

57(b) persons. Thus, the issuance of shares of Restricted Stock could be deemed to involve a joint transaction involving a BDC and a 57(b) person in contravention of section 57(a)(4). Rule 17d-1(b) provides that, in considering relief pursuant to the rule, the Commission will consider (i) whether the participation of the company in a joint enterprise is consistent with the Act's policies and purposes and (ii) the extent to which that participation is on a basis different from or less advantageous than that of other participants.

8. The Company requests an order pursuant to section 57(a)(4) and rule 17d-1 to permit the Company to grant shares of Restricted Stock pursuant to the Plan. The Company states that the Plan, although benefiting the Participants and the Company in different ways, is in the interests of the Company's stockholders because the Plan will help align the interests of the Company's employees and officers with those of its stockholders, which will encourage conduct on the part of those employees and officers designed to produce a better return for the Company's stockholders.

#### Applicant's Conditions

Applicant agrees that the order granting the requested relief will be subject to the following conditions:

1. The Plan will be authorized by the Company's stockholders.

2. Each issuance of Restricted Stock to a Participant will be approved by the required majority, as defined in section 57(o) of the Act, of the Company's directors on the basis that such issuance is in the best interest of the Company and its stockholders.

3. The amount of voting securities that would result from the exercise of all of the Company's outstanding warrants, options, and rights, together with any Restricted Stock issued pursuant to the Plan, at the time of issuance shall not exceed 25% of the outstanding voting securities of the Company, except that if the amount of voting securities that would result from the exercise of all of the Company's outstanding warrants, options, and rights issued to the Company's directors, officers, and employees, together with any Restricted Stock issued pursuant to the Plan, would exceed 15% of the outstanding voting securities of the Company, then the total amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights, together with any Restricted Stock issued pursuant to the Plan, at the time of issuance shall not exceed 20%

of the outstanding voting securities of the Company.

4. The maximum amount of shares of Restricted Stock that may be issued under the Plan will be 10% of the outstanding shares of common stock of the Company on the effective date of the Plan plus 10% of the number of shares of the Company's common stock issued or delivered by the Company (other than pursuant to compensation plans) during the term of the Plan.

5. The Board will review the Plan at least annually. In addition, the Board will review periodically the potential impact that the issuance of Restricted Stock under the Plan could have on the Company's earnings and NAV per share, such review to take place prior to any decisions to grant Restricted Stock under the Plan, but in no event less frequently than annually. Adequate procedures and records will be maintained to permit such review. The Board will be authorized to take appropriate steps to ensure that the grant of Restricted Stock under the Plan would not have an effect contrary to the interests of the Company's stockholders. This authority will include the authority to prevent or limit the granting of additional Restricted Stock under the Plan. All records maintained pursuant to this condition will be subject to examination by the Commission and its staff.

For the Commission, by the Division of Investment Management, under delegated authority.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016-02442 Filed 2-8-16; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77044; File No. SR-NYSEArca-2016-16]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To List and Trade Binary Return Derivatives

February 3, 2016.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act"),<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on January 27, 2016, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to list and trade Binary Return Derivatives ("ByRDs"). The proposed rule change is available on the Exchange's Web site 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.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to list and trade ByRDs. The Exchange proposes to model its ByRDs rules after the approved rules of another options exchange—namely NYSE MKT LLC ("NYSE MKT").<sup>4</sup>

###### ByRDs Generally

ByRDs are European-style option contracts on individual stocks, exchange-traded funds ("ETFs") and Index-Linked Securities that have a fixed return in cash based on a set strike price; satisfy specified listing criteria; and may only be exercised at expiration pursuant to the Rules of the Options Clearing Corporation (the "OCC").<sup>5</sup> ByRDs are binary options and, as such,

<sup>4</sup> See Securities Exchange Act Release No. 56251 (August 14, 2007), 72 FR 46523 (August 20, 2007) (SR-Amex-2004-27) (Order approving listing of Fixed Return Options ("FROs")); see also Securities Exchange Act Release No. 71957 (April 16, 2014), 79 FR 22563 (April 22, 2014) (SR-NYSEMKT-2014-06) (Order approving name change from FROs to Binary Return Derivatives (ByRDs) and re-launch of these products, with certain modification, and amending Obvious Errors rules to include ByRDs).

<sup>5</sup> See proposed Rules 5.82(b)(1).

differ from traditional options traded on U.S. options exchanges by providing a discontinuous or non-linear payout. An in-the-money ByRD will pay a fixed sum at expiration regardless of the magnitude of the difference between the option's exercise price and the settlement price. The Exchange proposes to list "Finish High" ByRDs, which will return \$100 per contract if the settlement price of the underlying security is above the strike price at expiration, and "Finish Low" ByRDs, which will return \$100 per contract if the settlement price of the underlying security is below the strike price at expiration.<sup>6</sup>

The Exchange proposes to specify which series of ByRDs options contracts may open for trading and the permissible strike price intervals.<sup>7</sup> After a particular class of ByRDs has been approved for listing on the Exchange (as described below), except for consecutive week expiration series, at the commencement of trading for a particular class of ByRDs, the Exchange shall open a minimum of one expiration month for each class of ByRDs open for trading on the Exchange.<sup>8</sup> The Exchange also proposes that consecutive week expiration series expire at the end of the week, normally a Friday, with consecutive week expirations covering the next five calendar weeks.<sup>9</sup> New expiration week series will be added for trading on Thursday each week, unless Thursday or Friday is an Exchange holiday, in which case new expiration series would be added for trading on Wednesday.<sup>10</sup> Further, the Exchange proposes that the strike price interval for ByRDs contracts will be \$1 for strike prices between \$3 and \$200, and \$5 for strike prices over \$200.<sup>11</sup> The Exchange proposes to initially list series that are no more than 30% away from the price of the underlying security, and may list additional series if the furthest out of the money strike is less than 10% out of the money.<sup>12</sup> At such time, the Exchange could list additional series that are not more than 30% away from the price of the underlying security.<sup>13</sup> At the time the Exchange is adding additional series, it may proactively

delist any existing series without open interest.<sup>14</sup>

#### Listing Standards

The initial listing criteria for ByRDs require that an individual stock underlying a ByRDs contract meet the criteria for underlying securities in Rule 5.3, "Criteria for Underlying Securities," and, in addition, have: (1) Minimum market capitalization of at least \$40 billion; (2) minimum trading volume, in all markets in which the security trades, of at least one billion shares in the preceding 12 months; (3) minimum average daily trading volume of four million shares; (4) minimum average daily trading value of at least \$200 million during the previous six months; and (5) a minimum market price per share of at least \$10, as measured by the closing price reported in the primary listed market in which the security is traded, over the previous five consecutive business days preceding the date on which the Exchange submits a certificate to the OCC for listing and trading.<sup>15</sup> An ETF or Index-Linked Security underlying a ByRDs contract would have to meet these five additional criteria along with the requirements of Rule 5.3, except for the minimum market capitalization requirement.<sup>16</sup>

The continued listing criteria for ByRDs require that an individual stock underlying a ByRDs contract satisfy the requirements of Rule 5.4, "Withdrawal of Approval of Underlying Securities," and, in addition, have: (1) Minimum market capitalization of at least \$30 billion; (2) minimum trading volume, in all markets trading the security, of at least one billion shares in the preceding 12 months; (3) minimum average daily trading volume of four million shares; (4) minimum average daily trading value of at least \$125 million during the last six months; and (5) an underlying market price per share of at least \$5 at the time additional series are listed for trading.<sup>17</sup> An ETF or Index-Linked Security underlying a ByRDs contract would have to meet these five additional criteria along with the

requirements of Rule 5.4, except for the minimum market capitalization requirement.<sup>18</sup>

#### Volume Weighted Average Price Settlement

To reduce concerns regarding potential price manipulation at expiration due to the "all-or-nothing" return provided by a ByRDs contract, the Exchange proposes to settle ByRDs using an all-day volume weighted average price ("VWAP") based on trading in the underlying security on the last trading day prior to expiration.<sup>19</sup> To calculate the VWAP, the Exchange will use composite prices during regular trading hours as reported by industry price vendors.<sup>20</sup> If the security underlying a ByRDs contract does not trade or is unavailable during regular trading hours at expiration, the settlement price may be fixed pursuant to the OCC's rules on a basis that the OCC believes is appropriate under the circumstances, including using the last sale price during regular trading hours on the most recent trading day for which a last sale price is available.<sup>21</sup> The Exchange will publish and disseminate the current value of the VWAP calculation for ByRDs at least every 15 seconds throughout the last trading day prior to expiration. The Exchange will disseminate the VWAP settlement price as the official settlement price for ByRDs and will make it publicly available through various market data vendors and on the Exchange Web site.

The Exchange also proposes to provide that the settlement price will be calculated such that it will always round up \$.01 in those instances when the settlement price exactly equals an expiring strike price.<sup>22</sup> For example, if the calculated settlement price is \$20.00, and there are expiring ByRDs Finish High and Finish Low contracts with a strike price of \$20.00, the

<sup>18</sup> See proposed Rule 5.91, Commentary .03.

<sup>19</sup> See proposed Rule 5.89. The VWAP for an underlying security is the sum of the dollar value of reported trades (price multiplied by the number of shares traded), divided by the total number of shares traded during the entire last day of trading prior to expiration. See Rule 5.82(b)(4)-(5).

<sup>20</sup> See proposed Rule 5.89(a). Composite prices are prices reported to the consolidated tape from any participating exchange or market. The Exchange notes that the OCC currently uses composite pricing in connection with the settlement of expiring equity options. The composite closing price is the last reported sale price from any eligible trade source (*i.e.*, primary listing market or participating regional market). It is not an average price. See Securities Exchange Act Release No. 49045 (January 8, 2004), 69 FR 2377 (January 15, 2004) (notice of filing and immediate effectiveness of File No. SR-OCC-2003-01).

<sup>21</sup> See proposed Rule 5.89, Commentary .01.

<sup>22</sup> See proposed Rule 5.89, Commentary .02.

<sup>6</sup> See proposed Rule 5.82(b)(2) and (3).

<sup>7</sup> See proposed Rule 5.83.

<sup>8</sup> See proposed Rule 5.85(a).

<sup>9</sup> See proposed Rule 5.85(b).

<sup>10</sup> See *id.* The Exchange believes that including instances when an Exchange holiday falls on a Thursday would allow the Exchange to add new series during Thanksgiving week or anytime Christmas or New Year's falls on a Thursday, which increased flexibility would benefit market participants.

<sup>11</sup> See proposed Rule 5.85(c).

<sup>12</sup> See proposed Rule 5.85(c)(1).

<sup>13</sup> See *id.*

<sup>14</sup> See proposed Rule 5.85(c)(2).

<sup>15</sup> See proposed Rule 5.90, Commentary .01.

<sup>16</sup> See proposed Rule 5.90, Commentary .02.

<sup>17</sup> See proposed Rule 5.91, Commentary .01. For purposes of this Rule, the market price of an underlying security is (i) for intra-day series additions, the last reported trade in the primary listed market in which the underlying security trades at the time the Exchange determines to add these additional series; and (ii) for next-day and expiration series additions, the closing price reported in the primary listed market in which the underlying security traded on the last trading day before the series are added. See proposed Rule 5.91, Commentary .02.

settlement price will be rounded up to \$20.01 so that the Finish High options will pay off. The effect of rounding will be to have long \$20.00 strike Finish High holders receiving \$100.00 and long \$20.00 strike Finish Low holders receiving \$0. Absent this rounding, a participant may potentially have a position that appears to guarantee a payoff of \$100 at expiration, but would instead receive \$0. For example, if an investor holds both a \$20.00 strike Finish High contract and a \$20.00 strike Finish Low contract, the investor would receive \$0 if the settlement price was calculated to exactly equal the \$20.00 strike price. Although the risk of the settlement price equaling the strike price is small, the Exchange believes that this could cause problems both for hedging and explaining to investors what would happen in the unusual circumstance where the settlement price matched the strike price of an expiring ByRDs contract exactly. The Exchange believes this proposed rounding method will ensure that either the Finish High or the Finish Low ByRDs option contracts will always pay off at expiration. The Exchange believes this will result in less opportunity for investor confusion and less uncertainty for participants as a whole.

#### Position and Exercise Limits of ByRDs

The position limits for ByRDs will be 25,000 contracts on the same side of the market, and positions in ByRDs will not be aggregated with positions in other options on the same underlying security for purposes of determining compliance with the position limits.<sup>23</sup> The Exchange is not proposing exercise limits for ByRDs because ByRDs will be exercised automatically at expiration if the settlement price of the underlying security is greater than the strike price of a Finish High ByRDs or less than the strike price of a Finish Low ByRDs.<sup>24</sup> ByRDs will not be subject to any qualified hedge exemptions from position limits. Positions in ByRDs must be reported to the Exchange when an account establishes an aggregate position on the same side of the market of 200 or more contracts,<sup>25</sup> and the provisions of Rule 6.6, "Reporting of Options Positions," will apply to ByRDs.<sup>26</sup> Rule 6.6(b) requires that a member, other than an Exchange Market Maker, that maintains a position in excess of 10,000 Non-FLEX equity

options contracts on the same side of the market, for its own account or the account of its customer, report certain information to the Exchange, including whether the position is hedged, a description of the hedge, and, if applicable, a description of the collateral. The Exchange believes that the reporting requirements under Rule 5.87 and the surveillance procedures for hedged positions will enable the Exchange to closely monitor sizable ByRDs positions and corresponding hedges.<sup>27</sup> The Exchange notes that Rule 6.11 regarding Other Restrictions on Exchange Option Transactions and Exercises, shall be applicable to ByRDs.<sup>28</sup>

#### Margins

A customer account with a long position in a ByRDs contract must initially deposit and maintain margin equal to at least 100% of the purchase price of the ByRD.<sup>29</sup> A customer account with a short position in a ByRD contract must initially deposit and maintain margin equal to the exercise settlement amount.<sup>30</sup> No margin is required for a ByRD position carried short against an existing long position in the same ByRD,<sup>31</sup> or when the writer's obligation is secured by a specific deposit or escrow deposit meeting the entire obligation under the ByRD.<sup>32</sup> In addition when a Finish High ByRDs option is carried short in a customer's account and there is also carried a short Finish Low ByRDs option for the same underlying security or instrument that expires at the same time and has an exercise price that is less than or equal to the exercise price of the short Finish High, the initial and maintenance margin required is the exercise settlement amount applicable to one contract.<sup>33</sup>

#### Bid-Ask Differentials and Minimum Price Variations

A Market Maker is expected to quote with no more than \$0.25 between the bid and the offer for each ByRD contract, except during the last trading day prior to expiration, when the maximum width may be \$0.50.<sup>34</sup> The

Exchange may, however, establish permissible price differences other than those noted above for one or more series or classes of ByRDs as warranted by market conditions.<sup>35</sup>

Rule 6.72, "Trading Differentials," generally provides that MPV for an option is: (i) \$0.05 for options quoted under \$3 a contract; and (ii) \$0.10 for options quoted at \$3 a contract or greater.<sup>36</sup> For the options classes included in the Penny Quoting Pilot Program, the MPV is: (i) \$0.01 for options quoted under \$3 a contract; and (ii) \$0.05 for options quoted at \$3 a contract or greater.<sup>37</sup> The Exchange proposes that the minimum price variation ("MPV") for quoting and trading of ByRDs contracts will be \$0.01 for all series.<sup>38</sup>

#### Obvious Errors and Catastrophic Errors

Related to the adoption of ByRDs, the Exchange also proposes to revise Rule 6.87, Nullification and Adjustment of Options Transactions including Obvious Errors, to include a new subsection (c)(6) that addresses the handling of transactions in ByRDs option contracts that are subject to the Obvious Error provisions of Rule 6.87. Proposed Rule 6.87(c)(6) provides that any transaction in a ByRDs contract that is higher or lower than the Theoretical Price by \$0.25 or more shall be deemed an obvious error, subject to the adjustment procedures of Rule 6.87(c)(4), unless such adjustment would result in a price higher than \$1.02, in which case the adjustment price shall be \$1.02.<sup>39</sup> As ByRDs will either pay \$0 or \$100 at expiration, a single ByRDs contract should not have a value greater than \$1.00, therefore the Exchange believes that any adjustment under the provisions of the Obvious Error rule should be capped at a price no higher than \$1.02. The Exchange also proposes to amend Rule 6.87(d)(3) to add a reference to proposed paragraph (d)(3)(A). The Exchange also proposes to amend Rule 6.87(d) to state that transactions in ByRDs contracts over \$1.02 shall qualify as catastrophic errors if participants request a review under the existing provisions of paragraph (d)(2).<sup>40</sup> Transactions in ByRDs contracts that qualify as catastrophic errors will be adjusted in accordance with the procedures of proposed paragraph (d)(3)(A), which states that

<sup>27</sup> The Exchange notes that hedge information for member firm and customer accounts with 200 or more contracts are reported electronically via the Large Options Position Report. In addition, the Exchange notes that Market Maker account information is reported to the Exchange by the member's clearing firm.

<sup>28</sup> See proposed Rule 5.88.

<sup>29</sup> See proposed Rule 4.16(d)(10)(A)(i).

<sup>30</sup> See proposed Rule 4.16(d)(10)(A)(ii).

<sup>31</sup> See proposed Rule 4.16(d)(10)(A)(iii).

<sup>32</sup> See proposed Rule 4.16(d)(10)(B).

<sup>33</sup> See proposed Rule 4.16(d)(10)(A)(iv).

<sup>34</sup> See proposed Rule 5.93.

<sup>35</sup> See proposed Rule 5.93, Commentary .01.

<sup>36</sup> See Rule 6.72(a)(1)–(2).

<sup>37</sup> See Rule 6.72(a)(3). In addition, options on the Power Shares QQQ Trust trade at an MPV of \$0.01 for all options premiums. See *id.*

<sup>38</sup> See proposed Rule 5.92.

<sup>39</sup> See proposed Rule 6.87(c)(6).

<sup>40</sup> See proposed Rule 6.87(d)(3)(A).

<sup>23</sup> See proposed Rule 5.86(a) and (b).

<sup>24</sup> See proposed Rule 5.94.

<sup>25</sup> See proposed Rule 5.87.

<sup>26</sup> See proposed Rule 5.87. In computing reportable ByRDs positions under Rule 6.6, ByRDs on underlying securities shall not be aggregated with non-ByRDs option contracts. See *id.*

any transaction in ByRDs that is higher or lower than the Theoretical Price by \$.50 or more shall be deemed a Catastrophic Error, subject to the adjustment procedures of paragraph (d)(3) unless such adjustment would result in a price higher than \$1.02, in which case the adjustment price shall be \$1.02.<sup>41</sup> Thus, as proposed, the transaction would only be adjusted to \$1.02 if the adjustment would result in a price greater than \$1.02. As ByRDs will either pay \$0 or \$100 at expiration, a single ByRDs contract should not have a value greater than \$1.00, therefore the Exchange believes that any adjustment under the provisions of the Catastrophic Error rule should be capped at a price no higher than \$1.02. Capping the adjustment price at \$1.02 for Catastrophic Errors involving ByRDs options is consistent with the adjustment process for obvious errors involving ByRDs option, which are also capped at \$1.02.<sup>42</sup> The proposed change would ensure that ByRDs trades that are deemed Catastrophic Errors are appropriately adjusted.<sup>43</sup>

#### Trading Halts and Suspensions of Binary Return Derivatives

The Exchange also proposes to adopt Rule 5.95 to make clear that the Exchange would halt or suspend trading for a ByRDs contract to the same extent that it halts or suspends trading under Rule 6.65 in an option contract on the same underlying security. In other words, trading in ByRDs contracts would be treated the same as other options contracts in the event that trading in options contracts is halted or suspended on the same underlying security.

#### Implementation

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

#### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>44</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>45</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.

As noted above, this proposal is designed to mirror the approved ByRDs rules that are in place on NYSE MKT, a competing options exchange.<sup>46</sup> The Exchange believes that introducing ByRDs would provide investors with a potentially useful investment choice that is already available on NYSE MKT, which aids in perfecting the mechanism of a free and open market and a national market system. In addition, and consistent with the Commission's findings when approving for listing ByRDs on NYSE MKT, listing ByRDs on Arca, "will extend to certain binary options the benefits of a listed exchange market, which include: A centralized forum for price discovery; pre- and post-trade transparency; standardized contract specifications; and the guarantee of the OCC."<sup>47</sup>

The Exchange believes that the proposed changes to the obvious and catastrophic error rule (*i.e.*, Rule 6.87) are consistent with the Act as they would protect investors and the public interest by providing certainty about how obvious and catastrophic errors in ByRDs would be treated. Specifically, the new provisions in the obvious and catastrophic error rule describe how to determine whether transactions in ByRDs contracts should be treated as errors and, if so, how they should be adjusted and the maximum adjustment price for such errors. The new provisions still require that the transactions be erroneous, as provided in Rule 6.87, and set forth specific criteria and procedures for the handling of such errors. The Exchange believes the specific and objective criteria to determine how and when to adjust transactions involving obvious or catastrophic errors provides certainty to market participants and reduces potential confusion, which serves to protect investors and the public interest.

The Exchange also believes that the proposed rule to make clear that ByRDs would be treated the same as other options contracts, in the event of a trading halt or suspension, would remove impediments to, and perfect the mechanisms of, a free and open market because it would add clarity and transparency to Exchange rules. Moreover, this proposed change would ensure consistent treatment of ByRDs

contracts in the event of a halt or suspension of trading in options contracts on the same underlying security.

Finally, the Exchange has in place an adequate surveillance program to monitor trading in ByRDs and intends to largely apply its existing surveillance program for options to the trading of ByRDs. The Exchange also has the necessary systems capacity to support the new options series that would result from the introduction of ByRDs. In addition, (ii) the Exchange and the Options Price Reporting Authority ("OPRA") have the necessary systems capacity to handle additional traffic associated with the listing and trading of ByRDs. The OCC has represented that it is able to accommodate the clearing and settlement of ByRDs contracts. Finally, the Exchange will monitor any increased trading volume associated with the listing of new series of ByRDs and will analyze the effect, if any, that the additional volume has on the capacity of the Exchange's, OPRA's, and the OCC's automated systems.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,<sup>48</sup> 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. To the contrary, the Exchange believes that the proposal will enhance competition by introducing a potentially useful investment choice, which is already available on competing options exchanges.<sup>49</sup>

#### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

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

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section

<sup>41</sup> See proposed Rule 6.87(d)(3)(A).

<sup>42</sup> See Rule 6.87 (c)(6).

<sup>43</sup> The Exchange notes that ByRDs contracts were outside of the scope of the industry wide effort to harmonize Obvious and Catastrophic Error rules, and the proposed change therefore does not impact the harmonization effort. See Securities Exchange Act Release No. 74920 (May 8, 2015), 80 FR 27816, 27822 (May 14, 2015) (SR-NYSEMKT-2015-39).

<sup>44</sup> 15 U.S.C. 78f(b).

<sup>45</sup> 15 U.S.C. 78f(b)(5).

<sup>46</sup> See *supra* n. 4.

<sup>47</sup> See *supra* n. 4, 72 FR at 46524 (Order approving listing of Fixed Return Options, later renamed ByRDs).

<sup>48</sup> 15 U.S.C. 78f(b)(8).

<sup>49</sup> See *supra* n. 4.

19(b)(3)(A) of the Act<sup>50</sup> and Rule 19b-4(f)(6) thereunder.<sup>51</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2016-16 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-NYSEArca-2016-16. 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-NYSEArca-2016-16, and should be submitted on or before March 1, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>52</sup>

**Robert W. Errett,**

*Deputy Secretary.*

[FR Doc. 2016-02439 Filed 2-8-16; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, February 11, 2016 at 2:00 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matter at the Closed Meeting.

Chair White, as duty officer, voted to consider the items listed for the Closed Meeting in closed session.

The subject matter of the Closed Meeting will be:

Institution and settlement of injunctive actions;  
Institution and settlement of administrative proceedings; and  
Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

<sup>52</sup> 17 CFR 200.30-3(a)(12).

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551-5400.

Dated: February 4, 2016.

**Brent J. Fields,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77047; File Nos. SR-NYSE-2015-31 and SR-NYSEMKT-2015-56]

### Self-Regulatory Organizations; New York Stock Exchange LLC; NYSE MKT LLC; Notice of Withdrawal of Proposed Rule Changes Amending the NYSE Trades Market Data and NYSE MKT Trades Market Data Product Offerings

February 3, 2016.

On July 16, 2015, New York Stock Exchange LLC ("NYSE") and, on July 24, 2015, NYSE MKT LLC ("NYSE MKT") (together with NYSE, the "Exchanges") each filed with the Securities and Exchange Commission ("Commission") 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> proposed rule changes to amend, respectively, the NYSE Trades market data and NYSE MKT Trades market data product offerings. The proposed rule changes were published for comment in the **Federal Register** on August 5, 2015.<sup>3</sup> Six comments on the proposals were received.<sup>4</sup> On September 17, 2015, the Commission issued an order instituting proceedings to determine whether to disapprove the proposed rule changes.<sup>5</sup> On November 16, 2015, the Exchanges withdrew the

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

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

<sup>3</sup> See Securities Exchange Act Release Nos. 75556 (July 30, 2015), 80 FR 46628 (SR-NYSE-2015-31) and 75559 (July 30, 2015), 80 FR 46642 (SR-NYSEMKT-2015-56).

<sup>4</sup> Letter from Eric S. Hunsader, Nanex, LLC, dated August 14, 2015; Letter from John Ramsay, Chief Market Policy Officer, IEX Group, Inc., to Brent J. Fields, Secretary, Commission, dated August 20, 2015; Letter from Lorenzo Ferlazzo, Acquaequity to the Commission, dated October 1, 2015; Elliot Grossman, Managing Director, Dinosaur Securities, LLC, to Brent J. Fields, Secretary, Commission, dated October 13, 2015; Melissa MacGregor, Managing Director and Associate General Counsel, SIFMA, to Brent J. Fields, Secretary, Commission, dated October 14, 2015; Elizabeth K. King, General Counsel and Corporate Secretary, NYSE, to Brent J. Fields, Secretary, Commission, dated November 12, 2015.

<sup>5</sup> See Securities Exchange Act Release No. 75937, 80 FR 57408 (Sept. 23, 2015).

<sup>50</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>51</sup> 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change.