

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-70169; File No. SR-NYSEMKT-2013-68)

August 13, 2013

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Commentary .10 to Rule 903 to Modify the Short-Term Option Series Program to Increase the Number of Classes that are Eligible to Participate in the Program from Five to 30

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that, on August 8, 2013, NYSE MKT LLC (the “Exchange” or “NYSE MKT”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend Commentary .10 to Rule 903 to modify the short-term option series (“Short-Term Option Series” or “STOS”) Program to increase the number of classes that are eligible to participate in the Program from five to 30. 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 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 first proposes to amend Commentary .10(a) to Rule 903 related to the STOS Program to increase the number of classes that are eligible to participate in the STOS Program from five to 30.³ Currently, for each option class that has been approved for listing and trading on the Exchange, the Exchange may select up to five listed options classes for the STOS Program. The Exchange may also include in the STOS Program any option classes that are selected by other exchanges that employ a similar program under their respective rules.

The Exchange is proposing to amend Commentary .10(a) to compete equally and fairly with other options exchanges in satisfying high market demand for weekly options. The Exchange believes that limiting the number of options classes eligible to participate in its STOS Program to five places the Exchange at a competitive disadvantage relative to substantially similar STOS Programs offered by other exchanges. Options exchanges operated by BATS Exchange, Inc. (“BATS”), Chicago Board Options Exchange (“CBOE”), NASDAQ Stock Market LLC (“NOM”), International Securities Exchange (“ISE”), and NASDAQ OMX PHLX LLC (“PHLX”) now have rules that allow up to 30 classes to participate in their respective STOS

³ A Short-Term Option Series is a series of an option class that is approved for listing and trading on the Exchange in which the series is opened for trading on any Thursday or Friday that is a business day and that expires at the close of business on the next Friday that is a business day. If a Thursday or Friday is not a business day, the series may be opened on the first business day immediately prior to that Thursday or Friday. If a Friday is not a business day, the series shall expire on the first business day immediately prior to that Friday. See NYSE MKT Rule 903(h); NYSE MKT Rule 900C(b)(27).

Programs.⁴ The Exchange's proposed increase in the number of classes eligible to participate in the STOS Program would not only improve its competitive position relative to other exchanges, but would also promote consistency and uniformity among the competing options exchanges that have adopted similar STOS Programs.

The Exchange notes that its STOS Program has been well-received by market participants, particularly retail investors. The Exchange believes that the current proposed revision to the STOS Program will permit the Exchange to meet increased customer demand and provide market participants with the ability to hedge securities positions with a greater number of option classes and series.

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 have the necessary systems capacity to handle the additional traffic associated with the proposed expansion of the STOS Program. While the expansion of the STOS Program is expected to generate additional quote traffic, the Exchange believes that this increased traffic will be manageable. The Exchange also notes that any series added under this expansion would be subject to quote mitigation.⁵ Although the number of classes participating in the Program would increase, that increase would be limited, as described above, and consistent with existing, similar programs on other exchanges. Further, the Exchange does not believe that the proposal will result in a material proliferation of additional series because it is limited to a fixed number of classes.

⁴ See BATS Rule 19.6, Interpretations and Policies .05(a); BATS Rule 29.11(h); CBOE Rules 5.5 and 24.9; NOM Rules Chapter IV, Section 6; Chapter XIV, Section 11; ISE Rules 504 and 2009; and PHLX Rules 1012 and 1101A. NOM and BATS, like NYSE Arca, each began its STOS Program in 2010, with 5-class limits similar to that provided for in Commentary .10(a) to NYSE MKT Rule 903. See Securities Exchange Act Release Nos. 62297 (June 15, 2010), 75 FR 35111 (June 21, 2010) (SR-NASDAQ-2010-073); 62597 (July 29, 2010), 75 FR 47335 (August 5, 2010) (SR-BATS-2010-020).

⁵ See NYSE MKT Rule 970.1NY.

The Exchange also notes its proposed typographical correction to Commentary .10(a) to Rule 903.

The Exchange next proposes to make a non-substantive, technical amendment to Commentary .10(c) to Rule 903, to correct two references to the word “month.” The Exchange proposes to correct each of the two references to read “series” instead of “month.”

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,⁶ in general, and furthers the objectives of Section 6(b)(5),⁷ 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. The Exchange believes that increasing the number of options classes that are eligible to participate in the STOS Program will result in a continuing benefit to investors by giving them more flexibility to closely tailor their investment and hedging decisions to their needs. Further, the Exchange does not believe that the proposal will cause market fragmentation or result in decreased liquidity.

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 not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that the proposal will allow the Exchange to compete more effectively with other options exchanges that have already adopted changes to their STOS Programs that are materially identical to the changes proposed by this filing.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

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 foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not 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 19(b)(3)(A) of the Act⁸ and Rule 19b-4(f)(6) thereunder.⁹

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest in that it will allow NYSE MKT to select option classes that are eligible to participate in the STOS Program in a manner substantially similar to the corresponding rules of other exchanges.¹⁰ In sum, the proposed rule change presents no novel issues, and waiver will allow the Exchange to remain competitive with other exchanges.

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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.

¹⁰ See BATS Rule 19.6, Interpretations and Policies .05(a); BATS Rule 29.11(h); CBOE Rules 5.5 and 24.9; NOM Rules Chapter IV, Section 6, Supplementary Material .07; Chapter XIV, Section 11(h)(1)(i); ISE Rules 504, Supplementary Material .02(a) and 2009, Supplementary Material .01(a); and PHLX Rules 1012, Commentary .11(a) and 1101A(b)(vi)(A). NOM and BATS, like NYSE Arca, each began its STOS Program in 2010, with five-class limits similar to that provided for in Commentary .07 to NYSE Arca Rule 6.4. See Securities Exchange Act Release Nos. 62297 (June 15, 2010), 75 FR 35111 (June 21, 2010) (SR-NASDAQ-2010-073); 62597 (July 29, 2010), 75 FR 47335 (August 5, 2010) (SR-BATS-2010-020).

Therefore, the Commission designates the proposal operative upon filing.¹¹

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)¹² of the Act 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-2013-68 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NYSEMKT-2013-68. 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

¹¹ 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).

¹² 15 U.S.C. 78s(b)(2)(B).

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-2013-68 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.¹³

Kevin M. O'Neill
Deputy Secretary

¹³ 17 CFR 200.30-3(a)(12).