centralized and secure online application, DTC would maintain safe and secure operations with respect to transmission and processing of such requests.

(B) Clearing Agency's Statement on Burden on Competition

DTC does not believe that the proposed rule change would have any adverse impact, or impose any burden, on competition because DTC does not charge a fee for access to UW SOURCE and therefore the proposal would not impose additional costs on Participants in this regard. In addition, the process for Participant's to register for UW SOURCE is transparent and available on DTCC's Web site [24] and identical to that used by Participants to register for DTC Web-based services generally. Moreover, because the proposed rule change improves the efficiency of the Older Issue Eligibility Request process, the proposed rule change may have a positive effect on competition among DTC Participants.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

DTC has not solicited and does not intend to solicit, comments regarding the proposed rule change. DTC has not received any unsolicited written comments from interested parties. To the extent DTC receives written comments on the proposed rule change, DTC will forward such comments to the Commission. DTC has issued an Important Notice to provide notice and related information with regard to the implementation of the proposal.[25]

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) [26] of the Act and paragraph (f) of Rule 19b–4 [27] thereunder. 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.

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 email to *rule-comments@sec.gov*. Please include File Number SR–DTC–2016–010 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

All submissions should refer to File Number SR–DTC–2016–010. This file number should be included on the subject line if email 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 Web site (*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 Web site 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 DTC and on DTCC's Web site (*http://dtcc.com/legal/sec-rule-filings.aspx*). 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–DTC–2016–010 and should be submitted on or before November 15, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Brent J. Fields,

Secretary.

[FR Doc. 2016–25686 Filed 10–24–16; 8:45 am]

BILLING CODE 8011–01–P

[24] *See* DTC's UW SOURCE Registration Information, *available at http://www.dtcc.com/matching-settlement-and-asset-services/underwriting/uw-source-registration-information.*

[25] *Available at http://www.dtcc.com/~/media/Files/pdf/2016/8/10/3896-16.pdf.*

[26] 15 U.S.C. 78s(b)(3)(A).

[27] 17 CFR 240.19b–4(f).

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79125; File No. SR–NYSEMKT–2016–48]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Amendment Nos. 2 and 3 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment Nos. 2 and 3, To Amend Certain Rules Related to Flexible Exchange Options

October 19, 2016.

I. Introduction

On July 1, 2016, NYSE MKT LLC (''NYSE MKT'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend certain rules related to Flexible Exchange (''FLEX'') Options. The proposed rule change was published for comment in the **Federal Register** on July 21, 2016.[3] On August 30, 2016, the Exchange filed Amendment No. 1 to the proposed rule change. On August 31, 2016, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On September 27, 2016, the Exchange filed Amendment No. 2 to the proposed rule change, which superseded and replaced Amendment No. 1.[6] On

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 78348 (July 15, 2016), 81 FR 47469 (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 78744 (August 31, 2016), 81 FR 61725 (September 7, 2016). The Commission designated October 19, 2016 as the date by which it shall approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

[6] In Amendment No. 2, the Exchange: (1) Provided greater clarity regarding the operation of FLEX Binary Return Derivatives contracts (''ByRDs''), including specifying position limits applicable to FLEX ByRDs and indicating that FLEX ByRDs will be settled using VWAP settlement and European exercise style; (2) specified that Asian and Cliquet style settlement will be available for

October 19, 2016, the Exchange filed Amendment No. 3 to the proposed rule change.[7] The Commission received no comments on the proposed rule change. The Commission is publishing this notice to solicit comment on Amendment Nos. 2 and 3 to the proposed rule change from interested persons, and is approving the proposed rule change, as modified by Amendment Nos. 2 and 3, on an accelerated basis.

II. Description of the Proposed Rule Change, as Modified by Amendment Nos. 2 and 3

FLEX Options are customized equity or index contracts that allow investors to tailor contract terms for exchange-listed equity and index options.[8] The Exchange has proposed to modify the rules relating to FLEX Options to allow FLEX Options in ByRDs, make available additional settlement styles, modify how exercise prices and premiums are expressed, change certain provisions relating to floor-based trading, and modify other related provisions pertaining to FLEX Options.

A. FLEX ByRDs

The Exchange has proposed to allow market participants to trade FLEX options contracts in ByRDs. ByRDs are option contracts that have a fixed return in cash based on a set strike price and that may only be exercised at expiration pursuant to the Rules of the Options Clearing Corporation.[9] ByRDs may be issued on individual stocks, Exchange-Traded Fund Shares, and Section 107 Securities, and must satisfy heightened listing standards.[10] ByRDs are settled using a settlement price calculated from the all-day Volume-Weighted Average Price of the composite prices of the underlying security on the expiration date (''VWAP'') and using a European exercise style.[11]

Through the use of FLEX ByRDs,[12] market participants would be able to trade ByRDs with non-standard exercise prices, non-standard expiration dates, or both. FLEX ByRDs would be settled in the same manner as ByRDs, with all-day VWAP settlement and European exercise style.[13] The Exchange would establish position limits for FLEX ByRDs that are the same as Non-FLEX ByRDs, as set forth in Rule 904ByRDs(a), although positions in FLEX ByRDs would be aggregated with positions in Non-FLEX ByRDs on the same or similar underlying for the purpose of calculating position limits.[14] The Exchange stated that, in its view, FLEX ByRDs would enable market participants to negotiate terms that differ from standardized ByRDs and thereby provide greater opportunities for investors to manage risk through the use of FLEX Options.[15]

B. Alternative Settlement Styles: Asian and Cliquet

The Exchange has proposed to allow market participants to designate Asian or Cliquet settlement styles for FLEX Index Options on broad stock index groups.[16] In its filing, the Exchange noted that these settlement styles are currently offered by another options exchange.[17]

1. Asian Style Settlement

FLEX Index Options on broad stock index groups with Asian style settlement would be cash-settled call[18] option contracts for which the final payout would be based on an arithmetic average of specified closing prices of an underlying broad stock index group taken on twelve predetermined monthly observation dates, including the expiration date (''Asian option'').[19] Asian options would use a ''preceding business day convention,'' such that if the monthly observation date falls on a non-NYSE MKT business day, the monthly observation date would be the immediately preceding business day.[20] Asian options would have a term of approximately one year, ranging from 350 to 371 days from the date of initial listing.[21] The contract multiplier would be determined in accordance with Rule 900G(b)(12) and, for Asian options that settle in U.S. Dollars, would be $100.[22] The exercise settlement amount would be the difference between the designated strike price and the observed average closing price.[23] Given that settlement value would be determined by observations taken over a 12-month period, Asian options would require the use of European exercise style.[24]

In its filing, the Exchange provided the following example of an Asian option that expires in-the-money. On January 21, 2015, an investor hedging the value of XYZ Index over a year purchases an Asian FLEX 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.

FLEX Index Options on broad stock index groups; (3) clarified that VWAP settlement will be available for FLEX Equity Options; and (4) removed its proposal to allow cash settlement of FLEX Options. Amendment No. 2 is available at the Exchange's Web site and at *https://www.sec.gov/comments/sr-nysemkt-2016-48/nysemkt201648-2.pdf.*

[7] In Amendment No. 3, the Exchange removed its proposal to allow VWAP settlement of FLEX Equity Options generally, although VWAP settlement would still be used for FLEX ByRDs. Amendment No. 3 is available at the Exchange's Web site.

[8] *See* Rule 900G(b)(1) (defining ''FLEX Option''). *See generally* Section 15, Flexible Exchange Options, Rules 900G–909G.

[9] *See* Rule 900ByRDs(b)(1).

[10] *See* Rule 915ByRDs. For a description of ''Exchange-Traded Fund Shares'' and ''Section 107 Securities,'' see also Rule 915, Commentaries .06 and .11.

[11] *See* Rules 900ByRDs (b)(1), 910ByRDs.

[12] Proposed Rule 900G(b)(17) would define ''FLEX ByRDs'' to mean ''a Binary Return Derivatives contract on any ByRDs-eligible underlying security that is subject to the rules in this Section.'' Proposed Rule 900G(b)(22) would define ''Non-FLEX ByRDs'' to mean ''a Non-FLEX Option that is a Binary Return Derivatives contract.'' Proposed Rule 900G(b)(16) would revise the definition of ''Series of FLEX Options'' to provide that a such a series would consist of, ''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.''

[13] *See* proposed Rule 903G(c)(3)(ii). Proposed Rule 903G(c)(3)(i) would specify that settlement by physical delivery of the underlying security would apply to FLEX Equity Options other than FLEX ByRDs. *See also* Amendment No. 2, at 6. ''FLEX Equity Option'' is defined in Rule 900G(b)(10).

[14] *See* proposed Rule 906G(b)(ii). For purposes of these position limits, long positions in ''Finish Low'' and short positions in ''Finish High'' ByRDs would be considered to be on the same side of the market; and short positions in ''Finish Low'' and long positions in ''Finish High'' ByRDs would be considered to be on the same side of the market. *See id.*

[15] *See* Notice, 81 FR at 47470.

[16] *See* Amendment No. 2, at 4. ''FLEX Index Option'' is defined in Rule 900G(b)(11). A ''broad stock index group'' is ''a stock index which reflects representative stock market values or prices of . . . a broad segment of the stock market.'' Rule 900C(b)(1). *See also* Rule 901C, Commentary .02 (specifying conditions that must be satisfied to trade options on a broad stock index group). Asian and Cliquet settlement styles would not be available for FLEX ByRDs. *See* Amendment No. 2, at 4–5, n. 9. The Commission notes that the Exchange has agreed file a proposed rule change to provide additional clarity to several aspects of the rule. None of these changes impact the Commission's analysis of this proposed rule change.

[17] *See* Amendment No. 2, at 4 (citing Chicago Board Options Exchange, Inc. (''CBOE'') Rules 24A.1, 24A.4, 24B.1, 24B.4).

[18] Puts would not be permitted. *See* proposed Rule 903G(b)(4).

[19] *See* proposed Rule 900G(b)(18) (defining ''Asian style settlement''); proposed Rule 903G(b)(4) (specifying terms for Asian options).

[20] *See* proposed Rule 900G(b)(18).

[21] *See* proposed Rule 903G(b)(4).

[22] *See* Notice, 81 FR at 47470; Rule 900G(b)(12).

[23] *See* Notice, 81 FR at 47470.

[24] *See* proposed Rule 900G(b)(18).

Monthly observation date [25]	XYZ Index closing value
23–Feb–15	2025.36
23–Mar–15	2049.34
23–Apr–15	2019.77
22–May–15	1989.65
23–Jun–15	2005.64
23–Jul–15	2035.10
21–Aug–15	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
Exercise (Averaged) Settlement Value	24,611.75/12 = 2050.98

In this example, the exercise settlement amount would be $5,098. This amount would be determined by adding the 12 observed closing values for the XYZ index and dividing that amount by 12 (24,611.75/12), which is equal to 2050.98 (when rounded). The payout would be the difference between the exercise (averaged) settlement value and the strike price (2050.98 − 2000 = 50.98) multiplied by the contract multiplier (50.98 × $100 = $5,098). If alternatively, in the above example, the strike price was 2060, the contract would have expired out-of-the money. The option would not be exercised and would expire worthless because the strike price of 2060 would be more than the 2050.98 exercise settlement value.[26]

2. Cliquet Style Settlement

FLEX Index Options on broad stock index groups with Cliquet style settlement would be cash-settled call [27] option contracts for which the final payout would be based on the greater of $0 or the sum of monthly returns (*i.e.,* percent changes in the closing value of the underlying broad stock index group from one month to the next), subject to a monthly return ''cap'' (*e.g.,* 3%), applied over twelve monthly observation dates (''Cliquet option'').[28] Cliquet options would use a preceding business day convention and have a term of approximately one year, ranging from 350 to 371 days from the date of initial listing.[29] The contract multiplier would be determined in accordance with Rule 900G(b)(12) and, for Cliquet options that settle in U.S. Dollars, would be $100.[30]

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 the date each month on which the closing price of the underlying broad stock index group would be observed for the purpose of calculating the exercise settlement value. In addition, the parties to a Cliquet option would designate a capped monthly return (*i.e.,* percent change in the closing values of the underlying broad stock index group 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 by computing the percent change between the closing value of the broad stock index group on the current monthly observation date versus its closing value on the previous monthly observation date. The Exchange would then compare the actual monthly return to the capped monthly return. The value used 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 stock index group was 1.75% and the designated capped monthly return for a Cliquet option was 2%, the 1.75% value would be utilized (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 stock index group was 3.30%, the 2% value would be utilized (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 utilized in determining the exercise settlement value. Drawing on this same example, if the actual monthly return of the underlying broad stock index group was −4.07%, the −4.07% value would be utilized as the value for the observation date to determine the exercise settlement value. There would, however, be a floor for all Cliquet options in 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 could only be expressed in a dollar and cents amount and the ''strike'' price for a Cliquet option could only span a range between $0.05 and $25.95.[31] In addition, the ''strike'' price for a Cliquet option could only be designated in $0.05 increments, *e.g.,* $1.75, $2.50, $4.15.[32] 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 stock index group 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

[25] Note that May 23, 2015 and August 23, 2015 fell on a weekend or holiday, so the business days immediately preceding those dates were used as the monthly observation dates.

[26] *See* Notice, 81 FR at 47470.

[27] Puts would not be permitted. *See* proposed Rule 903G(b)(5).

[28] *See* proposed Rule 900G(b)(19) (defining ''Cliquet style settlement''); proposed Rule 903(G)(b)(5) (specifying terms for Cliquet options).

[29] *See* proposed Rule 900G(b)(19); proposed Rule 903G(b)(5).

[30] *See* Notice, 81 FR at 47470; Rule 900G(b)(12).

[31] *See* proposed Rule 903G(b)(5).

[32] *See id.*

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 exercise style and could not be exercised prior to the expiration date.[33] The exercise settlement value for Cliquet options would be equal to the initial reference price of the underlying broad stock index group 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 less, the option would expire worthless.

In its filing, the Exchange provided the following example of a Cliquet option. 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.

Monthly observation date[34]	XYZ Index closing value	Actual monthly return (percent)	Capped monthly return (percent)[35]	Sum of monthly returns (percent)
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
22–May–15	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
21–Aug–15	2032.15	−0.14	−0.14	1.65
23–Sep–15	2076.18	2.17	2.00	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	4.08
Exercise Settlement Value	(4.08% * 2000.00) + 2 = 83.60			

In this example, the exercise settlement amount would be $8,160. This amount would be determined by adding the capped monthly return for the XYZ Index on the 12 monthly observation dates, multiplying that amount by the initial reference price (4.08% * 2000 = 81.60) and adding that amount to the strike price[36] (81.60 + 2 = 83.60), to arrive at an Exercise Settlement Value (''ESV'') that is the greater of zero (0) or the result of this calculation (83.60). Having determined the ESV, the payout at expiration would be based upon how much the ESV exceeds the strike price, similar to options that utilize standard settlement styles. Therefore the payout would be the amount by which the ESV exceeds the strike price (83.60 − 2 = 81.60), multiplied by the contract multiplier (81.60 × $100 = $8,160). In contrast, if the sum of the capped monthly returns had been negative, this option would have expired worthless.[37]

3. Surveillance for Asian and Cliquet Options

The Exchange stated that it would utilize the same procedures for FLEX Options utilizing the proposed settlement styles as it currently utilizes for other FLEX Options with standard settlement. The Exchange also represented that these surveillance procedures will be adequate to monitor trading in these options products. The Exchange noted that, for surveillance purposes, it would have access to information regarding trading activity in the pertinent underlying securities.[38]

C. Exercise Prices and Premiums

The Exchange has proposed to modify how market participants may express exercise prices and premiums for FLEX Options. The Exchange noted that these modifications reflect changes in the marketplace and a move towards decimalization. The Exchange explained that when it adopted its rules for FLEX Options, strike prices were designated in one-eighth of a dollar and options were priced in fractions of a dollar, whereas now certain Exchange rules have been revised to reflect the decimal equivalent of the previously approved fractional amount.[39] With respect to FLEX Equity Options, proposed Rule 903G(c)(2) would provide that exercise prices and premiums may be stated in terms of (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. The Exchange explained that this change would align the Exchange's treatment of FLEX Equity Options with its treatment of FLEX Index Options and also be consistent with the rules of another options exchange.[40]

In addition, with respect to both FLEX Index Options and FLEX Equity Options, proposed Rule 903G(b)(1) and (c)(2) would provide that exercise prices

[33] *See* proposed Rule 900G(b)(19).

[34] Note that May 23, 2015 and August 23, 2015 fell on a weekend or holiday, so the business days immediately preceding those dates were used as the monthly observation dates.

[35] Note that on September 23, 2015, the observed actual monthly return was 2.17%. Because the actual monthly return exceeded the 2% cap, the calculation utilized a capped monthly return of 2% for this observation date.

[36] The ''strike price'' for a Cliquet option would be determined by the agreed upon capped monthly return, which in this example is 2%.

[37] *See* Notice, 81 FR at 47470–72.

[38] *See id.* at 47472.

[39] *See id.*

[40] *See id.* (citing CBOE Rule 24A.4(b)(2), (c)(2)).

may be rounded to the nearest minimum tick or other decimal increment determined by the Exchange on a class-by-class basis that may not be smaller than $0.01 and exercise premiums will be rounded to the nearest minimum tick. Additionally, 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 described above.[41] The Exchange noted that this proposed change is consistent with the rules of another options exchange.[42] Finally, the Exchange proposed to remove a reference to fractional pricing from Rule 903G(a)(3)(i).[43] The Exchange stated that, in its view, this change would provide market participants with greater flexibility to create an options contract tailored to an investor's needs.[44]

D. FLEX Officials and Trading Posts

Currently under the FLEX rules, the FLEX Specialist is responsible for handling various aspects of FLEX Options, including receiving and displaying the terms of Requests for Quotes. The Exchange has proposed to delete these references to a FLEX Specialist and replace them with a floor official, to be known as a ''FLEX Official.''[45] A ''FLEX Official'' would be an Exchange employee that has regulatory responsibility for reviewing FLEX trades for adherence to the terms and specifications in the FLEX rules.[46]

Under the proposal, the Exchange would be able, at any time, to designate an Exchange employee to act as a FLEX Official in one or more classes of FLEX Options and to designate other qualified employees to assist the FLEX Official as needed.[47] This FLEX Official would be responsible for: (i) Reviewing the conforming of FLEX Requests for Quotes and FLEX Quotes to the terms and specifications contained in Rule 903G (Terms of FLEX Options); (ii) posting FLEX Requests for Quotes for dissemination; (iii) determining the BBO; (iv) ensuring that FLEX contracts are executed in conformance with the priority principles set forth in Rule 904G (FLEX Trading Procedures and Principles); and (v) calling upon Specialists to make FLEX Quotes in specific classes of FLEX Equity Options as provided in Rule 927NY(c), which sets forth the obligations of Specialists.[48] The Exchange noted that these provisions relating to a FLEX Official are consistent with the rules of another options exchange that trades FLEX Options.[49]

Additionally, the Exchange has proposed to revise its rules to reflect that in its current trading environment, FLEX Requests for Quotes and FLEX Quotes are ''disseminated,'' rather than ''displayed.'' [50] The Exchange explained that at the time when it introduced FLEX Options, the Exchange displayed FLEX Requests for Quotes and FLEX Quotes at physical FLEX posts. However, according to the Exchange, as FLEX Option trading gained in popularity, it became apparent that liquidity for FLEX Options was more readily available at the trading posts where the standard options in the underlying security traded, rather than the specific FLEX post. The Exchange explained that, over time, floor participants asked floor brokers to use various means to communicate the existence of trading interest.[51] Additionally, the Exchange has proposed to remove the modifier ''FLEX'' from before ''post'' in Rule 904G(b)(i) because there are no longer specific physical FLEX posts on the trading floor.[52]

E. Additional Changes

The Exchange has proposed several additional modifications to the FLEX Options Rules. First, the Exchange has proposed to amend the title of Section 15 to add the abbreviation ''FLEX.'' [53] In addition, the Exchange has proposed to replace references to ''Registered Options Traders'' in the FLEX rules with the term ''Floor Market Makers.'' [54] The Exchange explained that this change in terminology is consistent with a recent rule change approved by the Commission.[55] Further, the Exchange has proposed to remove obsolete references to Deutsche Marks and French Francs because these foreign currencies are no longer in circulation.[56] Additionally, the Exchange has proposed to modify Rule 909G(c) to update a cross-reference to rules pertaining to specialists' financial requirements by adding a reference to Rule 927NY(c)(1) and removing obsolete references to Rule 171 and Rule 950(h).[57]

The Exchange also has proposed to clarify that each FLEX Request for Quotes or FLEX contract must contain, as a contract term, either the underlying security in the case of FLEX Equity Options or (rather than ''and'') an underlying index in the case of FLEX Index Options.[58] In addition, the Exchange has proposed to make a non-substantive change to Rule 903G(c)(4) to clarify the reference to Rule 805 of the Options Clearing Corporation.[59] Moreover, the Exchange has proposed to clarify that the minimum value size of one contract for FLEX Options applies to quotations, in addition to the transactions specified in the current rule text.[60] Finally, the Exchange has proposed that FLEX Options will be permitted in puts and calls that do not have the same settlement style.[61] The Exchange explained that it does not allow trading of a FLEX Option that has the exact same terms as a Non-FLEX

[41] *See* proposed Rule 903G(b)(1), (c)(2).

[42] *See* Notice, 81 FR at 47472 (citing CBOE Rule 24A.4(b)(2), (c)(2)).

[43] *See* proposed Rule 903G(a)(3)(i).

[44] *See* Notice, 81 FR at 47472.

[45] *See* proposed Rule 904G(a)(i)–(ii).

[46] *See* Notice, 81 FR at 47472–73. Proposed Rule 900G(b)(21) would define ''FLEX Official'' as ''an Exchange employee designated to perform the FLEX Official functions set forth in Rule 910G.''

[47] *See* proposed Rule 910G(a).

[48] *See* proposed Rule 910G(b). The Exchange also proposed to make a conforming change to change a reference from ''FLEX Post Official'' to ''FLEX Official.'' *See* proposed Rule 927NY(c)(7).

[49] *See* Notice, 81 FR at 47472–73 (citing NYSE Arca, Inc. (''NYSEArca'') Rules 5.30(b)(7), 5.38 (defining role of FLEX Post Official)). *See also* CBOE Rule 24A.5(a)(i), (ii) (specifying role of FLEX Post Official in handling Requests for Quotes); CBOE Rule 24A.12(b) (setting forth duties of FLEX Official).

[50] *See* proposed Rule 904G(a)(ii), (c)(i)–(iii).

[51] *See* Notice, 81 FR at 47473. The Commission notes that the Exchange has represented that dissemination will permit market participants to transmit required information widely, including through wireless communications, cellular telephones, instant messaging, and other Exchange-approved communication devices. The Commission expects that the Exchange will properly surveil the use of such communications.

[52] *See* proposed Rule 904G(b)(i). The Exchange also proposed to make a non-substantive change to Rule 904G(c)(ii) to replace a colon with a semi-colon.

[53] *See* proposed Section 15. The Exchange has also proposed to delete an extraneous ''t'' from the word ''the'' in Rule 900G(a).

[54] *See* proposed Rules 900G(b)(4), 906G(a)(iv) and (b), 908G, 909G (updating title), and 909G(b).

[55] *See* Securities Exchange Act Release No. 59472 (February 27, 2009), 74 FR 9843, 9843 n.11 (March 6, 2009) (SR–NYSEALTR–2008–14) (noting that Exchange had indicated that Rules 900G through 909G would become outdated upon approval of the described rules and the Exchange represented it would review these rules and submit a separate filing to revise any outdated references).

[56] *See* proposed Rules 900G(b)(12), 903G(b)(3), 904G(g). *See also* Notice, 81 FR at 47473. The Exchange also proposed to make non-substantive changes to certain references to British Pounds. *See* proposed Rules 900G(b)(12), 904G(g).

[57] *See* proposed Rule 909G(c).

[58] *See* proposed Rule 903G(a)(2)(i).

[59] *See* proposed Rule 903G(c)(4).

[60] *See* proposed Rule 903G(a)(2)(vii). The Exchange explained that this proposed change aligns the rule text with the Commission's adoption on a permanent basis of a pilot program regarding minimum value sizes for opening transactions in new series of FLEX Options and FLEX Quotes. *See* Notice, 81 FR at 47473 (citing Securities Exchange Act Release No. 72536 (July 3, 2014), 79 FR 39425 (July 10, 2014) (SR–NYSEMKT–2014–21)).

[61] *See* proposed Rule 903G, Commentary .01.

Option, but that if the option's underlying security, exercise style, expiration date, exercise price, or, as proposed, settlement style differs then it may be traded as a FLEX Option.[62]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[63] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[64] which requires, among other things, that the rules of a national securities exchange be 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 has proposed several amendments to its rules related to FLEX Options. These amendments 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. As is discussed in more detail below, the Commission finds these changes consistent with the Act.

The proposal to allow ByRDs to trade as FLEX Equity Options on NYSE MKT will allow market participants to flex strike prices and expiration dates and thus obtain strike prices and expiration dates that are not available in the standardized market on the Exchange in ByRDs. In its approval order originally approving ByRDs for Exchange trading, the Commission noted that the heightened initial and continued listing standards, as well the settlement price based on an all-day VWAP, were reasonably designed to address potential manipulation concerns.[65] Similarly, the Commission believes that specifying that FLEX ByRDs can only be traded on ByRDs-eligible underlying securities that meet the same heightened initial and continued listing standards as ByRDs, thereby helping to ensure that only highly capitalized, actively traded stocks and ETFs will underlie cash-settled FLEX ByRDs, as well as requiring settlement based on all-day VWAP (as required for standardized ByRDs), should help to mitigate concerns about manipulation in the underlying security to benefit a position in FLEX ByRDs.

The Commission also believes that establishing position limits for FLEX ByRDs to be the same as Non-FLEX ByRDs position limits, which are currently 25,000 contracts on the same side of the market,[66] and aggregating positions in Flex ByRDs with Non-FLEX ByRDs on the same or similar underlying security for purposes of calculating position limits is reasonable and consistent with the Act. In approving position limits for ByRDs, the Commission noted that these position limits appeared to reasonably balance the promotion of a free and open market for these securities with minimization of incentives for market manipulation.[67] By establishing the same position limits for FLEX ByRDs as for Non-FLEX ByRDs and, importantly, aggregating such positions on the same side of the market,[68] the Commission similarly believes that the position limit requirements for FLEX ByRDs should help to ensure that the trading of FLEX ByRDs on the Exchange will not increase the potential for manipulation and could help to minimize such incentives. Finally, as noted above, because FLEX ByRDs must, like standardized ByRDs, be cash settled, European-style exercise, with a settlement price based on an all-day VWAP (and meet heightened listing and continued listing standards), unlike other FLEX Options, the only non-standardized terms that can be flexed are strike prices and expiration dates. The Commission notes that the Exchange has represented that it will be able to adequately surveil trading in FLEX ByRDs utilizing existing surveillance procedures pertaining to Non-FLEX ByRDs and FLEX Options.

The Commission believes that the Asian and Cliquet style settlements for FLEX Index Options on broad stock index groups may provide investors with additional trading and hedging tools. The Commission also believes that the Exchange's proposal to allow Asian and Cliquet style settlement for FLEX Index Options on broad stock index groups may give investors and other market participants the ability to individually tailor, within specified limits, certain terms of those options. Furthermore, the Commission believes that, since both Asian and Cliquet settlement styles depend on multiple measurements in determining the settlement value, both settlement styles could help to mitigate the potential for manipulation in the underlying security(ies).

The Commission notes that the Exchange would use the same surveillance procedures currently utilized for the Exchange's FLEX Options with standard settlement to monitor trading in those options with Asian or Cliquet style settlement. The Exchange has represented that these surveillance procedures will be adequate to monitor trading in options on these option products. The Exchange has also stated that for surveillance purposes, the Exchange will have complete access to information regarding trading activity in the pertinent underlying securities.

The Commission believes that the proposed modification in how exercise prices and premiums for FLEX Equity Options are stated may provide greater flexibility for market participants to tailor a contract to the needs of the investor. In addition, the Commission believes that the proposal to specify how exercise prices and premium for FLEX Index Options and FLEX Equity Options will be rounded and how they will be stated using a percentage-based methodology should provide greater clarity and allow market participants to specify contracts that meet their particular needs. Moreover, the Commission believes that the proposal to remove a reference to fractional pricing is consistent with the shift to decimal pricing found elsewhere in the Exchange's rules and would promote internal consistency.

The Commission notes that the Exchange's proposal to replace certain duties of a FLEX Specialist with respect to FLEX Options transactions with duties assigned to a FLEX Official, who is an Exchange employee, is consistent with the FLEX rules of CBOE.[69] Under current rules, the FLEX Specialist is responsible for assuring that a Request for Quotes is submitted properly as a FLEX Option and for displaying the terms and specifications of the Request for Quotes. The Exchange now proposes to change these duties to a FLEX Official

[62] *See* Notice, 81 FR at 47473.

[63] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[64] 15 U.S.C. 78f(b)(5).

[65] *See* Securities Exchange Act Release No. 56251 (August 14, 2007), 72 FR 46523, 76524 (August 20, 2007) (SR–Amex–2004–27) (''ByRDs Order'').

[66] The exercise limits for FLEX ByRDs will be equivalent to the position limits for FLEX ByRDs described in Rule 906G(b)(ii). *See* Rule 907G.

[67] *See* ByRDs Order, 72 FR at 76525.

[68] For purposes of these position limits, long positions in ''Finish Low'' and short positions in ''Finish High'' ByRDs would be considered to be on the same side of the market; and short positions in ''Finish Low'' and long positions in ''Finish High'' ByRDs would be considered to be on the same side of the market. *See* proposed Rule 906G(b)(ii).

[69] *See* CBOE Rules 24A.5(a)(i) and (ii), 24A.12(b). *See also* NYSEArca Rules 5.30(b)(7), 5.38.

rather than a FLEX Specialist due to market structure changes. The new rules will set forth with specificity the particular functions and requirements of a FLEX Official to, among other things, ensure adherence to FLEX rules and call in a Specialist to make FLEX Quotes. The Exchange has represented that the FLEX Official would be an Exchange employee that reports to the regulatory officer of the Exchange. The Commission would expect the Exchange to ensure that such FLEX Official, or any other designated qualified employees called in to assist the FLEX Official as permitted under the new rule, are properly qualified and meet any necessary requirements. The regulatory oversight of FLEX transactions by a properly qualified FLEX Official could help to ensure that FLEX transactions comply with the FLEX rules. Therefore we find this change is consistent with the Act. The proposed conforming changes to other provisions in the Exchange rules would enhance clarity and consistency. Moreover, the Commission believes that the proposed changes to refer to FLEX Requests for Quotes and FLEX Quotes as being disseminated and remove the concept of a post specific to the trading of FLEX options will align the rules with current trading practices on the Exchange's floor.[70]

Finally, the Commission believes that the proposal's minor, conforming, and technical revisions to Section 15, Rules 900G through 909G are consistent with the Act.

IV. Solicitation of Comments on Amendment Nos. 2 and 3

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment Nos. 2 and 3 are 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 email to *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 email 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 Web site (*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 Web site 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 November 15, 2016.

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment Nos. 2 and 3

The Commission finds good cause to approve the proposed rule change, as modified by Amendment Nos. 2 and 3, prior to the thirtieth day after the date of publication of the notice of Amendment Nos. 2 and 3 in the **Federal Register**. As discussed above, the proposed changes regarding the operation of FLEX ByRDs, including the delineation of applicable position limits and statement that FLEX ByRDs will be settled similar to Non-FLEX ByRDs, using all-day VWAP settlement and European exercise style, will provide additional clarity to the Exchange's rules concerning FLEX ByRDs. Similarly, the proposed changes to specify that Asian and Cliquet style settlement will be available only for FLEX Index Options on broad stock index groups remove potential for ambiguity about the operation of these settlement styles for FLEX Options. Furthermore, the Commission believes it is appropriate to have these changes incorporated into the rules of the Exchange concurrently with the changes noticed for comment in the original filing. Additionally, deleting the proposal to permit cash settlement for all FLEX Equity Options other than FLEX ByRDs, and the corresponding provision that would permit the use of a VWAP settlement for FLEX Equity Options other than FLEX ByRDs, helps to ensure that the proposal does not raise investor protection and manipulation concerns and allows the Commission to no longer consider these provisions for consistency with the Act.

Accordingly, for the reasons noted above, the Commission finds good cause for approving the proposed rule change, as modified by Amendment Nos. 2 and 3, on an accelerated basis, pursuant to Section 19(b)(2) of the Act.[71]

VI. Conclusion

It is therefore ordered, pursuant to Section 19b(2) of the Act,[72] that the proposed rule change (SR–NYSEMKT–2016–48), as modified by Amendment Nos. 2 and 3 thereto, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[73]

Brent J. Fields,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:

Form F–1, SEC File No. 270–249, OMB Control No. 3235–0258

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Form F–1 (17 CFR 239.31) is used by certain foreign private issuers to register securities pursuant to the Securities Act of 1933 (15 U.S.C. 77a *et seq.*). The information collected is intended to ensure that the information required to be filed by the Commission permits

[70] *See supra* note 51 and accompanying text.

[71] 15 U.S.C. 78s(b)(2).

[72] *Id.*

[73] 17 CFR 200.30–3(a)(12).