



8011-01p
SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-71844; File No. SR-NYSEMKT-2014-26)

April 1, 2014

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Option Trading Rules to Extend the Operation of Its Pilot Program Regarding Minimum Value Sizes for Opening Transactions in New Series of Flexible Exchange Options

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on March 27, 2014, NYSE MKT LLC (the “Exchange” or “NYSE MKT”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend its option trading rules to extend the operation of its pilot program (“Pilot Program”) regarding minimum value sizes for flexible exchange options (“FLEX Options” or “FLEX”), currently scheduled to expire on March 31, 2014 until the earlier of July 31, 2014 or approval of the Exchange’s proposal to adopt the Pilot Program on a permanent basis. The text of the proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 hereby proposes to amend its option trading rules to extend the operation of its Pilot Program regarding minimum value sizes for opening transactions in new FLEX series, currently scheduled to expire on March 31, 2014,⁴ until July 31, 2014. The Exchange has submitted a separate filing to the Commission proposing to adopt the existing Pilot Program on a permanent basis.⁵ The Exchange is submitting this proposed four-month extension of the Pilot Program so that the program may continue to operate uninterrupted while the Commission considers the Exchange's proposed adoption of the Pilot Program on a permanent basis. Accordingly, the proposed extension to the Pilot Program will end the earlier of July 31, 2014 or approval of the Exchange's proposal to adopt the Pilot Program on a permanent basis.

This filing does not propose any substantive changes to the Pilot Program and contemplates that all other terms of FLEX Options will remain the same. Overall, the Exchange believes that extending the Pilot Program will benefit public customers and other market

⁴ See Securities Exchange Act Release No. 69255 (March 28, 2013), 78 FR 20158 (April 3, 2013) (SR-NYSEMKT-2013-28).

⁵ SR-NYSEMKT-2014-21 requesting permanent adoption of the Pilot Program was submitted to the Commission on March 17 [sic], 2014.

participants who will be able to use FLEX Options to manage risk for smaller portfolios. In support of the proposed extension of the Pilot Program, and as required by the terms of the Pilot Program's implementation,⁶ the Exchange has submitted to the Commission a Pilot Program Report that provides an analysis of the Pilot Program covering the period during which the Pilot Program has been in effect. This Pilot Program Report includes (i) data and analysis on the open interest and trading volume in (a) FLEX Equity Options in new series that have opening transactions with a minimum size of 0 to 249 contracts and less than \$1 million in underlying value; (b) FLEX Index Options in new series that have opening transactions with a minimum opening size of less than \$10 million in underlying equivalent value; and (ii) analysis on the types of investors that initiated opening FLEX Equity and Index Options transactions in new series (i.e., institutional, high net worth, or retail). The report has been submitted to the Commission as Exhibit 3 to SR-NYSEMKT-2013-21⁷ [sic]

The Exchange believes that there is sufficient investor interest and demand in the Pilot Program to warrant extension for another four months. The Exchange believes that the Pilot Program has provided investors with additional means of managing their risk exposures and carrying out their investment objectives. The Exchange has not experienced any adverse market effects with respect to the Pilot Program.

In the event the Exchange does not receive approval to adopt the Pilot Program on a permanent basis by July 31, 2014 and proposes an additional extension of the Pilot Program, the Exchange will submit, along with any filing proposing such amendments to the Pilot Program, an additional Pilot Program Report covering the period during which the Pilot Program was in effect and including the details referenced above, along with the nominal dollar value of the

⁶ See infra note 7 [sic].

⁷ Supra note 5.

underlying security of each trade. The Pilot Program Report would be submitted to the Commission at least one month prior to the expiration date of the Pilot Program.

The Exchange notes that any positions established under this Pilot Program would not be impacted by the expiration of the Pilot Program. For example, a 10-contract FLEX Equity Option opening position that overlies less than \$1 million in the underlying security and expires in January 2016 could be established during the Pilot Program. If the Pilot Program were not extended or adopted on a permanent basis, the position would continue to exist and any further trading in the series would be subject to the minimum value size requirements for continued trading in that series.

The Exchange believes that the Pilot Program has been successful and well-received by its membership and the investing public for the period that it has been in operation as a Pilot Program.⁸

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Section 6(b)(5),¹⁰ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. Specifically, the Exchange believes that the proposed extension of the Pilot Program, which eliminates the minimum value size applicable to opening transactions

⁸ The Pilot Program was initiated on May 12, 2010. See Securities Exchange Act Release No. 62084 (May 12, 2010), 75 FR 28091 (May 19, 2010) (SR-NYSEAmex-2010-40).

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

in new series of FLEX Options, would provide greater opportunities for investors to manage risk through the use of FLEX Options. Further, the Exchange notes that it has not experienced any adverse effects from the operation of the Pilot Program. The Exchange further notes that extending the Pilot Program for an additional four months will remove impediments to and perfect the mechanism of a free and open market because it will enable the Pilot Program to continue uninterrupted pending review of the Exchange's rule proposal to adopt the Pilot Program on a permanent basis.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is being made to extend the operation of the Pilot Program to allow adequate time for the Commission to consider the Exchange's proposal to permanently adopt the elimination of the existing minimum value size applicable to opening transactions in new FLEX series. Other competing options exchanges have rules that do not impose minimum value size requirements for opening transactions in new FLEX series.¹¹ Thus, the proposed changes will not impose any burden on competition while providing that the elimination of the minimum value size requirements for opening transactions in new FLEX series continues without interruption until such time that permanent approval is granted by the Commission.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of

¹¹ See Chicago Board Options Exchange Rule 24A.4.

the Act¹² and Rule 19b-4(f)(6) thereunder.¹³ 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁴ and Rule 19b-4(f)(6) thereunder.¹⁵

A proposed rule change filed under Rule 19b-4(f)(6)¹⁶ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁷ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission notes that waiving the 30-day operative delay would allow the Pilot Program to continue without interruption while the Commission considers the Exchange's proposal to permanently adopt the Pilot Program, and believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.¹⁸ Therefore, the

¹² 15 U.S.C. 78s(b)(3)(A)(iii).

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹⁶ 17 CFR 240.19b-4(f)(6).

¹⁷ 17 CFR 240.19b-4(f)(6)(iii).

¹⁸ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.

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 under Section 19(b)(2)(B) of the Act¹⁹ to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEMKT-2014-26 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEMKT-2014-26. 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

¹⁹ 15 U.S.C. 78s(b)(2)(B).

all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEMKT-2014-26 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.²⁰

Kevin M. O'Neill
Deputy Secretary

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²⁰ 17 CFR 200.30-3(a)(12).