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SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-76992; File No. SR-NYSEMKT-2016-10)

January 28, 2016

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Change Modifying the NYSE Amex Options Fee Schedule to Add an Early Adopter Specialist Credit

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 January 20, 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 the 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 February 1, 2016. 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to implement a monthly credit available to Specialists to promote trading in Binary Return Derivatives (“ByRDs”),<sup>4</sup> which is a new product that the Exchange anticipates launching in February 2016.

To encourage trading of ByRDs, the Exchange proposes to offer an incentive to Specialists appointed to trade ByRDs.<sup>5</sup> Specialists that are appointed in ByRDs and eligible for the incentive payment would be known on the Exchange’s Fee Schedule as “Early Adopter Specialists.” Specifically, effective February 1, 2016, the Exchange proposes to offer each “Early Adopter Specialist” a monthly credit of \$335 for each class of ByRDs for which that Specialist is appointed, which the Exchange believes would provide a competitive incentive to Specialists based on market conditions and competing interests for technology.<sup>6</sup> The Exchange believes the proposed incentive payment would further the Exchange’s goal of introducing new

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<sup>4</sup> See Securities Exchange Act Release No. 56251 (August 14, 2007), 72 FR 46523 (August 20, 2007)(SR-Amex- 2004-27) (Order approving listing of Fixed Return Options (“FROs”)); see also Securities Exchange Act Release No. 71957 (April 16, 2014), 79 FR 22563 (April 22, 2014) (SR-NYSEMKT-2014-06) (Order approving name change from FROs to Binary Return Derivatives (ByRDs) and re-launch of these products, with certain modification, and amending Obvious Errors rules to include ByRDs). ByRDs are European-style option contracts on individual stocks, exchange-traded funds and Index-Linked Securities that have a fixed return in cash based on a set strike price; satisfy specified listing criteria; and may only be exercised at expiration pursuant to the Rules of the Options Clearing Corporation. See, e.g., NYSE MKT Rule 900ByRDs.

<sup>5</sup> Each Specialist must be registered with the Exchange as a Market Maker and is thus subject to the quoting requirements imposed on Market Makers. See, e.g., Rules 920NY, 925.1NY(b) and 927NY.

<sup>6</sup> See proposed Section I.H. of the Fee Schedule, which was previously Reserved.

products to the marketplace by encouraging Specialists to make a market for these products.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,<sup>8</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 that the proposed monthly credit is reasonable, equitable and not unfairly discriminatory for the following reasons. First, the proposed credit would generate additional order flow to the Exchange by creating incentives to quote and trade ByRDs options, which would benefit all market participants even those not eligible to receive the credit. The Exchange believes it is appropriate to offer the credit to Specialists (and not to other types of Market Makers) as the Specialists are subject to heightened continuous quoting obligations, which exceed those imposed on other Market Makers.<sup>9</sup> The Exchange believes the proposed credit would recognize the contributions of each Early Adopter Specialist to the trading environment on the Exchange and is designed to attract Specialists willing to seek appointments in and, thus provide continuous quotes in, ByRDs options, which increase in the availability of ByRDs options would benefit all market participants.

In addition, the Exchange has evaluated the market conditions, including the technology needs of Specialists appointed to options on ByRDs and believes the proposed monthly credit of

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<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>9</sup> See supra n. 5.

\$335 is reasonable, equitable and not unfairly discriminatory.<sup>10</sup> The Exchange notes that offering market participants incentives to trade in certain newly offered products is not new of novel.<sup>11</sup>

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,<sup>12</sup> the Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed incentive is pro-competitive as it would further the Exchange's goal of introducing new products to the marketplace and encouraging Specialists to make a market in these products, which would in turn, benefit market participants.

To the extent that there is an additional competitive burden on market participants that are not eligible for the credit (i.e., non-Specialists), the Exchange believes that this is appropriate because the proposal would incent Specialists to quote and trade in options on ByRDs which would enhance the quality of the Exchange's markets and increases the volume of contracts traded here. To the extent that this purpose is achieved, all of the Exchange's market participants should benefit from the improved market liquidity. Enhanced market quality and increased transaction volume that results from the anticipated increase in order flow directed to the Exchange will benefit all market participants and improve competition on the Exchange. Moreover, the Exchange believes it is appropriate to offer the credit to Specialists (and not to

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<sup>10</sup> In determining the \$335 fee, the Exchange considered factors such as systems upgrades and additional data feeds that may be necessary to act as a Specialist in ByRDS.

<sup>11</sup> See Exchange Act Release No. 34-60536 (August 19, 2009), 74 FR 43204 (August 26, 2009) (SR-ISE-2009-59).

<sup>12</sup> 15 U.S.C. 78f(b)(8).

other types of Market Makers) as Specialists are subject to heightened continuous quoting obligations that exceed those required of other Market Makers.<sup>13</sup>

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>14</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>15</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>16</sup> of the Act to determine whether the proposed rule change 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

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<sup>13</sup> See *supra* n. 5.

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(2).

<sup>16</sup> 15 U.S.C. 78s(b)(2)(B).

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEMKT-2016-10 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-2016-10. 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, D.C. 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 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-2016-10, 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>17</sup>

Robert W. Errett  
Deputy Secretary

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

[FR Doc. 2016-01928 Filed: 2/2/2016 8:45 am; Publication Date: 2/3/2016]