

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-56280; File No. SR-NYSEArca-2007-88)

August 17, 2007

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to NYSE Arca Rule 6.72 and the Penny Pilot for Options Trading

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 16, 2007, the NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which items have been substantially prepared by NYSE Arca. 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

NYSE Arca proposes to amend its options trading rules in order to extend the Penny Pilot in options classes in certain issues (“Pilot Program”) previously approved by the Commission through March 27, 2009.<sup>3</sup> The Exchange also proposes to expand the Pilot Program in two phases: (1) the first phase will start on September 28, 2007 and continue through March 27, 2008 and will add 22 options classes, and (2) the second phase will start on March 28, 2008 and continue through March 27, 2009 and will add approximately 28 additional option classes. The text of the proposed rule change is available at <http://www.nysearca.com>, at the Exchange, and at the Commission’s Public Reference Room.

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release Nos. 55156 (January 23, 2007), 72 FR 4759 (February 1, 2007) (SR-NYSEArca-2006-73) and 56150 (July 26, 2007), 72 FR 42460 (August 2, 2007) (SR-NYSEArca-2007-56).

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 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, of the most significant aspects of such statements.

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

1. Purpose

The Exchange hereby proposes to extend the time period of the Pilot Program<sup>4</sup> through March 27, 2009. The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh the increase in quote traffic.

The Exchange also proposes to expand the Pilot Program in two phases. According to the proposal, the first phase will start on September 28, 2007 and continue through March 27, 2008 and will add 22 options classes. These 22 options classes are among the most actively traded, multiply listed options classes based on national average daily volume and, together with the existing 13 pilot classes, represent approximately 35% of the total industry volume.

The 22 additional classes are: SPDR S&P 500 (SPY), Apple Inc. (AAPL), Altria Group (MO), Dendreon Corp. (DNDN), Amgen Inc. (AMGN), Yahoo! Inc. (YHOO), Qualcomm Inc. (QCOM), General Motors (GM), Energy Select Sector SPDR (XLE), Diamonds Trust (DIA), Oil Services HLDRS (OIH), NYSE Euronext (NYX), Cisco Systems (CSCO), Financial Select Sector SPDR (XLF), AT&T, Inc. (T), Citigroup, Inc. (C), Amazon.com Inc. (AMZN), Motorola

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<sup>4</sup> See supra, note 3.

Inc. (MOT), Research in Motion Ltd. (RIMM), Freeport-McMoRan Copper & Gold, Inc. (FCX), ConocoPhillips (COP), and Bristol-Myers Squibb Co. (BMY).

Pursuant to the proposal, the second phase will start on March 28, 2008 and continue through March 27, 2009 and will add approximately 28 additional options classes. These 28 options classes will be among the most actively traded, multiply listed options classes based on national average daily volume, up to the top 50 by volume. This will bring the total number of options classes traded pursuant to the Pilot Program to 63 (12 from the original Pilot Program, 22 from phase one of the proposed expansion, and 28 from phase two of the proposed expansion).<sup>5</sup>

Aside from this expansion, all other aspects of the Pilot Program will remain the same. Specifically, for option contracts traded pursuant to the Pilot Program, the following minimum increments apply: (1) one cent (\$0.01) for all options contracts in QQQQ (Nasdaq-100 Index Tracking Stock), (2) one cent (\$0.01) for all options contracts that are trading at less than \$3, and (3) five cents (\$0.05) for all option contracts that are trading at or above \$3. NYSE Arca represents that the Exchange has the necessary system capacity to support any additional series listed as part of the Pilot Program.

The Exchange agrees to submit written reports to the Commission that include data and written analysis of information collected during the course of the Pilot Program. The Exchange intends to submit four reports within 30 days of the end of each of the following report periods: (i) May 1, 2007 through September 27, 2007, (ii) September 28, 2007 through January 31, 2008, (iii) February 1, 2008 through July 31, 2008, and (iv) August 1, 2008 through January 31, 2009.

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<sup>5</sup> The Exchange intends to submit a filing pursuant to Section 19(b)(3)(A) of the Act prior to the beginning of phase two, announcing the classes to be added to the Pilot Program. Pursuant to NYSE Arca Rule 6.72, the pilot issues will also be announced to the Exchange's membership via Regulatory Bulletin and published by the Exchange on its Web site.

These reports will include, but will not be limited to, data and analysis concerning the economic and capacity impact of the Pilot Program.

2. Statutory Basis

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

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

The Exchange does not believe that the proposed rule change will result in 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 on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

- (A) by order approve such proposed rule change, or

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<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

#### 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. The Commission also requests and encourages interested persons to submit comments on the following specific questions:

- Whether there are circumstances under which options classes included in the Penny Pilot should be removed from the Pilot?
- If so, what factors should be considered in making the determination to remove an option class from the Penny Pilot?
  - Should an objective standard be used? For instance, should an option class come out of the Penny Pilot if its trading volume drops below a threshold amount? If so, what should that threshold be? Or, should an option class come out of the Penny Pilot if it is no longer among the most actively-traded options? If so, what should be considered the most-actively traded options? What statistics or analysis should be used to support a determination to remove an options class?
  - Should a more subjective analysis be allowed? If so, what factors should be taken into account?
- What concerns might arise by removing an option from the Penny Pilot? How could such concerns be ameliorated?
- How frequently should the analysis be undertaken (e.g., annually, bi-annually, quarterly), or should the evaluation be an automated process?

- If a determination is made that an option should be removed from the Penny Pilot, how much notice should be given to market participants that the quoting increment will change?

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 Number SR-NYSEArca-2007-88 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-NYSEArca-2007-88. 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, on official business days between the hours of 10:00 am and 3:00 pm. 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 Number SR-NYSEArca-2007-88 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>8</sup> 17 CFR 200.30-3(a)(12).