

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-62321; File No. SR-NYSEArca-2010-46)

June 17, 2010

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Commentary .01 to Rule 5.32 to Permit Certain FLEX Options to Trade under the FLEX Trading Procedures for a Limited Time on a Closing Only Basis

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that on June 2, 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend Commentary .01 to Rule 5.32, Terms of FLEX Options, to permit certain FLEX Options to trade under the FLEX Trading Procedures for a limited time. The text of the proposed rule change is attached at Exhibit 5 to the 19b-4 form. A copy of this filing is available on the Exchange’s Web site at www.nyse.com, on the Commission’s Web site at <http://www.sec.gov>, at the Exchange’s principal office, and at the Commission’s Public Reference Room.

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 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 this filing is to allow certain FLEX options, which are identical in all terms to a Non-FLEX option, to trade using FLEX Trading Procedures for the balance of the trading day on which the Non-FLEX Option is added as an intra-day add.

The Exchange recently adopted rule changes to allow FLEX options to expire within two business days of a third-Friday-of-the-month expiration, including expiration Friday ("expiration FLEX").⁴ Such FLEX Options could have either an American Style exercise or a European Style exercise. The same rule change also allowed for FLEX Index Options to expire on or within two business days of a third-Friday-of-the-month expiration, provided they only have an exercise settlement value on the expiration date determined by reference to the reported level of the index as derived from the opening prices of the component securities ("a.m. settlement").

The rule change provided that expiration FLEX options will be permitted before (but not after) Non-FLEX Options with identical terms are listed. Once and if an option series is listed for trading as a Non-FLEX Option series, (i) all existing open positions established under the

⁴ See Exchange Act Release No. 60549, SR-NYSE-Arca-2009-75 (August 20, 2009), 74 FR 44415 (August 28, 2009).

FLEX Trading procedures shall be fully fungible with transactions in the respective Non-FLEX Options series, and (ii) any further trading in the series would be as Non-FLEX Options subject to the Non-FLEX trading procedures and rules.

The Options Clearing Corporation (“OCC”) became concerned that, in certain circumstances, in the event a Non-FLEX Option is listed with identical terms to an existing FLEX option, OCC could not net the positions in the contracts until the next business day. If the Non-FLEX Option were listed intra-day, and the holder of a position in the FLEX option attempted to close the position using the Non-FLEX Option, the holder would be technically long in one contract and short in the other contract. This would expose the holder to assignment risk until the next day despite having offsetting positions.

The limited circumstances are:

- The Non-Flex Option is listed intra-day.
- The FLEX contract is for American style exercise.
- All other terms are identical and the contracts are otherwise fungible.

The risk does not occur in expiration Friday FLEX option positions during the five days prior to expiration, as no new Non-FLEX Option series may be listed within five days of expiration. It also does not exist for FLEX option positions that will be identical to Non-FLEX series to be added after expiration, as those new series are added “overnight” and OCC will convert the FLEX position to the Non-FLEX Options series at the time the Non-FLEX series is created. Further, it does not exist for FLEX Index Options listed on NYSE Arca, as Non-FLEX Index options currently traded on NYSE Arca are all European style exercise, and thus the Non-FLEX Index Options cannot be exercised on the day the series is listed.

As an example, suppose underlying issue XYZ, trading around \$25 per share, has options listed on the March cycle, and in February an investor wishes to buy just-out-of-the-money call options that will expire in May. Since the Non-FLEX May Options will not be listed until after the March expiration, the investor enters a FLEX Option order in February to buy 250 Call 30 options expiring on the third Friday of May. If, as expected, the Non-FLEX May 30 call options are listed on the Monday after March expiration, the investor's open FLEX position will be converted by OCC over the weekend following March expiration to the Non-FLEX series.

However, if XYZ stock should decline between the time of the FLEX transaction and March expiration, the May 30 calls may not be added after March Expiration. If that were to occur, the May 30 calls may be added sometime later. Suppose the Exchange receives a request to add the May 30 calls on the morning of the Wednesday after expiration, and the Exchange lists them immediately. The investor with the FLEX position may then decide it is an opportune time to close his position.

Under current rules, the investor would be required to close the position by entering a sell order in the new Non-FLEX Option series. However, when the Non-FLEX transaction is reported to OCC, the investor is considered short in the Non-FLEX Option series, and is still long in the FLEX Option. OCC cannot aggregate the FLEX positions into the Non-FLEX series until after exercise and assignment processing. If a buyer in the new Non-FLEX series were to exercise the options, the original investor who had attempted to close the FLEX position with an offsetting Non-FLEX trade would be at risk of being assigned on the technically short Non-FLEX position.

Because of this risk, OCC will not clear an American style expiration Friday FLEX option. The Exchange has spoken to OCC, and OCC has agreed that allowing the holder of an

open position in a FLEX contract to close the position using a FLEX option in such circumstances will mitigate the risk.

The assignment risk does not exist if the Non-FLEX option is to be added the next trading day. In situations where OCC is aware that a series will be added overnight, they can convert the FLEX Position to a Non-FLEX position before the next trading day. However, OCC cannot guarantee that an identical Non-FLEX series will not be added intra-day, and thus will not clear such American style FLEX options.

NYSE Arca is proposing a limited exception to the requirement that the trading in such options be under the Non-FLEX Trading Procedures. The Exchange proposes that, in the event a Non-FLEX Option is listed intra-day, the holder of a FLEX Option with identical terms could close the FLEX position under the FLEX Trading procedures, but only for the balance of the trading day on which the series is added. Under the proposed rule change, both sides of the FLEX transaction would have to be closing only positions.

This change will allow the holder of a FLEX position to trade in such a manner to mitigate the assignment risk.

A FLEX Post Official⁵ has the regulatory responsibility for reviewing the conformity of FLEX trades to the terms and specifications contained in Rule 5.32. In the event a Non-FLEX series, having the same terms as an existing expiration Friday FLEX option, is listed intra-day, the FLEX Post Official will review any subsequent FLEX transactions in that series and verify that the order is being executed for the purpose of closing out an existing FLEX position. The FLEX Post Official will not disseminate a FLEX Request for Quote for any order representing a FLEX series having the same terms as a Non-FLEX series, unless such FLEX order is a closing

⁵ FLEX Post Officials are Exchange employees designated pursuant to Rule 5.38(a).

order (and it is the day the Non-FLEX series has been added). In addition, if the FLEX Post Official were to disseminate a FLEX Request for Quotes for a closing order representing a FLEX series having the same terms as a Non-FLEX series, the FLEX Post Official would only accept response quotes and orders from Options Trading Permit (“OTP”) Holders that were closing out an existing FLEX position.

The NYSE Regulatory Department reviews FLEX trading activity, and, in the event a non-FLEX series with the same terms as an expiration Friday FLEX option is listed intra-day, will review any subsequent FLEX transactions in the series to verify that they are closing a position.⁶

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)⁷ of the Securities Exchange Act of 1934 (the “Act”), in general, and furthers the objectives of Section 6(b)(5)⁸ 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 giving OTP Holders, OTP Firms, and investors with additional tools to trade customized options in an exchange environment while allowing the holder of a FLEX position to trade in such a manner as to mitigate inadvertent assignment risk.

⁶ Through a Regulatory Services Agreement (“RSA”) between NYSE Regulation, Inc. (“NYSE Regulation”) and NYSE Arca, staff of NYSE Regulation conducts, among other things, surveillances of the NYSE Arca options trading platform for purposes of monitoring compliance with the relevant trading rules by NYSE Arca participants. NYSE Arca represents that, through this RSA, there is appropriate surveillances in place to monitor transactions in FLEX options.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰ 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 prior to 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 investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6)(iii) thereunder.¹²

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is

⁹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to 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 filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange has satisfied this requirement.

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 e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2010-46 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-NYSEArca-2010-46. 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 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 No. SR-NYSEArca-2010-46 and should be submitted on or before [insert date 21 days from date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Florence E. Harmon
Deputy Secretary

¹³ 17 CFR 200.30-3(a)(12).