

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-67194; File No. SR-NYSEMKT-2012-08)

June 13, 2012

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Amending Commentary .10 to Exchange Rule 903 Allowing the NYSE Amex Options to Open Short Term Option Series That Are Opened by Other Securities Exchanges in Option Classes Selected by Other Exchanges Under Their Respective Short Term Option Rules

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 June 12, 2012, NYSE MKT LLC (the “Exchange” or “NYSE MKT”) 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 .10 to Exchange Rule 903 to allow the NYSE Amex Options to open Short Term Option Series (“Weeklies”) that are opened by other securities exchanges in option classes selected by other exchanges under their respective short term option rules. 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

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

<sup>2</sup> 17 CFR 240.19b-4.

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 purpose of this proposed rule change is to amend Commentary .10 to Exchange Rule 903 to allow the Exchange to open Short Term Option Series (“Weeklies”) that are opened by other securities exchanges in option classes selected by other exchanges under their respective short term option rules.<sup>3</sup>

Currently, the Exchange may select up to 5 currently listed option classes on which Weeklies options may be opened in the Weeklies Program and the Exchange may also match any option classes that are selected by other securities exchanges that employ a similar program under their respective rules. For each option class eligible for participation in the Weeklies Program, the Exchange may open up to 30 Short Term Option Series for each expiration date in that class.

This proposal seeks to allow the Exchange to open Weeklies option series that are opened by other securities exchanges in option classes selected by other exchanges under their respective short term option rules. This change is being proposed notwithstanding the current cap of 30 series per class under the Weeklies Program. This is a competitive filing and is based on existing rules of The NASDAQ Stock Market LLC for the NASDAQ Options Market (“NOM”) and

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<sup>3</sup> On July 12, 2005, the Commission approved the Weeklies Program on a pilot basis. See Securities Exchange Act Release No. 52014 (July 12, 2005), 70 FR 41244 (July 18, 2005) (Amex-2005-035). The Weeklies Program was made permanent on June 23, 2010. See Securities Exchange Act Release No.62370 (June 23, 2010), 75 FR 37870 (June 30, 2010) (SR-NYSEAmex-2010-62).

NASDAQ OMX PHLX, Inc. (“PHLX”) and Chicago Board Options Exchange, Incorporated (“CBOE”).<sup>4</sup>

NYSE Amex Options is competitively disadvantaged since it operates a substantially similar Weeklies Program as NOM, PHLX and CBOE but is limited to listing a maximum of 30 series per options class that participates in its Weeklies Program (whereas PHLX, NOM and CBOE are not similarly restricted).

The Exchange is not proposing any changes to the Weeklies Program other than the ability to open Weeklies option series that are opened by other securities exchanges in option classes selected by other exchanges under their respective short term option rules.

The Exchange notes that the Weeklies Program has been well-received by market participants, in particular by retail investors. The Exchange believes that the current proposed revision to the Weeklies Program will permit the Exchange to meet increased customer demand and provide market participants with the ability to hedge in a greater number of option classes and series.

With regard to the impact of this proposal on system capacity, the Exchange has analyzed its capacity and represents that it and the Options Price Reporting Authority (“OPRA”) have the necessary systems capacity to handle the potential additional traffic associated with trading of an expanded number of series for the classes that participate in the Weeklies Program.

The proposed increase to the number of series per classes eligible to participate in the Weeklies Program is required for competitive purposes as well as to ensure consistency and

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<sup>4</sup> See Securities Exchange Act Release Nos. 65775 (November 17, 2011), 76 FR 72473 (November 23, 2011) (SR-NASDAQ-2011-138) ; 65776 (November 17, 2011), 76 FR 72482 (November 23, 2011) (SR-PHLX-2011-131); and 66563 (March 9, 2012), 77 FR 15426 (March 15, 2012).

uniformity among the competing options exchanges that have adopted similar Weeklies Programs.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),<sup>5</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>6</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, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that expanding the Weeklies Program will result in a continuing benefit to investors by giving them more flexibility to closely tailor their investment decisions and hedging decisions in a greater number of securities. The Exchange also believes that expanding the Weeklies Program will provide the investing public and other market participants with additional opportunities to hedge their investment thus allowing these investors to better manage their risk exposure. While the expansion of the Weeklies Program will generate additional quote traffic, the Exchange does not believe that this increased traffic will become unmanageable since the proposal remains limited to a fixed number of classes.

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.

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

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 significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>7</sup> and Rule 19b-4(f)(6) thereunder.<sup>8</sup>

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal is substantially similar to those of other exchanges that have been approved by the Commission and permit such exchanges to open Weekly option series that are opened by other securities exchanges under their respective short term option rules.<sup>9</sup> Therefore, the Commission designates the proposal operative upon filing.<sup>10</sup>

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

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<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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.

<sup>9</sup> See supra note 4.

<sup>10</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2012-08 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-2012-08. 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-2012-08 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>11</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).