

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-71231; File No. SR-FINRA-2013-055)

January 2, 2014

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Rule 2360 (Options) Position Limits

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 December 23, 2013, Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,³ which renders the proposal effective upon receipt of this filing by the Commission. 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

FINRA is proposing to amend FINRA Rule 2360 (Options) to: (1) specify that position limits for standardized equity options shall be the highest position limit established by an options exchange on which the option trades, which has the effect of eliminating position limits on standardized options on Standard and Poor’s Depository Receipts Trust (“SPY”) and increasing the position limit for standardized options on iShares MSCI Emerging Markets Index Fund

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

(“EEM”) to 500,000 contracts; and (2) increase the position limit for conventional options on EEM to 500,000 contracts.

The text of the proposed rule change is available on FINRA’s website at <http://www.finra.org>, at the principal office of FINRA 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, FINRA 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 these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

FINRA Rule 2360(b)(3)(A) imposes a position limit on the number of equity options contracts in each class on the same side of the market that can be held or written by a member, a person associated with a member, or a customer or a group of customers acting in concert. Position limits are intended to prevent the establishment of options positions that can be used to manipulate or disrupt the underlying market or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position. In addition, position limits serve to reduce the potential for disruption of the options market itself, especially in illiquid options classes. FINRA understands that the Commission, when considering the appropriate level at which to set options position and exercise limits, seeks to prevent investors from disrupting the

market in the security underlying the option.⁴ This consideration has been balanced by the concern that the limits “not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent specialists and market-makers from adequately meeting their obligations to maintain a fair and orderly market.”⁵

Currently, Rule 2360(b)(3)(A) establishes position limits for equity options according to a five-tiered system in which options on more actively traded stocks with larger public floats are subject to higher position limits. Rule 2360 does not specifically govern how a particular equity option falls within one of the tiers. Rather, the position limit established by the rules of an options exchange for a particular equity option is the applicable position limit for purposes of Rule 2360.⁶ Position limits for conventional equity options typically are the same as the limits for standardized equity options for which the underlying security qualifies or would be able to qualify.⁷

Standardized Options

As noted above, Rule 2360 provides that the five-tiered position limits established by the rules of an options exchange governs standardized equity options position limits. However, at times the options exchanges have increased position limits beyond the highest tier (currently

⁴ See Securities Exchange Act Release No. 40969 (January 22, 1999), 64 FR 4911, 4912-4913 (February 1, 1999) (Order Approving File No. SR-CBOE-98-23) (citing H.R. No. IFC-3, 96th Cong., 1st Sess. at 189-91 (Comm. Print 1978)).

⁵ Id. at 4913.

⁶ See CBOE Rule 4.11; ISE Rule 412; NASDAQ OMX PHLX Rule 1001; NYSE Amex Rule 904; NYSE Arca Rule 6.8; BOX Rule 3120 and IM-3120-2; Nasdaq Chapter III, Section 7; BX Chapter III, Section 7; and BATS Rule 18.7.

⁷ See Rule 2360(b)(3)(A)(viii). Standardized equity option contracts on the same side of the market overlying the same security are not aggregated with conventional equity option contracts or FLEX Equity Option contracts.

250,000 contracts) for certain exchange-traded funds (“ETF”) options. For example, the options exchanges raised the position limit for standardized options on ’SPY [sic] options to 900,000 contracts.⁸ In response, FINRA filed a corresponding rule change.⁹ Recently, the options exchanges amended position limits again to eliminate the position limit for standardized SPY options¹⁰ and raise the position limit for standardized EEM options.¹¹ Instead of continuing to

⁸ See the options exchanges’ filings to increase the position limits on SPY options to 900,000 contracts in Securities Exchange Act Release No. 64695 (June 17, 2011), 76 FR 36942 (June 23, 2011) (Order Approving File No. SR-Phlx-2011-58); Securities Exchange Act Release No. 64760 (June 28, 2011), 76 FR 39143 (July 5, 2011) (Notice of Filing and Immediate Effectiveness of File No. SR-ISE-2011-34); Securities Exchange Act Release No. 64928 (July 20, 2011), 76 FR 44633 (July 26, 2011) (Notice of Filing and Immediate Effectiveness of File No. SR-CBOE-2011-065); Securities Exchange Act Release No. 64966 (July 26, 2011), 76 FR 45899 (August 1, 2011) (Notice of Filing and Immediate Effectiveness of File No. SR-NYSEAmex-2011-50); and Securities Exchange Act Release No. 64945 (July 21, 2011), 76 FR 44969 (July 27, 2011) (Notice of Filing and Immediate Effectiveness of File No. SR-NYSEArca-2011-47).

⁹ See Securities Exchange Act Release No. 65086 (August 10, 2011), 76 FR 50796 (August 16, 2011) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Increase the Position Limit for Options on the Standard and Poor’s Depository Receipts Trust; File No. SR-FINRA-2011-036).

¹⁰ See the options exchanges’ filings to eliminate position limits on SPY options on a pilot basis in Securities Exchange Act Release No. 67672 (August 15, 2012), 77 FR 50750 (August 22, 2012) (Order Approving File No. SR-NYSEAmex-2012-29); Securities Exchange Act Release No. 67937 (September 27, 2012), 77 FR 60489 (October 3, 2012) (Notice of Filing and Immediate Effectiveness of File No. SR-CBOE-2012-091); Securities Exchange Act Release No. 67999 (October 5, 2012), 77 FR 62295 (October 12, 2012) (Notice of Filing and Immediate Effectiveness of File No. SR-Phlx-2012-122); Securities Exchange Act Release No. 68000 (October 5, 2012), 77 FR 62300 (October 12, 2012) (Notice of Filing and Immediate Effectiveness of File No. SR-ISE-2012-81); Securities Exchange Act Release No. 68001 (October 5, 2012), 77 FR 62303 (October 12, 2012) (Notice of Filing and Immediate Effectiveness of File No. SR-NYSEArca-2012-112); and Securities Exchange Act Release No. 67936 (September 27, 2012), 77 FR 60491 (October 3, 2012) (Notice of Filing of File No. SR-BOX-2012-013). NYSE MKT, CBOE and PHLX recently have extended their pilot programs. See Securities Exchange Act Release No. 70734 (October 22, 2013), 78 FR 64255 (October 28, 2013) (Notice of Filing and Immediate Effectiveness of File No. SR-NYSEMKT-2013-83); Securities Exchange Act Release No. 70878 (November 14, 2013), 78 FR 69737 (November 20, 2013) (Notice of Filing and Immediate Effectiveness of File No. SR-CBOE-2013-106); and Securities Exchange Act Release No. 70879 (November 14, 2013), 78 FR 69731

file separate proposed rule changes to harmonize the FINRA provision regarding position limits for such standardized equity options with those of the options exchanges, FINRA proposes to amend Rule 2360(b)(3)(A) (and re-number it as Rule 2360(b)(3)(A)(i)) to eliminate reference to the specific five tiers and in their place specify that a member shall not hold or control or be obligated in respect of an aggregate standardized equity options position in excess of the highest position limit established by an exchange on which the option trades.¹² As a result, under the proposed rule change, the position limits for standardized options on EEM would be 500,000 contracts and there would be no position limit for standardized options on SPY consistent with the options exchange provisions.

The proposed rule change would allow members to immediately take advantage of any increased standardized equity option position limit that may be set by an options exchange as

(November 20, 2013) (Notice of Filing and Immediate Effectiveness of File No. SR-Phlx-2013-108).

¹¹ See the options exchanges' filings to increase the position limits on EEM options to 500,000 contracts in Securities Exchange Act Release No. 68086 (October 23, 2012), 77 FR 65600 (October 29, 2012) (Order Approving File No. SR-CBOE-2012-066); Securities Exchange Act Release No. 68293 (November 27, 2012), 77 FR 71644 (December 3, 2012) (Notice of Filing and Immediate Effectiveness of File No. SR-Phlx-2012-132); Securities Exchange Act Release No. 68398 (December 11, 2012), 77 FR 74700 (December 17, 2012) (Notice of Filing and Immediate Effectiveness of File No. SR-ISE-2012-93); Securities Exchange Act Release No. 68359 (December 5, 2012), 77 FR 73716 (December 11, 2012) (Notice of Filing and Immediate Effectiveness of File No. SR-NYSEArca-2012-132); Securities Exchange Act Release No. 68358 (December 5, 2012), 77 FR 73708 (December 11, 2012) (Notice of Filing and Immediate Effectiveness of File No. SR-NYSEMKT-2012-71); and Securities Exchange Act Release No. 68478 (December 19, 2012), 77 FR 76132 (December 26, 2012) (Notice of Filing and Immediate Effectiveness of SR-BOX-2012-023).

¹² Rule 2360(b)(4) sets forth exercise limits through incorporating by reference options position limits under the rule. Accordingly, although the proposed rule change would not amend the text of Rule 2360(b)(4), the proposed rule change also would correspondingly raise exercise limits on the applicable standardized equity option.

approved by the SEC without waiting for FINRA to file a corresponding rule change.¹³ The proposed rule change is consistent with FINRA's provision regarding position limits on index options, which incorporates the position limits as set by the options exchange on which the index option trades.¹⁴

Conventional Options

As noted above, currently position limits for conventional options are the same as the limits for standardized options for which the underlying security qualifies or would be able to qualify.¹⁵ FINRA proposes to maintain this structure for purposes of securities that have position limits within the five-tiers (i.e., up to the 250,000 contract position limit). Accordingly, FINRA proposes to amend Rule 2360(b)(3)(A)(viii) (and re-number it as Rule 2360(b)(3)(A)(iii)) to provide that conventional equity options shall be subject to a basic position limit of 25,000 contracts or a higher tier for conventional option contracts on securities that underlie exchange-traded options qualifying for such higher tier as determined by the rules of the options exchanges. In addition, for options on securities that have higher position limits – currently, only the ETFs listed in Supplementary Material .03 – FINRA proposes to incorporate such position limits for conventional options on ETFs into the body of the text. At this time, FINRA also proposes to conform to the options exchanges' recent amendments that increased

¹³ With respect to future potential increases for position limits by an options exchange, FINRA members would be able to take advantage of any increased position limit subject to the rules of any other options exchange of which such FINRA member may also be a member. For example, if CBOE increases the position limit on XYZ options to 300,000 contracts (from 250,000 contracts), then any CBOE and FINRA member (or a FINRA-only member) would be entitled to use the higher limit. However, if the FINRA member is also a member of the ISE and the ISE has not yet raised the position limit on XYZ options, such member would be bound by the lower ISE position limit.

¹⁴ See Rule 2360(b)(3)(B).

¹⁵ See note 7.

the position limit to 500,000 contracts for standardized options on EEM by increasing the position limit applicable to conventional options on EEM to 500,000 contracts.¹⁶

In support of the increased position limit on conventional EEM options, below are the trading statistics comparing EEM to IWM and SPY. As shown in the following table, the average daily volume in 2012 for EEM was 49.4 million shares compared to 45.7 million shares for IWM and 143.3 million shares for SPY. The total shares outstanding for EEM were 911.7 million compared to 243.7 million shares for IWM and 837.5 million shares for SPY. Further, the fund market cap for EEM was \$34.1 billion compared to \$24.6 billion for IWM and \$137.2 billion for SPY.

ETF	2012 ADV (mil. shares)	2012 ADV (option contracts)	Shares Outstanding (Mil.)	Fund Market Cap (\$bil)
EEM	49.4	256,453	911.7	34.1
IWM	45.7	498,102	243.7	24.6
SPY	143.3	2,342,942	837.5	137.2

In further support of this proposal, as noted by CBOE, EEM tracks the performance of the MSCI Emerging Markets Index, which has approximately 800 component securities.¹⁷ As noted on MSCI's website: "[t]he MSCI Emerging Markets Index is a free float-adjusted market capitalization index that is designed to measure equity market performance of emerging markets.

¹⁶ See note 11.

¹⁷ See http://us.ishares.com/product_info/fund/overview/EEM.htm and http://www.msci.com/products/indices/licensing/msci_emerging_markets/. Identification of the specific securities in the MSCI Emerging Markets Index and their individual concentrations in the MSCI Emerging Markets Index can be accessed at: http://us.ishares.com/product_info/fund/holdings/EEM.htm.

The MSCI Emerging Markets Index consists of the following 21 emerging market country indices: Brazil, Chile, China, Colombia, Czech Republic, Egypt, Greece, Hungary, India, Indonesia, Korea, Malaysia, Mexico, Peru, Philippines, Poland, Russia, South Africa, Taiwan, Thailand, and Turkey.”¹⁸ CBOE, in its filing, indicated that EEM still qualifies for the initial listing criteria set forth in CBOE Rule 5.3.06(v) and that more than 50% of the weight of the securities held by EEM are subject to a comprehensive surveillance agreement (“CSA”).¹⁹ In addition, CBOE further notes that the component securities of the MSCI Emerging Markets Index on which EEM is based for which the primary market is in any one country that is not subject to a CSA do not represent 20% or more of the weight of the MSCI Emerging Markets Index.²⁰ Finally, the component securities of the MSCI Emerging Markets Index on which EEM is based for which the primary market is in any two countries that are not subject to CSAs do not represent 33% or more of the weight of the MSCI Emerging Markets Index.²¹

FINRA believes that the liquidity in the underlying ETF and the liquidity in EEM options support its request to increase the position limits for conventional EEM options as similar to the standardized EEM options. Through November 29, 2013, the year-to-date average daily trading volume in the ETF for EEM across all exchanges was 62 million shares. The year-to-date average daily trading for EEM options across all exchanges was 327,347 contracts.

FINRA believes that increasing position limits for EEM conventional options will lead to a more liquid and competitive market environment for EEM options that will benefit customers interested in this product.

¹⁸ See <http://www.msci.com/products/indices/tools/index.html#EM>.

¹⁹ See note 11.

²⁰ See note 11.

²¹ See note 11.

Surveillance and Reporting

Further, FINRA believes that the modified position limits provisions are appropriate in light of the existing surveillance procedures and reporting requirements at FINRA,²² the options exchanges, and at the several clearing firms, which are capable of properly identifying unusual or illegal trading activity. These procedures use daily monitoring of market movements by automated surveillance techniques to identify unusual activity in both options and underlying stocks.²³

In addition, large stock holdings must be disclosed to the Commission by way of Schedules 13D or 13G.²⁴ Options positions are part of any reportable positions and cannot legally be hidden. Moreover, the previously noted Rule 2360(b)(5) requirement that members must file reports with FINRA for any customer that held aggregate large long or short positions of any single class for the previous day will continue to serve as an important part of FINRA's surveillance efforts.

Finally, FINRA believes that the current financial requirements imposed by FINRA and by the Commission adequately address financial responsibility concerns that a member or its customer will maintain an inordinately large unhedged position in any option with a higher position limit. Current margin and risk-based haircut methodologies serve to limit the size of positions maintained by any one account by increasing the margin or capital that a member must maintain for a large position. Under Rule 4210(f)(8)(A), FINRA also may impose a higher margin requirement upon a member when FINRA determines a higher requirement is warranted.

²² See Rule 2360(b)(5) for the options reporting requirements.

²³ These procedures have been effective for the surveillance of options trading and will continue to be employed.

²⁴ 17 CFR 240.13d-1.

In addition, the Commission's net capital rule²⁵ imposes a capital charge on members to the extent of any margin deficiency resulting from the higher margin requirement.

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so FINRA can implement the proposed rule change immediately.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,²⁶ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change promotes consistent regulation by harmonizing position limits on standardized equity options with those of the other self-regulatory organizations. FINRA further believes that increasing the position limit on conventional EEM options promotes consistent regulation by harmonizing the position limit with its standardized counterpart. In addition, FINRA believes the proposed rule change will be beneficial to large market makers and institutions (which generally have the greatest ability to provide liquidity and depth in products that may be subject to higher position limits as has been the case with recently approved increased position limits²⁷), as well as retail traders, investors and public customers, by providing them with a more effective trading and hedging vehicle.

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

²⁵ 17 CFR 240.15c3-1.

²⁶ 15 U.S.C. 78o-3(b)(6).

²⁷ See notes 10 and 11.

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. As noted above, the proposed rule change would amend Rule 2360 to harmonize FINRA's position limits on standardized options with those of the options exchange (which are subject to approval by the SEC), and to harmonize position limits for conventional EEM options with the position limit for standardized EEM options.²⁸ Under the current rule, broker-dealers that are members of FINRA remain subject to the lower FINRA specified contract position limit and may not avail themselves of the higher position limit as set by an options exchange until FINRA can file a corresponding change. FINRA believes that the proposed rule change promotes consistent regulation by harmonizing standardized equity option position limits with those of the options exchanges and by harmonizing conventional EEM options position limits with their standardized counterpart. FINRA believes that setting consistent position limits for standardized options does not result in any burden on competition and would allow market participants to compete equally regardless of membership with an options exchange. Likewise, FINRA believes that harmonizing position limits for conventional EEM options does not result in any burden on competition and would allow market participants in the conventional EEM options market to compete effectively with participants using the standardized counterpart.

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

Written comments were neither solicited nor received.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition;

²⁸ See notes 10 and 11.

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 19(b)(3)(A) of the Act²⁹ and Rule 19b-4(f)(6) thereunder.³⁰

A proposed rule change filed under Rule 19b-4(f)(6)³¹ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),³² the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. FINRA has asked the Commission to waive the 30-day operative delay so that FINRA may immediately harmonize position limits with those of other self-regulatory organizations to ensure consistent regulation for the protection of investors and the public interest. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.³³

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

²⁹ 15 U.S.C. 78s(b)(3)(A).

³⁰ 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. FINRA has satisfied this requirement.

³¹ 17 CFR 240.19b-4(f)(6).

³² 17 CFR 240.19b-4(f)(6)(iii).

³³ 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).

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-FINRA-2013-055 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-FINRA-2013-055. 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 FINRA. 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-FINRA-2013-055 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.³⁴

Kevin M. O'Neill
Deputy Secretary

³⁴ 17 CFR 200.30-3(a)(12).