

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-68358; File No. SR-NYSEMKT-2012-71)

December 5, 2012

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Commentary .07 to Exchange Rule 904 to Increase the Position and Exercise Limits for Options on the iShares MSCI Emerging Markets Index Fund to 500,000 Contracts

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 26, 2012, NYSE MKT LLC (“NYSE MKT” or “Exchange”) 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 .07 to Exchange Rule 904 to increase the position and exercise limits for options on the iShares MSCI Emerging Markets Index Fund (“EEM”) to 500,000 contracts. The text of the proposed rule change is available on the Exchange’s website at [www.nyse.com](http://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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 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 Commission approved the Exchange to list and trade the options on the iShares MSCI Emerging Markets Index Fund (“EEM”) on May 17, 2006.<sup>3</sup> Position limits for exchange-traded fund (“ETFs”) options, such as EEM options, are determined pursuant to Rule 904 and vary according to the number of outstanding shares and past six-month trading volume of the underlying stock or ETF. The largest in capitalization and most frequently traded stocks and ETFs have an option position limit of 250,000 contracts (with adjustments for splits, re-capitalizations, etc.) on the same side of the market; smaller capitalization stocks and ETFs have position limits of 200,000, 75,000, 50,000 or 25,000 contracts (with adjustments for splits, re-capitalizations, etc.) on the same side of the market. The current position limit for EEM options is 250,000 contracts. The purpose of the proposed rule change is to amend Exchange Rule 904, Commentary .07 to increase the position and exercise limits for EEM options to 500,000 contracts.<sup>4</sup>

Position limits serve as a regulatory tool designed to address potential manipulative schemes and adverse market impact surrounding the use of options. The Exchange understands that the Commission, when considering the appropriate level at which to set option position and exercise limits, has considered the concern that the limits be sufficient to prevent investors from

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<sup>3</sup> See Securities Exchange Act Release No. 53824 (May 17, 2006), 71 FR 30003 (May 24, 2006) (SR-Amex-2006-43).

<sup>4</sup> By virtue of Exchange Rule 905(a)(i), which is not being amended by this filing, the exercise limit for EEM options would be similarly increased.

disrupting the market in the security underlying the option.<sup>5</sup> 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.”<sup>6</sup>

There is precedent for establishing position limits for options on actively-traded ETFs and these position limit levels are set forth in Commentary .07 to Rule 904.

Option	Position Limits
PowerShares QQQ Trust <sup>SM</sup> , Series 1 (QQQ)	900,000 contracts
SPDR <sup>®</sup> S&P 500 <sup>®</sup> ETF (SPY)	None
iShares <sup>®</sup> Russell 2000 <sup>®</sup> Index Fund (IWM)	500,000 contracts
SPDR <sup>®</sup> Dow Jones Industrial Average <sup>SM</sup> ETF Trust (DIA)	300,000 contracts

In support of this proposed rule change, the Exchange has collected trading statistics comparing EEM to IWM and SPY. As shown in the following table, the average daily volume year to date in 2012 for EEM was 49.1 million shares compared to 47 million shares for IWM and 143.1 million shares for SPY. The total shares outstanding for EEM are 926.6 million compared to 204.2 million shares for IWM and 771.4 million shares for SPY. Further, the fund market cap for EEM is \$38.2 billion compared to \$16.7 billion for IWM and \$108.9 billion for SPY.

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<sup>5</sup> See Securities Exchange Act Release No. 40969 (January 22, 1999), 64 FR 4911, 4912-4913 (February 1, 1999) (SR-CBOE-98-23) (citing H.R. No. IFC-3, 96th Cong., 1st Sess. at 189-91 (Comm. Print 1978)).

<sup>6</sup> Id., at 4913.

ETF	October 2012 YTD ADV (mil. Shares)	October 2012 YTD ADV (option contracts)	Shares Outstanding (mil.) as of October 31, 2012	Fund Market Cap (\$bil) as of October 31, 2012
EEM	49.1	249,496	926.6	38.2
IWM	47	498,723	204.2	16.7
SPY	143.1	2,292,977	771.4	108.9

In further support of this proposal, the Exchange represents that EEM still qualifies for the initial listing criteria set forth in Commentary .06 to Exchange Rules [sic] 915 for ETFs holding non-U.S. component securities.<sup>7</sup> EEM tracks the performance of the MSCI Emerging Markets Index, which has approximately 800 component securities.<sup>8</sup> “The MSCI Emerging Markets Index is a free float-adjusted market capitalization index that is designed to measure equity market performance of emerging markets. The MSCI Emerging Markets Index consists of the following 21 emerging market country indices: Brazil, Chile, China, Colombia, Czech Republic, Egypt, Hungary, India, Indonesia, Korea, Malaysia, Mexico, Morocco, Peru, Philippines, Poland, Russia, South Africa, Taiwan, Thailand, and Turkey.”<sup>9</sup> The Exchange represents that more than 50% of the weight of the securities held by EEM are now subject to a comprehensive surveillance agreement (“CSA”).<sup>10</sup> Additionally, 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

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<sup>7</sup> The Exchange notes that the initial listing criteria for options on ETFs that hold non-U.S. component securities are more stringent than the maintenance listing criteria for those same ETF options. See Exchange Rules 915, Commentary .06, and 916, Commentary .07.

<sup>8</sup> See [http://us.ishares.com/product\\_info/fund/overview/EEM.htm](http://us.ishares.com/product_info/fund/overview/EEM.htm) and [http://www.msci.com/products/indices/licensing/msci\\_emerging\\_markets/](http://www.msci.com/products/indices/licensing/msci_emerging_markets/). Identification of the specific securities in the EEM and their individual concentrations in the EEM can be accessed at: [http://us.ishares.com/product\\_info/fund/holdings/EEM.htm](http://us.ishares.com/product_info/fund/holdings/EEM.htm).

<sup>9</sup> See <http://www.msci.com/products/indices/tools/index.html#EM>.

<sup>10</sup> See Exchange Rules [sic] 915, Commentary .06 subsection (b)(i).

Emerging Markets Index.<sup>11</sup> 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.<sup>12</sup>

The Exchange believes that the liquidity in the underlying ETF and the liquidity in EEM options support its request to increase the position and exercise limits for EEM options. As to the underlying ETF, through October 31, 2012 the year-to-date average daily trading volume for EEM across all exchanges was 49.1 million shares. As to EEM options, the year-to-date average daily trading for EEM options across all exchanges was 249,496 contracts.

The Exchange believes that the current position limits on EEM options may inhibit the ability of certain large market participants, such as mutual funds and other institutional investors with substantial hedging needs, to utilize EEM options and gain meaningful exposure to the hedging function they provide. The Exchange believes that increasing position limits for EEM options will lead to a more liquid and competitive market environment for EEM options that will benefit customers interested in this product.

Under the Exchange's proposal, the options reporting requirement for EEM options would continue unabated. Thus, the Exchange would still require that each ATP Holder that maintains a position in EEM options on the same side of the market, for its own account or for the account of a customer, report certain information to the Exchange. This information would include, but would not be limited to, the option position, whether such position is hedged and, if so, a description of the hedge, and the collateral used to carry the position, if applicable. In

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<sup>11</sup> See Exchange Rules [sic] 915, Commentary .06 subsection (b)(ii).

<sup>12</sup> See Exchange Rules [sic] 915, Commentary .06 subsection (b)(iii).

addition, the general reporting requirement for customer accounts that maintain an aggregate position of 200 or more option contracts would remain at this level for EEM options.<sup>13</sup>

As the anniversary of listed options trading approaches its fortieth year, the Exchange believes that the existing surveillance procedures and reporting requirements at the Exchange, other options exchanges, and at the several clearing firms are capable of properly identifying unusual and/or illegal trading activity. In addition, routine oversight inspections of the Exchange's regulatory programs by the Commission have not uncovered any material inconsistencies or shortcomings in the manner in which the Exchange's market surveillance is conducted. These procedures utilize daily monitoring of market movements via automated surveillance techniques to identify unusual activity in both options and underlying stocks.<sup>14</sup>

Furthermore, large stock holdings must be disclosed to the Commission by way of Schedules 13D or 13G.<sup>15</sup> Options positions are part of any reportable positions and, thus, cannot be legally hidden. Moreover, the Exchange's requirement that members or member organizations file reports with the Exchange for any customer who held aggregate large long or short positions of any single class for the previous day will continue to serve as an important part of the Exchange's surveillance efforts.

The Exchange believes that the current financial requirements imposed by the Exchange and by the Commission adequately address concerns that an ATP Holder, or its customer may try to maintain an inordinately large un-hedged position in an option, particularly on EEM. Current margin and risk-based haircut methodologies serve to limit the size of positions maintained by

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<sup>13</sup> For reporting requirements, see Exchange Rule 906.

<sup>14</sup> These procedures have been effective for the surveillance of EEM options trading and will continue to be employed.

<sup>15</sup> 17 CFR 240.13d-1.

any one account by increasing the margin and/or capital that an ATP Holder must maintain for a large position held by itself or by its customer.<sup>16</sup> In addition, the Commission’s net capital rule, Rule 15c3-1<sup>17</sup> under the Securities Exchange Act of 1934 (the “Act”), imposes a capital charge on members to the extent of any margin deficiency resulting from the higher margin requirement.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)<sup>18</sup> of the Act, in general, and furthers the objectives of Section 6(b)(5),<sup>19</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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. Specifically, the proposed rule change will benefit large Market-Makers (which generally have the greatest potential and actual ability to provide liquidity and depth in the product), as well as retail traders, investors, and public customers, by providing them with a more effective trading and hedging vehicle. In addition, the Exchange believes that the structure of EEM options and the considerable liquidity of the market for EEM options diminish the opportunity to manipulate this product and disrupt the underlying market that a lower position limit may protect against.

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<sup>16</sup> See Exchange Rule 462 for a description of margin requirements.

<sup>17</sup> 17 CFR 240.15c3-1.

<sup>18</sup> 15 U.S.C. 78f(b).

<sup>19</sup> 15 U.S.C. 78f(b)(5).

**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.

**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: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>20</sup> and Rule 19b-4(f)(6) thereunder.<sup>21</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that it can increase the position and exercise limits for EEM options immediately, which will result in consistency and uniformity among the competing options exchanges as to the position limits for EEM options. The Commission believes that waiving the 30-day operative delay is consistent

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<sup>20</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>21</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with 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 fulfilled this requirement.

with the protection of investors and the public interest.<sup>22</sup> The Commission notes the proposal is substantively identical to a proposal that was recently approved by the Commission, and does not raise any new regulatory issues.<sup>23</sup> For these reasons, the Commission designates the proposed rule change as operative upon filing.

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.

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEMKT-2012-71 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-2012-71. This file number should

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

<sup>23</sup> See Securities Exchange Act Release No. 68086 (October 23, 2012), 77 FR 65600 (October 29, 2012) (SR-CBOE-2012-066).

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 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-2012-71 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>24</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>24</sup> 17 CFR 200.30-3(a)(12).