

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-89359; File No. SR-NYSEArca-2020-68)

July 21, 2020

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Update the NYSE Arca Options Fee Schedule

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 July 16, 2020 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 modify its rules to conform the terminology in the NYSE Arca Options Fee Schedule (“Fee Schedule”) to Rule 6.72A-O (Requirements for Penny Interval Program), which permits quoting in penny increments for certain option classes on a permanent basis. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, 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

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

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 modify its rules to conform the terminology in the Fee Schedule to Rule 6.72A-O (Requirements for Penny Interval Program), which permits quoting in penny increments for certain option classes on a permanent basis. In sum, the Exchange proposes to define “Penny” and “non-Penny” issues, with cross-reference to Rule 6.72A-O and to eliminate from the Fee Schedule obsolete references to the “Pilot” program. This filing is technical in nature as it merely updates the nomenclature regarding transactions in Penny and non-Penny issues and does not modify any associated fees or credits for such transactions.

Background

On April 1, 2020, the U.S. Securities and Exchange Commission (the “Commission”) approved Amendment No. 5 to the Plan for the Purpose of Developing and Implementing Procedures Designed to Facilitate the Listing and Trading of Standardized Options to Adopt a Penny Interval Program (“Amendment No. 5”).⁴ The Exchange then filed to conform its rules -- including Rule 6.27A-O -- to Amendment No. 5, which rules (like Amendment No. 5) became operative July 1, 2020 (the “Penny Program”).⁵ The Penny Pilot, which was adopted in 2007 and

⁴ See Securities Exchange Act Release No. 88532 (April 1, 2020), 85 FR 19545 (April 7, 2020) (File No 4-443).

⁵ See Securities Exchange Act Release No. 88943 (May 26, 2020), 85 FR 33255 (June 1, 2020) (SR-NYSEArca-2020-50) (immediately effective filing that is operative on July 1, 2020, which outlines the history of the Penny Pilot program and details the process for the Penny Interval Program).

extended and expanded over the years, expired by its own terms on June 30, 2020.⁶

Proposed changes

The Exchange proposes to modify the terminology in the Fee Schedule to align with the terminology in the Penny Program by adding new definitions for “Penny” and “non-Penny” issues and eliminating all references to “Pilot.”⁷ As proposed, a “Penny” issue or class refers to option classes that participate in the Penny Interval Program, as described in Rule 6.72A-O” and a “non-Penny” issue or class refers to option classes that do not participate in the Penny Interval Program, as described in Rule 6.72A-O.”⁸

Consistent with the foregoing, the Exchange proposes to eliminate from the Fee Schedule all references to “Pilot” as that term relates to the “Penny Pilot” because such references became obsolete as of July 1, 2020.⁹

For consistency in usage and terminology, the Exchange proposes to modify references to “non-Penny” in existing text to consistently hyphenate and utilize a lower case “n” to denote the term except when it is used in a section or column heading, which would add clarity, transparency and internal consistency.¹⁰

⁶ See Securities Exchange Act Release No. 87610 (November 25, 2019) 84 FR 66047 (December 2, 2019) (NYSEArca-2019-83).

⁷ See generally proposed Fee Schedule, NYSE Arca OPTIONS: TRADE-RELATED CHARGES FOR STANDARD OPTIONS and NYSE Arca OPTIONS: GENERAL.

⁸ See proposed Fee Schedule, NYSE Arca OPTIONS: TRADE-RELATED CHARGES FOR STANDARD OPTIONS.

⁹ See proposed Fee Schedule, NYSE Arca OPTIONS: TRADE-RELATED CHARGES FOR STANDARD OPTIONS (deleting reference to “Pilot” throughout) and NYSE Arca OPTIONS: GENERAL, Endnote 6 (deleting reference to “Pilot” and including a reference to Penny Interval Program and cross reference to Rule 6.72A-O).

¹⁰ See generally proposed Fee Schedule, NYSE Arca OPTIONS: TRADE-RELATED CHARGES FOR STANDARD OPTIONS.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),¹¹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹² in particular, in that 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 mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

In particular, the proposed rule change, which conforms the terminology in the Fee Schedule to Rule 6.72A-O, promotes just and equitable principles of trade because it does not alter any existing fees or credits but instead is technical in nature insofar as it adopts new definitions for “Penny” and “non-Penny” issues, consistent with Exchange rules, and removes references to the now-expired (Penny) “Pilot.” This proposed change would provide internal consistency within Exchange rules and operate to protect investors and the investing public by making the Exchange rules easier to navigate and comprehend. The proposed change would render the rules more accurate and reduce potential investor confusion, thus helping to facilitate the maintenance of a fair and orderly market.

Regarding the proposed technical changes (see supra notes 9 and 10), the Exchange believes the changes would add clarity and transparency to the Fee Schedule making it easier to navigate and comprehend to the benefit of all market participants.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization’s Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act, the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposal, which modifies the terminology in the Fee Schedule to align with the terminology in the Exchange’s rules, is not a competitive filing. Instead, the proposed change is meant to add clarity and transparency to the Fee Schedule to the benefit of all market participants that trade on the Exchange. Given the technical nature of this filing, the Exchange anticipates that other options exchanges will similarly update their fee schedules (as needed) to align with any rule(s) adopted in conformance with Amendment No. 5.

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 Act¹³ and Rule 19b-4(f)(6) thereunder.¹⁴ Because the foregoing 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 for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁵ and Rule 19b-4(f)(6)¹⁶ thereunder. The Exchange has proposed

¹³ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change,

to implement the proposed rule change immediately upon filing and has asked the Commission to waive the 30-day operative delay for this filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to modify the terminology in its fee schedule to conform it to the Penny Program, which is currently described in NYSE Arca Rule 6.72A-O. The proposed rule change does not raise any novel issues and is technical in nature as it is designed to update the language in the Exchange's fee schedule to reflect the language used throughout the Exchange's rulebook. The Commission believes that the proposed rule change proposes ministerial changes which are designed to alleviate the potential for investor confusion. Accordingly, the Commission designates the proposed rule change as operative upon filing.¹⁷

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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹⁷ For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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:to-rule-comments@sec.gov). Please include File Number SR-NYSEArca-2020-68 on the subject line

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2020-68. 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 website (<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 website 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. Persons

submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2020-68 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.¹⁸

J. Matthew DeLesDernier
Assistant Secretary

¹⁸ 17 CFR 200.30-3(a)(12).