

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58130; File No. SR-NYSEArca-2008-72)

July 9, 2008

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Exchange's Quarterly Options Series Pilot Program

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 2, 2008, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange has designated this proposal as non-controversial under Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposed rule change effective upon filing with the Commission. 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 rules to (i) extend the Quarterly Options Series pilot program ("Pilot Program") until July 10, 2009, (ii) add provisions to the Pilot Program regarding the addition of new strike prices and the delisting of inactive series and, (iii) make minor technical changes. The text of the proposed rule change is available on the Exchange's Web site at (<http://www.nyse.com>), at the Exchange's principal office, and at the Commission's Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

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

On July 12, 2006 the Exchange filed with the Commission a proposal to list and trade Quarterly Options Series on a pilot basis ("Pilot Program") through July 10, 2007. The rule change was effective upon filing.⁵ The original Pilot Program was subsequently extended and is now due to expire on July 10, 2008.⁶ The Exchange now proposes to extend the Pilot Program for another year, so that it will now expire on July 10, 2009; to amend the Pilot Program in certain respects; and make minor technical changes.

Pilot Extension

The Exchange stated that it would submit, in connection with any proposed extension of the Pilot Program, a Pilot Program Report ("Report") that would provide an analysis of the Pilot

⁵ See Securities Exchange Act Release No. 54166 (July 18, 2006), 71 FR 42151 (July 25, 2006) (SR-NYSEArca-2006-45).

⁶ See Securities Exchange Act Release No. 56119 (July 24, 2007), 72 FR 41563 (July 30, 2007) (SR-NYSEArca-2007-70).

Program covering the entire period which the program was in effect. The Report was to include: (1) data and written analysis on the open interest and trading volume in the classes for which Quarterly Options Series were opened; (2) an assessment of the appropriateness of the option classes selected for the Pilot Program; (3) an assessment of the impact of the Pilot Program on the capacity on the Exchange, OPRA and on market data vendors (to the extent data from market data vendors is available); (4) any capacity problems or other problems that arose during the operation of the Pilot Program and how the Exchange addressed such problems; (5) any complaints that the Exchange received during the operation of the Pilot Program and how the Exchange addressed them; and (6) any additional information that would assist the Commission in assessing the operation of the Pilot Program. The Exchange has submitted the Report.

The Exchange represents that the Report supports its belief that extension of the Pilot Program is proper. Among other things, the Report shows the strength of the Pilot Program as reflected by the overall volume and open interest of Quarterly Options Series traded on NYSE Arca and other national options exchanges. The Report shows that the Pilot Program has not created, and in the future should not create, any capacity, operational or regulatory problems attributable to Quarterly Options Series. Finally, NYSE Arca represents that the Exchange has the necessary system capacity to support any additional series listed as part of the Pilot Program.

Proposal Related to the Listing and Delisting of Strikes

On August 7, 2007, the Chicago Board Options Exchange (“CBOE”) filed a proposal to revise the terms of its Quarterly Options Series pilot program. As part of this filing, CBOE proposed to implement new policies related to the listing and delisting of additional strike prices for Quarterly Options Series. The proposal, as amended, was approved by the Commission on

March 3, 2008.⁷ NYSE Arca proposes to adopt the revised terms of the CBOE's pilot program, for use in its own Pilot Program.

Specifically, NYSE Arca proposes to amend Rule 6.4, Commentary .08 to permit the Exchange to list additional strike prices for Quarterly Options Series in exchange traded fund ("ETF") options that fall within a percentage range (30%) above and below the price of the underlying ETF.⁸

Additionally, upon demonstrated customer interest, the Exchange also will be permitted to open additional strike prices of Quarterly Options Series in ETF options that are more than 30% above or below the current price of the underlying ETF. Market-makers trading for their own account will not be considered when determining customer interest under this provision. In addition to the initial listed series, the proposal will permit the Exchange to list up to sixty (60) additional series per expiration month for each Quarterly Options Series in ETF options.

The proposed policies regarding the listing of new strikes are identical to those approved for CBOE. The Exchange also proposes to adopt the same policy approved for CBOE, regarding the delisting of inactive strikes in Quarterly Options Series. Under the proposed delisting policy, the Exchange will, on a monthly basis, review Quarterly Options Series that are outside a range of five (5) strikes above and five (5) strikes below the current price of the underlying ETF, and delist series with no open interest in both the put and the call series having a strike price: (i) higher than the highest strike price with open interest in the put and/or call series for a given expiration month; or (ii) lower than the lowest strike price with open interest in the put and/or

⁷ See Securities Exchange Act Release No. 57410 (March 3, 2008), 73 FR 12483 (March 7, 2008) (SR-CBOE-2007-96).

⁸ Pursuant to the existing Pilot Program, the Exchange is presently limited to listing new strike prices on Quarterly Options Series that fall within a \$5 range from the closing price of the underlying security on the preceding day.

call series for a given expiration month. Notwithstanding the proposed delisting policy, the Exchange will grant customer requests to add strikes and/or maintain strikes in Quarterly Options Series eligible for delisting.

The delisting policy proposed by the Exchange is designed to mitigate the number of options series with no open interest, and reduce quote traffic accordingly. If during the life of the Pilot Program the Exchange identifies series for delisting, the Exchange will notify other options exchanges with similar delisting policies, and shall work with such other exchanges to develop a uniform list of securities to be delisted, to help to ensure uniform series delisting of multiply listed Quarterly Options Series in ETF options.

Finally, the Exchange notes that the delisting policy, once approved, would become part of the Pilot Program and, going forward, would be considered by the Commission when the Exchange seeks to renew or make permanent the Pilot Program in the future.

The proposed policies regarding the delisting of inactive strikes are identical to those in place as part of the CBOE Quarterly Options Series Pilot Program.

Non-substantive Changes

The Exchange also proposes at this time to make minor, non-substantive changes, to Rule 5.19(a)(3) and Rule 6.4 Commentary .08 in order to revise the dates used in existing examples that describe the listing process for Quarterly Options Series, and to renumber certain subsections of the rule for clarity purposes. These changes serve only to update the text, and make no changes to the Pilot Program itself, or the rules governing such.

2. Statutory Basis

The Exchange believes that the continuation of the Pilot Program, along with the proposed revision to the program, will continue to stimulate customer interest in options by

creating greater trading opportunities and flexibility in investment choices. The Exchange further believes that continuation of the Pilot Program will provide the ability to more closely tailor investment strategies and provide a valuable hedging tool for investors. Also, the Exchange believes that by revising its Pilot Program to include similar provisions contained in the CBOE Quarterly Options Series pilot program will make for more uniform rules across exchanges that have implemented a Quarterly Options Series pilot program. For these reasons, the Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.⁹ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) of the Act,¹⁰ which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

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

The Exchange believes that the proposed rule change will 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 on the proposed rule change were neither solicited nor received.

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

The Exchange has designated the proposed rule change as one that: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Therefore, the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹²

The Exchange has asked the Commission to waive the operative delay to permit the proposed rule change to become operative prior to the 30th day after filing. The Commission has determined that waiving the 30-day operative delay of the Exchange's proposal is consistent with the protection of investors and the public interest and will promote competition because such waiver will allow NYSE Arca to continue the existing Pilot Program without interruption.¹³ Therefore, the Commission designates the proposal operative upon filing.

The Commission notes that NYSE Arca's proposed changes regarding additional series and the delisting policy will become part of the Pilot Program and, going forward, its effects will be considered by the Commission in the event that the Exchange seeks to renew or make permanent the Pilot Program. Thus, in the Exchange's future reports on the Pilot Program, the Exchange should include analysis of (1) the impact of the additional series on the Exchange's market and quote capacity, and (2) the implementation and effects of the delisting policy,

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 a self-regulatory organization to provide the Commission with 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 date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

¹³ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

including the number of series eligible for delisting during the period covered by the report, the number of series actually delisted during that period (pursuant to the delisting policy or otherwise), and documentation of any customer requests to maintain QOS strikes that were otherwise eligible for delisting.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the 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. Please include File No. SR-NYSEArca-2008-72 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-2008-72. 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 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-2008-72 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Florence E. Harmon
Acting Secretary

¹⁴ 17 CFR 200.30-3(a)(12).