

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-80695; File No. SR-NYSEMKT-2017-28)

May 16, 2017

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Rule 994NY, Broadcast Order Liquidity Delivery Mechanism

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 May 10, 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 and II 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 clarify a change to Rule 994NY, Broadcast Order Liquidity Delivery (“BOLD”) Mechanism. The proposed rule 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 the filing is to make a clarifying change to a recently adopted Exchange rule that governs the operation of the BOLD Mechanism.⁴ The BOLD Mechanism is a feature within the Exchange's trading system that would provide automated order handling for eligible orders in designated classes. Under the current rule, after trading with eligible interest on the Exchange, the BOLD Mechanism will automatically process an eligible incoming order that is marketable against quotations disseminated by other exchanges that are participants in the Options Order Protection and Locked/Crossed Market Plan. With respect to order handling, orders that are received by the BOLD Mechanism pursuant to the rule will be electronically exposed at the National Best Bid or Offer ("NBBO") upon receipt for a period of time determined by the Exchange.

Regarding the allocation of exposed orders, the current rule states that any interest priced at the prevailing NBBO or better will be executed pursuant to Rule 964NY (Display, Priority and Order Allocation).⁵ Rule 964NY provides the allocation procedures for orders that are displayed. The Exchange proposes to amend current Rule 994NY to clarify that orders processed by the BOLD Mechanism will be considered displayed during the exposure period and

⁴ See Securities Exchange Act Release No. 80494 (April 20, 2017), 82 FR 19300 (April 26, 2017) (SR-NYSEMKT-2017-21).

⁵ NYSE Amex provides customer priority and size pro-rata allocation. Pursuant to Rule 964NY, customers at a given price are executed first in priority. Non-customers are executed on a pro-rata basis pursuant to the size pro rata algorithm set forth in Rule 964NY(b)(3).

will be treated as displayed orders pursuant to Rule 964NY. The Exchange does not propose to modify current Rule 964NY or the operation of the BOLD Mechanism. The Exchange simply seeks to clarify current system functionality within the Exchange's rules. The Exchange believes the proposed amendment will provide ATP Holders and the investing public with greater transparency regarding the operation of the BOLD Mechanism.

2. Statutory Basis

The Exchange believes that its proposal to amend its rules to provide additional specificity regarding the functionality of the BOLD Mechanism is consistent with the requirements of the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.⁶ In particular, the proposal is consistent with Section 6(b)(5) of the Act⁷ because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest. The Exchange believes that the clarifying change to the operation of the BOLD Mechanism would promote just and equitable principles of trade and remove impediments to a free and open market by providing greater transparency concerning the operation of Exchange functionality. The Exchange also believes that the proposed amendment will contribute to the protection of investors and the public interest by making the Exchange's rules easier to understand. Moreover, the Exchange believes that the additional clarity and transparency of the proposed rule change would promote the efficient execution of investor transactions, and thus strengthen investor confidence in the market. In addition, the Exchange believes that additional specificity in its rules will lead to a better

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

understanding of the operation of the BOLD Mechanism, thereby facilitating fair competition among market participants.

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

The Exchange does not believe that the proposed rule change to adopt the BOLD Mechanism will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange is not proposing to substantively modify the operation of the BOLD Mechanism; rather, it intends to enhance the clarity of current system functionality. The proposed rule change is not designed to address any competitive issues, but rather provide additional specificity and transparency to ATP Holders and the investing public regarding the operation of the BOLD Mechanism. Since the Exchange does not propose to substantively modify the operation of exchange functionality, the proposed rule change will not impose any burden on competition.

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

Because the 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁸ and Rule 19b-4(f)(6) thereunder.⁹

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹⁰ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹¹ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest as it will allow the Exchange to provide additional clarity and transparency regarding the operation of the BOLD Mechanism prior to the introduction of the functionality to market participants. Accordingly, the Commission hereby waives the operative delay and designates the proposal operative upon filing.¹²

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 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 to determine whether the proposed rule should be approved or disapproved.

days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 17 CFR 240.19b-4(f)(6)(iii).

¹² For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2017-28 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-2017-28. 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-2017-28, 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.¹³

Eduardo A. Aleman
Assistant Secretary

¹³ 17 CFR 200.30-3(a)(12).