regulation NMS thereunder,<sup>4</sup> the Plan to Implement a Tick Size Pilot Program.<sup>5</sup> The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014.<sup>6</sup> The Plan was published for comment in the **Federal Register** on November 7, 2014, and approved by the Commission, as modified, on May 6, 2015.<sup>7</sup> The Commission approved the Pilot on a two-year basis, with implementation to begin no later than May 6, 2016.<sup>8</sup> On November 6, 2015, the SEC exempted the Participants from implementing the Pilot until October 3, 2016.<sup>9</sup> Under the revised Pilot implementation date, the Pre-Pilot data collection period commenced on April 4, 2016. On September 13, 2016, the SEC exempted the Participants from the requirement to fully implement the Pilot on October 3, 2016, to permit the Participants to implement the pilot on a phased-in basis, as described in the Participants' exemptive request.<sup>10</sup>

The Plan is designed to allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stock of small-capitalization companies. Each Participant is required to comply, and to enforce compliance by its member organizations, as applicable, with the provisions of the Plan.

BX adopted rule amendments to implement the requirements of the Plan, including relating to the Plan's data collection requirements and requirements relating to Web site data publication.<sup>11</sup> Specifically, with respect to the Web site data publication requirements pursuant to Section VII and Appendices B and C to the Plan, BX Rule 4770(b)(2)(B) provides, among other things, that BX shall make the data required by Items I and II of Appendix B to the Plan, and collected pursuant to paragraph (b)(2) of Rule 4770, publicly available on the BX Web site on a monthly basis at no charge and shall not identify the Trading Center that generated the data. BX Rule 4770(b)(3)(C), provides, among other things, that BX shall make the data required by Item IV of Appendix B to the Plan, and collected pursuant to paragraph (b)(3) of Rule 4770, publicly available on the BX Web site on a monthly basis at no charge and shall not identify the Trading Center that generated the data. Commentary .08 to Rule 4770 provides, among other things, that the requirement that BX make certain data publicly available on the BX Web site pursuant to Appendix B and C to the Plan shall commence at the beginning of the Pilot Period.

BX is proposing amendments to Rule 4770(b)(2)(B) (regarding Appendix B.I and B.II data) and Rule 4770(b)(3)(C) (regarding Appendix B.IV data) to provide that data required to be made available on BX's Web site be published within 120 calendar days following month end. In addition, the proposed amendments to Commentary .08 to Rule 4770 would provide that, notwithstanding the provisions of paragraphs (b)(2)(B), (b)(3)(C) and (b)(5), BX shall make data for the Pre-Pilot period publicly available on the BX Web site pursuant to Appendix B and C to the Plan by February 28, 2017.<sup>12</sup>

The purpose of delaying the publication of the Web site data is to address confidentiality concerns by providing for the passage of additional time between the market information

reflected in the data and the public availability of such information.

BX also proposes to amend Rule 4770(b)(5), which relates to the collection and transmission of Market Maker registration statistics. Currently, Rule 4770(b)(5) provides that the Exchange shall collect and transmit to the SEC the data described in Item III of Appendix B of the Plan relating to daily Market Maker registration statistics in a pipe delimited format within 30 calendar days following month end for (1) transactions in each Pre-Pilot Data Collection Security for the period beginning six months prior to the Pilot Period through the trading day immediately preceding the Pilot Period; and (2) transactions in each Pilot Security for the period beginning on the first day of the Pilot Period through six months after the end of the Pilot Period. Although the Plan requires that such data be made publicly available,<sup>13</sup> Rule 4770(b)(5) does not currently include a provision requiring the Exchange to publish such data to its Web site. The Exchange therefore proposes to amend Rule 4770(b)(5) to provide that the Exchange shall make Market Maker registration data publicly available on the Exchange Web site within 120 calendar days following month end at no charge.

BX has filed the proposed rule change for immediate effectiveness and has requested that the Commission waive the 30-day operative delay. If the Commission waives the 30-day operative delay, the operative date of the proposed rule change will be the date of filing.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>14</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>15</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, because it is designed to assist the Participants in meeting their regulatory obligations pursuant to the Plan and is in furtherance of the objectives of the Plan, as identified by the SEC.

In approving the Plan, the Commission recognized that requiring the publication of Market Maker data may raise confidentiality concerns, especially for Pilot Securities that may

<sup>3</sup> 15 U.S.C. 78k-1.

<sup>4</sup> 17 CFR 242.608.

<sup>5</sup> See Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

<sup>6</sup> See Securities Exchange Act Release No 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

<sup>7</sup> See Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) ("Approval Order").

<sup>8</sup> See Approval Order at 27533 and 27545.

<sup>9</sup> See Securities Exchange Act Release No. 76382 (November 6, 2015), 80 FR 70284 (November 13, 2015).

<sup>10</sup> See Letter from David S. Shillman, Associate Director, Division of Trading and Markets, Commission, to Eric Swanson, EVP, General Counsel and Secretary, Bats Global Markets, Inc., dated September 13, 2016; see also Letter from Eric Swanson, EVP, General Counsel and Secretary, Bats Global Markets, Inc., to Brent J. Fields, Secretary, Commission, dated September 9, 2016.

<sup>11</sup> See, e.g., Securities Exchange Act Release No. 77457 (March 28, 2016), 81 FR 18913 (April 1, 2016) (SR-BX-2016-019); see also Letter from David S. Shillman, Associate Director, Division of Trading and Markets, Commission, to Marcia E. Asquith, Senior Vice President and Corporate Secretary, FINRA, dated February 17, 2016.

<sup>12</sup> With respect to data for the Pilot Period, the requirement that BX make data publicly available on the BX Web site pursuant to Appendix B and C to the Plan shall continue to commence at the beginning of the Pilot Period. Thus, the first Web site publication date for Pilot Period data (covering October 2016) would be published on the BX Web site by February 28, 2017, which is 120 days following the end of October 2016.

<sup>13</sup> See Section VII.A. 4 of the Plan.

<sup>14</sup> 15 U.S.C. 78f(b).

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

have a relatively small number of designated Market Makers.<sup>16</sup> For this reason, the Commission modified the Plan so that the data that would be made publicly available would not contain profitability measures for each security, but would be aggregated by the Control Group and each Test Group. BX believes that this proposal is consistent with the Act in that it is designed to address confidentiality concerns by permitting BX to delay Web site publication to provide for passage of additional time between the market information reflected in the data and the public availability of such information. With respect to the change to Rule 4770(b)(5), BX believes this change will clarify the timing and format of publishing Market Maker registration statistics.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. BX notes that the proposed rule change implements the provisions of the Plan, and is designed to assist the Participants in meeting their regulatory obligations pursuant to the Plan.

The proposal is intended to address confidentiality concerns that may adversely impact competition, especially for Pilot Securities that may have a relatively small number of designated Market Makers, by permitting BX to delay Web site publication to provide for passage of additional time between the market information reflected in the data and the public availability of such information. The proposal also does not alter the information required to be submitted to the SEC.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.<sup>17</sup>

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>18</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>19</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>20</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>21</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. In this filing, the Exchange has asked that the Commission waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing.

The Exchange notes that the proposed rule change implements the provisions of the Plan, and is designed to assist the Participants in meeting their regulatory obligations pursuant to the Plan. The proposal is intended to address confidentiality concerns by permitting the Exchange to delay Web site publication to provide for passage of additional time between the market information reflected in the data and public availability of such information. The proposal does not alter the information required to be submitted to the Commission.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to implement these proposed changes that are intended to address confidentiality concerns. The Commission notes that some Pilot data was scheduled to be published on November 30, 2016. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative on November 30, 2016.<sup>22</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may

temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BX-2016-067 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-BX-2016-067. 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

<sup>16</sup> See Approval Order at 27543-27544.

<sup>17</sup> BX notes that Financial Information Forum (FIF) submitted a letter to the staff of the Commission raising concerns regarding the publication of certain Appendix B statistics on a disaggregated basis using a unique masked market participant identifier. See Letter from Mary Lou Von Kaenel, Managing Director, FIF, to David S. Shillman, Associate Director, Division of Trading and Markets, Commission, dated August 16, 2016, available at <https://www.fif.com/comment-letters>.

<sup>18</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>19</sup> 17 CFR 240.19b-4(f)(6).

<sup>20</sup> *Id.*

<sup>21</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>22</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

should refer to File Number SR–BX–2016–067 and should be submitted on or before January 10, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>23</sup>

Robert W. Errett,  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79558; File No. SR–NYSEMKT–2016–114]

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

December 14, 2016.

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 Web site 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.

#### 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 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>

<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).

<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”).

- 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 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

<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”).

<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>23</sup> 17 CFR 200.30–3(a)(12).

<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.