

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-77014; File No. SR-NYSEMKT-2016-16)

February 2, 2016

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Certain of Its Rules Related to Binary Return Derivatives Contracts

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 January 27, 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 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend certain of its rules related to Binary Return Derivatives contracts. 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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend certain of its rules related to Binary Return Derivatives contracts (“ByRDs”), which the Exchange introduced in 2007.⁴

First, the Exchange proposes to add Rule 953ByRDs to make clear that the Exchange would halt or suspend trading for a ByRDs contract to the same extent that it halts or suspends trading under Rule 953NY in an option contract on the same underlying security.⁵ The current ByRDs rules are silent regarding the treatment of ByRDs during trading halts and suspensions of options contracts. The Exchange therefore believes that the proposed change would add clarity and transparency to Exchange rules and would ensure consistent treatment of ByRDs contracts in the event of a halt or suspension of trading in options contracts on the same underlying security.

Next, the Exchange proposes to modify Rule 903ByRDs(b) (Series of ByRDs Open for Trading), which currently provides that “[n]ew expiration week series will be added for trading on Thursday each week, unless Friday is an Exchange holiday in which case new expiration

⁴ 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 (“ETFs”) 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 (the “OCC”).

⁵ See proposed Rule 953ByRDs (Trading Halts and Suspensions of Binary Return Derivatives).

series would be added for trading on Wednesday.”⁶ The Exchange proposes to revise this rule to include instances when an Exchange holiday falls on a Thursday. Specifically, as revised, new series would be added for trading “on Thursday each week, unless Thursday or Friday is an Exchange holiday in which case new expiration series would be added for trading on Wednesday.”⁷ The Exchange notes that this proposed change would allow the Exchange to add new series during Thanksgiving week or anytime Christmas or New Year’s falls on a Thursday, which increased flexibility would benefit market participants.

The Exchange also proposes to amend Rule 975NY (Nullification and Adjustment of Options Transactions including Obvious Errors) regarding the treatment of ByRDs in the event of a catastrophic error. Current Rule 975NY(d)(3)(A) provides that “[u]pon proper notification as described in section (d)(2) of this Rule, any transaction in ByRDs, qualifying as a Catastrophic Error will automatically be adjusted by the Exchange to \$1.02 per contract unless both parties mutually agree to nullify the transaction or both parties mutually agree to a different adjustment price. However, the Exchange proposes to modify this rule to clarify that any transactions in ByRDs qualifying as a Catastrophic Error “that is higher or lower than the Theoretical Price by \$.50 or more shall be deemed a Catastrophic Error, subject to the adjustment procedures of paragraph (d)(3) unless such adjustment would result in a price higher than \$1.02, in which case the adjustment price shall be \$1.02.”⁸ Thus, as proposed, the

⁶ See Rule 903ByRDs(b).

⁷ See proposed Rule 903ByRDs (b) (“Consecutive Week Expiration Series: The Exchange will list Binary Return Derivatives having five (5) consecutive weekly expiration series available at one time. Each expiration series will expire at the end of the week, normally a Friday, with consecutive week expirations covering the next five (5) calendar weeks. New expiration week series will be added for trading on Thursday each week, unless Thursday or Friday is an Exchange holiday in which case new expiration series would be added for trading on Wednesday”).

⁸ See proposed Rule 975NY(d)(3)(A).

transaction would only be adjusted to \$1.02 if the adjustment would result in a price greater than \$1.02. As ByRDs will either pay \$0 or \$100 at expiration, a single ByRDs contract should not have a value greater than \$1.00, therefore the Exchange believes that any adjustment under the provisions of the Catastrophic Error rule should be capped at a price no higher than \$1.02. Capping the adjustment price at \$1.02 for Catastrophic Errors involving ByRDs options is consistent with the adjustment process for obvious errors involving ByRDs option, which are also capped at \$1.02.⁹ Similarly, to ensure consistency in Exchange rules, the Exchange propose to strike from the definition of Catastrophic Error rules, the clause that states “except for Binary Return Derivatives where any transaction occurring at a price greater than \$1.02 shall qualify as a Catastrophic Error.”¹⁰ The change to paragraph (d)(1) of the Rule would allow transactions in ByRDs to be subject to standard Catastrophic Error rules (i.e., transactions that are higher or lower than the Theoretical Price by \$.50 or more shall be deemed a Catastrophic Error). The Exchange notes that, to date, no ByRDs transactions have been deemed Catastrophic Errors and the Exchange did not adjust any ByRDs transaction per current Rule 975NY(d)(3)(A). The proposed change would ensure that ByRDs trades that are deemed Catastrophic Errors are appropriately adjusted.¹¹

Finally, the Exchange proposes to delete extraneous text from Rule 462(d)(10)(A), regarding margin accounts, such that the revised text would provide that “[e]xcept as provided below, no ByRDs option carried long in a customer’s account shall be considered of any value

⁹ See Rule 975NY(c)(6).

¹⁰ See proposed Rule 975NY(d)(1).

¹¹ The Exchange notes that ByRDs contracts were outside of the scope of the industry wide effort to harmonize Obvious and Catastrophic Error rules, and the proposed change therefore does not impact the harmonization effort. See Securities Exchange Act Release No. 74920 (May 8, 2015), 80 FR 27816, 27822 (May 14, 2015) (SR-NYSEMKT-2015-39).

for the purpose of computing the margin required in the account of such customer.”¹² The Exchange believes the proposed change would correct an existing typographical error in Exchange rules.

Implementation

The Exchange proposes to announce the implementation of the proposed rule change via Trader Update.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)¹³ of the Securities Exchange Act of 1934 (the “Act”), in general, and furthers the objectives of Section 6(b)(5),¹⁴ in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

Specifically, the proposed change to Rule 903ByRDs(b) to cover instances when an Exchange holiday falls on a Thursday would allow the Exchange to add new series during Thanksgiving week or anytime Christmas or New Year’s falls on a Thursday, which increased flexibility would remove impediments to, and perfect the mechanism of, a free and open market and a national market system to the benefit of market participants.

In addition, the Exchange believes that the proposed rule to make clear that ByRDs would be treated the same as other options contracts, in the event of a trading halt or suspension, would remove impediments to, and perfect the mechanisms of, a free and open market because it

¹² See proposed Rule 462(d)(10)(A) (striking the extraneous words “is or a customer”).

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

would add clarity and transparency to Exchange rules. Moreover, this proposed change would ensure consistent treatment of ByRDs contracts in the event of a halt or suspension of trading in options contracts on the same underlying security.

The proposed change to Rule 975NY(d)(3)(A), regarding the treatment ByRDs transactions deemed Catastrophic Errors is designed to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a national market system, as the proposed change would ensure that ByRDs trades that are deemed Catastrophic Errors are appropriately adjusted.

Finally, the proposed change to remove incorrect and extraneous rule text from Rule 462(d)(10)(A) adds clarity and transparency to Exchange rules and reduces potential investor confusion, which would remove impediments to and perfect the mechanism of a free and open market and a national market system.

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 that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not designed to address any competitive issue but rather to add clarity and transparency to Exchange rules, thereby reducing confusion and making the Exchange's rules easier to understand and navigate. The Exchange believes that the proposed rule change will serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

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, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁵ and Rule 19b-4(f)(6) thereunder.¹⁶

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 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
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-

NYSEMKT-2016-16 on the subject line.

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 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 days prior to the date of filing of the proposed rule change.

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-2016-16. 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 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-2016-16, 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.¹⁷

Robert W. Errett
Deputy Secretary

¹⁷ 17 CFR 200.30-3(a)(12).