

The proposed change is not otherwise intended to address any other matter, and the Exchange is not aware of any significant problem that ETP Holders would have in complying with the proposed change.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),<sup>6</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act,<sup>7</sup> in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed rule change is reasonable since permitting ETP Holders to use alternative methods to designate orders as Retail Orders will encourage the development of the Exchange's liquidity pool, and thus support the quality of price discovery, promote market transparency, and improve investor protection. The Exchange believes the proposed change is reasonable because it will provide ETP Holders alternative ways to designate orders as Retail Orders while ensuring that ETP Holders are required to have written policies and procedures designed to assure that they will only designate orders as Retail Orders if all requirements of a Retail Order are met.

The Exchange believes that the proposed rule change is equitable and not unfairly discriminatory because it provides a second method for Retail Order designation and allows each ETP Holder to choose the designation method most convenient to it, recognizing that individual firms have different internal system configurations. By providing alternative avenues for ETP Holders to designate orders as Retail Orders, the Exchange believes that ETP Holders will choose the designation method that is most operationally efficient, potentially reducing transaction costs.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For

review an ETP Holder's compliance with these requirements through an exam-based review of the ETP Holder's internal controls.

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

<sup>7</sup> 15 U.S.C. 78f(b)(5).

the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

### 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

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)<sup>8</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>9</sup> thereunder, because it establishes a due, fee, or other charge imposed by the NYSE Arca.

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-NYSEARCA-2012-129 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.

All submissions should refer to File Number SR-NYSEARCA-2012-129.

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEARCA-2012-129 and should be submitted on or before December 26, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Kevin M. O'Neill,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68318; File No. SR-ISE-2012-90]

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

November 29, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on November 21, 2012, the International

<sup>10</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.

Securities Exchange, LLC (the "Exchange" or "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 its rules to expand the number of expirations available under the Short Term Option Series Program ("STOS Program"), to allow for the Exchange to delist certain series in the STOS that do not have open interest and to expand the number of series in STOS under limited circumstances. The text of the proposed rule change is available on the Exchange's Web site [www.ise.com](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 purpose of the proposal is to amend ISE rules to provide for the ability to open up to five consecutive expirations under the Short Term Option Series Program ("STOS Program") for trading on the Exchange, to allow for the Exchange to delist certain series in the STOS that do not have open interest and to expand the number of series in STOS under limited circumstances when there are no series at least 10% but not more than 30% away from the current price of the underlying security.<sup>3</sup>

<sup>3</sup> On July 12, 2005, the Commission approved the STOS Program on a pilot basis. See Securities Exchange Act Release No. 52012 (July 12, 2005), 70

This filing is based on filings previously submitted by NYSE Arca, Inc. ("Arca") and NYSE MKT LLC ("MKT"), which the Commission recently approved.<sup>4</sup>

Currently, the Exchange may select up to 30 currently listed option classes on which STOS options may be opened in the STOS Program and the Exchange may also match any option classes that are selected by other securities exchanges that employ a similar program under their respective rules.<sup>5</sup> 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>6</sup> Under the current rule, STOS options expire the following week.

This proposal seeks to allow the Exchange to open STOS option series for up to five consecutive week expirations. The Exchange intends to add a maximum of five consecutive week expirations under the STOS Program, however it will not add a STOS expiration in the same week that a monthly options series expires or, in the case of Quarterly Option Series, on an expiration that coincides with an expiration of Quarterly Option Series on the same class. In other words, the total number of consecutive expirations will be five, including any existing monthly or quarterly expirations.<sup>7</sup> The Exchange notes that the STOS Program has been well-received by market participants, in particular by retail investors.<sup>8</sup> The Exchange believes that the current proposed revision to the STOS Program will permit the Exchange to meet increased customer demand and

FR 41246 (July 19, 2005) (SR-ISE-2005-17). The STOS Program was made permanent on July 1, 2010. See Securities Exchange Act Release No. 62444 (July 2, 2010), 75 FR 39595 (July 9, 2010) (SR-ISE-2010-72).

<sup>4</sup> See Securities Exchange Act Release Nos. 68190 (November 8, 2012)

(SR-NYSEArca-2012-95); 68191 (November 8, 2012) (SR-NYSEMKT-2012-42).

<sup>5</sup> See ISE Rule 504, Supplementary Material .02(a).

<sup>6</sup> See ISE Rule 504, Supplementary Material .02(c) and (d).

<sup>7</sup> For example, if quarterly options expire week 1 and monthly options expire week 3 from now, the proposal would allow the following expirations: week 1 quarterly, week 2 STOS, week 3 monthly, week 4 STOS, and week 5 STOS. If quarterly options expire week 3 and monthly options expire week 5, the following expirations would be allowed: week 1 STOS, week 2 STOS, week 3 quarterly, week 4 STOS, and week 5 monthly.

<sup>8</sup> Since the STOS Program has been adopted, it has seen rapid acceptance among industry participants as evidenced by the expansion of the number of classes eligible for the STOS Program. See Securities Exchange Act Release No. 66432 (February 21, 2012), 77 FR 11614 (February 27, 2012) (SR-ISE-2012-08).

provide market participants with the ability to hedge in a greater number of option classes and series.

With regard to the impact of this proposal on system capacity, the Exchange has analyzed its capacity and represents that it and the Options Price Reporting Authority have the necessary systems capacity to handle the potential additional traffic associated with trading of an expanded number of expirations that participate in the STOS Program.

In addition, the Exchange is proposing to add new language to Supplementary Material .02 to ISE Rule 504 and Supplementary Material .01 to ISE Rule 2009 to allow the Exchange, 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, to delist 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 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. Further, in the event that all existing series have open interest and there are no series at least 10% above or below the current price of the underlying security, the Exchange may list additional series, in excess of the 30 allowed currently under current ISE Rules 504 and 2009, that are at least 10% and not more than 30% above or below the current price of the underlying security. This change is being proposed notwithstanding the current cap of 30 series per class under the STOS Program.

The Exchange believes that it is important to allow investors to roll existing option positions and ensuring that there are always series at least 10% but not more than 30% above or below the current price of the underlying security will allow investors the flexibility they need to roll existing positions.

##### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act<sup>9</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>10</sup> in particular, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market

<sup>9</sup> 15 U.S.C. 78f (b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

system and, in general, to protect investors and the public interest.

The Exchange believes that expanding the STOS Program will result in a continuing benefit to investors by giving them more flexibility to closely tailor their investment decisions and hedging decisions in a greater number of securities. The Exchange also believes that expanding the STOS Program will provide the investing public and other market participants with additional opportunities to hedge their investment thus allowing these investors to better manage their risk exposure. While the expansion of the STOS Program will generate additional quote traffic, the Exchange does not believe that this increased traffic will become unmanageable since the proposal remains limited to a fixed number of expirations.

The Exchange believes that the ability to delist certain series with no open interest in both the call and the put series will benefit investors by devoting the current cap in the number of series to those series that are more closely tailored to the investment decisions and hedging decisions of investors.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

ISE does not believe that this proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. In this regard and as indicated above, the Exchange notes that the rule change is being proposed as a competitive response to filings recently submitted by Arca and MKT and approved by the Commission. ISE believes this proposed rule change is necessary to permit fair competition among the options exchanges and to establish uniform rules regarding the STOS Program.

#### *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 foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30

days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup>

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal is substantially similar to those of other exchanges that have been approved by the Commission and permit such exchanges to open up to five consecutive expirations under their respective STOS Programs as well as allow for the exchanges to delist any series in the STOS Programs that do not have open interest and expand the number of series per class permitted in the STOS Programs under limited circumstances.<sup>13</sup> Therefore, the Commission designates the proposal operative upon filing.<sup>14</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.

### **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-ISE-2012-90 on the subject line.

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>13</sup> See *supra* note 4.

<sup>14</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

#### *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-2012-90. 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-2012-90 and should be submitted on or before December 26, 2012.

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

**Kevin M. O'Neill,**

*Deputy Secretary.*

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<sup>15</sup> 17 CFR 200.30-3(a)(12).