

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-78348; File No. SR-NYSEMKT-2016-48)

July 15, 2016

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Rule Change to Amend Certain Rules Related to Flexible Exchange Options

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 1, 2016, NYSE MKT LLC (“NYSE MKT” or the “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 Exchange. 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 amend certain rules related to Flexible Exchange (“FLEX”) Options. 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 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.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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 certain rules related to FLEX Options, as described below.

FLEX Options are customized equity or index contracts that allow investors to tailor contract terms for exchange-listed equity and index options.<sup>3</sup> The Exchange is proposing to modify rules related to FLEX Options to offer new alternative terms for FLEX Options and to update rule text to more accurately reflect trading in FLEX Options on the Exchange.

FLEX Options for Binary Return Derivatives contracts (“ByRDs”)

The Exchange proposes to modify its rules to enable market participants to trade customized – or FLEX – options contracts in ByRDs.<sup>4</sup> Specifically, the Exchange proposes to add a new definition of “FLEX ByRDs,” which would be a “Binary Return Derivatives contract on any ByRDs-eligible underlying security that is subject to the rules in this Section.”<sup>5</sup> The Exchange also proposes to revise Rule 900G(b)(16) to include FLEX ByRDs in the definition of “Series of FLEX Options.”<sup>6</sup> The Exchange believes that FLEX ByRDs would enable market participants to negotiate terms that differ from standardized ByRDs, which would, in turn,

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<sup>3</sup> See generally Section 15, Flexible Exchange Options, Rules 900G-909G.

<sup>4</sup> ByRDs are European-style option contracts on individual stocks, exchange-traded funds (“ETFs”) and Section 107 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”). See Rules 900ByRDs(b), 915ByRDs.

<sup>5</sup> See proposed Rule 900G(b)(17).

<sup>6</sup> See proposed Rule 900G(b)(16) (proposing to add that a “Series of FLEX Options” would include, in the case of FLEX ByRDs, all such option contracts of the same class having the same expiration date, strike price, and exercise settlement amount).

provide greater opportunities for investors to manage risk through the use of FLEX Options.<sup>7</sup>

#### Additional Settlement Styles for FLEX Options: Asian, Cliquet and VWAP Style

In addition, the Exchange proposes to permit parties to designate additional settlement styles for FLEX Options.<sup>8</sup> Specifically, the Exchange proposes to permit parties to FLEX Index Options to designate Asian style settlement and Cliquet style settlement, both of which are currently offered on another options exchange.<sup>9</sup>

As proposed in new paragraph (b)(4) of Rule 903G and new paragraph (b)(18) of Rule 900G, FLEX Index Options with Asian style settlement would be cash-settled call<sup>10</sup> option contracts for which the final payout would be based on an arithmetic average of specified closing prices of an underlying broad-based index taken on twelve predetermined monthly observation dates, including the expiration date (“Asian option”). The monthly observation dates would be determined by working backwards from the farthest out observation date prior to the expiration date. When the scheduled observation date for an Asian option occurs on a holiday or a weekend, the observation would occur on the immediately preceding business day. The exercise settlement

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<sup>7</sup> The Exchange also proposes to modify Rule 903G(c)(3)(iii) to provide that FLEX ByRDs must be settled the same as non-FLEX ByRDs. See proposed Rule 903G(c)(3)(iii) (discussed herein under “Additional Updates to Reflect Trading in FLEX Options”); see also Rule 910ByRDs (Determination of the Settlement Price of ByRDs). As ByRDs are settled based on the Volume-Weighted Average Price of the underlying security (see id.), the Exchange proposes to add new paragraphs (b)(20) of Rule 900G and (c)(5) of Rule 903G to permit parties to a FLEX Option to designate a VWAP Settlement (discussed below under “Additional Settlement Styles for FLEX Options: Asian, Cliquet and VWAP Style”).

<sup>8</sup> Unless otherwise specified herein, the proposed settlement styles would be subject to the same rules as FLEX Options, including for hours of trading and margin requirements.

<sup>9</sup> See e.g., Chicago Board Options Exchange, Inc. (“CBOE”) Rules 24A.1 (Definitions), 24A.4 (Terms of FLEX Options), 24B.1 (Definitions) and 24B.4 (Terms of FLEX Options). FLEX ByRDs could not be settled using Asian or Cliquet settlement. See, e.g., supra n. 8.

<sup>10</sup> Puts would not be permitted.

amount for Asian options would be calculated similarly to other options (i.e., the difference between the strike price and the averaged settlement value would determine the value, or “moneyness” of the contract at expiration). Asian options would have a term of approximately one year and would expire anytime from 350 to 371 days (i.e., approximately 50 to 53 calendar weeks) from the date of initial listing. The contract multiplier (or Index Multiplier) for an Asian option that settles in U.S. dollars, for example, would be \$100.<sup>11</sup> Finally, because settlement value is determined by observations taken over a 12-month period, Asian style settlement requires European-style exercise.

An example of an Asian FLEX call option expiring in-the-money follows. On January 21, 2015, an investor hedging the value of XYZ Index over a year purchases a call option expiring on January 22, 2016 with a strike price of 2000 and a contract multiplier of \$100. The option has monthly observation dates occurring on the 23rd of each month.

<b>Monthly Observation Date</b>	<b>XYZ Index Closing Value</b>
23-Feb-15	2025.36
23-Mar-15	2049.34
23-Apr-15	2019.77
<b>22-May-15*</b>	1989.65
23-Jun-15	2005.64
23-Jul-15	2035.10
<b>21-Aug-15*</b>	2032.15
23-Sep-15	2076.18
23-Oct-15	2099.01
23-Nov-15	2109.32
23-Dec-15	2085.42
22-Jan-16	2084.81

<sup>11</sup> See Rule 900G(b)(12) providing that Index Multiplier means the monetary amount, stated in terms of the settlement currency specified in the contract, by which the current index settlement value is to be multiplied to arrive at the value required to be delivered to the holder of a call or the holder of a put upon valid exercise of the option and setting forth the established Index Multipliers for FLEX Index Options on domestic indices).

<b>Exercise (Averaged) Settlement Value</b>	$24,611.75/12 = 2050.98$
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\* Because Asian FLEX options use the “preceding business day convention,” the dates of May 23, 2015 and August 23, 2015, were not used in the above example because those dates will fall on a weekend or a holiday. Instead the business days immediately preceding those dates were used as the monthly observation date.

If, in the above example, the strike price for the Asian FLEX call option was 2060, that contract would have expired out-of-the-money. This is because the exercise settlement value for this 2060 call option is equal to 2050.98 (when rounded). Since the strike price of 2060 is more than the 2050.98 exercise settlement value, this option would not be exercised and would expire worthless.

As proposed in new paragraph (b)(5) of Rule 903G and new paragraph (b)(19) of Rule 900G, FLEX Index Options with Cliquet style settlement would be cash-settled call option contracts for which the final payout would be based on the sum of monthly returns (i.e., percent changes in the closing value of the underlying broad-based index from one month to the next), subject to a monthly return “cap” (e.g., 3%) , applied over twelve monthly observation dates (“Cliquet option”). Cliquet options would have a term of approximately one year and would expire anytime from 350 to 371 days (which is approximately 50 to 53 calendar weeks) from the date of initial listing. The contract multiplier for a Cliquet option that settles in U.S. dollars, for example, would be \$100.<sup>12</sup>

The parties to a Cliquet option would designate a set of monthly observation dates for each contract and an expiration date for each contract. The monthly observation date would be

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<sup>12</sup> See id.

the date each month on which the price of the underlying broad-based index would be observed for the purpose of calculating the exercise settlement value for Cliquet FLEX Options. Each Cliquet FLEX Option would have 12 consecutive monthly observation dates (which includes an observation on the expiration date) and each observation would be based on the closing price of the underlying broad-based index. The specific monthly observation dates would be determined by working backwards from the farthest out observation date prior to the expiration date. When the scheduled observation date for a Cliquet option occurs on a holiday or a weekend, the observation would occur on the immediately preceding business day. The parties may not designate a subsequent business day convention for Cliquet options.

The parties to a Cliquet option would designate a capped monthly return (percent change in the closing values of the underlying broad-based index from one month to the next month) for the contract, which would be the maximum monthly return that would be included in the calculation of the exercise settlement value for the contract. On each monthly observation date, the Exchange would determine the actual monthly return (the percent change of the underlying broad-based index) using the closing value of the broad-based index on the current monthly observation date and the closing value of the broad-based index on the previous monthly observation date. The Exchange would then compare the actual monthly return to the capped monthly return. The value to be included as the monthly return for a Cliquet option would be the lesser of the actual monthly return or the capped monthly return.

For example, if the actual monthly return of the underlying broad-based index was 1.75% and the designated capped monthly return for a Cliquet option was 2%, the 1.75% value would be included (and not the 2%) as the value for the observation date to determine the exercise settlement value. Using this same example, if the actual monthly return of the underlying broad-

based index was 3.30%, the 2% value would be included (and not the 3.30%) as the value of the observation date to determine the exercise settlement value. This latter example illustrates that Cliquet options have a capped upside. Cliquet options do not, however, have a capped downside for the monthly return that would be included in determining the exercise settlement value. Drawing on this same example, if the actual monthly return of the underlying broad-based index was -4.07%, the -4.07% value would be included as the value for the observation date to determine the exercise settlement value. There would be, however, be a global floor for Cliquet options so that if the sum of the monthly returns is negative, a Cliquet option would expire worthless.

Unlike other options, Cliquet options would not have a traditional exercise (strike) price. Rather, the exercise (strike) price field for a Cliquet option would represent the designated capped monthly return for the contract and would be expressed in dollars and cents. For example, a capped monthly return of 2.25% would be represented by the dollar amount of \$2.25. The “strike” price for a Cliquet option may only be expressed in a dollar and cents amount and the “strike” price for a Cliquet option may only span a range between \$0.05 and \$25.95. In addition, the “strike” price for a Cliquet option may only be designated in \$0.05 increments, e.g., \$1.75, \$2.50, \$4.15. Increments of \$0.01 in the “strike” price field (representing the capped monthly return) would not be permitted.

The first “monthly” return for a Cliquet option would be based on the initial reference value, which would be the closing value of the underlying broad-based index on the date a new Cliquet option is listed. The time period measured for the first “monthly” return would be between the initial listing date and the first monthly observation date. For example, if a Cliquet option was opened on January 1 and the parties designated the 31st of each month as the monthly

observation date, the measurement period for the first monthly return would span the time period from January 1 to January 31. The time period measured for the second monthly return, and all subsequent monthly returns, would run from the 31st of one month to the 31st of the next month (or the last Exchange business day of each month depending on the actual number of calendar days in each month covered by the contract).

Cliquet options would have European-style exercise and may not be exercised prior to the expiration date. The exercise settlement value for Cliquet options would be equal to the initial reference price of the underlying broad-based index multiplied by the sum of the monthly returns (with the cap applied) on the 12 consecutive monthly observation dates, which include the expiration date of the option, provided that the sum is greater than 0. If the sum of the monthly returns (with the applied cap) is 0 or a less, the option would expire worthless.

An example of a Cliquet option follows. On January 21, 2015, an investor hedging the value of XYZ Index over a year purchases a Cliquet FLEX call option expiring on January 22, 2016 with a capped monthly return of 2% and a contract multiplier of \$100. The initial reference price of XYZ Index (closing value) on January 21, 2015 is 2000. The option has monthly observation dates occurring on the 23rd of each month.

<b>Monthly Observation Date</b>	<b>XYZ Index Closing Value (Si)</b>	<b>Actual Monthly Return</b>	<b>Capped Monthly Return (CMRi)</b>	<b>Sum of Monthly Returns</b>
23-Feb-15	2025.36	1.27%	1.27%	1.27%
23-Mar-15	2049.34	1.18%	1.18%	2.45%
23-Apr-15	2019.77	-1.44%	-1.44%	1.01%
<b>22-May-15*</b>	1989.65	-1.49%	-1.49%	-0.48%
23-Jun-15	2005.64	0.80%	0.80%	0.32%
23-Jul-15	2035.10	1.47%	1.47%	1.79%
<b>21-Aug-15*</b>	2032.15	-0.14%	-0.14%	1.65%



23-Sep-15	2076.18	2.17%	<b>2.00%**</b>	3.65%
23-Oct-15	2099.01	1.10%	1.10%	4.75%
23-Nov-15	2109.32	0.49%	0.49%	5.24%
23-Dec-15	2085.42	-1.13%	-1.13%	4.11%
22-Jan-16	2084.81	-0.03%	-0.03%	<b>4.08%</b>
<b>Exercise Settlement Value</b>	[(4.08% * 2000.00)] + 2 = 83.60			

\* Because Cliquet FLEX options use the “preceding business day convention,” the dates of May 23, 2015, and August 23, 2015, were not used in the above example because those dates fall on a weekend or a holiday. Instead the business days immediately preceding those dates were used as the monthly observation dates.

\* \*Monthly capped return applied.

The “strike price” for a Cliquet option is determined by the agreed upon capped monthly return, which in this example is 2%. The Exercise Settlement Value (“ESV”) is the greater of zero (0) or [(Closing price of index on trade date\*sum of capped returns)+Strike Price]. However, as with standard options, the Total Return, or payout, at expiration is based on how much the ESV exceeds the Strike Price (i.e., the ESV minus the Strike Price). Thus, in this example, the ESV for this January 22, 2016 Cliquet option is 83.60, which exceeds the Strike Price by 81.60. The contract multiplier (\$100) is then applied (81.60 \* \$100) resulting in \$8,160 as the cash settlement between the writer of the contract and the buyer of the contract. If the sum of the monthly capped returns had been negative, this option would have expired worthless.

Finally, the Exchange proposes to permit parties to a FLEX Equity Option or a FLEX ByRD to designate a “VWAP Settlement,” wherein the settlement value of a FLEX Option would be determined by the Volume-Weighted Average Price (or VWAP) of the underlying on

the expiration day of the contract. Specifically, as proposed in new paragraphs (b)(20) of Rule 900G and (c)(5) of Rule 903G, parties to FLEX Options may designate VWAP settlement with call or put options and the settlement price would be calculated as the amount in which the VWAP of all reported transactions in the underlying security (rounded to \$0.01) on the expiration date exceed the agreed upon “exercise (strike) price” of the option. Because the settlement value is not determined until the date of expiration, FLEX Options with a VWAP Settlement have European-style exercise. The Exchange notes that VWAP transactions are becoming increasingly popular in the equities (and options) markets as a means to reduce risks associated with the timing of entering an order during a volatile period, especially with orders for large positions that would disrupt trading if exposed all at once.<sup>13</sup> A VWAP Settlement may also reduce or offset risk at expiration because of volatility on the expiration day. The Exchange believes that by using a VWAP a trader may “smooth” the average price paid or realized for a large position. Thus, as proposed, VWAP Settlement for FLEX Options would provide market participants with a method to offset risk for a large position, regardless of whether the position in the underlying security was established using a VWAP methodology.<sup>14</sup>

Regarding the proposed settlement styles, the Exchange would use the same surveillance procedures currently utilized for the Exchange’s other FLEX Options, including FLEX Index Options. The Exchange further represents that these surveillance procedures will be adequate to

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<sup>13</sup> The Exchange notes that the settlement price of ByRDs are based on the VWAP, which for a given underlying security means the sum of the dollar value of trades reported to the Consolidated Tape (price multiplied by number of shares traded) divided by the total number of shares traded during the entire last day of trading on the business day of their expiration, or, in the case of an option contract expiring on a day that is not a business day, on the business day prior to expiration. See Rule 910ByRDs (Determination of the Settlement Price of ByRDs).

<sup>14</sup> While VWAP Settlement would be available for FLEX Equity Options, as noted herein, FLEX ByRDs would be required to be settled using VWAP Settlement. See, e.g., supra n. 8 and proposed Rule 903G(c)(3)(iii).

monitor trading in these option products. For surveillance purposes, the Exchange would have access to information regarding trading activity in the pertinent underlying securities.

#### FLEX Exercise Prices and Premiums

The Exchange also proposes to modify how exercise prices and premiums for FLEX Options may be expressed, which would reflect recent changes in the marketplace. The Exchange notes that when it adopted rules for FLEX Options, strike prices were designated in one-eighth of a dollar, and options were priced in fractions of a dollar. Now that decimalization has been applied to options trading, including trading in FLEX Options, certain exchange rules have been revised to reflect the decimal equivalent of a previously approved fractional term. Thus, the Exchange proposes to modify current Rule 903G(b)(1) and (c)(2). First, in the case of FLEX Equity Options, the Exchange proposes to modify Rule 903G(c)(2) to clarify that exercise prices and premiums may be stated in:

- (i) a dollar amount; (ii) a method for fixing such a number at the time a FLEX Request for Quote or FLEX Order is traded; or (iii) a percentage of the price of the underlying security at the time of the trade or as of the close of trading on the Exchange on the trade date.<sup>15</sup>

The Exchange notes that this change would align with the Exchange's treatment of FLEX Index Options as well as the rules of other exchanges.<sup>16</sup> In addition, the Exchange proposes to modify Rule 903G(b)(1) and (c)(2) to provide that:

Exercise prices may be rounded to the nearest minimum tick or other decimal increment determined by the Exchange on a class-by-class basis

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<sup>15</sup> Current rule 903G(c)(2) provides that “[e]xercise prices and premiums may be stated in dollar amount or percentage of the price of the underlying security, rounded to the nearest minimum price variation (as set forth in Rule 960NY)”.

<sup>16</sup> See, e.g., Rule 903G(b)(1); CBOE Rule 24A.4(b)(2) and (c)(2).

that may not be smaller than \$0.01. Premiums will be rounded to the nearest minimum tick. For exercise prices and premiums stated using a percentage-based methodology, such values may be stated in a percentage increment determined by the Exchange on a class-by-class basis that may not be smaller than 0.01% and will be rounded as provided above.<sup>17</sup>

The Exchange notes that this proposed change is consistent with the rules of another options exchange.<sup>18</sup> In this regard, the Exchange also proposed to modify Rule 903G(a)(3)(i) to eliminate reference to fractional pricing.<sup>19</sup> The Exchange believes this change would provide greater flexibility in terms of describing an option contract tailored to the needs of the investor.

#### Additional Updates to Reflect Trading in FLEX Options

The Exchange is also proposing the following modifications to streamline and update FLEX Options Rules:

- “FLEX” Options. The Exchange proposes to define “FLEX” as shorthand for Flexible Options in the title of Section 15.<sup>20</sup>
- Floor Market Makers. The Exchange proposes to replace reference in the FLEX rules to “Registered Options Traders” (“ROT”) with “Floor Market Makers,”<sup>21</sup> which is consistent with an approval order by the SEC, which provided, that, among other

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<sup>17</sup> See proposed Rule 903G(b)(1) and (c)(2).

<sup>18</sup> See, e.g., CBOE Rule 24A.4(b)(2) and (c)(2).

<sup>19</sup> The Exchange also proposes to make a non-substantive changes to paragraphs (a)(3)(ii) and (b)(2) and (3) of Rule 903G to re-locate the semi-colon and to replace a semi-colon with a period, respectively.

<sup>20</sup> See proposed Section 15 (Flexible Exchange (“FLEX”) Options). The Exchange also proposes to delete an extraneous “t” from the word the in Rule 900G(a).

<sup>21</sup> See proposed Rules 900G(b)(4), 906G(a)(iv) and (b), 908G, 909G (updating title of rule) and 909G(b).

changes, ROTs would be referred to in Exchange rules as Floor Marker Makers.<sup>22</sup>

- Flex Official. The Exchange proposes to add the concept of a “FLEX Official” to Rule 900G(b)(21) and new Rule 910G, which position is consistent with another options exchange that trade FLEX Options.<sup>23</sup> In short, a FLEX Official has the regulatory responsibility for reviewing the conformity of FLEX trades to the terms and specifications contained in FLEX rules.<sup>24</sup> Proposed Rule 900G(b)(21) would define a FLEX Official as being an Exchange employee that carries out the duties set forth in proposed Rule 910G, FLEX Official. Pursuant to proposed Rule 910G(a), the Exchange may at any time designate an Exchange employee to act as a FLEX Official in one or more classes of FLEX Options and may also designate other qualified employees to assist the FLEX Official as the need arises. Further, a FLEX Official would have the regulatory responsibility for reviewing the conformity of FLEX trades to the terms and specifications contained in Rule 903G (Terms of FLEX Options), including posting FLEX Requests for Quotes for dissemination; determining the BBO; ensuring that FLEX contracts are executed in conformance with the priority principles set forth in Rule 904G (FLEX Trading Procedures and Principles); and calling upon Specialists to make FLEX Quotes in specific classes of FLEX Equity Options, per Rule 927NY(c), which sets forth

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<sup>22</sup> See Securities and Exchange Act Release No. 59472 (February 27, 2009) 74 FR 9843, 9843, n. 11. (March 6, 2009) (SR-NYSEALTR-2008-14) (in filing for this rule change, the Exchange noted that certain terms in then, NYSE Alternext Rules 900G-909G would “become outdated upon approval of the rules proposed herein” and that the Exchange would file subsequent filings to address these outmoded references). In approving this proposal, the Commission noted that the general term Market Maker in the proposed rules includes, among others, Specialists and Floor Market Makers.

<sup>23</sup> See NYSE Arca Rules 5.30(b)(7) and 5.38.

<sup>24</sup> See id.

the obligations of Specialists.<sup>25</sup> In this regard, the Exchange likewise proposes to modify Rule 904G(a)(i)-(ii) (FLEX Trading Procedures and Principles) to clarify the FLEX Officials, not FLEX Specialists, would handle Requests for Quotes from OTP Holders and OTP Firms. The Exchange notes that these responsibilities were previously handled by Specialists but are currently handled by FLEX Officials.<sup>26</sup> The Exchange also proposes to modify reference to “FLEX Post Official” in Rule 927NY to “FLEX Official,” which would add clarity and transparency to Exchange rules.

Second, consistent with the foregoing changes, the Exchange proposes to modify Rule 904G(a)(ii) and (c)(i)-(iii) to more accurately reflect the handling of FLEX Quotes and requests for such quotes. When the Exchange introduced FLEX Options, the Exchange displayed FLEX Request for Quotes and FLEX Quotes at physical FLEX posts. However, as trading in FLEX Options gained popularity, it became apparent that liquidity for FLEX Options was more readily available at trading posts where the standard options in the underlying security traded rather than at a specific FLEX post. And, over time, Floor Participants would ask Floor Brokers to communicate the existence of trading interest in particular FLEX Options through various means to their customers and correspondents. Thus, the Exchange proposes to revise the rules to reflect that the FLEX Request for Quotes or the FLEX Quotes are “disseminated” (rather than displayed), which would add clarity and transparency to Exchange rules.<sup>27</sup> Similarly, because there are no longer specific physical FLEX post on the Trading Floor, the Exchange proposes to remove the FLEX modifier from Rule 904G(b)(i), such that the

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<sup>25</sup> See proposed Rule 910G(b)(1)-(5).

<sup>26</sup> See proposed Rule 904G(a)(i)-(ii).

<sup>27</sup> See proposed Rule 904G(a)(ii) and (c)(i)-(iii).

revised rule text refers only to a “post,” which the Exchange believes would add clarity and consistency to Exchange rules. The Exchange also proposes to make a non-substantive change to Rule 904G(c)(ii) to replace a colon with a semi-colon. The Exchange believes these changes would add clarity, transparency and internal consistency to Exchange rules.

- Obsolete Foreign Currencies. The Exchange proposes to modify rule text relating to FLEX Options to remove obsolete references to foreign currencies that are no longer in circulation, which would add clarity and transparency to Exchange rules. Specifically, the Exchange proposes to remove references in the FLEX rules to Deutsche Marks and French Francs.<sup>28</sup>
- Terms of FLEX Options. The Exchange proposes to modify several aspects of Rule 903G (Terms of FLEX Options). First, the Exchange proposes to clarify that each FLEX Request for Quote and FLEX contract must contain the underlying security in the case of FLEX Equity Options or (as opposed to “and”) the underlying index, in the case of FLEX Index Options.<sup>29</sup> The Exchange also proposes to make a non-substantive change to Rule 903G(c)(4) to clarify the reference to Rule 805 of the Options Clearing Corporation.<sup>30</sup> The Exchange believes these changes would add clarity, transparency and internal consistency to Exchange rules.
- Financial Requirements for Specialist. The Exchange also proposes to modify Rule 909G(c) to update the cross-reference regarding the financial requirements of Specialists

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<sup>28</sup> See proposed 900G(b)(12), 903G(b)(3), 904G(g). The Exchange also proposes to modify Rule 900G(b)(12) relating to the reference to “British Pound” to both remove errant brackets and pluralize “Pounds.” See proposed 900G(b)(12), 904G(g).

<sup>29</sup> See proposed Rule 903G(a)(2)(i).

<sup>30</sup> See proposed 903G (c)(4).

to Rule 927NY(c)(10), and to remove the obsolete rule references to Rule 171 and Rule 950(h).<sup>31</sup>

Second, the Exchange proposes to modify Rule 903G(a)(2)(vii) to make clear that the minimum size of one contract for FLEX Options applies to both transactions (per current rule text) “and quotations” (per proposed rule text). This proposed change corresponds to the Commission’s approval, in 2014, of the Exchange’s proposal to adopt on a permanent basis its pilot program regarding minimum value sizes for opening transactions in new series of FLEX Options and FLEX Quotes.<sup>32</sup> The Exchange believes this change would add clarity and transparency to Exchange rules.

The Exchange is proposing to modify Rule 903G(c)(3) to address exercise settlement of FLEX Options that are cash-settled, as the current rule only addresses exercise settlement by physical delivery.<sup>33</sup> Specifically, the Exchange proposes to designate the current description of exercise settlement by physical delivery as paragraph (3)(i) and to add a description of cash-settlement in paragraph (3)(ii). Finally, the Exchange proposes paragraph (3)(iii) to state that exercise settlement of FLEX ByRDs would be the same as non-FLEX ByRDs, pursuant to Rule 910ByRDs.<sup>34</sup>

The Exchange also proposes to modify Commentary .01 to Rule 903G, to provide that

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<sup>31</sup> See Securities and Exchange Act Release No. 59454 (February 25, 2009), 74 FR 9461 (March 4, 2009) (SR-NYSEALTR-2009-17) (approving proposal to replace certain then-existing Alternext Rules, including Rules 171 and 950 regarding the financial requirements of Specialists, with Rule Section 900NY, including Rule 927NY (Specialists)).

<sup>32</sup> See Securities and Exchange Act Release No. 72536 (July 3, 2014) 79 FR 39425 (July 10, 2014) (SR-NYSEMKT-2014-21).

<sup>33</sup> Rule 903G(c)(3) currently provides that “[e]xercise settlement shall be by physical delivery of the underlying security.”

<sup>34</sup> See proposed Rule 903G(c)(3)(i)-(iii).



FLEX Options may be permitted in puts and calls that do not have identical terms, including, as proposed, “the same settlement style.” Commentary .01 to Rule 903G is designed to prevent the trading of a FLEX Option that has the exact same terms (underlying security, exercise style, expiration date, exercise price and, as proposed, settlement style) as a Standard or (non-FLEX) Option. In other words, as long as just one term of the FLEX Option is different from an existing “regular” or “non-FLEX” option it may be traded as a FLEX Option.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),<sup>35</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>36</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that the proposal to add FLEX ByRDs would remove impediments to and perfect the mechanism of a free and open market as FLEX ByRDs would enable market participants to negotiate terms that differ from standardized ByRDs, which would, in turn provide greater opportunities for investors to manage risk through the use of FLEX Options to the benefit of investors and the public interest.

The Exchange believes that the proposal to permit additional settlement types – Asian, Cliquet and VWAP – would remove impediments to and perfect the mechanism of a free and open market because the proposed rule change would provide OTP Holders with enhanced methods to manage risk by more finely tailoring a FLEX Option, within specified limits, to the

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<sup>35</sup> 15 U.S.C. 78f(b).

<sup>36</sup> 15 U.S.C. 78f(b)(5).

underlying security or index through a variety of settlement calculations and styles. In addition, this proposal would promote just and equitable principles of trade and protect investors and the general public because the additional settlement styles for FLEX Options would provide investors with additional trading and hedging tools. Further, the Exchange notes that its proposal to offer Asian and Cliquet-style settlement for FLEX Index Options is consistent with the rules of another options exchange and therefore raise no novel issues for the Commission.<sup>37</sup>

The Exchange notes that permitting VWAP Settlement, which would be available for FLEX Equity Options and FLEX ByRDs, would remove impediments to and perfect the mechanism of a free and open market because the proposed rule change would provide market participants with a method to offset risk for a large position, regardless of whether the position in the underlying was established using a VWAP methodology.

The Exchange believes the proposed changes to FLEX Exercise Prices and Premiums would remove impediments to and perfect the mechanism of a free and open market as this change would provide greater flexibility in terms of describing an option contract tailored to the needs of the investor. In addition, the proposed changes would promote internal consistency in our own rules and would align our rules with that of another options exchange and therefore raise no novel issues for the Commission.<sup>38</sup>

Regarding the proposed settlement styles, the Exchange would use the same surveillance procedures currently utilized for the Exchange's other FLEX Options, including FLEX Index Options. The Exchange further represents that these surveillance procedures shall be adequate to monitor trading in options on these option products. For surveillance purposes, the Exchange would have complete access to information regarding trading activity in the pertinent underlying

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<sup>37</sup> See supra n. 10.

<sup>38</sup> See supra nn. 16, 18.

securities.

Finally, the remaining proposed changes to FLEX Options would remove impediments to and perfect the mechanism of a free and open market as the changes correct inaccuracies in rule text and update the rules to better reflect the Exchange's current practices with respect to FLEX Options, which have evolved over time. The Exchange believes the proposed changes would provide transparency and internal consistency within Exchange rules and operate to protect investors and the investing public by making the Exchange rules easier to navigate and comprehend.

**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 proposal is designed to increase competition for order flow on the Exchange in a manner that is beneficial to investors because it is designed to provide investors seeking to effect FLEX Option orders with the opportunity for different methods of settling option contracts at expiration. The proposed changes are also designed to update Exchange rules regarding FLEX Options, including by removing obsolete references, which should likewise improve the competitiveness of the Exchange by making it a more attractive venue for trading.

The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues who offer similar functionality. The Exchange also believes the proposed rule change is promotes competition because it would enable the Exchange to provide market participants with FLEX Options transaction possibilities that are similar to that of other options exchanges. The Exchange believes the proposed rules encourage competition amongst market participants to provide tailored FLEX Options contracts.

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

Within 45 days of the date of publication of this notice in the Federal Register or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEMKT-2016-48 on the subject line.

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-2016-48. 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-2016-48, 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>39</sup>

Robert W. Errett  
Deputy Secretary

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<sup>39</sup> 17 CFR 200.30-3(a)(12).