

June 19, 2009

VIA ELECTRONIC SUBMISSION AND OVERNIGHT DELIVERY

June 19, 2009

Ms Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street N.E.
Washington, D.C. 20549

Re: File No. SR-ISE-2009-32

Dear Ms. Murphy:

NYSE Arca Inc. (“NYSE Arca”) appreciates the opportunity to comment on the proposed rule change of the International Securities Exchange, Inc. (“ISE”) regarding extension and expansion of the Penny Pilot Program to quote and trade certain options in pennies (the “Penny Pilot”). NYSE Arca generally supports extending and expanding the Penny Pilot.¹

NYSE Arca supports ISE’s proposal, which similar to our own, proposes to expand the Penny Pilot to include the 300 most active issues via phased implementation. NYSE Arca has significant reservations, however, regarding the manner of expansion that the ISE has proposed. Specifically, the ISE proposes a three-tiered approach which only permits penny (\$.01) increment trading in the Penny Pilot classes with series trading at a premium below \$1, while trading in nickel (\$.05) increments in series trading with a premium between \$1 and \$3, and trading in dime (\$.10) increments in series with a premium above \$3 trade. This structure would require extensive system changes and needlessly rolls back, without justification, the advancements in penny trading previously approved by the Commission.

¹ See Securities Exchange Act Release No. 59944 (May 20, 2009), 74 FR 25294 (May 27, 2009) (notice of filing of SR-NYSEArca-2009-44, NYSE Arca’s proposal to expand and extend the Penny Pilot).



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The ISE Proposal Increases Investor Confusion and Will Require Excessive System Changes

The Options Exchanges have maintained a Minimum Price Variation (“MPV”) change, or breakpoint, at \$3 premium since the beginning of listed options trading in the United States. The breakpoint is well understood by the investing public, and both exchange and firm systems have been programmed to process a single breakpoint at \$3. NYSE Arca believes that introduction of an additional breakpoint with three different MPVs in a single class will lead to confusion for investors entering orders in both Penny Pilot and non-Penny Pilot classes. It will also require extensive system changes for both order entry firms and exchanges to filter orders and quotes at an additional breakpoint.

The ISE Proposal Rolls Back Penny Pricing for Current Penny Pilot Issues

The ISE proposal imposes the three tiered MPV scheme onto the existing Penny Pilot classes, including QQQQ, which trades all series in \$.01 increments. NYSE Arca strongly opposes such a rollback in the current Penny Pilot issues, as it will cause uncertainty for investors who are currently trading series in \$.01 and \$.05 increments. In addition to increasing investor confusion and uncertainty, this proposal raises the possibility of actually harming investors. For example, investors who opened a position in one increment may incur losses by only being able to close the position at a wider increment. An investor that bought a QQQQ series at \$3.23 and wishes to sell at \$3.27 may only be able to enter a sell order at \$3.20 or \$3.30. By reverting to dime trading, the investor may not have the opportunity to close the position for a profit—an opportunity the investor would have under the currently approved design of the Penny Pilot.

The Commission Should Encourage Open and Transparent Penny Trading

Options are trading in pennies today across all premiums, through the use of price improvement auctions or dark penny "price improving" orders. Neither of these mechanisms provides full and open access to a real-time market where the best price is disseminated to all participants on an equal footing. The penny auction approach holds orders up for inspection by a limited number of participants who can decide, on a case-by-case basis, whether to step up for participation against an incoming order. The second alternative to meet the demand for penny pricing was the introduction of un-displayed quotes, or "dark pennies", which again undermines efforts to foster a transparent marketplace.

Expanding the Penny Pilot is a valuable and direct challenge to this old way of conducting business, since it allows and demands all participants to reveal their best price, in real time, to



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the entire marketplace. If the duty of an exchange is to provide a fair and orderly marketplace where the free flow of information promotes the greatest amount of participation from the largest number of traders and investors, then requiring the best price for an option to be disseminated must surely be part of that responsibility to the investing public.

By limiting penny pricing to options under \$1.00 and maintaining dimes over \$3.00, the ISE is effectively asking that the industry take a step backward from the transformative and investor friendly progress toward greater price transparency that has been made in the initial stages of the Penny Pilot. It is our fervent opinion that instead of taking this backward step and increasing investor confusion and the potential for investor harm, the Commission should continue the forward momentum of the Penny Pilot. Accordingly, NYSE Arca requests that the Commission reject SR-ISE-2009-32.

We appreciate the Commission's consideration of our comments. If the Commission or its Staff has any questions, please feel free to contact Mr. Edward Boyle, at (312) 442-7662, or Mr. Peter Armstrong, at (415) 393-4232.

Sincerely,

A handwritten signature in black ink that reads "Janet M. Kissane". The signature is written in a cursive, flowing style.

Janet M. Kissane
Senior Vice President – Legal
Corporate Secretary

cc: E. King, Division of Markets and Trading
H. Seidel, Division of Markets and Trading