

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-62054; File No. SR-NYSEArca-2010-34)

May 6, 2010

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt Commentary .02 to Rule 5.32, Terms of FLEX Options, to Establish a Pilot Program to Permit FLEX Options to Trade With No Minimum Size Requirement

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹, and Rule 19b-4² thereunder, notice is hereby given that on April 29, 2010, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (the “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 adopt Commentary .02 to Rule 5.32, Terms of FLEX Options, to establish a Pilot Program to permit FLEX Options to trade with no minimum size requirement. The text of the proposed rule change is attached as Exhibit 5 to the 19b-4 form. A copy of this filing is available on the Exchange’s Web site at www.nyse.com, at the Exchange’s principal office, at the Commission’s Public Reference Room, and on the Commission’s Web site at www.sec.gov.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 purpose of the filing is to adopt rules to establish a Pilot Program to eliminate minimum value sizes for both FLEX Equity options and FLEX Index options similar to a pilot approved for the Chicago Board Options Exchange ("CBOE").³

Presently, the Exchange minimum value size requirements for an opening FLEX Equity transaction in any FLEX series in which there is no open interest at the time the Request for Quote is submitted is the lesser of 250 contracts or the number of contracts overlying \$1 million in underlying securities. An opening FLEX Index transaction in a FLEX series in which there is no open interest requires a minimum size of \$10 million Underlying Equivalent Value. The Exchange proposes to adopt a fourteen month pilot program that eliminates the minimum value size requirements for both FLEX Equity and FLEX Index options. If, in the future, the Exchange proposes an extension of the minimum value size Pilot Program, or should the Exchange propose to make the new

³ See Exchange Act Release No. 34-61439 (January 28, 2010) 75 FR 5831 (February 4, 2010).

Program permanent, the Exchange will submit, along with any filing proposing such amendments to the Program, a Pilot Program report that would provide an analysis of the Pilot covering the period during which the Program was in effect. This minimum value size report would include: (i) data and analysis on the open interest and trading volume in (a) FLEX Equity Options with opening transaction with a minimum size of 0 to 249 contracts and less than \$1 million in underlying value; (b) FLEX Index Options with opening transaction with a minimum opening size of less than \$10 million in underlying equivalent value; and (ii) analysis on the types of investors that initiated opening FLEX Equity and Index Options transactions (i.e., institutional, high net worth, or retail). The report would be submitted to the Commission at least two months prior to the expiration date of the Pilot Program and would be provided on a confidential basis.

The Exchange notes that any positions established under this Pilot would not be affected by the expiration of the Pilot. For example, a 10-contract FLEX Equity Option opening position that overlies less than \$1 million in the underlying security and expires in January 2015 could be established during the 14-month Pilot. If the Pilot Program were not extended, the position would continue to exist and any further trading in the series would be subject to the minimum value size requirements for continued trading in that series. The proposed minimum opening transaction size elimination is based on a similar pilot approved for use on CBOE.⁴

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)⁵

⁴ See Note 3 above.

⁵ 15 U.S.C. 78f(b).

of the Securities Exchange Act of 1934 (the “Act”), in general, and furthers the objectives of Section 6(b)(5)⁶ in particular in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest by eliminating a minimum size for FLEX transactions, which the Exchange believes will provide greater opportunities for investors to manage risk through the use of FLEX options.

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: (1) significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of

⁶ 15 U.S.C. 78f(b)(5).

investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁷ and Rule 19b-4(f)(6) thereunder.⁸

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.⁹ However, Rule 19b-4(f)(6)¹⁰ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. NYSE Arca has requested that the Commission waive the 30-day operative delay.

The Commission has considered NYSE Arca's request to waive the 30-day operative delay. Because, however, the Commission does not believe, practically speaking, that a pilot should retroactively commence, the Commission is only waiving the operative delay as of the date of this notice for the reasons discussed below.

The Commission believes that shortening the 30-day operative delay to allow the commencement of the pilot as of the date of this notice is consistent with the protection of investors and the public interest. The Commission notes that the proposed rule change is substantially similar to a pilot that was previously approved by the Commission and is currently in existence for CBOE.¹¹ The Commission also notes that the corresponding

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(6). When filing a proposed rule change pursuant to Rule 19b-4(f)(6) under the Act, an Exchange is required to give the Commission written notice of its 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 met this requirement.

⁹ 17 CFR 240.19b-4(f)(6)(iii).

¹⁰ Id.

¹¹ See CBOE Rule 24A.4 Interpretations and Policies .01(b); see also Securities Exchange Act Release No. 61439 (January 28, 2010) 75 FR 5831 (February 4, 2010) (SR-CBOE-2009-087).

CBOE pilot was subject to full notice and comment in the Federal Register, and that the Commission only received comments that supported that proposal.¹² Moreover, waiving the operative date as of the date of this notice is consistent with approval of CBOE's pilot, which allowed implementation as of the date of the Commission's approval order. For these reasons, the Commission designates the proposal to be operative upon the date of issuance of this notice.¹³

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate 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 the 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 e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2010-34 on the subject line.

¹² See Securities Exchange Act Release No. 61439 (January 28, 2010) 75 FR 5831 (February 4, 2010) (SR-CBOE-2009-087).

¹³ For the purposes only of waiving the operative date of this proposal, 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-NYSEArca-2010-34. This file number should be included on the subject line if e-mail 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-NYSEArca-2010-34 and should be submitted on or before [insert date 21 days after publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Florence E. Harmon
Deputy Secretary

¹⁴ 17 CFR 200.30-3(a)(12).