

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-69174; File No. SR-NYSEMKT-2013-26)

March 19, 2013

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Certain Rules to Accommodate the Trading of Option Contracts Overlying 10 Shares of Certain Securities

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 March 18, 2013, 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 certain rules to accommodate the trading of option contracts overlying 10 shares of a security (“mini-options contracts”). The text of 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange recently adopted a Commentary to Rule 901 which establishes the listing and trading of mini-options contracts (which represent a deliverable of 10 shares of an underlying, as opposed to the deliverable of 100 shares of an underlying for standard options contracts).⁴ This filing is to clarify the treatment of mini-options contracts with respect to certain trading rules. Specifically, this proposal seeks to: (a) permit mini-options to trade in the same minimum increments as standard contracts for the same underlying, (b) include mini-options in calculations for the Risk Limitation Mechanism, and (c) establish the trading of Qualified Contingent Cross Orders in mini-options.

Trading Differentials

Of the five securities on which mini-options are permitted, four of them (SPY, AAPL, GLD and AMZN) participate in the penny pilot. Under the penny pilot, (1) the minimum price variation for AAPL, GLD and AMZN options is \$0.01 for all quotations in series that are quoted at less than \$3.00 per contract and \$0.05 for all quotations in series that are quoted at \$3.00 per contract or greater and (2) the minimum price variation for SPY options is \$0.01 for all quotations in all series.⁵

This proposed rule change will permit the minimum trading increment for mini-options contracts to be identical to the minimum trading increment applicable to standard options on the

⁴ See Securities Exchange Act Release No. 69131 (March 13, 2013) (SR-NYSEMKT-2013-23).

⁵ See Exchange Rule 960NY.

same underlying security and is consistent with recently approved proposals of other markets.⁶ The Exchange believes having different trading increments for mini-options contracts than those permitted for standard options on the same underlying security would be detrimental to the success of this new product offering and would also lead to investor confusion. The Exchange notes that the Commission approved mini-options contracts on SPY, AAPL, GLD, GOOG and AMZN because of their high price and current volume levels and because of the level of retail investor participation in trading options in these classes. Mini-options are a natural extension to the options overlying these securities and therefore should retain the most important characteristic, i.e., trading increments. The Exchange believes that by reducing the minimum trading increments for mini-options contracts, the proposed rule change will provide market participants with meaningful trading opportunities in this product. Further, quoting and trading in smaller increments will enable market participants to trade mini-options with greater precision as to price. Providing these more refined increments will permit the Exchange's market makers the opportunity to provide better fills (meaning less spread than the current wider minimum increments rules allow) to customers. Therefore, the Exchange proposes to amend its rules to permit the listing and trading of mini-options in the same increment permitted for standard options on the same underlying security. The Exchange notes that it is not requesting penny pricing for all of the five securities eligible for mini-options trading; but rather is seeking to permit matched penny pricing for mini-options contracts on those securities for which standard options already trade in pennies.

With this proposed rule change, although mini-options contracts would be trading in narrower increments, they would not be considered part of the penny pilot.

⁶ See Securities Exchange Act Release No. 69124 (March 12, 2013) (approving SR-CBOE-2013-16 and SR-ISE-2013-08).

The Exchange's proposal to quote and trade certain option classes that are outside of the penny pilot in \$0.01 increments is not novel. Specifically, the Commission has permitted the International Stock [sic] Exchange, LLC ("ISE") to set the minimum increment for all Foreign Currency Options traded on the ISE at \$0.01 regardless of the price at which the option is quoted.⁷ The Commission has also previously approved a proposal by NASDAQ OMX PHLX, Inc. permitting that exchange to also trade its foreign currency options in \$0.01 increments.⁸

Further, the Exchange agrees with the statements made by the Commission in approving similar filings of ISE and Chicago Board Options Exchange, Incorporated ("CBOE"). In particular, the Exchange believes that maintaining consistency in trading increments between mini-options contracts and standard options contracts for the same underlying security: (a) should help prevent investor confusion that could otherwise result if the standard and mini-options were not aligned;⁹ (b) should provide additional market benefits (such as attracting additional liquidity providers who already make markets in the underlying symbols which hopefully would result in more efficient pricing via arbitrage);¹⁰ and (c) is consistent with the current operation of member firms' systems (which are programmed to use root symbols and would not be able to assign different minimum price variations to mini-options contracts).¹¹

In support of this proposed rule change, the Exchange proposes to amend its Rules 903 and 960NY. As to Rule 960NY, the Exchange proposes to add new Commentary .03 which

⁷ See Securities Exchange Act Release No. 57019 (December 20, 2007), 72 FR 73937 (December 28, 2007)(SR-ISE-2007-120).

⁸ See Securities Exchange Act Release No. 56933 (December 7, 2007), 72 FR 71185 (December 14, 2007)(Approving SR-PHLX-2007-70).

⁹ See supra note 6 at 4-5.

¹⁰ See supra note 6 at 5.

¹¹ See supra note 6 at 6.

provides that the minimum trading increment for mini-options contracts shall be determined in accordance with Commentary .15(d) to Rule 903. Proposed Commentary .15(d) to Rule 903 provides that the minimum trading increment for mini-options contracts shall be the same as the minimum trading increment permitted for standard options on the same underlying security.

With regard to the impact of this proposal on system capacity, the Exchange represents that it and the Options Price Reporting Authority have the necessary systems capacity to handle the potential additional traffic associated with this proposal. The Exchange does not believe that this increased traffic will become unmanageable since mini-options are limited to a fixed number of underlying securities.

Treatment of Mini-Options

Pursuant to Rule 928NY, the Exchange employs a number of mechanisms designed to mitigate risks of ATP Holders and serve as additional safeguards that could help limit potential harm from extreme number of executions. The Exchange believes that, since these mechanisms are intended to prevent repetitive executions, for purposes of calculating the trade counter, mini-options contracts should be calculated as part of the underlying symbol. As a result, the Exchange proposes to amend Rule 928NY to include mini-options contracts in the Risk Limitation Mechanism. Accordingly, ATP Holders will be able to continue to customize their thresholds based upon underlying symbol.

Certain orders have minimum thresholds assigned by rule. Given the reduced delivery of mini-options contracts, there is a risk that those thresholds could be circumvented by the use of mini-options contracts instead of (or in combination with) standard options. To make clear that such loopholes are not available, the Exchange seeks to establish the standards that apply to mini-options contracts.

Similarly, the Exchange also proposes to amend the definition of Qualified Contingent Cross Order to accommodate the reduced deliverables of mini-options contracts. When Qualified Contingent Cross Orders were originally proposed, they had a size requirement of only 500 standard contracts.¹² However, in gaining ultimate approval the minimum size was increased to the current level of 1000 standard contracts representing 100,000 shares.¹³ The reduced deliverable of mini-options contracts potentially threatens that standard in a manner that was never intended and not discussed in the adoption of mini-options contracts.¹⁴ As such, to maintain the current threshold, the Exchange proposes that orders for mini-options must be of 10,000 contracts or more to qualify as a Qualified Contingent Cross Order.¹⁵ Without such a change, market participants could trade Qualified Contingent Cross Orders for the underlying share equivalent of merely 100 standard contracts.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)¹⁶ of the Securities Exchange Act of 1934 (the “Act”), in general, and furthers the objectives of Section 6(b)(5),¹⁷ in particular, because it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the

¹² See Securities Exchange Act Release No. 60584 (September 3, 2009) [sic], 74 FR 45663 (September 3, 2009)(SR-ISE-2009-35).

¹³ See Securities Exchange Act Release No. 63955 (March 2, 2011) [sic], 76 FR 11533 (March 2, 2011)(SR-ISE-2010-73).

¹⁴ See supra note 4.

¹⁵ It should be noted that the proposed language does not permit the combining of mini-options contracts with standard contracts in order to reach the minimum threshold. For example, an order to trade 900 standard contracts and 1000 mini-options contracts would not qualify for treatment as a Qualified Contingent Cross.

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(5).

mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest. Specifically, the Exchange believes that investors and market participants would benefit from the current rule proposal because it (a) assures that standard options and mini-options on the same underlying security will trade in similar increments and therefore provide market participants meaningful trading opportunities and enable [sic] to trade mini-options contracts with greater precision as to price; (b) permit OTP [sic] Holders to continue to customize their thresholds based upon underlying symbol by including mini-options in the Risk Limitation Mechanism; and (c) allow market participants to execute Qualified Contingent Cross Orders in mini-options contracts. The Exchange believes that these proposed rule changes will avoid investor confusion that could otherwise develop through the trading of mini-options contracts alongside standard options. Further, the Exchange believes that establishing these amendments prior to the commencement of trading of mini-options contracts would lessen investor and marketplace confusion.

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. In particular, the proposed amendment to trading differentials is based upon recently approved rule amendments by other option exchanges. Since mini-options contracts are permitted on multiple-listed classes, other exchanges that have received approval to trade mini-options contracts will have the opportunity to similarly amend their rules to incorporate mini-options into risk mechanisms and to accommodate Qualified Contingent Orders in mini-options contracts.

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 Act¹⁸ and Rule 19b-4(f)(6) thereunder.¹⁹

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 the proposed rule change may coincide with the anticipated launch of trading in mini-options. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.²⁰ Waiver of the operative delay will allow the Exchange to implement its proposal consistent with the commencement of trading in mini-options as scheduled and expected by members and other participants on March 18, 2013. For these reasons, the Commission designates the proposed rule change as operative upon filing.

¹⁸ 15 U.S.C. 78s(b)(3)(A).

¹⁹ 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 satisfied this requirement.

²⁰ 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).

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. Please include File Number SR-NYSEMKT-2013-26 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-2013-26. 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 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-2013-26 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.²¹

Kevin M. O'Neill
Deputy Secretary

²¹ 17 CFR 200.30-3(a)(12).