

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-70854; File No. SR-NYSEMKT-2013-90)

November 13, 2013

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Commentary .09 to Rule 903 to Modify the Quarterly Option Series Program to Eliminate the Cap on the Number of Additional Series That May Be Listed Per Expiration Month for Each QOS in Exchange-Traded Fund Options

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on November 5, 2013, NYSE MKT LLC (the “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “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 amend Commentary .09 to Rule 903 to modify the Quarterly Option Series (“QOS”) Program to eliminate the cap on the number of additional series that may be listed per expiration month for each QOS in exchange-traded fund (“ETF”) options. 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.

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 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 is proposing to amend Commentary .09(d) to Rule 903 related to the QOS Program to eliminate the cap on the number of additional series that may be listed per expiration month for each QOS in ETF options.⁴ As set out in Commentary .09, the Exchange may list QOS for up to five currently listed options classes that are either index options or options on ETFs. The Exchange may also list QOS on any option classes that are selected by other securities exchanges that employ a similar program under their respective rules. Currently, for each QOS in ETF options that has been initially listed on the Exchange, the Exchange may list up to 60 additional series per expiration month.

⁴ A Quarterly Option Series is a series of an option class that is approved for listing and trading on the Exchange in which the series is opened for trading on any business day, and that expires at the close of business on the last business day of a calendar quarter. The Exchange lists series that expire at the end of the next consecutive four (4) calendar quarters, as well as the fourth quarter of the next calendar year. See Rules 900C(26) and 903, Commentary .09(a).

The Exchange is proposing to amend Commentary .09(d) to make the treatment of QOS in ETF options consistent with the treatment of QOS in stock index options. Rule 900C(a)(iv) [sic] governs the QOS Program in stock index options. A stock index option is “an option contract on a specific stock index group.”⁵ Options on ETFs are similar to index options because ETFs hold securities based on an index or portfolio of securities.⁶ The requirements and conditions of the QOS Program in index options, moreover, parallel those of the QOS Program in ETF options. For example, like the QOS Program in ETF options, the QOS Program in index options permits QOS in up to five currently-listed options classes; requires the listing of series that expire at the end of the next (as of the listing date) consecutive four quarters, as well as the fourth quarter of the next calendar year; requires the strike price of each QOS to be fixed at a price per share; and establishes parameters for the number of strike prices above and below the underlying index. The QOS Program in index options, however, does not place a cap on the number of additional series that the Exchange may list per expiration month for each

⁵ Rule 900C(b)(2). “Stock index group” means: “[A] group of stocks each of whose inclusion and relative representation in the group is determined by the inclusion and relative representation of their current market values or market prices in a widely disseminated stock index. A stock index group may relate to a stock index which reflects representative stock market values or prices of either a broad segment of the stock market (“broad stock index group”) or stocks representing a particular industry or related industries (“stock index industry group”).” Rule 900C(b)(1).

⁶ Rule 900.2NY(24) defines “Exchange-Traded Fund Share” as “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.”

QOS in index options. Elimination of the cap set out in Commentary .09(d), therefore, would result in similar regulatory treatment of similar options products.⁷

The Exchange believes that the proposed revision to the QOS Program would provide market participants with the ability to better tailor their trading to meet their investment objectives, including hedging securities positions, by permitting the Exchange to list additional QOS in ETF options that meet such objectives. The Exchange has observed that situations arise in which the market value of the ETF underlying QOS moves to the point that additional strike prices in smaller intervals would be valuable to investors. However, due to the cap on additional QOS series, the Exchange cannot always provide these important at-the-money strikes. Elimination of the cap would remedy this issue.

Currently, the Exchange lists quarterly expiration options on six ETFs, but the cap restricts the number of strikes on these options, which often results in a lack of strike continuity. For example, the Exchange lists quarterly expiration options on SPDR Gold

⁷ The Exchange notes that Rule 903C(a)(iv)(4), which governs the addition of new series of Quarterly Options Series on index options, states: “The Exchange may open additional strike prices of a Quarterly Options Series that are above the value of the underlying index provided that the total number of strike prices above the value of the underlying index is no greater than five. The Exchange may open additional strike prices of a Quarterly Options Series that are below the value of the underlying index provided that the total number of strike prices below the value of the underlying index is no greater than five. The opening of any new Quarterly Options series shall not affect the series of options of the same class previously opened.” In practice, this means that the Exchange may add Quarterly Options Series at strikes above and below the current index value, so long as there are not more than five strikes above, and five strikes below, the current index value after such additions are made. The total number of Quarterly Options Series that can be listed at any one time is, therefore, theoretically unlimited, so long as there are no more than five strikes above (or below) a given index value when new strikes are added.

Trust (“GLD”). On January 2, 2013, the Exchange initially listed December 31, 2013 quarterly expiration options (“December 2013 Quarterlies”) on GLD, which closed the previous trading day at \$162.02, with initial strikes from \$115 to \$210, and additional strikes in \$1 intervals from \$131 to \$189. But during 2013, GLD has closed at a range of \$115.94 to \$163.67 and is currently trading around \$125. As a result of the cap, the Exchange cannot offer December 2013 Quarterlies on GLD in \$1 intervals within \$10 of the closing price of GLD because the number of strikes would exceed the cap of 60 additional strikes. Consequently, the Exchange is not able to list important at-the-money strikes due to the cap on additional strikes. While the Exchange has the ability to delist strikes with no open interest so that it may list strikes that are closer to the money, delisting is not always possible. If all of the existing strikes have open interest, the Exchange cannot delist strikes so that it may list strikes closer to the money.

But the Exchange is not subject to a similar cap on the number of additional weekly or monthly expiration options it can list on ETFs.⁸ So, for example, the Exchange can list additional weekly expiration options on GLD in \$1 and \$0.50 intervals within \$5 of the closing price of GLD, and additional monthly expiration options in \$1 intervals from \$85 to \$178. Therefore, due to the cap, the Exchange cannot list, and an investor cannot structure, an investment on a quarterly basis with the same granularity that can be achieved on a weekly or monthly basis.

⁸ For Short Term Options Series (“weekly options”), commentary .10 to Rule 903 sets a maximum number of strikes, but the Exchange can exceed this maximum number of strikes under certain circumstances. Specifically, “in the event that the underlying security has moved such that there are no series that are at least 10% above or below the current price of the underlying security and all existing series have open interest, the Exchange may list additional series, in excess of the 30 allowed under Commentary .10, that are between 10% and 30% above or below the price of the underlying security.”

Similarly, the Exchange lists quarterly options on SPDR S&P 500 ETF (“SPY”), which during 2013 closed at a range of \$145.55 to \$173.05. Again, due to the cap, the Exchange cannot offer quarterly expiration options on SPY in \$1 intervals above \$170 because the number of additional strikes would exceed the cap of 60. Instead, the Exchange is forced to list quarterly expiration options on SPY at \$5 intervals above \$170, despite the fact that SPY has recently traded between \$165 and \$170. As such, if SPY would again increase to \$170, then the Exchange would only be able to offer options with a strike price \$5 away from the price of the underlying ETF due to the cap on additional strikes.

On the other hand, in contrast to the limitations imposed on the Exchange for quarterly expiration options on ETFs, the absence of a similar cap on quarterly expiration options on indexes means that the Exchange can list, and investors can achieve, more granularity in index-based options. For example, S&P 500 Mini - SPX options (“SPX”) are options on the S&P 500 index, as opposed to options on SPY, the ETF based on that same S&P 500 index. SPX options are used to hedge SPY positions and are traded at the equivalent of one point and one-half point intervals. The SPX trades at 10 times the value of SPY, so that if SPY trades at \$168.70, SPX trades at \$1687. Therefore, the strike price for a quarterly expiration option on SPX, that is a hedge for a quarterly expiration option on SPY at \$170, would be \$1700. The Exchange can offer quarterly expiration options on SPX with strike prices of \$1670, \$1680, \$1690, and \$1700 because there is no cap on quarterly expiration index-based options. However, the Exchange cannot similarly offer quarterly expiration options on SPY with similar strike price continuity because of the cap on quarterly expiration ETF-based options.

Elimination of the cap would also help market participants meet their investment objectives by providing expanded opportunities to roll ETF options into later quarters. For example, a market participant that holds one or more contracts in a QOS in an ETF put option that has a strike price of \$120 and an expiration date of the last day of the third quarter may wish to roll that position into the fourth quarter. That is, the market participant may wish to close out the contracts set to expire at the end of the third quarter and instead establish a position in the same number of contracts in a QOS in a put option on the same ETF with the same strike price of \$120, but with an expiration date of the last day of the fourth quarter. Because of the cap on additional QOS in ETF options, however, the Exchange may not be able to list additional QOS in the ETF. Elimination of the cap, though, would allow the Exchange to meet the investment needs of market participants in such situations.

The Exchange has sufficient capacity to handle increased quote and trade reporting traffic that might be expected to result from listing additional QOS in ETF options. The Exchange notes that it has purchased capacity from the Options Price Reporting Authority (“OPRA”) to handle its options quote and trade reporting traffic.⁹ The Exchange believes that it has acquired sufficient capacity to handle increased quote and trade reporting traffic that might be expected to result from listing additional QOS in ETF options.¹⁰ In the Exchange’s view, it would be inconsistent to prohibit the listing of

⁹ See Exchange Act Release No. 48822 (Nov. 21, 2003), 68 FR 66892 (Nov. 28, 2003) (SR-OPRA-2003-01) (requiring exchanges to acquire options market data transmission capacity independently, rather than jointly).

¹⁰ The SEC has relied upon an exchange’s representation that it has sufficient capacity to support new options series in approving a rule amendment permitting the listing of additional option series. See Exchange Act Release No. 57410 (Jan. 17 [sic], 2008), 73 FR 12483, 12484 (Mar. 7, 2008) (SR-CBOE-2007-96)

additional QOS beyond a specified cap when each exchange independently purchases capacity to meet its quote and trade reporting traffic needs.

Moreover, the Exchange has in place a quote mitigation plan that helps it maintain sufficient capacity to handle quote traffic. The plan, which has been approved by the Commission, reduces the number of quotations that the Exchange disseminates by limiting disseminated quotes to active options series only.¹¹

To help ensure that only active options series are listed, the Exchange also has in place procedures to delist inactive series. Commentary .09(f) to Rule 903 requires the Exchange to review QOS that are outside of a range of five strikes above and five strikes below the current price of the underlying ETF. Based on that review, the Exchange must delist series with no open interest in both the call and the put series having (i) a strike price higher than the highest price with open interest in the put and/or call series for a given expiration month, and (ii) a strike price lower than the lowest strike price with open interest in the put and/or call series for a given expiration month.

Finally, the Exchange is proposing to update an outdated cross-reference in Commentary .09(d) to Rule 903. Commentary .09(d) currently states that the term “Exchange-Traded Fund Share” is defined in Rule 900(b)(42); however, that term is defined in Rule 900.2NY(24). The Exchange proposes to update the language accordingly.

(amendments to CBOE Rule 5.5(e)(3)) (“In approving the proposed rule change, the Commission has relied upon the Exchange’s representation that it has the necessary systems capacity to support new options series that will result from this proposal”).

¹¹ The Exchange’s quote mitigation plan is set out in Rule 970.1NY, adopted in 2009.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,¹² in general, and furthers the objectives of Section 6(b)(5),¹³ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to remove impediments to and perfect the mechanism of a free and open market because it will expand the investment options available to investors and will allow for more efficient risk management. The Exchange believes that removing the cap on the number of QOS in ETF options permitted to be listed on the Exchange will result in a continuing benefit to investors by giving them more flexibility to closely tailor their investment and hedging decisions to their needs, and therefore, the proposal is designed to protect investors and the public interest. Additionally, by removing the cap, the proposed rule change will make the treatment of QOS in ETF options consistent with the treatment of QOS in index options, thus resulting in similar regulatory treatment for similar options products.

While the expansion of the number of QOS in ETF options is expected to generate additional quote traffic, the Exchange believes that this increased traffic will be manageable and will not present capacity problems. As previously stated, the Exchange has in place a quote mitigation plan that helps it maintain sufficient capacity to handle quote traffic. To help ensure that only active options series are listed, Exchange procedures are designed to delist inactive series, ensuring that any additional quote traffic

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

is a result of interest in active series.

Finally, amending Commentary .09(d) to Rule 903 to correct an outdated cross-reference to the definition of Exchange-Traded Fund Shares will remove impediments to, and perfect the mechanism of a free and open market system. The Exchange believes that the proposed rule change will resolve any investor confusion regarding the incorrect cross-reference, and ensures that the Exchange provides a clear and well-defined rule set.

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 not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that investors would benefit from the introduction of additional QOS in ETF options by providing investors with more flexibility to closely tailor their investment and hedging decisions to their needs. Additionally, Exchange procedures for delisting inactive series will ensure that only active series with sufficient investor interest will be made available and maintained on the Exchange.

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 Section 19(b)(3)(A) of the Act¹⁴ and Rule 19b-4(f)(6)¹⁵ thereunder.

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. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)¹⁶ of the Act 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 e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEMKT-2013-90 on the subject line.

Paper Comments:

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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.

¹⁶ 15 U.S.C. 78s(b)(2)(B).

- 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-2013-90. 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-2013-90 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.¹⁷

Kevin M. O'Neill
Deputy Secretary

¹⁷ 17 CFR 200.30-3(a)(12).