

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-60365; File No. 4-443)

July 22, 2009

Joint Industry Plan; Notice of Filing of Amendment No. 3 to the Plan for the Purpose of Developing and Implementing Procedures Designed to Facilitate the Listing and Trading of Standardized Options

I. Introduction

On June 30, 2009, June 16, 2009, June 12, 2009, June 22, 2009, June 12, 2009, June 18, 2009, June 23, 2009, July 8, 2009, the Chicago Board Options Exchange, Incorporated (“CBOE”), International Securities Exchange, LLC (“ISE”), NASDAQ Stock Market LLC (“NASDAQ”), NASDAQ OMX BX, Inc. (“BX”), NASDAQ OMX PHLX (“Phlx”), NYSE Amex LLC (“NYSE Amex”), NYSE Arca Inc. (“NYSE Arca”), and The Options Clearing Corporation (“OCC”), respectively, filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 11A of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 608 thereunder,<sup>2</sup> Amendment No. 3 to the Plan for the Purpose of Developing and Implementing Procedures Designed to Facilitate the Listing and Trading of Standardized Options (“Plan” or “OLPP”).<sup>3</sup> The amendment would apply uniform objective standards to the range of options series exercise (or strike) prices

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<sup>1</sup> 15 U.S.C. 78k-1.

<sup>2</sup> 17 CFR 242.608.

<sup>3</sup> On July 6, 2001, the Commission approved the OLPP, which was originally proposed by the American Stock Exchange LLC (k/n/a NYSE Amex), CBOE, ISE, OCC, Philadelphia Stock Exchange, Inc. (k/n/a Phlx), and Pacific Exchange, Inc. (k/n/a NYSE Arca). See Securities Exchange Act Release No. 44521, 66 FR 36809 (July 13, 2001). On February 5, 2004, the Boston Stock Exchange, Inc. (k/n/a BX) was added as a sponsor to the OLPP. See Securities Exchange Act Release No. 49199, 69 FR 7030 (February 12, 2004). On March 21, 2008, NASDAQ was added as a sponsor to the OLPP. See Securities Exchange Act Release No. 57546 (March 21, 2008), 73 FR 16393 (March 27, 2008).

available for trading on the Plan Sponsor exchanges. This notice solicits comment on Amendment No. 3 from interested persons.

## II. Description of the Proposed Amendment

Amendment No. 3 proposes to apply uniform objective standards to the range of options series exercise (or strike) prices available for trading on the Plan Sponsor exchanges as a quote mitigation strategy.<sup>4</sup> According to the Plan Sponsors, by agreeing to uniform standards, the Plan Sponsor exchanges intend to reduce the overall number of option series available for trading, which will in turn lessen the rate of increase in quote traffic.

Specifically, the proposal applies certain “range limitations” to the addition of new series strike prices for options classes overlying equity securities, Exchange Traded Fund Shares, or Trust Issued Receipts. As proposed, if the price of the underlying security is less than or equal to \$20, the Series Selecting Exchange would not list new option series with an exercise price more than 100 percent above or below the price of the underlying security.<sup>5</sup> If the price of the underlying security is greater than \$20, the Series Selecting Exchange would not list new option series with an exercise price more than 50 percent above or below the price of the underlying security.

The proposal provides for an objective basis upon which the underlying prices for the price range limitations described above shall be determined, specifically, in regards to intra-day add-on series and next-day series additions, new expiration months and for option series to be added as a result of pre-market trading. Furthermore, 8 a.m. Chicago

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<sup>4</sup> CBOE, ISE, NASDAQ, BX, Phlx, NYSE Amex, and OCC have represented that the Penny Pilot Program has resulted in an explosion of quote traffic.

<sup>5</sup> This restriction would not prohibit the listing of at least three options series per expiration month in an option class.

time is proposed as the earliest permissible time at which a Series Selecting Exchange may notify the OCC, and each other exchange also trading the same options class, that it has commenced trading new series as a result of pre-market trading. This earliest permissible time is established to ensure that outlier prices for the underlying security which occur at 6 a.m. Chicago time, for example (i.e., well in advance of the opening of the standard trading session), are not relied upon for purposes of the exercise price range limitations.

Example: XYZ closes on Tuesday at \$20, but trades in the evening aftermarket trading session from a range of \$35 – \$40 on speculation of a merger. At 8:15 a.m. Chicago time the next day (Wednesday), the exchanges wish to list additional series, for trading that day, with strike prices that reflect the anticipated price increase in XYZ relative to the previous trading day. There is no official high/low price since the market has not yet opened for trading for Wednesday, so the exchanges use the most recent pre-open trade price of \$40. The exchanges could therefore add series with strike prices from \$20 – \$60 based upon the proposed exercise price range limitations.

As of 2 p.m. Chicago time during the Wednesday standard trading session XYZ has traded from a range of a low price of \$40 to a high price of \$45. An exchange wishes to add additional series during the standard trading session (“intra-day add-on series”). According to the proposed exercise price range limitations the exchanges may list series with strike prices between \$20 and \$67.50 (i.e.,  $\$40 - (40 \times .50)$  and  $\$45 + (45 \times .50)$ ). Note that the exchanges were

already able to list series with strike prices as low as \$20 based upon the pre-open determinations).

As of the 3 p.m. Chicago time close on Wednesday XYZ hit a low price of \$35 and a high price of \$50 during Wednesday's standard trading session. The exchanges wish to add additional series for trading the following day (Thursday) ("next-day series additions"). According to the proposed exercise price range limitations, the exchanges may list additional series with strikes between \$17.50 – \$75 (i.e.,  $\$35 - (35 \times .50)$  and  $\$50 + (50 \times .50)$ ). The exchanges also wish to add XYZ series the following Monday to replace the series expiring this Friday ("new expiration months"), and would use this same range (\$17.50 - \$75) for those additional series.

The proposal also allows each Plan Sponsor exchange to designate up to five underlying securities to except from the aforementioned 50 percent restriction and instead apply the 100 percent restriction. These designations would be made on an annual basis and cannot be removed during the calendar year unless the option class is delisted by the designating exchange, in which case the designating exchange may designate another class to replace the delisted class. If a designated class is delisted by the designating exchange but continues to trade on at least one other exchange, any additional series for the class which are added from that point forward would again be subject to the proposed exercise price range limitations, unless the class is subsequently designated by another exchange. The proposal also provides an exchange with a procedure to request, if conditions warrant, additional case-by-case exceptions even when it has already so designated five underlying securities.

In addition, a procedure is created for a Series Listing Exchange to request an exemption, on a case-by-case basis, from the 100 percent range limitation, whereby, if unanimously agreed upon by all exchanges that list the particular options class, the Series Listing Exchange may list options series with strike prices that are more than 100 percent above or below the price of the underlying security.<sup>6</sup>

Example: Exchange E has designated ABC as one of its five classes for which the 100 percent exercise price range limitations shall apply despite ABC's price exceeding \$20. ABC hit a low price of \$25 and a high price of \$30 during the standard trading session as of the 3 p.m. Chicago time market close on Wednesday. The exchanges are considering next-day series additions for Thursday's opening, and, according to the proposed exercise price range limitations, may list additional series with strikes ranging from \$0 – \$60. However, Exchange E believes that \$60 as the high strike available to add will be insufficient to allow for adequate customer demand should ABC's price fluctuate to the high side.<sup>7</sup> Exchange E requests an exemption from the 100% range limitation for the purpose of adding strikes beyond \$60 beginning on Thursday. If all exchanges that trade ABC unanimously consent then Exchange E, and all other exchanges that list ABC, may exceed the \$60 upper strike price limitation when adding new series. If unanimous consent is not given then all exchanges will be limited to the 100 percent exercise price range limitations. The exchanges may

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<sup>6</sup> Application of any of the aforementioned exceptions and/or exemptions to the strike price range limitations for an underlying security would be available to all exchanges listing options on such security.

<sup>7</sup> This belief could be based upon an expected announcement by ABC during the after or premarket hours or an impending announcement which would directly impact ABC's industry.

add strikes beyond \$60 to all existing series months at the time of consent. They may also add strikes beyond \$60 in the series month that will be created at the next standard expiration after consent is provided, and if appropriate, any non-standard expiration that occurs prior to the standard expiration.

The proposal would not allow for the listing of options series that would otherwise be prohibited by the rules of a Series Selecting Exchange or the Plan, nor does it restrict the ability of an exchange to list options series that have been properly listed by another exchange. The proposal also expressly eliminates the applicability of the strike price range limitations with regard to: (1) the listing of \$1 strike prices in option classes participating in the \$1 Strike Program, where instead, the Series Selecting Exchange shall be permitted to list \$1 strike prices to the fullest extent as permitted under its rules for the \$1 Strike Program; and (2) the listing of series of Flexible Exchange Options.

The Commission directed the then-current options exchanges to act jointly to develop strategies to address overall capacity concerns in an Order dated September 8, 1999, as confirmed in a letter from the Director of the Division of Market Regulation dated September 13, 2000. According to the Plan Sponsors, this amendment is an additional strategy to meet this goal. According to one study cited by the Plan Sponsor exchanges, the options industry would expect an approximate four percent reduction in the number of series traded, with only a nominal reduction in trading volume, upon implementation of the changes proposed in this amendment.

### III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether proposed Amendment No. 3 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](mailto:rule-comments@sec.gov). Please include File Number 4-443 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 4-443. 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 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 inspection and copying 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

will also be available for inspection and copying at principal offices of the exchanges. 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 4-443 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.<sup>8</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>8</sup> 17 CFR 200.30-3(a)(12).