



8011-01p
SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-72891; File No. SR-NYSEMKT-2014-70)

August 21, 2014

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Rules Governing the Short-Term Option Series Program to Introduce Finer Strike Price Intervals for Related Non-Short Term 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 August 18, 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 [sic] its rules governing the Short-Term Option Series program to introduce finer strike price intervals for Related non-Short Term Options. 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.

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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 amend its rules governing the Short-Term Option Series ("STOS") program to introduce finer strike price intervals for Related non-Short Term Options. In particular, the Exchange proposes to amend its rules to permit the listing of Related non-Short Term Options during the month prior to expiration in the same strike price intervals as allowed for STOS. The Exchange believes that the proposed rule change would increase market efficiency as it would harmonize strike price intervals for contracts that are close to expiration – whether listed pursuant to a weekly or monthly expiration schedule – and would align the Exchange's rules with recently approved changes to the rules governing STOS programs of other options exchanges,⁴ which would enable the Exchange to compete equally and fairly with other options exchanges in satisfying strong customer demand to have the ability to execute hedging and trading strategies in finer strike price intervals.

Pursuant to Commentary .10(a) to Rule 903, the Exchange may list short term options in up to fifty option classes, in addition to option classes that are selected by other securities

⁴ See Securities and Exchange Act Release Nos. 72098 (May 6, 2014), 79 FR 27006 (May 12, 2014) (Notice); 72452 (June 24, 2014), 79 FR 36848 (June 30, 2014) (SR-ISE-2014-23) (Approval Order). The present filing is consistent with the recently approved filing by the International Securities Exchange, LLC ("ISE") in all material respects, except that the Exchange is only proposing to amend the STOS program for equity options and proposes no changes to STOS program for index options. For STOS program rules regarding index options, see Rule 903C; Rule 900C(b)(27). This filing is also similarly consistent with the recent filing for immediate effectiveness by the Chicago Board of Options Exchange ("CBOE"). See Securities and Exchange Act Release No. 72539 (July 3, 2014), 79 FR 39447 (July 10, 2014) (SR-CBOE-2014-052).

exchanges that employ a similar program under their respective rules.⁵ For each of these option classes, the Exchange may list five short term option expiration dates at any given time, not counting monthly or quarterly expirations.⁶ Specifically, on any Thursday or Friday that is a business day, the Exchange currently may list short term options that expire at the close of business on each of the next five Fridays that are business days and are not Fridays in which monthly or quarterly options expire.⁷ These short term option series, which can be several weeks or more from expiration, may be listed in strike price intervals of \$0.50, \$1, or \$2.50, with the finer strike price intervals being offered for lower priced securities, and for options that trade in the Exchange's \$1 Strike Price Interval Program (as discussed further below).⁸ More specifically, per current Commentary .10(d) to Rule 903, the strike price interval for STOS may be \$0.50 or greater for option classes that both trade in \$1 Strike Price Intervals and are in the STOS program. If the class does not trade in \$1 Strike Price Intervals, the Exchange may list STOS in \$0.50 intervals for strike prices less than \$75; in \$1 intervals for strike prices that are between \$75 and \$150; and in \$2.50 intervals for strike prices greater than \$150.⁹

The Exchange may also list standard expiration contracts, which are listed in accordance with the regular monthly expiration cycle, in wider strike price intervals of \$2.50, \$5, or \$10¹⁰, though the Exchange also operates strike programs, such as the \$1 Strike Price Interval program mentioned above, which allows the Exchange to list a limited number of option classes in finer

⁵ The Exchange notes that the number of option classes that may participate in the STOS program is aggregated between equity options and index options and is not apportioned between equity options and index options.

⁶ See Rule 903(h).

⁷ Id.

⁸ See Commentary .10(d) to Rule 903.

⁹ Id.

¹⁰ See Commentary .05(a)(i)-(iii) to Rule 903.

strike price intervals.¹¹ In general, however, the Exchange must list standard expiration contracts in \$2.50 intervals for strike prices \$25 or less, \$5 intervals for strike prices greater than \$25, and \$10 intervals for strike prices greater than \$200.¹² Pursuant to the Exchange current rules, during the week prior to expiration only, the Exchange is permitted to list Related non-Short Term Option contracts in the narrower strike price intervals available for STOS.¹³ This exception to the standard strike price intervals is available only during the week prior to expiration, however, standard expiration contracts regularly trade at significantly wider intervals than their weekly counterparts.

For example, assume ABC is trading at \$56.54 and the monthly expiration contract is three weeks to expiration. Assume also that the Exchange has listed all available STOS expirations and thus has STOS listed on ABC for weeks one, two, four, five, and six. Each of the five weekly ABC expiration dates can be listed with strike prices in \$0.50 intervals, including, for example, the \$56.50 at-the-money strike. Because the monthly expiration contract has three weeks to expiration, however, the at-the-money strikes must be listed in \$5

¹¹ See Commentary .06 to Rule 903 (allows the Exchange to designate up to 150 options classes on individual stocks to be traded in \$1 strike price intervals where the strike price is between \$50 and \$1. See also Commentary .13 to Rule 903 (“\$0.50 Strike Program”, which allows the Exchange to designate a limited number of its listed options on individual stocks for which the interval of strike prices will be \$0.50 where the strike price is \$5.50 or less, but only for options classes whose underlying securities closed at or below \$5.00 in its primary market on the previous trading day and which have national average daily volume that equals or exceeds 1,000 contracts per day as determined by the Options Clearing Corporation during the preceding three calendar months. The \$0.50 Strike Program is currently limited to options classes overlying no more than 20 individual stocks specifically designated by the Exchange. However, the Exchange may list \$0.50 strike prices in any other option classes if those classes are specifically designated by other securities exchanges that employ a similar \$0.50 Strike Program under their respective rules.).

¹² See Commentary .05(a)(i)-(iii) to Rule 903.

¹³ See Commentary .05(c) and .10(d) to Rule 903.

intervals unless those options are eligible for one of the Exchange's other strike price programs. In this instance, that would mean that investors would be limited to choosing, for example, between the \$55 and \$60 strike prices instead of the \$56.50 at-the-money strike available for STOS. This is the case even though contracts on the same option class that expire both several weeks before and several weeks after the monthly expiration are eligible for finer strike price intervals. Under the proposed rule change, the Exchange would be permitted to list the Related non-Short Term Option on ABC, which is less than a month to expiration, in the same strike price intervals as allowed for short term option series. Thus, the Exchange would be able to list, and investors would be able to trade, all expirations described above with the same uniform \$0.50 strike price interval.

As proposed, the Exchange would be permitted to begin listing the monthly expiration contract in these narrower intervals at any time during the month prior to expiration, which begins on the first trading day after the prior month's expiration date, subject to the provisions of other Exchange rules. For example, since the April 2014 monthly option expired on Saturday, April 19, the proposed rule change would allow the Exchange to list the May 2014 monthly option in short term option intervals starting Monday, April 21.

Thus, the Exchange proposes to amend Commentary .05(c) and .10(d) to Rule 903 to reflect that the Exchange may list Related non-Short Term Options in the same strike price intervals as allowed for STOS at any time during the month prior to expiration.¹⁴ The Exchange

¹⁴ The Exchange also proposes to amend Commentary .05(c) and .10(d) to Rule 903 to delete reference to "on Thursday and Friday" to conform the Exchange's treatment of Related non-STOS with that of other options Exchanges. See, e.g., CBOE Rule 5.5(6) ("Related non-Short Term Option series shall be opened during the month prior to expiration in the same manner as permitted in Rule 5.5(d) [Short Term Options Program] and in the same strike price intervals that are permitted in this Rule 5.5(d)(5) [Strike Interval]").

believes that introducing consistent strike price intervals for STOS and Related non-Short Term options during the month prior to expiration will benefit investors by giving them more flexibility to closely tailor their investment decisions. The Exchange also believes that the proposed rule change will provide the investing public and other markets with additional opportunities to hedge their investments, thus allowing these investors to better manage their risk exposure. In addition, as noted above, the Exchange believes the proposed rule change will harmonize the Exchange's rules with recently approved rules on competing options exchanges, which consistency across markets will benefit investors.¹⁵

With regard to the impact of this proposal on system capacity, the Exchange has analyzed its capacity and represents that it and the Options Price Reporting Authority ("OPRA") have the necessary systems capacity to handle any potential additional traffic associated with this proposed rule change. The Exchange believes that its ATP Holders will not have a capacity issue as a result of this proposal. The Exchange also represents that it does not believe this expansion will cause fragmentation of liquidity.

2. Statutory Basis

The Exchange believes that the proposed change is consistent with Section 6(b) of the Act,¹⁶ in general, and furthers the objectives of Section 6(b)(5),¹⁷ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

¹⁵ See supra n. 4.

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(5).

The Exchange believes that the proposed change will result in a continuing benefit to investors by giving them more flexibility to closely tailor their investment and hedging decisions, thus allowing them to better manage their risk exposure. As noted above, standard expiration options currently trade in wider intervals than their weekly counterparts, except during the week prior to expiration. As a result, contracts on the same option class that expire both several weeks before and several weeks after the standard expiration are eligible to trade in strike price intervals that the standard expiration contract is not. This inconsistency is [sic] has arisen due the growth and expansion of the STOS program in response to customer demand. In fact, the Exchange had been limited to listing one short term option expiration date pursuant to the STOS program and it is only in the last two years that the Exchange amended its rules to permit it to list up to five short term option expiration dates in addition to standard expiration options.¹⁸

As noted above, the STOS program has been very well-received by market participants, in particular by retail investors. There is continuing strong customer demand for having the ability to execute hedging and trading strategies in the finer strike price intervals available in STOS, and the Exchange believes that the proposed rule change will increase market efficiency by harmonizing strike price intervals for contracts that are close to expiration, whether those contracts happen to be listed pursuant to weekly or monthly expiration cycles. The Exchange notes that, in addition to listing standard expiration contracts in short term option intervals during the expiration week, it already operates several programs that allow for strike price intervals for standard expiration contracts that range from \$0.50 to \$2.50.¹⁹ The Exchange believes that each of these programs has been successful but notes that limitations on the number of option classes

¹⁸ See Securities Exchange Act Release No. 68191 (November 8, 2012), 77 FR 68194 (November 15, 2012) (SR-NYSEMKT-2012-42).

¹⁹ See supra nn. 10-12.

that may be selected for each of these programs means that many standard expiration contracts must still be listed in wider intervals than their short term option counterparts. For example, the \$0.50 Strike Price Program, which offers the narrowest strike price interval, only permits the Exchange to designate up to twenty option classes to trade in \$0.50 intervals, in addition to option classes selected by other exchanges that employ a similar program.²⁰ Thus, the Exchange believes that the proposed rule change will fill the gap between strike price intervals allowed for STOS and Related non-Short Term Options. The Exchange believes that the proposed rule change, like the other strike price programs currently offered by the Exchange, will benefit investors by giving them more flexibility to closely tailor their investment and hedging decisions.

With regard to the impact of this proposal on system capacity, the Exchange has analyzed its capacity and represents that it and the OPRA have the necessary systems capacity to handle any potential additional traffic associated with this proposed rule change. The Exchange believes that its ATP Holders will not have a capacity issue as a result of this proposal. The Exchange also represents that it does not believe this expansion will cause fragmentation of liquidity.

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

The Exchange does not believe that the Proposal will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that the proposed rule change will result in additional investment options and opportunities to achieve the investment objectives of market participants seeking efficient trading and hedging vehicles, to the benefit of investors, market participants, and the marketplace in general. Specifically, the Exchange believes that investors will benefit from the availability of

²⁰ See supra n. 11.

strike price intervals in standard expiration contracts that match the intervals currently permitted for short term options with a similar time to expiration, and from the clarification regarding the listing of additional series during the week of expiration. In addition, as noted above, the Exchange believes the proposed rule change is pro-competitive and will allow the Exchange to compete more effectively with other options exchanges that have already adopted changes to their STOS programs that are substantially identical to the changes proposed by this filing.

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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act²¹ and Rule 19b-4(f)(6) thereunder.²²

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange stated that waiver of this requirement would enable the Exchange to, as soon as possible, have the ability to compete with other exchanges that have incorporated the proposed rule change to their STOS Programs and would help eliminate investor confusion and promote competition among the option

²¹ 15 U.S.C. 78s(b)(3)(A).

²² 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, or such shorter time as designated by the Commission.

exchanges. For these reasons, the Commission believes that the proposed rule change presents no novel issues and that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest; and will allow the Exchange to remain competitive with other exchanges. Therefore, the Commission designates the proposed rule change to be operative upon filing.²³

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 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-2014-70 on the subject line.

Paper Comments:

²³ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

- 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-2014-70. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer

to File Number SR-NYSEMKT-2014-70 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.²⁴

Kevin M. O'Neill
Deputy Secretary

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²⁴ 17 CFR 200.30-3(a)(12).