

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-95387; File No. SR-NYSEAMER-2022-33)

July 28, 2022

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 903

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that on July 21, 2022, NYSE American LLC (“NYSE American” or the “Exchange”) 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 to [sic] amend Rule 903 (Series of Options Open for Trading), Commentary .10 regarding the Short Term Option Series Program. 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 903 (Series of Options Open for Trading). Specifically, the Exchange proposes to amend Commentary .10 to Rule 903 to account for conflicts between different provisions within the Short Term Option Series (“STOS”) rule. The Exchange notes that this proposal is substantively identical to the strike interval proposal recently submitted by Nasdaq ISE, LLC (“Nasdaq ISE”) and approved by the Securities and Exchange Commission (“Commission”).⁴

In 2021, the Exchange amended Rule 903, Commentary .10 (“Commentary .10”) to limit the intervals between strikes in equity options listed as part of the Short Term Option Series Program (the “STOS Program”), excluding Exchange-Traded Fund Shares⁵ and Section 107 Securities,⁶ that have an expiration date more than twenty-one days from the listing date (“Strike

⁴ See Securities Exchange Act Release No. 95085 (June 10, 2022), 87 FR 36353 (June 16, 2022) (SR-ISE-2022-10) (approval order) (“ISE Strike Interval Clarification”). The Exchange notes that the rule change set forth in the ISE Strike Interval Clarification will be implemented on August 1, 2022.

⁵ The term Exchange-Traded Fund Shares includes Exchange-listed securities representing interests in open-end unit investment trusts or open-end management investment companies that hold securities (including fixed income securities) based on an index or a portfolio of securities. See Rule 900.2NY(24).

⁶ The term Section 107 Securities is the collective definition for the following securities: “Index-Linked Securities”, “Commodity-Linked Securities”, “Currency-Linked Securities”, “Fixed Income-Linked Securities”, “Futures-Linked Securities”, and “Combination-Linked Securities”. See Sections 107D, 107E, 107F, 107G, 107H and 107I of the Company Guide.

Interval Proposal”).⁷ The Strike Interval Proposal adopted a new paragraph (e) to Commentary .10 that included a table intended to specify the applicable strike intervals for STOS in equity options, excluding Exchange-Traded Fund Shares and Section 107 Securities, which have an expiration date more than twenty-one days from the listing date. The newly adopted Commentary .10(e) was intended to establish strike intervals that would supersede those set forth in Commentary .10(d).⁸ The Strike Interval Proposal was designed to reduce the density of strike intervals that would be listed in later weeks, within the STOS Program, by utilizing limitations for intervals between strikes which have an expiration date more than twenty-one days from the listing date.

At this time, the Exchange proposes to amend Commentary .10(e), and delete note 4 thereto, to alleviate any ambiguity regarding the appropriate strike interval per Commentary .10 (i.e., whether to apply paragraph (d) or (e) of Commentary .10).

Currently, the table within Commentary .10(e) is as follows:⁹

⁷ See Securities Exchange Act Release No. 92336 (July 7, 2021) 86 FR 36827 (July 13, 2021) (SR-NYSEAMER-2021-32) (immediately effective Strike Interval Proposal to limit STOS Intervals between strikes).

⁸ See Rule 903, Commentary .10(d) (providing in relevant part that “[t]he strike price interval for Short Term Option Series may be \$0.50 or greater for option classes that trade in \$1 strike price intervals and are in the Short Term Option Series Program. If the class does not trade in \$1 strike price intervals, the strike price interval for Short Term Option Series may be (i) \$0.50 or greater where the strike price is less than \$100; (ii) \$1.00 or greater where the strike price is between \$100 and \$150; or (iii) \$2.50 or greater for strike prices greater than \$150.”).

⁹ See Rule 903, Commentary .10(e), note 1 (describing the Share Price); note 2 (describing the Average Daily Volume or “ADV”); and note 3 (providing that newly-listed options will not be subject to subparagraph (e) until after the end of the first full calendar quarter following the date the option class was first listed for trading on any options market).

Tier	Average Daily Volume	Share Price				
		Less than \$25	\$25 to less than \$75	\$75 to less than \$150	\$150 to less than \$500	\$500 or greater
1	Greater than 5,000	\$0.50	\$1.00	\$1.00	\$5.00	\$5.00
2	Greater than 1,000 to 5,000	\$1.00	\$1.00	\$1.00	\$5.00	\$10.00
3	0 to 1,000	\$2.50	\$5.00	\$5.00	\$5.00	\$10.00

The first sentence of Commentary .10(e) provides that “[n]otwithstanding subparagraph (d) above, when Short Term Option Series in equity options (excluding options on Exchange-Traded Fund Shares and Section 107 Securities) have an expiration more than 21 days from the listing date, the strike interval for each option class will be based on the table below.”

To alleviate ambiguity, the Exchange proposes to delete the first clause of Commentary .10(e) (i.e., to delete “Notwithstanding subparagraph (d)”), and to add language specifying that the strike intervals in Commentary .10(e) would apply. Specifically, proposed Commentary .10(e) would provide that “[w]hen Short Term Option Series in equity options (excluding options on Exchange-Traded Fund Shares and Section 107 Securities) have an expiration more than 21 days from the listing date, the table below, *which specifies the applicable interval for listing, will apply*” (emphasis supplied). The Exchange proposes to add the phrase “which specifies the applicable interval for listing” to make clear that the table within Commentary .10(e), which provides for the listing of intervals based on certain parameters (i.e., average daily volume and share price) dictates the permitted intervals, unless Commentary .10(d) specifically provides for

a greater interval (as described below).

To add further clarity, the Exchange proposes to add a new sentence within Commentary .10(e), which would state that “[t]o the extent there is a conflict between applying Commentary .10(d) and the below table, the greater interval would apply.” Today, there are instances where a conflict is presented as between the application of the table within Commentary .10(e) and the rule text within Commentary .10(d) with respect to the correct interval. Adding the proposed sentence would make clear to ATP Holders the applicable intervals where there is a conflict between the rule text within subparagraph (e) and the rule text within subparagraph (d), thereby providing certainty as to the outcome. Specifically, subparagraph (d) would govern only in the event that the strike interval would be greater. Should subparagraph (d) provide for a lesser strike interval, it would not apply (and subparagraph (e) would apply). The following examples are designed to illustrate this point.

Example 1: Assume a Tier 1 stock that closed on the last day of Q1 with a quarterly share price higher than \$75 but less than \$150. Therefore, utilizing the table within Commentary .10(e), the interval would be \$1.00 for strikes added during Q2 even for strikes above \$150. Next, assume during Q2 the share price rises above \$150. Utilizing only the table within Commentary .10(e), the interval would be \$1.00 even though the stock is now trading above \$150 because the Share Price for purposes of Commentary .10(e) was calculated utilizing data from the prior calendar quarter. However, a separate rule, Commentary .10(d), provides that the Exchange may list a STOS at \$2.50 intervals where the strike price is above \$150. In other words, there is a potential conflict between the permitted strike intervals above \$150. In this example, Commentary .10(e) would specify a \$1.00 interval whereas Commentary .10(d) would specify a \$2.50 interval. As proposed, the Exchange proposes to apply the greater interval. The

greater interval would then be \$2.50 as per Commentary .10(d) in this scenario. Therefore, the following strikes would be eligible to list: \$152.5 and \$157.5. For strikes less than \$150, the following strikes would be eligible to list: \$149 and \$148 because STOS with expiration dates more than 21 days from the listing date as well as STOS with expiration dates less than 21 days from the listing date would both be eligible to list \$1 intervals pursuant to paragraphs (d) and (e) to Commentary .10.

Example 2: Assume a Tier 2 stock that closed on the last day of Q1 with a quarterly share price less than \$25. Therefore, utilizing the table within Commentary .10(e), the interval would be \$1.00 for strikes added during Q2 even for strikes above \$25. Next, assume during Q2 the share price rises above \$100. Utilizing only the table within Commentary .10(e), the interval would be \$1.00 even though the stock is now trading above \$100 because the Share Price for purposes of Commentary .10(e), was calculated utilizing data from the prior calendar quarter. However, Commentary .10(d), provides that the Exchange may list a STOS at \$1.00 intervals where the strike price is above \$100. As proposed, the Exchange would apply the greater interval, however, the \$1.00 interval is the same in both cases in this scenario and therefore there is no conflict. Now assume during the quarter the price rose above \$150. Utilizing only the table within Commentary .10(e), the interval would continue to be \$1.00 because the Share Price relied on data from the prior calendar quarter, however, pursuant to Commentary .10(d), the interval would be \$2.50 for strike prices above \$150. The greater interval would then be \$2.50 as per Commentary .10(d) in this scenario.

Example 3: Assume a Tier 3 stock that closed on the last day of Q1 with a quarterly share price less than \$25. Therefore, utilizing the table within Commentary .10(e), the interval would be \$2.50 for strikes added during Q2 even for strikes above \$25. Next, assume during Q2

the share price rises above \$100. Utilizing only the table within Commentary .10(e), the interval would be \$2.50 even though the stock was trading above \$100 because the Share Price for purposes of Commentary .10(e), was calculated utilizing data from the prior calendar quarter. However, Commentary .10(d) provides that the Exchange may list a STOS at \$1.00 intervals where the strike price is above \$100. The greater interval would then be \$2.50 as per the table in Commentary .10(e) in this scenario.

In addition, the Exchange proposes to delete the last sentence of the first paragraph of Commentary .10(e), which states that “[t]he below table indicates the applicable strike intervals and supersedes subparagraph (d) above, which permits additional series to be opened for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the market price of the underlying security moves substantially from the exercise price or prices of the series already opened.” The Exchange believes the reference to Commentary .10(d) is an error as Commentary .10(c) (not subparagraph (d)) describes adding series of options in the STOS Program.¹⁰ The table within Commentary .10(e) impacts permissible strike intervals. Because there should be no conflict between strike intervals set forth

¹⁰ As discussed herein, Commentary .10(d) relates to Strike Intervals, whereas Commentary .10(c), regarding “Additional Series,” provides that “[i]f the Exchange opens less than thirty (30) Short Term Option Series for a Short Term Option Expiration Date, additional series may be opened for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the market price of the underlying security moves substantially from the exercise price or prices of the series already opened.” The language of the filing indicates the intent to (correctly) refer to Commentary .10(c). See Strike Interval Proposal, 86 FR at 36829 (providing that the table in Commentary .10(e), “indicates the applicable strike intervals and supersedes Rule 903, *Commentary .10 (c)*, which currently permits 10 additional series to be opened for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the market price of the underlying security moves substantially from the exercise price or prices of the series already opened.”) (emphasis supplied).

in Commentary .10(e) and details about adding option series set forth in Commentary .10(c) (albeit erroneously referred to as Commentary .10(d)), the Exchange believes that deleting this reference will avoid potential confusion.

Finally, consistent with the foregoing, the Exchange proposes to delete note 4 to the table in Commentary .10(e), which provides that “[n]otwithstanding the limitations imposed by this subparagraph (e), this subparagraph (e) does not amend the range of strikes for Short Term Option Series that may be listed pursuant to subparagraph (d) above,” which deletion would add clarity and consistency to Commentary .10 and limit the potential for confusion or ambiguity. In addition, the Exchange believes this sentence is unnecessary given the foregoing changes that propose to clarify the circumstances when either subparagraph (e) or subparagraph (d) applies to strike intervals.

Implementation

The Exchange proposes to implement this rule change on August 1, 2022, consistent with the date of ISE’s rule change per the ISE Strike Interval Clarification.¹¹ The Exchange will issue a Trader Update to notify ATP Holders of the implementation date.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.¹² Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹³ requirements that the rules of an exchange be designed to

¹¹ See ISE Strike Interval Clarification, supra note 4.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule maintains the goal of the Strike Interval Proposal and continues to limit the intervals between strikes listed in the STOS Program that have an expiration date more than twenty-one days.¹⁴

The Exchange's proposal to add clarifying language to the first sentence of Commentary .10(e), is consistent with the Act because it will make clear that the only permitted intervals are as specified in the table within Commentary .10(e), except in the case where Commentary .10(d) provides for a greater interval. This amendment will bring greater transparency to the rule.

Adopting a new sentence within Commentary .10(e) to address a potential conflict between provisions in the STOS rule, specifically as between the application of the table within Commentary .10(e) and the rule text within Commentary .10(d), with respect to the correct interval is consistent with the Act. Proposed Commentary .10(e) will make clear to ATP Holders the applicable intervals when there is a conflict between the rule text within Commentary .10(e) and the rule text within Commentary .10(d), thereby providing certainty as to the outcome. Further, the proposed new rule text promotes just and equitable principles of trade by adding transparency to the manner in which the Exchange implements its listing rules, and protects investors and the general public by removing uncertainty.

The Exchange believes that deleting the last sentence of the first paragraph of Commentary .10(e) is consistent with the Act. The table within Commentary .10(e) supersedes

¹⁴ 15 U.S.C. 78f(b)(5).

other rules pertaining to strike intervals, but the table does [sic] is not intended to supersede (or conflict with) rules governing the addition of options series, per Commentary .10(c). Therefore, deleting the (erroneous) reference to Commentary .10(d) in proposed Commentary .10(e) will avoid confusion regarding the application of each paragraph, which clarity would protect investors and the general public.

Removing note 4 to the table in Commentary .10(e) is consistent with the Act because while the range limitations continue to be applicable, the strike ranges do not conflict with strike intervals, rendering the sentence unnecessary and potentially confusing. Also, the proposed rule text within Commentary .10(e) otherwise indicates when Commentary .10(d) would apply.

As noted here, the Strike Interval Proposal was designed to reduce the density of strike intervals that would be listed in later weeks, within the STOS Program, by utilizing limitations for intervals between strikes which have an expiration date more than twenty-one days from the listing date. The Exchange's proposal furthers this goal as it intends to continue to remove certain strike intervals where there exist clusters of strikes whose characteristics closely resemble one another and, therefore, do not serve different trading needs, rendering these strikes less useful.¹⁵

Also, the Strike Interval Proposal will continue to reduce the number of strikes listed on the Exchange, allowing Lead Market Makers and Market Makers to expend their capital in the options market in a more efficient manner, thereby improving overall market quality on the Exchange.

Additionally, by making clear that the greater interval would control as between the

¹⁵ For example, two strikes that are densely clustered may have the same risk properties and may also be the same percentage out-of-the money.

Commentary .10(e) and Commentary .10(d), the Exchange is reducing the number of strikes listed in a manner consistent with the intent of the Strike Interval Proposal (i.e., to reduce strikes which were farther out in time). The result of this clarification is to select wider strike intervals for STOS in equity options that have an expiration date more than twenty-one days from the listing date. This proposed rule change would harmonize strike intervals as between inner weeklies (those having less than 21 days from the listing date) and outer weeklies (those having more than 21 days from the listing date) so that strike intervals are not widening as the listing date approaches.

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 rule change is not designed to impact competition but rather is designed to clarify a potential ambiguity regarding strike intervals that exists in the current STOS rule.

The Exchange anticipates that this proposal, which is consistent with a Commission-approved rule of another options exchange, will be adopted by other option exchanges and therefore would have no impact on competition.¹⁶

In addition to alleviating potential ambiguity, the proposed rule will further the goal of limiting the number of STOS Program strike intervals available for quoting and trading on the Exchange for all ATP Holders. The Exchange continues to balance the needs of market participants by continuing to offer a number of strikes to meet a market participant's investment objective. The Exchange's Strike Interval Proposal does not impose an undue burden on inter-market competition as this Strike Interval Proposal does not impact the listings available at

¹⁶ See ISE Strike Interval Clarification, supra note 4.

another self-regulatory organization.

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: (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 after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act¹⁷ and Rule 19b-4(f)(6)¹⁸ thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)¹⁹ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),²⁰ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the Exchange may implement the proposed rule change on August 1, 2022—the same time other exchanges are implementing an identical change.²¹ The

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) 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.

¹⁹ 17 CFR 240.19b-4(f)(6).

²⁰ 17 CFR 240.19b-4(f)(6)(iii).

²¹ See Securities Exchange Act Release No. 95085 (June 10, 2022), 87 FR 36353 (June 16, 2022) (SR-ISE-2022-10) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, to Amend ISE Options 4, Section 5, Series of Options Contracts Open for Trading).

Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change does not raise any new or novel issues. Accordingly, the Commission hereby waives the operative delay.²²

At any time within 60 days of the filing of such 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 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 email to rule-comments@sec.gov. Please include File Number SR-NYSEAMER-2022-33 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-NYSEAMER-2022-33. This file number

²² For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

should be included on the subject line if email 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-NYSEAMER-2022-33 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.²³

J. Matthew DeLesDernier,
Deputy Secretary.

²³ 17 CFR 200.30-3(a)(12), (59).