

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60531; File No. 4-443)

August 19, 2009

Joint Industry Plan; Order Approving 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”)¹ and Rule 608 thereunder,² 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”).³ Amendment No. 3

¹ 15 U.S.C. 78k-1.

² 17 CFR 242.608.

³ 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).

would apply uniform objective standards to the range of options series exercise (or strike) prices available for trading on the Plan Sponsor exchanges.

The proposed Amendment was published for comment in the Federal Register on July 28, 2009.⁴ The Commission received no comment letters in response to the Notice. This order approves Amendment No. 3 to the OLPP.

II. Description of the Proposed Amendment

Amendment No. 3 would 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. 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.⁵ 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 proposed Amendment provides for an objective basis upon which the underlying prices for the price range limitations described above would 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 time is proposed as the earliest permissible time at which a

⁴ See Securities Exchange Act Release No. 60365 (July 22, 2009), 74 FR 37266 (“Notice”).

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

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.

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 could not be removed during the calendar year unless the option class was delisted by the designating exchange, in which case the designating exchange could 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.⁶

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 would 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.

III. Discussion

After careful review, the Commission finds that Amendment No. 3 is consistent with the requirements of the Act and the rules and regulations thereunder.⁷ Specifically, the Commission finds that Amendment No. 3 to the OLPP is consistent with section 11A of the Act⁸ and Rule 608 thereunder⁹ in that it is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system.

The Commission notes that according to one study cited by the Plan Sponsor exchanges, the options industry would expect an approximate four percent reduction in

⁶ 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.

⁷ In approving this proposed Amendment, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78k-1.

⁹ 17 CFR 242.608.

the number of series traded, with only a nominal reduction in trading volume, upon implementation of the changes proposed in this Amendment.¹⁰ Therefore, the Commission believes that adopting uniform objective standards to the range of options series exercise (or strike) prices available for trading on the Plan Sponsor exchanges should reduce the number of option series available for trading, and thus should reduce increases in the options quote message traffic because market participants will not be submitting quotes in those series. Accordingly, the Commission believes that it is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect mechanisms of, a national market system to approve Amendment No. 3 to the OLPP.

IV. Conclusion

It is therefore ordered, pursuant to Section 11A of the Act,¹¹ and Rule 608 thereunder,¹² that proposed Amendment No. 3 to the OLPP be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Florence E. Harmon
Deputy Secretary

¹⁰ See Notice, supra note 4.

¹¹ 15 U.S.C. 78k-1.

¹² 17 CFR 242.608.

¹³ 17 CFR 200.30-3(a)(29).