SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67862; File No. SR–NYSEMKT–2012–41]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Rule Change Amending Commentary .04 to NYSE Amex Options Rule 903 To Permit the Exchange To List Additional Strike Prices Until the Close of Trading on the Second Business Day Prior to Monthly Expiration

September 14, 2012.

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 September 6, 2012, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III 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 .04 to NYSE Amex Options Rule 903 to permit the Exchange to list additional strike prices until the close of trading on the second business day prior to monthly expiration. The text of the proposed rule change is available on the Exchange's Web site 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 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend Commentary .04 to NYSE Amex Options Rule 903 to permit the Exchange to add additional strikes until the close of trading on the second business day prior to a monthly expiration.

NYSE Amex Options Rule 903 currently permits the Exchange to open additional series of individual stock options and Exchange-Traded Fund Shares until the beginning of the month in which the option expires or until five business days prior to expiration if unusual market conditions exist.[4] Options market participants generally prefer to focus their trading in strike prices that immediately surround the price of the underlying security. However, if the price of the underlying stock moves significantly, there may be a market need for additional strike prices to adequately account for market participants' risk management needs in a stock. In these situations, the Exchange has the ability to add additional series at strike prices that are better tailored to the risk management needs of market participants.[5] The Exchange may make the determination to open additional series for trading when the Exchange deems it necessary to maintain an orderly market, to meet customer demand, or when certain price movements take place in the underlying market.[6] If the market need occurs prior to five business days prior to expiration, then the market participants may have access to an option contract that is more tailored to the movement in the underlying stock.[7] However, if the market need to manage risk due to unusual market conditions comes to light anytime from five to two days prior to expiration, then market participants are left without a contract that is tailored to manage their risk.[8] For example:

- On October 17, 2011, a Monday of the week that monthly options expired, Crocs Inc. (CROX) closed at $26.65.
- After the close of trading the issuer published a warning regarding earnings, and on Tuesday morning the underlying opened at $17.40.
- The lowest expiring series were the $18 strike calls and puts. The Exchange was unable to add additional series to tailor the risk management needs of market participants in the stock due in a situation where the stock moves more than 35%.

In this situation, investors had no nearest term strikes to effectively manage their risk in the underlying stock, CROX. Because of the current five-days-before-expiration restriction, investors were unable to tailor their hedging activities in options and effectively manage their risk going into expiration.[9]

The Exchange proposes to permit the listing of additional strikes until the close of trading on the second business day prior to expiration in unusual market conditions. Since expiration of the monthly contract is on a Saturday, the close of trading on the second business day will typically fall on a Thursday. However, in the cases where Friday is a holiday during which the Exchange is closed, the close of trading on the second business day will occur on a Wednesday. The Exchange will continue to make the determination to open additional series for trading when the Exchange deems it necessary to maintain an orderly market, to meet customer demand, or when certain price

[4] *See* Commentary .04 to NYSE Amex Options Rule 903. 'Until the fifth business day prior' generally means up through the end of the day on the Friday of the week prior to expiration week. When options were first approved for listing and trading in the United States, the generally uniform rules of the options exchanges restricted the addition of new series ''until the first calendar day of the month in which the option expires.'' At various times in 1985, exchanges were granted authority to list new equity options series until five business days prior to expiration under unusual market conditions. In 1985 there were two main concerns expressed by the Commission: (i) worry over the proliferation of strikes and possible capacity concerns, and (ii) effective and timely communication to market participants about the new strikes. At the time, though, exchanges were only allowed to list three expiration months per issue, and were expanding from listing three strikes to listing five strikes. Since then, there has been a continual expansion of the number of strikes, the number of expiration months, and alternative expiration days. Following the restructuring of OPRA in 2003, each exchange became responsible for purchasing sufficient capacity to handle its own quotes generated by the series and classes it listed. Also, when options were first listed, additional strikes were communicated via teletype and firm wires to branch offices, firm back offices, and OCC. As communications were improved, through the use of fax machines and then email, the time to send notifications decreased significantly. Now, with the adoption of Streamline Options Series Adds (''SOSA'') by OCC, notification of new strikes is in real time throughout the industry.

[5] *See* NYSE Amex Options Rule 903.

[6] *See* NYSE Amex Options Rule 903(d).

[7] *See* NYSE Amex Options Rule 903(d).

[8] While these situations are relatively rare, the Exchange represents that approximately two times a month there is a legitimate need to add additional strikes closer to expiration than the five business day limitation permits, due to it being necessary to maintain an orderly market, to meet customer demand, or when certain price movements take place in the underlying market.

[9] The Exchange notes that if the proposed rule were in place, the Exchange would have added $15, $16, and $17 strikes expiring the following Saturday.

movements take place in the underlying market. The proposed change will provide an additional four days to the Exchange to gauge market impact of the underlying stock and to react to any market conditions that would render additional series prior to expiration beneficial to market participants. The Exchange believes that the impact on the market from the proposed change will be very minimal to market participants, however it will be extremely beneficial in that minority of situations where unusual market conditions dictate immediately prior to expiration. The proposal would simply allow participants to adjust their risk exposure in narrow situations when an unusual market event occurred on trading days 2, 3, 4, 5 prior to expiration.

This proposal does not raise any capacity concerns on the Exchange, because the changes have no material difference in impact from the current rules. The Exchange notes the proposed change allows for new strikes that would otherwise be permitted to add under existing rules either on the fifth day prior or immediately after expiration.[10] A strike which opens two days prior to expiration will have minimal impact on quoting, as it adds two series out of hundreds of thousands, and only for a small number of days.[11] Thus, any additional strikes that may be added under the proposed change would have no measurable effect on systems capacity.

The Exchange discussed the proposed listing and trading of series during expiration week with the OCC. The OCC represented that it is able to accommodate the proposal and would have no operational concerns with adding new series on any day except the last day of trading an expiring series.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[12] in general, and furthers the objectives of Section 6(b)(5) of the Act,[13] in particular, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that providing an additional four days to the Exchange to gauge market impact and to react to any market conditions prior to expiration beneficial [sic] will result in a continuing benefit to investors by giving them more flexibility to closely tailor their investment decisions and hedging decisions prior to expiration. The Exchange also believes that the additional four days 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 with additional in the money series. While the four additional days may generate additional quote traffic, the Exchange does not believe that this increased traffic will become unmanageable since the proposal remains limited to the narrow situations when an unusual market event occurred on trading days 2, 3, 4, 5 prior to expiration.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be 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 email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2012–41.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

All submissions should refer to File Number SR–NYSEMKT–2012–41. This file number should be included on the subject line if email 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 Web site (*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 Web site 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 such 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–2012–41 and should be submitted on or before October 11, 2012.

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[10] Any new strikes added under this proposal would be added in a manner consistent with the range limitations described in NYSE Amex Options Rule 903A.

[11] In the case of a multi-stock event where multiple stocks may be subject to unusual market conditions, a strike which opens two days prior to expiration will also have minimal impact on quoting, as it adds two series per stock out of hundreds of thousands, and only for a small number of days.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–23204 Filed 9–19–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67861; File No. SR–CBOE–2012–088]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the CBOE Stock Exchange Fees Schedule

September 14, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 7, 2012, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II and III 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 the CBOE Stock Exchange (''CBSX'') Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission.

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 Exchange 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 these 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 aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

CBSX proposes to amend its Fees Schedule. Starting on September 10, 2012, CBSX will begin to implement the functionality that will allow CBSX Traders to send silent orders, silent-mid orders, silent-post-mid orders, and silent-mid-seeker orders to CBSX.[3] Pursuant to such implementation, CBSX proposes to adopt Maker and Taker fees for transactions in securities priced $1 or greater relating to these new order types. For transactions in securities priced less than $1, these new order types will be subject to the same Maker and Taker fees ($0.00 fee for Makers, 0.30% of the dollar value of the transaction fee for Takers) that apply to most other orders.

The Maker fee for adding liquidity using a silent order will be $0.0018 per share, same as the regular Maker rate (though not subject to the reduced fee tiers for adding increasing amounts of liquidity in one day). The Taker rebate for removing silent order liquidity will be $0.0014 per share. The Maker fee for adding liquidity using a silent-mid or silent-post-mid order will be $0.0008 per share. The Taker rebate for removing silent-mid or silent-post-mid liquidity will be $0.0004 per share. The purpose of the new Maker fees is to incentivize passive liquidity provision using the silent, silent-mid, and silent-post-mid order types. The purpose of the new Taker rebates is to incentivize routing to the Exchange for the purpose of removing liquidity. The fees proposed for adding and rebates for removing liquidity are both intended to compliment the existing maker-taker fee structure and to improve realized prices and price discovery on the Exchange by efficiently and predictably allocating the economics specifically for each form of liquidity provision, and to incentivize participants to route orders to the Exchange in the first instance.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[4] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[5] which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities. The amount of the proposed Maker fee for silent orders is reasonable because it is the same amount as the regular Maker fee. Not applying the reduced fee tiers for adding increasing amounts of liquidity in one day to silent Maker orders is equitable and not unfairly discriminatory because these silent orders are not displayed [sic] do not improve the Exchange's displayed prices. Further, the Maker fee for silent orders will apply to all market participants trading silent orders.

The amount of the proposed Taker rebate for removing silent order liquidity is reasonable because it will allow market participants removing silent order liquidity to receive a rebate (and not pay a fee) for doing so. The proposed Taker rebate is equitable and not unfairly discriminatory because such undisplayed orders do not transparently improve the prices available within the market, while displayed orders do. As such, the pricing is designed to promote the use of and interaction with displayed liquidity more than undisplayed liquidity. Further, the Taker rebate for silent orders will apply to all market participants trading silent orders.

The amount of the proposed Maker fee for adding liquidity using a silent-mid or silent-post-mid order is reasonable because it is lower than the amount of the fee for other Maker orders. This is equitable and not unfairly discriminatory because the liquidity is priced at the midpoint of the NBBO, and therefore the fee will be less. This offers the remover of liquidity significant price improvement. Further, the Maker [sic] proposed Maker fee for adding liquidity using a silent-mid or silent-post-mid order will apply to all market participants adding liquidity using a silent-mid or silent-post-mid order.

The amount of the proposed Taker rebate for removing silent-mid or silent-post-mid liquidity is reasonable because it will allow market participants removing silent order liquidity to receive a rebate (and not pay a fee) for doing so. The proposed Taker rebate for removing silent-mid or silent-post-mid liquidity is equitable and not unfairly discriminatory because the trade will result in an improved price over the

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 67548 (July 31, 2012) 77 FR 46783 (August 6, 2012) (SR–CBOE–2012–049).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).