

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>13</sup> and Rule 19b-4(f)(2)<sup>14</sup> thereunder. At any time within 60 days of the filing of such 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.

### 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-EDGA-2013-35 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-EDGA-2013-35. 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 the

filings 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-EDGA-2013-35 and should be submitted on or before January 7, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013-29901 Filed 12-16-13; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34-71034; File No. SR-ISE-2013-69]**

### **Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to the Short Term Option Series Program**

December 11, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on December 6, 2013, the International Securities Exchange, LLC (the "Exchange" or the "ISE") 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 Supplementary Material .02 to Rule 504 to expand the Short Term Options Program with respect to non-index options. The text of the proposed rule change is available on the Exchange's Internet Web site at <http://www.ise.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 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 self-regulatory organization 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

The Exchange is proposing to amend Supplementary Material .02 to Rule 504 consistent with a recently approved filing by NASDAQ OMX PHLX, LLC ("PHLX").<sup>3</sup> In particular, the Exchange proposes to expand the Short Term Options ("STO") Program for non-index options so that the Exchange may: change the current thirty option class limitation to fifty option classes on which STOs may be opened; match the parameters for opening initial and additional STO strikes to what is permissible per the Options Listing Procedures Plan ("OLPP");<sup>4</sup> open up to

<sup>3</sup> See Securities Exchange Act Release No. 70682 (October 15, 2012), 78 FR 62809 (October 22, 2013) (SR-PHLX-2013-101) (notice of filing; approval; citation pending publication by the Commission).

<sup>4</sup> The full name of the OLPP (which is applicable to all option exchanges) is Plan For The Purpose of Developing and Implementing Procedures Designed to Facilitate the Listing and Trading of Standardized Options Submitted Pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act of 1934. With regard to the listing of new series on equity, ETF, or trust issued receipt ("TIRs") option classes, subsection 3.(g)(i) of the OLPP states, in relevant part, that the exercise price of each option series listed by an exchange that chooses to list a series of options (known as the Series Selecting Exchange) shall be fixed at a price per share which is reasonably close to the price of the underlying equity security, ETF, or TIR at or about the time the Series Selecting Exchange determines to list such series. Except as provided in subparagraphs (ii) through (iv) of the OLPP, if the price of the underlying security is less than or equal to \$20, the Series Selecting Exchange shall not list new option series with an exercise price more than 100% above or below the price of the underlying security. If the price of the underlying security is greater than \$20, the Series Selecting Exchange shall not list new option series with an exercise price more than 50% above or below the price of the underlying security.

Subsection 3.(g)(i) of the OLPP indicates that an option series price has to be reasonably close to the price of the underlying security and must not exceed a maximum of 50% or 100%, depending on the price, from the underlying. The Exchange's proposal related to non-index options, while

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<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(2).

<sup>15</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.

thirty initial STO series for each expiration date in an STO class; add an STO strike price interval of \$2.50 or greater where the strike price is above \$150; and in general harmonize the different parts of the Program (e.g., initial listings and additional series).

The STO Program, which was initiated in 2010,<sup>5</sup> is codified in Supplementary Material .02 to Rule 504 for non-index options including equity, currency, and exchange traded fund (“ETF”) options.<sup>6</sup> These rules currently provide that after an option class has been approved for listing and trading on the Exchange, the Exchange may open for trading on any Thursday or Friday that is a business day series of options on no more than thirty option classes that expire on each of the next five consecutive Fridays that are business days.<sup>7</sup> In addition to the thirty-option class limitation, there is also a limitation that no more than twenty initial series for each expiration date in those classes may be opened for trading; provided, however, that the Exchange may open up to 10 additional series 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.<sup>8</sup>

Furthermore, the strike price of each STO has to be fixed with approximately the same number of strike prices being opened above and below the value of the underlying security at about the time that the STOs are initially opened for trading on the Exchange, and with strike prices being within thirty percent (30%) above or below the closing price of the underlying security from the preceding day. In terms of the strike price intervals, the STO Program currently allows the interval between strike prices on STOs to be (i) \$0.50 or greater where the strike price is less than \$75, and \$1 or greater where the strike price is between \$75 and \$150 for all classes that participate in the STO

conforming to the current structure of the Exchange’s STO rules, is similar in practical effect to the noted OLPP subsection.

<sup>5</sup> See Securities Exchange Act Release No. 62444 (July 2, 2010), 75 FR 39595 (July 9, 2010) (SR-ISE-2010-72) (notice of filing and immediate effectiveness of proposed rule change to permanently establish the STO Program on the Exchange).

<sup>6</sup> The Exchange does not by this filing propose any changes to Supplementary Material .01 to Rule 2009 related to the STO Program for index options.

<sup>7</sup> The Exchange increased the number of option issues that could be opened pursuant to the STO Program in 2012. See Securities Exchange Act Release No. 66432 (February 21, 2012), 77 FR 11614 (February 27, 2012) (SR-ISE-2012-08).

<sup>8</sup> See Supplementary Material .02(c) and (d) to Rule 504.

Program; or (ii) \$0.50 for option classes that trade in one dollar increments, *i.e.*, in the Related non-STO,<sup>9</sup> and are in the STO Program. This proposal retains many of the fundamental limitations of the STO Program while proposing specific changes as described below.

#### The Proposal

First, the Exchange proposes to increase the number of STO classes that may be opened after an option class has been approved for listing and trading on the Exchange. Specifically, the Exchange proposes in Supplementary Material .02(a) to Rule 504 that the Exchange may select up to fifty currently listed option classes on which STO series may be opened. The Exchange also proposes in Supplementary Material .02(c) to Rule 504 that for each option class eligible for participation in the STO Program, the Exchange may open up to thirty initial STO series for each expiration date in that class. Currently ISE rules permit the Exchange to list up to twenty initial series, and up to ten additional series, for each option class that participates in the STO program.<sup>10</sup> While the ISE may currently list thirty STO series total, the Exchange is proposing to increase the number of initial series that it may list in order to remain competitive with other exchanges. The Exchange will continue to be limited to a total of thirty STO series, including both initial and additional series, and is proposing amendments to Supplementary Material .02(d) to Rule 504 to reflect the fact that the Exchange may only open additional series if it has opened fewer than thirty initial series. The Exchange believes that this proposed moderate increase in the number of STO classes and initial STO series is needed and advisable in light of the demonstrated acceptance and popularity of the STO Program among market participants, as discussed below.

Second, the Exchange proposes changes to Supplementary Material .02(c) and (d) to Rule 504 to indicate that any initial or additional strike prices listed by the Exchange shall be reasonably close to the price of the underlying equity security and within the following parameters: (i) If the price of the underlying security is less than or equal to \$20, strike prices shall be not more than one hundred percent (100%) above or below the price of the underlying security; and (ii) if the price

<sup>9</sup> Related non-STOs are non-STOs that have similar options with longer expiration cycles (*e.g.*, monthly Apple (AAPL) options would be Related non-STOs to weekly AAPL options).

<sup>10</sup> See Supplementary Material .02(c) and (d) to Rule 504.

of the underlying security is greater than \$20, strike prices shall be not more than fifty percent (50%) above or below the price of the underlying security.<sup>11</sup> This proposal is in line with the process for adding new series of options found in subsection 3.(g)(i) of the OLPP, and harmonizes the STO Program internally by adopting consistent parameters for opening STOs and listing additional strike prices. The Exchange believes that this proposal is a reasonable and desirable enhancement to the STO Program.

Third, the Exchange proposes additional changes to Supplementary Material .02(d) to indicate that if the Exchange has opened less than thirty STO series for an STO expiration date, the Exchange may also open additional strike prices of STO series that are more than 50% above or below the current price of the underlying security if the price is greater than \$20, provided that demonstrated customer interest exists for such series,<sup>12</sup> as expressed by institutional, corporate or individual customers or their brokers. This is done to further conform the additional strike price methodology to the proposed listing parameters described above, while retaining demonstrated interest language that may be useful in unforeseen circumstances. Furthermore, Rule 504A(b)(i) currently states that if the price of the underlying security is greater than \$20, the Exchange shall not list new option series with an exercise price more than 50% above or below the price of the underlying security. Immediately before this language, the Exchange proposes to also add a carve-out that states: “Except as provided in Supplementary Material .02(d) to Rule 504 . . .”

Fourth, the Exchange proposes to simplify the delisting language in Supplementary Material .02(d) to Rule 504, by removing the current range methodology that states, in part, that the Exchange will delist certain series “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.”<sup>13</sup> In the event that the

<sup>11</sup> The price of the underlying security will be calculated commensurate with Rule 504A(b)(i) as amended.

<sup>12</sup> Market Makers trading for their own account are not considered when determining customer interest.

<sup>13</sup> Currently, the delisting language states: “In the event that the underlying security has moved such that there are no series that are at least 10% above or below the current price of the underlying security, the Exchange will delist any series with no open interest in both the call and the put series having a: (i) Strike higher than the highest strike price with open interest in the put and/or call series for a given expiration month; and (ii) strike lower

underlying security has moved such that there are no series that are at least 10% above or below the current price of the underlying security, the Exchange will continue to delist any series with no open interest in both the call and the put series having a: (i) Strike higher than the highest price with open interest in the put and/or call series for a given expiration week; and (ii) strike lower than the lowest strike price with open interest in the put and/or the call series for a given expiration week.<sup>14</sup> New series added after delisting will not be constrained by the prior range methodology. The Exchange believes that, like its other proposals, the delisting proposal will add clarity and certainty to the STO process on the Exchange.

Fifth, the Exchange proposes to add \$2.50 strike price intervals to the STO Program. Specifically, the Exchange proposes in Supplementary Material .12 to Rule 504 to indicate that the interval between strike prices on STOs may be \$2.50 or greater where the strike price is above \$150. This proposed change complements the current STO strike price intervals of \$0.50 or greater where the strike price is less than \$75 (or for STO classes that trade in one dollar increments in the Related non-STO), and \$1 or greater where the strike price is between \$75 and \$150. The proposed \$2.50 strike price interval addresses the issue that above a \$150 strike price STO strike price intervals must generally be an exceedingly wide \$5 or greater.<sup>15</sup>

The principal reason for the proposed expansion is market demand for additional STO classes and series and a desire to make the STO Program more effective. There is continuing strong customer demand for having the ability to execute hedging and trading

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than the lowest strike price with open interest in the put and/or the call series for a given expiration 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. In the event that the underlying security has moved such that there are no series that are at least 10% above or below the current price of the underlying security and all existing series have open interest, the Exchange may list additional series, in excess of the 30 allowed under this Supplementary Material .02, that are between 10% and 30% above or below the price of the underlying security.” Supplementary Material .02(d) to Rule 504. See Securities Exchange Act Release No. 68318 (November 29, 2012), 77 FR 72426 (December 5, 2012) (SR-ISE-2012-90) (notice of filing and immediate effectiveness of proposed rule change to delist series and open up to five consecutive weekly expirations of STOs).

<sup>14</sup> The Exchange notes that the delisting language in Supplementary Material .02(d) to Rule 504 incorrectly refers to expiration months rather than weeks. With this filing the Exchange also proposes to clarify that the exchange will delist series for given expiration weeks in accordance with the criteria discussed in this rule.

<sup>15</sup> See, e.g., Rule 504(d).

strategies via STOs, particularly in the current fast and volatile multi-faceted trading and investing environment that extends across numerous markets and platforms,<sup>16</sup> and includes market moving events such as significant market volatility, corporate events, or large market, sector, or individual issue price swings. The Exchange has been requested by traders and other market participants to expand the STO Program to allow additional STO offerings and increased efficiency.

In order that the Exchange not exceed the current thirty option class and twenty initial option series restriction, the Exchange has on occasion had to turn away STO customers (traders and investors) because it could not list, or had to delist, STOs or could not open adequate STO series because of restrictions in the STO Program. This has negatively impacted investors and traders, particularly retail investors, who have continued to request that the Exchange add, or not remove, STO classes, or have requested that the Exchange expand the STO Program so that additional STO classes and series could be opened that would allow the market participants to execute trading and hedging strategies. There are, as discussed, substantial benefits to market participants having the ability to trade eligible option classes within the STO Program. Furthermore, the Exchange supports the objective of responding to customer need to enhance successful programs to make them more efficient for hedging and trading purposes. The Exchange notes that the STO Program has been well-received by market participants, in particular by retail investors. The Exchange believes that weekly expiration options will continue to grow in importance for all market participants, including institutional and retail investors.<sup>17</sup> The proposed revisions to the STO Program will permit the Exchange to meet customer demand for weekly expiration options by providing a reasonable expansion to the program, and will further allow the Exchange to harmonize STO Program rules with the OLPP as well as internally.

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 any potential additional traffic associated with this current amendment to the STO Program. The Exchange believes that its members will not have a capacity issue as a result of this proposal. The Exchange represents that it will monitor the trading volume associated with the additional STO classes and series listed as a result of this proposal and the effect (if any) of these additional STO classes and series on market fragmentation and on the capacity of the Exchange’s automated systems.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>18</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>19</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. Expanding the classes and additional series that can be opened in the STO Program, simplifying the delisting process, and allowing \$2.50 strike price intervals will result in a continuing benefit to investors by giving them more flexibility to closely tailor their investment and hedging decisions in greater number of securities. In addition, correcting the delisting language, which currently refers to “expiration months” instead of weeks will clarify the Exchange’s rules and reduce investor confusion.

The STO Program has been well-received by market participants, and in particular by retail investors, and has seen increasing trading volume. The Exchange believes that the current proposed revisions to the STO Program will permit the Exchange to meet customer demand for weekly expiration options by providing a reasonable expansion to the program, and will further allow the Exchange to harmonize STO Program rules with the OLPP as well as internally to the benefit of investors, market participants, and the marketplace.

With regard to the impact of this proposal on system capacity, the Exchange believes that it and OPRA have the necessary systems capacity to handle any potential additional traffic associated with this current amendment

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<sup>16</sup> These include, without limitation, options, equities, futures, derivatives, indexes, ETFs, exchange traded notes, currencies, and over the counter instruments.

<sup>17</sup> The current STO Program, which is similar across all options markets that have weeklies programs, is in its current formulation one of the more challenging industry-wide listings program to administer. Recognizing the importance of the Program, the Exchange is seeking to improve the Program for non-index STOs by making it more uniform and logical.

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

<sup>19</sup> 15 U.S.C. 78f(b)(5).

to the STO Program. The Exchange believes that its members will not have a capacity issue as a result of this proposal. As explained above, this proposal will afford significant benefits to market participants, and the market in general, in terms of significantly greater flexibility and increases in efficient trading and hedging options. It will also allow the Exchange to compete on equal footing with STO Programs adopted by other options exchanges, and in particular PHLX, which has recently been granted approval to adopt substantially similar rules to those proposed here.

*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. To the contrary, the Exchange believes the proposal is pro-competitive. The proposed rule change is a competitive response to a recently approved filing by the PHLX,<sup>20</sup> which the Exchange believes is necessary to permit fair competition among the options exchanges with respect to STO Programs. The Exchange believes that the proposed rule change will result in additional investment options and opportunities to achieve the investment objectives of market participants seeking efficient trading and hedging vehicles, to the benefit of investors, market participants, and the marketplace in general.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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

Because the 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)

of the Act<sup>21</sup> and Rule 19b-4(f)(6) thereunder.<sup>22</sup>

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange stated that it would be at a competitive disadvantage if it were not allowed to adopt the proposed rule changes contemporaneously with those recently approved for PHLX. The Exchange also stated that the proposal will promote fair competition among exchanges by allowing the Exchange to offer a more efficient STO Program that is harmonized internally and externally with the OLPP, and to meet customer demand for a greater number of STO classes and strike price intervals, in the same manner as other exchanges. For these reasons, the Commission believes that the proposed rule change presents no novel issues, and waiver will allow the Exchange to remain competitive with other exchanges. Therefore, the Commission designates the proposed rule change to be operative upon filing.<sup>23</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 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

<sup>21</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>22</sup> 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the 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.

<sup>23</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2013-69 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-ISE-2013-69. 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 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-ISE-2013-69 and should be submitted on or before January 7, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>24</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013-29890 Filed 12-16-13; 8:45 am]

**BILLING CODE 8011-01-P**

<sup>20</sup> See supra note 3.

<sup>24</sup> 17 CFR 200.30-3(a)(12).