

comments on the proposed rule change.⁴

Section 19(b)(2) of the Act⁵ provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days (i) as the Commission may designate 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 shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is July 11, 2021. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change and the comments received. Accordingly, pursuant to Section 19(b)(2) of the Act,⁶ the Commission designates August 25, 2021, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR-NYSEArca-2021-37).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷

**J. Matthew DeLesDernier,
Assistant Secretary.**

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92336; File No. SR-NYSEMER-2021-32]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 903 To Limit Short Term Options Series Intervals

July 7, 2021.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³

⁴Comments received on the proposed rule change are available at: <https://www.sec.gov/comments/srnysearca-2021-37/srnysearca202137.htm>.

⁵15 U.S.C. 78s(b)(2).

⁶*Id.*

⁷17 CFR 200.30-3(a)(31).

¹15 U.S.C. 78s(b)(1).

²15 U.S.C. 78a.

³17 CFR 240.19b-4.

notice is hereby given that on June 25, 2021, NYSE American LLC (“NYSE American” or the “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 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 Rule 903 (Series of Options Open for Trading) in connection with limiting the number of strikes listed for Short Term Option Series which are available for quoting and trading on the Exchange. 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 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 903 (Series of Options Open for Trading). Specifically, this proposal seeks to widen the intervals between strikes in order to limit the number of strikes listed for multiply listed equity options classes (excluding options on Exchange-Traded Funds (“ETFs”) and Section 107 Securities (as described herein, *see infra* n. 13) within the Short Term Option Series program that have an expiration date more than 21 days from the listing date.

Background

Current Rule 903 permits the Exchange, after a particular class of options has been approved for listing and trading on the Exchange, to open for

trading series of options therein. The Exchange may list series of options for trading on a weekly,⁴ monthly⁵ or quarterly⁶ basis. Rule 903 (c) sets forth the intervals between strike prices of series of options on individual stocks generally⁷ and Rule 903 Commentary .10 (d) specifically sets forth intervals between strike prices Short Term Option Series. Additionally, the Exchange may list series of options pursuant to the \$1 Strike Price Interval Program,⁸ the \$0.50 Strike Program,⁹ the \$2.50 Strike Price Program,¹⁰ and the \$5 Strike Program.¹¹ The Exchange’s proposal seeks to amend the listing of weekly series of options (*i.e.* Short Term Option Series) by adopting new Rule 903 Commentary .10 (e),¹² which widens the permissible intervals between strikes, thereby limiting the number of strikes listed, for multiply listed equity options (excluding options

⁴The weekly listing program is known as the Short Term Option Series Program and is described within Rule 903, Commentary .10.

⁵The Exchange will open at least one expiration month for each class of options open for trading on the Exchange. *See* Rule 903(a). The monthly expirations are subject to certain listing criteria for underlying securities described within Rule 915. Monthly listings expire the third Friday of the month *See* The Options Clearing Corporation (“OCC”) By-Laws at Section 1.

⁶The quarterly listing program is known as the Quarterly Options Series Program and is described within Rule 903.

⁷The interval between strike prices of series of options on individual stocks may be \$2.50 or greater where the strike price is \$25 or less, provided however, that the Exchange may not list \$2.50 intervals below \$50 (*e.g.* \$12.50, \$17.50) for any class included within the \$1 Strike Price Program, as detailed below in Rule 903 Commentary .06 if the addition of \$2.50 intervals would cause the class to have strike price intervals that are \$0.50 apart. For series of options on Exchange-Traded Fund Shares that satisfy the criteria set forth in Rule 915 Commentary .06, the interval of strike prices may be \$1 or greater where the strike price is \$200 or less or \$5 or greater where the strike price is over \$200. Exceptions to the strike price intervals above are set forth in Rule 903, Commentary .07.

⁸The \$1 Strike Interval Program is described within Rule 903, Commentary .06

⁹The \$0.50 Strike Program is described within Rule 903, Commentary .13

¹⁰The \$2.50 Strike Price Program is described within Rule 903, Commentary .07

¹¹The \$5 Strike Program is described within Rule 903, Commentary .12

¹²As a result, the proposed rule change subsequently updates current Rule 903, Commentary .10(e) to (f). In this regard, the Exchange also proposes to update a cross-reference to this newly re-lettered paragraph .10(g) that appears in Rule 903(h). *See* proposed Rule 903(h).

on ETFs¹³ and Section 107 Securities¹⁴)

¹³ The term “ETF” (Exchange-Traded Fund) (or “Fund Shares”) has the same meaning as the term “exchange-traded fund” as defined in Rule 6c-11 under the Investment Company Act of 1940. *See* Rule 915, Commentary .06(g). Securities deemed appropriate for options trading shall include shares or other securities (“Fund Shares”), including but not limited to Partnership Units as defined in this Rule, that are principally traded on a national securities exchange and are defined as an “NMS stock” under Rule 600 of Regulation NMS, and that (1) represent interests in registered investment companies (or series thereof) organized as open-end management investment companies, unit investment trusts or similar entities, and that hold portfolios of securities comprising or otherwise based on or representing investments in indexes or portfolios of securities (or that hold securities in one or more other registered investment companies that themselves hold such portfolios of securities) (“Funds”) and/or financial instruments including, but not limited to, stock index futures contracts, options on futures, options on securities and indexes, equity caps, collars and floors, swap agreements, forward contracts, repurchase agreements and reverse repurchase agreements (the “Financial Instruments”), and money market instruments, including, but not limited to, U.S. government securities and repurchase agreements (the “Money Market Instruments”) constituting or otherwise based on or representing an investment in an index or portfolio of securities and/or Financial Instruments and Money Market Instruments, or (2) represent commodity pool interests principally engaged, directly or indirectly, in holding and/or managing portfolios or baskets of securities, commodity futures contracts, options on commodity futures contracts, swaps, forward contracts and/or options on physical commodities and/or non-U.S. currency (“Commodity Pool ETFs”) or (3) represent interests in a trust or similar entity that holds a specified non-U.S. currency or currencies deposited with the trust or similar entity when aggregated in some specified minimum number may be surrendered to the trust by the beneficial owner to receive the specified non-U.S. currency or currencies and pays the beneficial owner interest and other distributions on the deposited non-U.S. currency or currencies, if any, declared and paid by the trust (“Currency Trust Shares”), or (4) represent interests in the SPDR Gold Trust or are issued by the iShares COMEX Gold Trust or iShares Silver Trust).

¹⁴ Securities deemed appropriate for options trading shall include shares or other securities (“Index-Linked Securities”, “Commodity-Linked Securities”, “Currency-Linked Securities”, “Fixed Income-Linked Securities”, “Futures-Linked Securities”, and “Combination-Linked Securities”, collectively known as “Section 107 Securities”), as defined in Sections 107D, 107E, 107F, 107G, 107H and 107I of the Company Guide, that are principally traded on a national securities exchange and an “NMS stock” (as defined in Rule 600 of Regulation NMS under the Securities and Exchange Act of 1934), and represent ownership of a security that provides for the payment at maturity, as described below: Index-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance or the leveraged (multiple or inverse) performance of an underlying index or indexes of equity securities (“Equity Reference Asset”); Commodity-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance or the leveraged (multiple or inverse) performance of one or more physical commodities or commodity futures, options on commodities, or other commodity derivatives or Commodity-Based Trust Shares or a basket or index of any of the foregoing (“Commodity Reference Asset”); Currency-Linked Securities are securities that provide for the payment at maturity of a cash

amount based on the performance or the leveraged (multiple or inverse) performance of one or more currencies, or options on currencies or currency futures or other currency derivatives or Currency Trust Shares (as defined in Rule 1200B—AEMI(b)) or a basket or index of any of the foregoing (“Currency Reference Asset”); Fixed Income-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance or the leveraged (multiple or inverse) performance of one or more notes, bonds, debentures or evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities (“Treasury Securities”), government-sponsored entity securities (“GSE Securities”), municipal securities, trust preferred securities, supranational debt and debt of a foreign country or a subdivision thereof or a basket or index of any of the foregoing (“Fixed Income Reference Asset”); Futures-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance or the leveraged (multiple or inverse) performance of an index or indexes of futures contracts or options or derivatives on futures contracts (a “Futures Reference Asset”); and Combination-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance or the leveraged (multiple or inverse) performance of any combination of two or more Equity Reference Assets, Commodity Reference Assets, Currency Reference Assets, Fixed Income Reference Assets, or Futures Reference Assets (a “Combination Reference Asset”).

After an option class has been approved for listing and trading on the Exchange,¹⁵ Rule 903(h) permits the

amount based on the performance or the leveraged (multiple or inverse) performance of one or more currencies, or options on currencies or currency futures or other currency derivatives or Currency Trust Shares (as defined in Rule 1200B—AEMI(b)) or a basket or index of any of the foregoing (“Currency Reference Asset”); Fixed Income-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance or the leveraged (multiple or inverse) performance of one or more notes, bonds, debentures or evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities (“Treasury Securities”), government-sponsored entity securities (“GSE Securities”), municipal securities, trust preferred securities, supranational debt and debt of a foreign country or a subdivision thereof or a basket or index of any of the foregoing (“Fixed Income Reference Asset”); Futures-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance or the leveraged (multiple or inverse) performance of an index or indexes of futures contracts or options or derivatives on futures contracts (a “Futures Reference Asset”); and Combination-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance or the leveraged (multiple or inverse) performance of any combination of two or more Equity Reference Assets, Commodity Reference Assets, Currency Reference Assets, Fixed Income Reference Assets, or Futures Reference Assets (a “Combination Reference Asset”).

¹⁵ The Exchange may have no more than a total of five Short Term Option Expiration Dates, not including any Monday or Wednesday SPY Expirations as provided in paragraph (g). If the Exchange is not open for business on the respective Thursday or Friday, the Short Term Option Opening Date will be the first business day immediately prior to that respective Thursday or Friday. Similarly, if the Exchange is not open for business on the Friday that the options are set to expire, the Short Term Option Expiration Date will be the first business day immediately prior to that Friday. *See* Rule 903, Commentary .10. The Exchange may open for trading on any Friday or Monday that is a business day series of options on the SPDR S&P 500 ETF Trust (“SPY”) to expire on any Monday of the month that is a business day and is not a Monday on which Quarterly Options Series expire (“Monday SPY Expirations”), provided that any Friday on which the Exchange opens for trading a Monday SPY Expiration is one business week and one business day prior to expiration. The Exchange may also open for trading on any Tuesday or Wednesday that is a business day series of SPY options to expire on any Wednesday of the month that is a business day and is not a Wednesday on which Quarterly Options Series expire (“Wednesday SPY Expirations”). The Exchange may list up to five consecutive Monday SPY Expirations and up to five consecutive Wednesday SPY Expirations at one time; the Exchange may have no more than a total of five Monday SPY Expirations and no more than a total of five Wednesday SPY Expirations. Monday and

Wednesday SPY Expirations will be subject to the provisions of this Rule. *See* Rule 903, Commentary .10(e). With the exception of Monday and Wednesday SPY Expirations, no Short Term Option Series may expire in the same week in which monthly option series on the same class expire or, in the case of Quarterly Options Series, on an expiration that coincides with an expiration of Quarterly Options Series on the same class. *See* Rule 903, Commentary .10(e).

¹⁶ *See* Rule 903, Commentary .10(a).

¹⁷ Additionally, Rule 903, Commentary .10 (d) provides that the interval between strike prices on Short Term Option Series shall be the same as the

The Exchange notes that listings in the weekly program comprise a significant part of the standard listing in options markets and that the industry has observed a notable increase over approximately the last five years in compound annual growth rate (“CAGR”) of weekly strikes as compared to CAGR for standard third-Friday expirations.¹⁸

Proposal

The Exchange proposes to widen the intervals between strikes in order to limit the number of strikes listed for equity options (excluding options on ETFs and Section 107 Securities) listed as part of the Short Term Option Series Program that have an expiration date more than 21 days from the listing date,

by adopting proposed Rule 903, Commentary .10 (e). The Exchange notes that this proposal is substantively identical to the strike interval proposal recently submitted by Nasdaq BX, Inc. (“BX”) and approved by the Securities and Exchange Commission (“Commission”).¹⁹

The proposal widens intervals between strikes for expiration dates of equity option series (excluding options on ETFs and Section 107 Securities) beyond 21 days utilizing the three-tiered table in proposed Rule 903, Commentary .10 (e) (presented below) which considers both the Share Price and Average Daily Volume for the option series. The table indicates the applicable strike intervals and

supersedes Rule 903, Commentary .10 (c), which currently permits 10 additional series to be opened for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the market price of the underlying security moves substantially from the exercise price or prices of the series already opened. As a result of the proposal Rule 903, Commentary .10(e) would not permit an additional series of an equity option to have an expiration date more than 21 days from the listing date to be opened for trading on the Exchange despite the noted circumstances in paragraph (c) when such additional series may otherwise be added.

Tier	Average daily volume	Share price				
		Less than \$25	\$25 to less than \$75	\$75 to less than \$150	\$150 to less than \$500	\$500 or greater
1	Greater than 5,000	\$0.50	\$1.00	\$1.00	\$5.00	\$5.00
2	Greater than 1,000 to 5,000	1.00	1.00	1.00	5.00	10.00
3	0 to 1,000	2.50	5.00	5.00	5.00	10.00

Proposed 903, Commentary .10 (e)(1) provides that the Share Price is the closing price on the primary market on the last day of the calendar quarter. This value is used to derive the column from which to apply strike intervals throughout the next calendar quarter. Also, proposed Rule 903, Commentary .10 (e)(1) provides that in the event of a corporate action, the Share Price of the surviving company is utilized.²⁰ Proposed Rule 903, Commentary .10 (e)(2) provides that the Average Daily Volume is the total number of option contracts traded in a given security for the applicable calendar quarter divided by the number of trading days in the applicable calendar quarter. Beginning on the second trading day in the first month of each calendar quarter, the Average Daily Volume is calculated by utilizing data from the prior calendar quarter based on Customer-cleared volume at OCC. For options listed on the first trading day of a given calendar

quarter, the Average Daily Volume is calculated using the calendar quarter prior to the last trading calendar quarter.²¹ Pursuant to current Rule 903, Commentary .10, if the Exchange is not open for business on the respective Thursday or Friday, the Short Term Option Opening Date will be the first business day immediately prior to that respective Thursday or Friday.

By way of example, if the Share Price for a symbol was \$142 at the end of a calendar quarter, with an Average Daily Volume greater than 5,000, thereby, requiring strike intervals to be listed \$1.00 apart, that strike interval would apply for the calendar quarter, regardless of whether the Share Price changed to \$150 or greater during that calendar quarter.²² The proposed table within Rule 903, Commentary .10(e) takes into account the notional value of a security, as well as Average Daily Volume in the underlying stock, in order to widen the intervals between

strikes and thereby limit the number of strikes listed for equity options (excluding options on ETFs and Section 107 Securities) in the Short Term Option Series listing program. The Exchange will utilize OCC Customer-cleared volume, as customer volume is an appropriate proxy for demand. The OCC Customer-cleared volume represents the majority of options volume executed on the Exchange, which, in turn, reflects the demand in the marketplace. The options series listed on the Exchange are intended to meet customer demand by offering an appropriate number of strikes. Non-Customer cleared OCC volume generally represents the supply side.

The proposal is intended to remove repetitive and unnecessary strike listings across the weekly expiries. Specifically, the proposal seeks to reduce the number of strikes listed in the furthest weeklies, which generally have wider markets and therefore lower

strike prices for series in that same option class that expire in accordance with the normal monthly expiration cycle. During the expiration week of an option class that is selected for the Short Term Option Series Program pursuant to this rule (“Short Term Option”), the strike price intervals for the related non-Short Term Option (“Related non-Short Term Option”) shall be the same as the strike price intervals for the Short Term Option.

¹⁸ See Securities Exchange Act Release No. 91125 (February 12, 2021), 86 FR 10375 (February 19, 2021) (SR-BX-2020-032) (“BX Strike Interval Approval Order”); and SR-BX-2020-032 as amended by Amendment No. 1 (February 10, 2021) available at: <https://www.sec.gov/comments/sr-bx-2020-032>.

¹⁹ See BX Strike Interval Approval Order, *id.*

²⁰ The Exchange notes that corporate actions resulting in change ownership would result in a surviving company, such as a merger of two publicly listed companies, and the Share Price of the surviving company would be used to determine strike intervals pursuant to the proposed table. Corporate actions that do not result in a change of ownership, such as stock-splits or distribution of

special cash dividends, would not result in a “surviving company,” therefore would not impact which Share Price to apply pursuant to the proposed Rule.

²¹ For example, options listed as of April 1, 2021 would be calculated on April 2, 2021 using the Average Daily Volume from October 1, 2020 to December 31, 2020.

²² The Exchange notes that any strike intervals imposed by the Exchange’s Rules will continue to apply. In this example, the strikes would be in \$1 intervals up to (but not including) \$150, which is the upper limit imposed by Rule 903, Commentary .10(d).

market quality.²³ The proposed strike intervals are intended to widen permissible strike intervals in multiply listed equity options (excluding options on ETFs and Section 107 Securities) where there is less volume as measured by the Average Daily Volume tiers.

Therefore, the lower the Average Daily Volume, the greater the proposed spread between strike intervals. Options classes with higher volume contain the most liquid symbols and strikes, which the Exchange believes makes the finer proposed spread between strike intervals for those symbols appropriate. Additionally, lower-priced shares have finer strike intervals than higher-priced shares when comparing the proposed spread between strike intervals. Today, weeklies are available on 16% of underlying products. The proposal limits the density of strikes listed in series of options, without reducing the classes of options available for trading on the Exchange. Short Term Option Series with an expiration date greater than 21 days from the listing date currently equate to 7.5% of the total number of strikes in the options market, which equals 81,000 strikes.²⁴ The Exchange expects this proposal to result in the limitation of approximately 20,000 strikes within the Short Term Option Series, which is approximately 2% of the total strikes in the options markets.²⁵ The Exchange understands there has been an inconsistency of demand for series of options beyond 21 calendar days.²⁶ The proposal takes into account customer demand for certain options classes, by considering both the Share Price and the Average Daily Volume, in order to remove certain strike intervals where there exist clusters of strikes whose characteristics closely resemble one another and, therefore, do not serve different trading

²³ See BX proposal, *supra* note 18, which presents tables that focus on data for 10 of the most and least actively traded symbols and demonstrate average spreads in weekly options during the month of August 2020.

²⁴ The Exchange notes that this proposal is an initial attempt at reducing strikes and anticipates filing additional proposals to continue reducing strikes. The percentage of underlying products and percentage of and total number of strikes, are approximations and may vary slightly at the time of this filing. The Exchange intends to decrease the overall number of strikes listed on the NYSE Group options exchanges in a methodical fashion, so that it may monitor progress and feedback from its ATP Holders. The Exchange also notes that its affiliated options exchange, NYSE Arca Options, Inc. plans to submit an identical proposal.

²⁵ From information drawn from time period between January 2020 and May 2020. See BX proposal, *supra* note 18.

²⁶ See BX proposal, *supra* note 18.

needs,²⁷ rendering these strikes less useful. The Exchange also notes that the proposal focuses on strikes in multiply listed equity options, and excludes ETFs and Section 107 Securities, as the majority of strikes reside within equity options.

Additionally, proposed Rule 903, Commentary .07(e)(3) provides that options that are newly eligible for listing pursuant to Rule 915 and designated to participate in the Short Term Option Series program pursuant to Rule 903, Commentary .10(e) will not be subject to subparagraph (e) (as proposed) until after the end of the first full calendar quarter following the date the option class was first listed for trading on any options market.²⁸ As proposed, the Exchange is permitted to list options on newly eligible listings, without having to apply the wider strike intervals, until the end of the first full calendar quarter after such options were listed. The proposal thereby permits the Exchange to add strikes to meet customer demand in a newly listed options class. A newly eligible option class may fluctuate in price after its initial listing; such volatility reflects a natural uncertainty about the security. By deferring the application of the proposed wider strike intervals until after the end of the first full calendar quarter, additional information on the underlying security will be available to market participants and public investors, as the price of the underlying has an opportunity to settle based on the price discovery that has occurred in the primary market during this deferment period. Also, the Exchange has the ability to list as many strikes as are permissible for the Short Term Option Series once the expiry is no more than 21 days. Short Term Option Series that have an expiration date no more than 21 days from the listing date are not subject to the proposed strike intervals, which allows the Exchange to list additional, and potentially narrower, strikes in the event of market volatility or other market events. These metrics are intended to align expectations for determining which strike intervals will be utilized. Finally, proposed Rule 903, Commentary .10(e)(4) provides that, notwithstanding the strike intervals imposed in proposed subparagraph (e),

²⁷ For example, two strikes that are densely clustered may have the same risk properties and may also be the same percentage out-of-the money.

²⁸ For example, if an options class became newly eligible for listing pursuant to Rule 5.3-O on March 1, 2021 (and was actually listed for trading that day), the first full quarterly lookback would be available on July 1, 2021. This option would become subject to the proposed strike intervals on July 2, 2021.

the proposal does not amend the range of strikes that may be listed pursuant to subparagraph (d).

While the current listing rules permit the Exchange to list a number of weekly strikes on its market, in an effort to encourage Market Makers to deploy capital more efficiently, as well as improve displayed market quality, the proposal aims to reduce the density of strikes listed in later weeks by widening the intervals between strikes listed for equity options (excluding options on ETFs and Section 107 Securities) which have an expiration date more than 21 days from the listing date. The Exchange requires Specialists and e-Specialists (“Specialists”) and Market Makers to quote during a certain amount of time in the trading day and in a certain percentage of series in their assigned options classes to maintain liquidity in the market.²⁹ With an increasing number of strikes being listed across options exchanges, Market Makers must expend their capital to ensure that they have the appropriate infrastructure to meet their quoting obligations on all options markets in which they are assigned in option classes. The Exchange believes that by widening the intervals between strikes listed for equity options (excluding options on ETFs and Section 107 Securities), thus reducing the number of strikes listed on the Exchange, the proposal will likewise reduce the number of weekly strikes in which Specialists and Market Makers are required to quote and, as a result, allow Specialists and Market Makers to expend their capital in the options market in a more efficient manner. Due to this increased efficiency, the Exchange believes that the proposal may improve overall market quality on the Exchange by widening the intervals between strikes in multiply listed equity options (excluding options on ETFs and Section 107 Securities) that have an expiration date more than 21 days from the listing date. The proposal is intended to balance the goal of limiting the number of listed strikes with the needs of market participants. The Exchange believes that the various permissible strike intervals will continue to offer market participants the ability to select the appropriate strikes to meet their investment objectives.

Implementation

The Exchange will announce the implementation date of the proposed rule change by Trader Update to be published no later than 30 days following the operative date of the proposed rule. The implementation date

²⁹ See Rule 925.1NY.

will be no later than 30 days following the issuance of the Trader Update. The Exchange will issue a Trader Update³⁰ to its ATP Holders whenever the Exchange is the first exchange to list a class as eligible for Short Term Option Series pursuant to Rule 903, Commentary .10(e).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.³¹ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)³² requirements that the rules of an exchange be 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)³³ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposal seeks to widen the permissible intervals between strikes listed for equity options (excluding options on ETFs and Section 107 Securities) in order to limit the number of strikes listed in the Short Term Option Series program that have an expiration date more than 21 days. The proposal removes impediments to and perfects the mechanism of a free and open market and a national market system by encouraging Market Makers to deploy capital more efficiently, which may improve market quality overall on the Exchange, by widening the intervals between strikes when applying the strike interval table to

³⁰ When the Exchange is the first exchange to list an option class Rule 6.4–O, Commentary .07 the Exchange shall provide a Trader Notice OTP Holders regarding the Short Term Option Series to be listed. Such notice will include for each eligible option class: the closing price of the underlying, the Average Daily Volume of the option class; and the eligible strike category (per the proposed table) in which the eligible option class falls under as a result of the closing price and the Average Daily Volume.

³¹ 15 U.S.C. 78ff(b).

³² 15 U.S.C. 78ff(b)(5).

³³ *Id.*

multiply listed equity options (excluding options on ETFs and Section 107 Securities) that have an expiration date more than 21 days from the listing date. As described above, the Exchange requires Specialists and Market Makers to quote during a certain amount of time in the trading day and in a certain percentage of series in their assigned options classes to maintain liquidity in the market.³⁴ With an increasing number of strikes due, in part, to tighter intervals being listed across options exchanges, Market Makers must expend their capital to ensure that they have the appropriate infrastructure to meet their quoting obligations on all options markets in which they are assigned in options classes. The Exchange believes that this proposal will widen the intervals between strikes listed on the Exchange, thereby reducing the number of weekly options listed on its market in later weeks in which Market Makers are required to quote and, in turn, allowing DPMs and Market Makers to expend their capital in the options market in a more efficient manner.

The Exchange believes that limiting the permissible strikes for multiply listed equity options (excluding options on ETFs and Section 107 Securities) that have an expiration date more than 21 days from the listing date will not significantly disrupt the market, as the majority of the volume traded in weekly options exists in options series which have an expiration date of 21 days or less. The proposal will limit the number of strikes listed in series of options without reducing the number of classes of options available for trading on the Exchange. The proposal allows the Exchange to determine the weekly strike intervals for multiply listed equity Short Term Option Series listed in the later weeks by taking into account customer demand for certain options classes by considering both the Share Price and the Average Daily Volume in the underlying security. The Exchange utilizes OCC Customer-cleared volume, as customer volume is an appropriate proxy for demand. Whereas non-Customer cleared OCC volume generally represents the supply side, the Exchange believes OCC Customer-cleared volume represents the majority of options volume executed on the Exchange, which, in turn, reflects the demands in the marketplace and is therefore intended to assist the Exchange in meeting customer demand by offering an appropriate number of strikes.

The proposal is intended to remove certain strikes where there exist clusters of strikes whose characteristics closely

resemble one another and, therefore, do not serve different trading needs, which currently results in less useful strikes. As such, the proposal protects investors and the general public by removing unnecessary choices for an options series, which the Exchange believes may improve market quality. The proposal seeks to reduce the number of strikes in the furthest weeklies, which generally have wider markets, and, therefore, lower market quality. The implementation of the Strike Interval table is intended to allow for greater spreads between strike intervals in multiply listed equity options where there is less volume as measured by the Average Daily Volume tiers. Therefore, the lower the Average Daily Volume, the wider the proposed spread between strike intervals, and the higher the Average Daily Volume (*i.e.*, the options classes that contain the most liquid symbols and strikes), the narrower the proposed spread between strike intervals. Additionally, the proposed strike intervals are finer for lower-priced shares than higher-priced shares.³⁵ As a result, the Exchange believes that, by limiting the permissible strikes for multiply listed equity options (excluding options on ETFs and Section 107 Securities) that have an expiration date more than 21 days from the listing date pursuant to the proposed Strike Interval table, the proposal may improve overall market quality on the Exchange, which serves to protect investors and the general public.

Further, utilizing the second trading day of a calendar quarter allows the Exchange to accumulate data regarding OCC Customer-cleared volume from the entire prior calendar quarter and allows the calculation of Average Daily Volume to account for trades executed on the last day of the previous calendar quarter, which will have settled by the second trading day.³⁶ The Exchange believes that applying the previous calendar quarter for the calculation is appropriate to reduce the impact of unusual trading activity as a result of unique market events, such as a corporate action (*i.e.*, it may result in a more reliable measure of Average Daily Volume than a shorter period).

As stated, the proposal is substantively identical to the strike interval proposal recently submitted by BX and approved by the Commission.³⁷

³⁵ The Exchange notes that it has discussed the proposed strike intervals with various ATP Holders.

³⁶ Options contracts settle one business day after trade date. Strike listing determinations are made the day prior to the start of trading in each series.

³⁷ See BX Strike Interval Approval Order, *supra* note 18.

³⁴ See *supra* note 30.

The Exchange believes that varied strike intervals will continue to offer market participants the ability to select the appropriate strike interval to meet that market participants' investment objectives.

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. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act as the proposed rule change limits the number of Short Term Option Series strikes available for quoting and trading on the Exchange for all market participants. Therefore, all market participants will equally be able to transact in options series in the strikes listed for trading on the Exchange. The proposal is intended to reduce the number of strikes for weekly options listed in later weeks without reducing the number of classes of options available for trading on the Exchange while also continuing to offer an appropriate number of strikes the Exchange believes will meet market participants' investment objectives.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act as it only impacts the permissible strike intervals for certain options series listed on the Exchange. Additionally, another options exchange has recently implemented a substantively identical rule for listing Short Term Option Series strike intervals on its exchange, approved by the Commission.³⁸ The proposal is a competitive response that will permit the Exchange to list the same series in multiply listed options as another options 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.

³⁸ See BX Strike Interval Approval Order, *supra* note 18.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii)³⁹ of the Act and Rule 19b-4(f)(6) thereunder.⁴⁰ 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 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)(iii) of the Act and subparagraph (f)(6) of Rule 19b-4 thereunder.⁴¹

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act⁴² normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)⁴³ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the Exchange may implement the proposed rule change at the same time that all other options exchanges implement their respective rule changes. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change is substantively identical to rules adopted by each other options exchange, and therefore the Exchange's proposal does not raise any new or novel issues. Waiver of the operative delay will allow the Exchange to implement its new rule on the same timeline as the other options exchanges, and such coordinated implementation will reduce potential investor confusion and facilitate a harmonized approach to strike listings for options within the Short Term Option Series program that have an expiration date more than 21 days from the listing date. Therefore, the Commission hereby waives the operative delay and designates the proposal as operative upon filing.⁴⁴

³⁹ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴⁰ 17 CFR 240.19b-4(f)(6).

⁴¹ In addition, Rule 19b-4(f)(6)(iii) requires the Exchange 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.

⁴² 17 CFR 240.19b-4(f)(6).

⁴³ 17 CFR 240.19b-4(f)(6)(iii).

⁴⁴ For purposes only of waiving the 30-day operative delay, the Commission also has

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 to determine whether the proposed rule 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 email to rule-comments@sec.gov. Please include File Number SR-NYSEAMER-2021-32 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEAMER-2021-32. 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 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

considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEAMER-2021-32, and should be submitted on or before August 3, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁵

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92342; File No. SR-DTC-2021-011]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change Relating to Confidential Information, Market Disruption Events, and Other Changes

July 7, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 25, 2021, The Depository Trust Company (“DTC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of modifications to DTC’s Rules, Bylaws and Organization Certificate (the “Rules”)³ to (i) revise certain provisions in the Rules relating to the confidentiality of information furnished by Participants⁴ to DTC, (ii) require that

each Participant maintain confidential information furnished by DTC or its affiliates in confidence, and restrict use and disclosure of such information, (iii) add certain officers who are allowed to determine that there is a Market Disruption Event pursuant to Rule 38 and (iv) add a new Rule 38(A) to address situations in which it is necessary to disconnect a Participant, or third party service provider, or service bureau due to an imminent threat of harm to DTC, Participants and/or other market participants. Each of the proposed changes is described in greater detail below.

II. Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency 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 clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change consists of modifications to (i) revise certain provisions in the Rules relating to the confidentiality of information furnished by Participants to DTC, (ii) require that each Participant maintain confidential information furnished by DTC or its affiliates in confidence and restrict use and disclosure of such information, (iii) add certain officers who are allowed to determine that there is a Market Disruption Event pursuant to Rule 38 and (iv) add a new Rule 38(A) to address situations in which it is necessary to disconnect a Participant, or third party service provider, or service bureau due to an imminent threat of harm to DTC, Participants and/or other market participants. Each of the proposed changes is described in greater detail below.

(i) DTC Confidentiality Requirements

Section 1 of Rule 2⁵ contains provisions relating to confidentiality of

information furnished by Participants to DTC (collectively, the “DTC Confidentiality Requirements”). Each of the DTC Confidentiality Requirements provides that the rights of DTC to inspect books and records, or to be furnished with information, is subject to any applicable laws or rules, or regulations of regulatory bodies having jurisdiction over the Participant, that relate to confidentiality of records. DTC is proposing to update the DTC Confidentiality Requirements because such provisions (i) may result in unequal treatment of Participants due to differing laws or regulations of regulatory bodies, (ii) may result in a potential conflict of laws where rules or regulations governing a regulatory body of a Participant differ from the laws applicable to DTC, or a Participant has multiple regulatory bodies whose rules conflict, (iii) are burdensome as they require DTC to track the rules and regulations of each regulatory body of its Participants to determine what applicable laws or rules or regulations of regulatory bodies that relate to confidentiality of records affect its rights to receive information and (iv) are unnecessary as DTC has sufficient protections in place relating to protection and confidentiality of Participant data.

The regulatory bodies that have jurisdiction over Participants differ by Participant depending on certain criteria of each Participant, including the type of entity of the Participant, where the Participant was organized, the types of businesses in which the Participant engages and where the Participant is doing business. In addition, many Participants are regulated by more than one regulatory body. As a result, a requirement to maintain confidentiality standards for information provided by a Participant or the right to receive information based on the regulatory body or bodies that regulate such Participant result in varying standards of confidentiality for Participants that are regulated by different regulatory bodies. Such varying standards may result in unequal treatment of Participants due to differing laws or regulations of the regulatory body or bodies governing such Participants. In addition, such varying standards may result in a potential conflict of laws where rules or regulations governing a regulatory body of a Participant differ from the laws applicable to DTC or an entity that has multiple regulatory bodies whose rules conflict.

DTC believes that it is unnecessarily burdensome to determine the rules and regulations of each of the regulatory bodies that regulate its Participants.

⁴⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Capitalized terms not defined herein are defined in the Rules, available at <https://www.dtcc.com/legal/rules-and-procedures>.

⁴ As provided in the Rules, the term “Participant” includes the term “Limited Participant” unless (i)

the context otherwise requires or (ii) the Procedures otherwise provide. Section 1 of Rule 2, *id.*

⁵ Rule 2 relates to initial and ongoing requirements to become and continue to be a Participant and/or Pledgee, including information that DTC may require applicants or Participants to provide to DTC. *Id.*