

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-59978; File No. SR-NYSEArca-2009-41)

May 27, 2009

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Exchange Rules Related to Doing a Public Business in Options

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on May 7, 2009, 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 substantially prepared by the Exchange.<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 Exchange Rule 9.18 – Doing a Public Business in Options. The text of the proposed rule change is available on the Exchange’s Web site at [www.nyse.com](http://www.nyse.com), at the Exchange’s principal office 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

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

<sup>2</sup> 15 U.S.C. 78a *et seq.*

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> The Exchange and Commission staff agreed to several clarifying changes in text of Items I, II, and III during a telephone conversation between Andrew Stevens, Chief Counsel U.S. Equities and Derivatives, Exchange, and Darren Vieira, Attorney Advisor, Division of Trading and Markets, Commission on May 21, 2008.

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 Exchange has prepared summaries, set forth in sections A, B, and C below.

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

1. Purpose

The purpose of the proposed rule change is to amend Exchange Rule 9.18(f) to provide that the market on which an options transaction is executed need not be disclosed on a written confirmation furnished to a customer of an Options Trading Permit Holder ("OTP Holder") or Options Trading Permit Firm ("OTP Firm").<sup>5</sup> Pursuant to proposed Rule 9.18(f), the OTP Holders and OTP Firms would continue to be required to furnish a

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<sup>5</sup> The proposed filing is being done pursuant to an industry-wide initiative under the auspices of the Options Self-Regulatory Council ("OSRC"), which is a committee comprised of representatives from each of the options exchanges functioning pursuant to the OSRC Plan (the "Plan"). See Securities Exchange Act Release No. 20158 (September 8, 1983), 48 FR 41256 (September 14, 1983). The Plan is not a National Market System ("NMS") plan under Section 11A of the Act, but rather is a plan to allocate regulatory responsibilities under Rule 17d-2 under the Act. 17 CFR 240.17d-2. As a result of the introduction of multiply listed options and the introduction of the Plan for the Purpose of Creating and Operating an Intermarket Options Market Linkage ("Options Linkage Plan"), the contracts in a customer options order could be executed on more than one options exchange, and the significance of the options exchange, or exchanges, that execute a particular options transaction has diminished significantly. See Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Furthermore, the OSRC believes that in light of best execution and disclosure requirements, the usefulness of including on an options confirmation the name of the options exchange, or exchanges, on which the options transaction was effected does not outweigh the operational difficulties of capturing the information given the multiple trading of options and the application of the Options Linkage Plan industry wide.

written confirmation that contains a description of each transaction in the option contracts which shows: the type of option; the underlying security (e.g., stock or exchange traded fund); the expiration month; the exercise price; the number of option contracts; the premium and commissions; the transaction and settlement dates; whether the transaction was a purchase or a sale (writing) transaction; and whether the transaction was effected on a principal or agency basis.

The Exchange believes that with the expansion of multi-listing of options and the introduction of new options exchanges, it has become operationally inefficient to require the disclosure of the market center on which an order was executed on the confirmation. As an example, a customer may have a single option order containing numerous option contracts executed on multiple exchanges. As such, it would be inefficient for the executing firm to be required to identify the exchange symbol for each contract executed on that customer's order. This proposal would clarify that written confirmations furnished to a customer will not need to specify the exchange or exchanges on which such option contracts were executed.

This proposal is similar to rule change proposals that have been filed by the American Stock Exchange LLC, the Financial Industry Regulatory Authority, Inc., the Chicago Board Options Exchange, the NASDAQ OMX PHLX, Inc., the Boston Stock Exchange, Inc., and the International Securities Exchange, LLC and approved by the Commission.<sup>6</sup>

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<sup>6</sup> See Securities Exchange Act Release No. 58814 (October 20, 2008), 73 FR 63527 (October 24, 2008) (approval order); Securities Exchange Act Release No. 58932 (November 12, 2008), 73 FR 69696 (November 19, 2008) (approval order); Securities Exchange Act Release No. 58980 (November 19, 2008), 73 FR 72091 (November 26, 2008) (approval order); Securities Exchange Act Release No.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b) of the Act<sup>7</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>8</sup> in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest, and that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in, securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Additionally, this proposed rule change would promote consistency between NYSE Arca and other self-regulatory organization rules and clarify the Exchange's options confirmation procedure rules to better reflect the realities of the modern options market.

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

The proposed rule change does not 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

Written comments were neither solicited nor received.

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59166 (December 29, 2008), 74 FR 328 (January 5, 2009) (approval order); Securities Exchange Act Release No. 59434 (February 23, 2009), 74 FR 9012 (February 27, 2009) (approval order); and Securities Exchange Act Release No. 59806 (April 21, 2009), 74 FR 19254 (April 28, 2009) (approval order).

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

<sup>8</sup> 15 U.S.C. 78f (b)(5).

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 Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup> 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 Act<sup>11</sup> and Rule 19b-4(f)(6)(iii) thereunder.<sup>12</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>13</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>14</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. Because the proposed rule change is based on rule changes previously approved by the Commission and the proposed rule change does not

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<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<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 the pre-filing requirement.

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> 17 CFR 240.19b-4(f)(6)(iii).

present any novel issues, the Commission believes that waiving the 30-day operative delay period to permit the proposed rule change to be implemented immediately is consistent with the protection of investors and the public interest. The proposed rule will promote consistency between the rules of the NYSE Arca and other self-regulatory organizations. Thus, the Commission, consistent with the protection of investors and the public interest, has determined to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.<sup>15</sup>

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 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](mailto:rule-comments@sec.gov). Please include File No. SR-NYSEArca-2009-41 on the subject line.

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<sup>15</sup> For purposes only of waiving the operative date of the proposal, the Commission has considered the proposed Rule's impact on efficiency, competition and capital formation. 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.

All submissions should refer to File Number SR-NYSEArca-2009-41. 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 inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549-1090 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 NYSE Arca's principal office and on its Internet Web site at [www.nyse.com](http://www.nyse.com). 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-2009-41 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).