

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-79651; File No. SR-NYSEMKT-2016-121)

December 21, 2016

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

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on December 15, 2016, NYSE MKT LLC (“Exchange”) filed with the Securities and Exchange Commission (“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 15, 2016. The proposed 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 specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 III. C. of the Fee Schedule to exempt Binary Return Derivatives contracts (“ByRDs”) from the monthly Rights Fees assessed on Specialists, e-Specialists, Directed Order Market Markers (each a “DOMM”). The Exchange proposes to implement these changes effective December 15, 2016.

The Exchange added rules related to ByRDs in 2007 and re-launched trading in ByRDs in March 2016.⁴ To encourage trading in ByRDs, the Exchange currently exempts transactions in ByRDs from all transactions fees and credits.⁵ However, ByRDs are subject to monthly Rights Fees.⁶ The Exchange proposes to exempt ByRDs from all Rights Fees, which should

⁴ The Exchange adopted ByRDs in 2007 and plans to re-launch trading in ByRDs in March. 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 Nos. 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); 77014 (February 2, 2016), 81 FR 6566 (February 8, 2016) (SR-NYSEMKT-2016-16) (immediate effectiveness filing amending amend certain of rules related to ByRDs). ByRDs are European-style option contracts on individual stocks, exchange-traded funds (“ETFs”) and Section 107 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 Fee Schedule, Section I.A., n. 5 (exempting ByRDs from all fees and credits for standard options transactions), available here, https://www.nyse.com/publicdocs/nyse/markets/amex-options/NYSE_Amex_Options_Fee_Schedule.pdf.

⁶ The Exchange charges a monthly Rights Fee on each issue in the allocation of an e-Specialist, DOMM, and Specialist, which ranges from \$50 to \$2,500 (absent any applicable discount) and is based on the Average National Daily Customer Contracts per issue. See id., Fee Schedule, Section III. C. (e-Specialist, DOMM and Specialist Monthly Rights Fees).

encourage trading in ByRDs.⁷

The Exchange believes the proposed treatment of ByRDs for purposes of the Fee Schedule would further the Exchange's goal of introducing new products to the marketplace by encouraging trading in these products.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,⁹ 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 the proposed change is reasonable, equitable and not unfairly discriminatory because the Exchange's treatment of ByRDs would apply equally to all market participants that opted to trade ByRDs. Further, the proposed change is reasonable and does not unfairly discriminate because exempting ByRDs from monthly Rights Fees would further the Exchange's goal of introducing new products to the marketplace by encouraging trading in these products. To the extent that the proposed change incentivizes any market participants to direct their order flow to the Exchange, all market participants would benefit from increased liquidity and trading opportunities on the Exchange.

⁷ See proposed Fee Schedule, Section III. C. at n. 1 (stating that ByRDs are exempt from the Rights Fees). The Exchange proposes to delete as obsolete language from current note 1 to Section III.C., which provides that options listed before June 1, 2012 would be "grandfathered" for purposes of certain Rights Fee. See *id.* The Exchange believes this proposed change adds clarity and transparency to the Fee Schedule, as any options series listed before 2012 would have expired by now.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4) and (5).

The Exchange believes the proposed change to remove obsolete language from the Fee Schedule adds clarity and transparency to the Fee Schedule, which makes it easier for market participants to comprehend.

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,¹⁰ 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 that the proposed change is pro-competitive as it would further the Exchange's goal of introducing new products to the marketplace and encouraging trading in these products, which would in turn, benefit market participants. 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.

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.

¹⁰ 15 U.S.C. 78f(b)(8).

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)¹¹ of the Act and subparagraph (f)(2) of Rule 19b-4¹² 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)¹³ 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
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEMKT-2016-121 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission,

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(2).

¹³ 15 U.S.C. 78s(b)(2)(B).

100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEMKT-2016-121. 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-2016-121 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.¹⁴

Eduardo A. Aleman
Assistant Secretary

¹⁴ 17 CFR 200.30-3(a)(12).