

Dated: November 23, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011-30794 Filed 11-25-11; 11:15 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold a Closed Meeting on Tuesday, November 29, 2011 at 5 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(10) and 17 CFR 200.402(a)(10), permit consideration of the scheduled matter at the Closed Meeting.

Commissioner Aguilar, as duty officer, voted to consider the item listed for the Closed Meeting in closed session, and determined that no earlier notice thereof was possible.

The subject matter of the Closed Meeting scheduled for Tuesday, November 29, 2011 will be: A matter relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 551-5400.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65805; File No. SR-NYSEAmex-2011-89]

### Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Increase From 20 to 30 the Number of Short Term Options Series That May Be Opened for Each Option Class That Participates in the Exchange's Short Term Option Series Program

November 22, 2011.

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 18, 2011, NYSE Amex LLC (the "Exchange" or "NYSE Amex") 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 Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Commentary .10 to NYSE Amex Options Rule 903 to increase the number of Short Term Options Series that may be opened for each option class that participates in the Exchange's Short Term Option Series Program ("Program") from 20 series to 30 series. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, <http://www.nyse.com>, and <http://www.sec.gov>.

#### 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 Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange proposes to amend Commentary .10 to NYSE Amex Options Rule 903 to increase the number of Short Term Options Series that may be opened for each option class that participates in the Program from 20 series to 30 series.<sup>5</sup>

The Program is codified in NYSE Amex Options Rule 903 and Commentary .10 thereto. This rule text provides 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 ("Short Term Option Opening Date") series of options on no more than five (5) classes<sup>6</sup> that expire at the close of business on the next Friday that is a business day ("Short Term Option Expiration Date").<sup>7</sup>

The strike price of each Short Term Option Series will be fixed at a price per share, 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 Short Term Option Series are initially opened for trading on the Exchange (e.g., if seven series are initially opened, there will be at least three strike prices above and three strike prices below the value of the underlying security).<sup>8</sup> Any strike prices listed by

<sup>5</sup> On July 12, 2005, the Commission approved the Program on a pilot basis. See Securities Exchange Act Release No. 52014 (July 12, 2005), 70 FR 41244 (July 18, 2005) (SR-Amex-2005-035). The Program was expanded and made permanent on June 23, 2010. See Securities Exchange Act Release No. 62370 (June 23, 2010), 75 FR 37870 (June 30, 2010) (SR-NYSEAmex-2010-62).

<sup>6</sup> In addition to the five-option class restriction, the Exchange also may list Short Term Option Series on any option classes that are selected by other securities exchanges that employ a similar program under their respective rules.

<sup>7</sup> If the Exchange is not open for business on a Thursday or Friday, the Short Term Option Opening Date will be the first business day immediately prior to that Thursday or Friday. Similarly, if the Exchange is not open for business on a Friday, the Short Term Option Expiration Date will be the first business day immediately prior to that Friday. Short Term Option Series are P.M.-settled, except for Short Term Option Series on indexes, which are A.M.-settled. No Short Term Option Series may expire in the same week in which monthly or Quarterly Option Series on the same class expire.

<sup>8</sup> The listing criteria for Short Term Options Series contained in Commentary .10 of Rule 903 is

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

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

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

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

the Exchange must be within thirty percent (30%) above or below the closing price of the underlying security from the preceding day. The Exchange is not proposing any changes to these additional Program limitations.

The principal reason for the proposed expansion is market demand for additional Short Term Option Series in classes included in the Program in which the maximum number of series (20) has already been reached. Specifically, the Exchange has observed increased demand for additional Short Term Option Series when market-moving events, such as corporate events and large price swings, have occurred during the lifespan of an affected class included in the Program.

Currently, in order to be able to respond to market demand, the Exchange is forced to delist certain Short Term Option Series in order to make room for higher-demand Short Term Option Series.<sup>9</sup> The Exchange finds this method to be problematic for two reasons. First, the Exchange has received requests to maintain certain Short Term Option Series that it intends to delist to make room for higher-demand Short Term Option Series. While market participants may often access other markets for the delisted Short Term Option Series, the Exchange would prefer to provide market participants with their preferred choice of markets on which to trade—NYSE Amex. Second, this method can lead to competitive disadvantages among exchanges. If one exchange is actively responding to market demand by delisting and adding series and another exchange is the last to delist the less desirable series with open interest, then that exchange is required to maintain those series and is potentially unable to list the in-demand Short Term Option Series (because to do so could result in more than 20 Short Term Option Series being listed on that exchange). As a result, the Exchange believes that the maximum number of Short Term Option Series per class of options that participates in the Program should be increased to 30 so that exchanges can list the full panoply of Short Term Option Series that other exchanges list and that the market demands.

To effect this change, the Exchange is proposing to amend Commentary .10 to

made applicable to index options by Rule 903C(a). Accordingly, NYSE Amex is proposing to add a parenthetical reference to Commentary .10(c) of Rule 903 stating that in the case of index options, the calculated value of an index will be used when determining the initial strike prices of Short Term Options Series.

<sup>9</sup> The Exchange delists Short Term Option Series with no open interest regardless of whether those series are open for trading on another exchange.

NYSE Amex Options Rule 903. Specifically, the Exchange is proposing to limit the initial number of Short Term Option Series that may be opened for trading to 20 series and to limit the number of additional Short Term Option Series that may be opened for trading to 10 series.<sup>10</sup>

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 the potential additional traffic associated with trading of an expanded number of Short Term Option Series for classes that participate in the Program.

The Exchange believes that the Program has provided investors with greater trading opportunities and flexibility and the ability to more closely tailor their investment and risk management strategies and decisions. Therefore, the Exchange requests a modest expansion of the current Program. It is expected that other options exchanges that have adopted a similar program will submit similar proposals.

## 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>11</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>12</sup> in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that expanding the number of Short Term Option Series per option class eligible to participate in the Program will allow the investing public and other market participants to better

<sup>10</sup> Short Term Option Series must be added pursuant to the existing listing parameters set forth in Commentary .10 to NYSE Amex Options Rule 903. Initial Short Term Option Series must be within 30% above or below the closing price of the underlying security on the preceding day. Any additional strike prices listed by the Exchange must be within 30% above or below the current price of the underlying security. The Exchange may also open additional strike prices of Short Term Option Series that are more than 30% above or below the current price of the underlying security provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate or individual customers or their brokers. Market-Makers trading for their own account are not considered when determining customer interest.

<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

manage their risk exposure, and would benefit investors by giving them more flexibility to closely tailor their investment decisions in a greater number of securities. While the expansion of the Program will generate additional quote traffic, the Exchange does not believe that this increased traffic will become unmanageable since the proposal is limited to a fixed number of series per class. Further, the Exchange does not believe that the proposal will result in a material proliferation of additional series because it is limited to a fixed number of series per class and the Exchange does not believe that the additional price points will result in fractured liquidity.

## 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

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>13</sup> and Rule 19b-4(f)(6) thereunder.<sup>14</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 that of another exchange that has been approved by the

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

<sup>14</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.

Commission.<sup>15</sup> Therefore, the Commission designates the proposal operative upon filing.<sup>16</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-NYSEAmex-2011-89 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-NYSEAmex-2011-89. 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 a.m. and 3 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-NYSEAmex-2011-89 and should be submitted on or before December 20, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65807 File No. SR-OCC-2011-13]

### Self-Regulatory Organizations; Options Clearing Corporation; Notice of Filing of Amendment No. 2 and Amendment No. 3 to Proposed Rule Relating to Relative Performance Indexes

November 22, 2011.

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 September 21, 2011, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change. On October 4, 2011, OCC filed Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on October 11, 2011.<sup>3</sup> On November 17, 2011, OCC filed Amendment No. 2 and Amendment No. 3 to the proposed rule change. The proposed rule change as amended by Amendment Nos. 1, 2 and 3 is described in Items I, II, and III below, which Items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on Amendment Nos. 2 and 3

to the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would remove any potential cloud on the jurisdictional status of relative performance indexes.

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

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

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

The purpose of the proposed rule change is to remove any potential cloud on the jurisdictional status of relative performance indexes. NASDAQ OMX PHLX has proposed to trade options on indexes ("Alpha Index Options") that measure the relative total returns of a stock or exchange-traded fund ("ETF") against another stock or ETF, including where one of the reference ETFs measured by the index is a gold- or silver-based ETF.<sup>4</sup> Generally, a relative performance index should be considered to be an index of securities since the components of a relative performance index are ETFs or other securities. However, OCC would like to confirm the jurisdictional treatment of relative performance indexes in situations in which one of the reference securities of an underlying relative performance index is an ETF designed to measure the return of gold or silver. To accomplish this purpose, OCC is proposing to add an interpretation following Section 2 in Article XVII of OCC's By-Laws,<sup>5</sup> clarifying that OCC will clear and treat as securities any

<sup>15</sup> See Securities Exchange Act Release No. 65772 (November 17, 2011) (SR-CBOE-2011-086) (order approving expansion of Short Term Option Program).

<sup>16</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).

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

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

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

<sup>3</sup> Securities Exchange Act Release No. 65483 (October 4, 2011), 76 FR 62981 (October 11, 2011).

<sup>4</sup> The staff notes that on August 17, 2011, the Commission issued an Order granting approval this proposed rule change. See Securities Exchange Act Release No. 34-65149, 76 FR 52729 (August 23, 2011).

<sup>5</sup> The staff notes that OCC is also adding a definition of "relative performance index" to Section 1, which will be defined as an index designed to measure the relative performance of a reference security or reference index in relation to another reference security or reference index.