

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-80964; File No. SR-NYSEMKT-2017-37)

June 19, 2017

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 June 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 June 9, 2017. 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 places

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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.

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 establish fees and credits for a recently adopted Exchange trading mechanism known as Broadcast Order Liquidity Delivery Mechanism (“BOLD”), which was launched on May 31, 2017.<sup>4</sup>

BOLD is a new feature within the Exchange’s trading system that provides automated order handling in eligible orders that are executable against quotations disseminated by other exchanges that are participants in the Options Order Protection and Locked/Crossed Market Plan.<sup>5</sup>

First, the Exchange proposes to adopt definitions related to BOLD. The Exchange proposes to define the “BOLD Mechanism” as referring to “the Exchange’s automated order handling for eligible orders in designated classes, pursuant to Rule 994NY.”<sup>6</sup> As a general matter, the BOLD Mechanism is Exchange functionality that allows ATP Holders to “step-up” and trade against orders that are exposed by the Exchange prior to such orders being routed to another market or posted on the Exchange’s order book. ATP Holders that submit orders that are designated to be BOLD-eligible will be considered BOLD Initiating Orders for purposes of this proposed rule change. As such, the Exchange proposes to define a “BOLD Initiating Order” as

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<sup>4</sup> See Securities Exchange Act Release Nos. 80494 (April 20, 2017) 82 FR 19300 (April 26, 2017) (SR-NYSEMKT-2017-21) and 80695 (May 16, 2017) (SR-NYSEMKT-2017-28).

<sup>5</sup> See Rule 994NY.

<sup>6</sup> See proposed Fee Schedule, Key Terms and Definitions.

“an order submitted to be executed via the BOLD Mechanism.”<sup>7</sup> ATP Holders that “step-up” to trade against a BOLD Initiating Order will be considered BOLD Responding Order for purposes of this proposed rule change. As such, the Exchange proposes to define a “BOLD Responding Order” as “an order that trades with the BOLD Initiating Order.”<sup>8</sup> The Exchange believes these proposed changes would add clarity and transparency to the Fee Schedule.

Regarding pricing, the Exchange proposes that Non-Customer<sup>9</sup> and Professional Customer orders executed via BOLD would be charged the same rate as currently applied to Electronic executions in standard options contracts, based on participant type and whether the option traded is a Penny Pilot issue.<sup>10</sup> The Exchange proposes to apply a per contract credit for all BOLD Initiating Orders that are Customer orders executed via BOLD, which credit would be the greater of \$0.12 or the rebate amount achieved through the Amex Customer Engagement (“ACE”) Program.<sup>11</sup> The Exchange proposes to exclude from this proposed credit any transactions in Binary Return Derivatives – or ByRDs – executed via BOLD as ByRDs transactions are not currently subject to transaction charges.<sup>12</sup> The Exchange proposes to impose no fee on Customer orders that are BOLD Responding Orders. The Exchange notes that, as

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<sup>7</sup> See id.

<sup>8</sup> See id.

<sup>9</sup> Non-Customers include Broker-Dealers, DOMMs, e-Specialists, Firms, Market Makers, and Specialists.

<sup>10</sup> See Fee Schedule, Section I.A. (Rates for Standard Options transactions – Electronic and Manual), 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>11</sup> See proposed Fee Schedule, Section I.M. (BOLD Mechanism Fees & Credits).

<sup>12</sup> See Fee Schedule, supra note 11, at footnote 5 to Section I.A. (excluding transactions in ByRDs from transaction fees and credits) and proposed Fee Schedule, Section I.M., at footnote 2 (excluding ByRDs from proposed credit for executions via the BOLD Mechanism). See also Fee Schedule, Section I.H. (Early Adopter Specialist) (providing incentive to Specialists appointed to trade ByRDs).

proposed, NYSE Amex Options Market Makers would not be assessed Marketing Charges for transactions executed via the BOLD Mechanism.<sup>13</sup> The Exchange believes this proposed change would encourage Market Makers to provide additional liquidity to orders directed to BOLD Mechanism for execution on the Exchange.

The Exchange proposes that, beginning in June 2017, volume executed via BOLD would be included for purposes of calculating monthly volume thresholds for the Market Maker Sliding Scale and the ACE Program.<sup>14</sup> Also beginning in June 2017, the Exchange proposes to apply fees incurred via the BOLD Mechanism to the Prepayment Programs.<sup>15</sup>

Finally, the Exchange proposes to make a clarifying change to the ACE Program to make clear that ATP Holders that achieve Tier 2 and are eligible to receive the \$0.19 per contract credit for Electronic Customer Complex Orders would receive such credit “regardless of whether the Complex Order trades against interest in the Complex Order Book or with individual orders and quotes in the Consolidated Book.”<sup>16</sup> The Exchange notes that this treatment would be consistent with how other credits for Complex Orders achieved through the ACE Program are handled.<sup>17</sup> The Exchange believes this change would add clarity, transparency and internal consistency to the Fee Schedule.

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<sup>13</sup> See proposed Fee Schedule, Section I.M., at footnote 1. Only Market Makers incur Marketing Charges, such charges are not imposed on any other market participants.

<sup>14</sup> See proposed Fee Schedule, Sections I.C. (NYSE Amex Options Market Maker Sliding Scale – Electronic and Manual) and I.E (ACE Program). The Exchange also proposes to remove from Section I.C. of the Fee Schedule the now-superfluous language “[e]ffective January 3, 2017,” which would add clarity and transparency to the Fee Schedule. See proposed Fee Schedule, Section I.C.

<sup>15</sup> See proposed Fee Schedule, Section I.D. (Prepayment Program).

<sup>16</sup> See proposed Fee Schedule, Section I.E., n. 4 (ACE Program).

<sup>17</sup> See Fee Schedule, supra note 11, Section I.E., n. 2 (providing that credits for Complex Orders achieved under Tiers 4 or 5 of the ACE Program would be paid “regardless of

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>18</sup> in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,<sup>19</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 believes applying standard transaction fees (based on participant type and whether a Penny Pilot issue) for Non-Customer and Professional Customer orders executed using the BOLD Mechanism is reasonable, equitable, and not unfairly discriminatory, because these market participants would be subject to the same or lower fees as are currently imposed on these market participants for Electronic transactions executed on the Exchange.

Further, the Exchange believes the proposed treatment of Customer orders executed via BOLD – i.e., the proposed credit for BOLD Initiating Orders, no fee for BOLD Responding Orders and absence of Marketing Charge– is reasonable, equitable, and not unfairly discriminatory as these fees and credits recognize the benefits of additional liquidity delivered to the Exchange when ATP Holders utilize the BOLD Mechanism. Specifically, the proposed pricing provides an incentive for Customer orders that are marketable against the National Best Bid/Offer (“NBBO”) to be sent to NYSE Amex, which benefits all market participants by providing more trading opportunities. The Exchange also notes that other markets have utilized pricing incentives for features similar to the BOLD Mechanism and therefore the concept is not

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whether the Complex Order trades against interest in the Complex Order Book or with individual orders and quotes in the Consolidated Book”).

<sup>18</sup> 15 U.S.C. 78f(b).

<sup>19</sup> 15 U.S.C. 78f(b)(4) and (5).

new or novel.<sup>20</sup> The Exchange also notes that it is reasonable to exclude transactions in ByRDs from the proposed credit for BOLD Initiating Orders because ByRDs are not currently subject to any transaction fees.<sup>21</sup>

Further, the proposal to include orders executed via the BOLD Mechanism for purposes of calculating monthly volume thresholds for the Market Maker Sliding Scale and the ACE Program, as well as to apply fees incurred for BOLD transactions to the Prepayment Program, are reasonable, equitable, and not unfairly discriminatory as these programs are designed to encourage participation by Customers and Market Makers in the full spectrum of NYSE Amex Options transactions. The Exchange also believes it is reasonable, equitable, and not unfairly discriminatory to not impose Marketing Charges on NYSE Amex Market Makers for orders executed via the BOLD Mechanism because such orders do not interact with quoted markets but are required to be filled at prices no worse than the NBBO. The Exchange believes that removing the Marketing Charges should incentivize Market Makers to more actively provide liquidity in response to orders submitted via BOLD.<sup>22</sup> To the extent that the proposed changes attract additional order flow to the Exchange, this would result in liquidity and more trading opportunities to the benefit of all market participants.

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<sup>20</sup> See, e.g., Nasdaq ISE Schedule of Fees, available here, <https://www.ise.com/fees> (Section IV.G., providing credit for responses to Flash Orders). See also NASDAQ PHLX LLC Pricing Schedule, available here, <http://www.nasdaqtrader.com/Micro.aspx?id=phlxpricing> (providing that “[n]o Marketing Fees will be assessed on transactions which execute against an order for which the Exchange broadcast an order exposure alert in Penny Pilot Options,” which exposure alert is similar to BOLD).

<sup>21</sup> The Exchange notes that ByRDs, which were re-launched in 2016, are exempted from standard transaction fees and are also not subject to monthly rights fees. See Fee Schedule, *supra* note 11, Section I.A., n. 5 and Section III. C., n. 1, respectively.

<sup>22</sup> The Exchange also notes that other options exchanges do not charge marketing fees for orders similar to BOLD-designated orders. See *supra* note 21 (citing NASDAQ PHLX fee schedule).

In addition, the Exchange believes the proposed changes are consistent with the Act because to the extent the BOLD Mechanism permits the Exchange to continue to attract greater volume and liquidity, the proposed change would improve the Exchange's overall competitiveness and strengthen its market quality for all market participants.

Finally, the Exchange believes the proposed clarifying change to the ACE Program regarding how credits for Complex Orders would be handled is consistent with the Act as this change would add clarity, transparency and internal consistency to the Fee Schedule. In addition, the proposal to remove extraneous language from Section I.C. of the Fee Schedule<sup>23</sup> would likewise add clarity, transparency and internal consistency to the Fee Schedule.

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

In accordance with Section 6(b)(8) of the Act,<sup>24</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 credit for Customer orders executed via BOLD and the proposed absence of a fee for Customer orders that are BOLD Responding Orders are pro-competitive as the proposed pricing is designed to encourage Order Flow Providers ("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 proposed fees for Non-Customer and Professional Customer orders executed via BOLD would not discourage competition and are instead intended to promote competition and better improve the Exchange's competitive position. Further, the proposed changes only affect trading on the

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<sup>23</sup> See supra note 15.

<sup>24</sup> 15 U.S.C. 78f(b)(8).

Exchange. 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 ATP Holders on the Exchange.

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.

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>25</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>26</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>27</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

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<sup>25</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>26</sup> 17 CFR 240.19b-4(f)(2).

<sup>27</sup> 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEMKT-2017-37 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-2017-37. 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-2017-37, 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>28</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>28</sup> 17 CFR 200.30-3(a)(12).