

.30 to NYSE MKT Rule 95—Equities. The Exchange proposes to keep Supplementary Material .10 to NYSE MKT Rule 95—Equities.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b) of the Act,<sup>17</sup> in general, and Section 6(b)(5) of the Act,<sup>18</sup> in particular, in that it is designed to remove impediments to and perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest. In particular, the proposed rule change would further the ability of Floor brokers to carry out their Trading Floor functions and, as a result, is designed to remove impediments to and perfect the mechanism of a free and open market through the efficient operation of the Exchange, specifically by placing Floor brokers on equal footing with other market participants utilizing automatic executions.

The fundamental changes that have occurred in the roughly twenty years since the adoption of NYSE Rules 95(c) and (d) have left the underlying rationale behind their adoption obsolete, and subsequently, the rationale behind NYSE MKT Rules 95(c)—Equities and (d)—Equities is also obsolete. The significant increase in market speed and the reduced role of Floor brokers have largely eliminated the concerns that NYSE MKT Rules 95(c)—Equities and (d)—Equities were intended to address. By deleting a trading restriction that was originally adopted in response to a specific market structure that has fundamentally changed since 2005, the Exchange believes that the proposed rule changes will serve to place Floor brokers on a more equal footing with other market participants utilizing automatic executions.

### 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEMKT-2012-58 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-2012-58. 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, on business days between the hours of 10 a.m. and 3 p.m.,

located at 100 F Street NE., Washington, DC 20549-1090. Copies of the filing will also be available for inspection and copying at the Exchange's principal office and on its Internet Web site at [www.nyse.com](http://www.nyse.com). 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-2012-58 and should be submitted on or before December 6, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68190; File No. SR-NYSEArca-2012-95]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1, To Amend Commentary .07 to NYSE Arca Options Rule 6.4 To Expand the Number of Expirations Available Under the Short Term Option Series Program ("STOS Program"), To Allow for the Exchange To Delist Series in the STOS Program That Do Not Have Open Interest, and To Expand the Number of Series in the STOS Program Under Limited Circumstances

November 8, 2012.

## I. Introduction

On September 6, 2012, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to amend Commentary .07 to NYSE Arca Options Rule 6.4 ("Commentary .07") to make certain modifications to the Exchange's Short Term Option Series Program ("STOS Program"). The proposed rule change was published for comment in the **Federal Register** on September 26,

<sup>19</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>17</sup> 15 U.S.C. 78f(b).

<sup>18</sup> 15 U.S.C. 78f(b)(5).

2012.<sup>3</sup> The Commission received no comment letters on the proposal. This order approves the proposed rule change, as modified by Amendment No. 1.

## II. Description of the Proposal

The Exchange proposes to amend Commentary .07 to (i) expand the number of expirations available under the STOS Program; (ii) allow the Exchange to delist, in certain circumstances, series in the STOS program that do not have open interest; and (iii) allow the Exchange to list, in certain circumstances, additional series in the STOS program.

The proposed rule change allows the Exchange to open a maximum of five consecutive expirations under the STOS Program for trading on the Exchange. The Exchange notes that it will not add expirations in a STOS series if such expirations would coincide with an existing expiration of a monthly or quarterly series of an option in the same class of the STOS series.

The proposed rule change also amends the circumstances in which the Exchange may delist or list series in the STOS Program. Specifically, the proposed rule change provides that the Exchange will delist series in the STOS Program with no open interest in both the call and the put series having a: (i) Strike price higher than the highest strike price with open interest in the put and/or call series for a given expiration month; and (ii) strike price lower than the lowest strike price with open interest in the put and/or call series for a given month, so as to list series that are at least 10% but not more than 30% above or below the current price of the underlying security. The Exchange would also be permitted, under the proposed rule change, to list additional series in excess of the 30 series otherwise allowed<sup>4</sup> under Commentary .07 that are between 10% and 30% above or below the price of the underlying security. The Exchange will only be allowed to delist or list series in accordance with the proposed rule change in the event that the underlying security has moved so that there are no series that are at least 10% above or

below the current price of the underlying security.

The Exchange asserts that the ability to list five consecutive expirations under the STOS Program is designed to meet increased customer demand and provide market participants with the ability to hedge in a greater number of option classes and series.<sup>5</sup> The Exchange also claims that the proposed amendments regarding delisting or listing STOS series are designed to provide investors flexibility by ensuring that there are series within the band of at least 10% but not more than 30% above or below the current price of the underlying security.<sup>6</sup>

## III. Discussion and Commission Findings

After careful review of the proposed rule change, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>7</sup> Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>8</sup> which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, 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. The Commission believes that the proposed change may provide the investing public and other market participants with greater flexibility to closely tailor their investment and hedging decisions in a greater number of series, thus allowing investors to better manage their risk exposure.

In approving this proposal, the Commission notes that the Exchange has represented that it and OPRA have the necessary systems capacity to handle the potential additional traffic associated with opening of up to five consecutive expirations under the STOS Program.<sup>9</sup> The Commission expects the Exchange to monitor the trading volume associated with the additional options series listed as a result of this proposal and the effect of these additional series on market fragmentation and on the

capacity of the Exchange's, OPRA's, and vendors' automated systems.

## IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change, as modified by Amendment No. 1, (SR-NYSEArca-2012-95) be, and it hereby is, approved.

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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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68191; File No. SR-NYSEMKT-2012-42]

### Self-Regulatory Organizations; NYSE MKT LLC; Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1, Amending Rule 903(h) and Related Commentary .10 To Expand the Number of Expirations Available Under the Short Term Option Series Program ("STOS Program"), To Allow for the Exchange To Delist Series in the STOS Program That Do Not Have Open Interest, and To Expand the Number of Series in the STOS Program Under Limited Circumstances

November 8, 2012.

## I. Introduction

On September 6, 2012, NYSE MKT LLC ("NYSE MKT" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to amend Rule 903(h) and related Commentary .10 ("Commentary .10") to make certain modifications to the Exchange's Short Term Option Series Program ("STOS Program"). The proposed rule change was published for comment in the **Federal Register** on September 26, 2012.<sup>3</sup> The Commission received no comment letters on the proposal. This order approves the

<sup>3</sup> Securities Exchange Act Release No. 67898 (September 20, 2012), 77 FR 59233 ("Notice"). The Commission notes that on September 18, 2012, the Exchange submitted Amendment No. 1 to the proposed rule change to make certain amendments that, in part, clarified the circumstances in which the Exchange will delist series with no open interest.

<sup>4</sup> Commentary .07(a) provides, in part, that for each option class eligible for participation in the STOS Program, the Exchange may open up to 30 Short Term Option Series for each expiration date in that class.

<sup>5</sup> See Notice, *supra* note 3 at 59233.

<sup>6</sup> See *id.* at 59234.

<sup>7</sup> In approving this proposed rule change, the Commission considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> See Notice, *supra* note 3 at 59233.

<sup>10</sup> 15 U.S.C. 78s(b)(2).

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

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

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

<sup>3</sup> Securities Exchange Act Release No. 67897 (September 20, 2012), 77 FR 59236 ("Notice"). The Commission notes that on September 18, 2012, the Exchange submitted Amendment No. 1 to the proposed rule change to make certain amendments that, in part, clarified the circumstances in which the Exchange will delist series with no open interest.