

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-64518; File No. SR-NYSEArca-2011-28)

May 19, 2011

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Permit the Listing of Additional Expiration Months if Such Expiration Months Are Listed on Another Exchange

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 May 17, 2011, 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 prepared by the Exchange. 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 adopt Commentary .12 to NYSE Arca Rule 6.4 to permit the listing of additional expiration months if such expiration months are listed on another exchange. The text of the proposed rule change is available at the Exchange’s principal office, at [www.nyse.com](http://www.nyse.com), at the Commission’s Public Reference Room, and at the Commission’s website at [www.sec.gov](http://www.sec.gov).

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

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

<sup>2</sup> 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 proposed rule change is to permit the Exchange to list additional expiration months if such expiration months are listed on another exchange. This filing is based on a filing previously submitted by the International Securities Exchange LLC.<sup>3</sup>

Under current Rule 6.4(a), NYSE Arca usually will open four (4) expiration months for each type of option of a class of options open for trading on the Exchange: the first two (2) being the two nearest months, regardless of the quarterly cycle on which that class trades; the third and fourth month being the next two months of the quarterly cycle previously designated by the Exchange for the specific class. For example, if the Exchange listed in late September a new stock option on a January-April-July-October quarterly cycle, the Exchange would list the two nearest term months (October and November) and the next two expiration months of the cycle (January and April). Further, when the October series expire, the Exchange would add the December series as the next nearest month. And when the November series expire, the Exchange would add the July series as the next month of the cycle.

In 2010, the Exchange established a pilot program to add up to two additional expiration months for each class of options opened for trading on the Exchange (the "Additional Expiration Months Pilot").<sup>4</sup> Under the Additional Expiration Months Pilot, NYSE Arca lists expiration months that are considered "mid-month". For example, for options classes that have expiration

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<sup>3</sup> See Exchange Act Release No. 64343 (April 26, 2011) 76 FR 24546 (May 2, 2011).

<sup>4</sup> See Exchange Act Release No. 63133 (October 19, 2010) 75 FR 65545 (October 25, 2010).

months of October, November, February, and May, the Exchange lists the December and January series. The listing of additional expiration months has been well received by OTP Holders, and has had very limited impact on system resources.

ISE recently submitted a filing in response to a filing by NASDAQ OMX PHLX, Inc. (“PHLX”).<sup>5</sup> PHLX amended its rules so that it can open “at least one expiration month” for each class of standard options open for trading on that exchange. Consequently, while NYSE Arca is currently restricted to listing a limited number of expiration months that are permissible under its rules and the Additional Months Expiration Months Pilot, PHLX has the ability to list expiration months that NYSE Arca would not be able to list under its rules. Indeed, PHLX has listed additional expiration months that no other exchange could list at the time they were added (ISE listed matching series only on April 28, 2011, effective for trading April 29, 2011). For example, in January 2011, PHLX listed the October 2011 expiration in Omnicare, Inc. (ticker: OCR). Meanwhile, NYSE Arca could not list the October 2011 series under Rule 6.4(a) because the standard expiration months for OCR at the time were February, March, June, and September. NYSE Arca could not list the October 2011 series as part of the Additional Expiration Months Pilot because OCR is not one of the classes selected by the Exchange to participate in the Additional Expiration Months Pilot. As a result, PHLX was the only exchange that listed the October 2011 series in OCR and, until April 29, 2011, continued to trade those series without competition.

For competitive reasons, NYSE Arca now proposes to add new Commentary .12 to its Rule 6.4 and Commentary .01 to its Rule 5.19 to permit the Exchange to list additional

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<sup>5</sup> See Securities Exchange Act Release No. 63700 (January 11, 2011) 76 FR 2931 (January 18, 2011) (SR-PHLX-2011-04). In its filing, PHLX cites to the Commission’s approval of the NASDAQ Options Market (“NOM”) and rules pertaining thereto as the basis for making the change to its rules.

expiration months on options classes opened for trading on the Exchange if such expiration months are opened on at least one other national securities exchange, identical to the provision recently added by ISE.<sup>6</sup> This proposed rule change will allow NYSE Arca to match the listing of expiration months that PHLX or NOM lists in the event NYSE Arca is not able to list those expiration months because they do not comport to NYSE Arca Rules or the Additional Months Expiration Pilot.

The Exchange notes that the proposed rule change affords additional flexibility in that it will permit the exchange to list those additional expiration months that have an actual demand from market participants thereby potentially reducing the proliferation of classes and series. The Exchange believes the proposed rule change is proper, and indeed necessary, in light of the need to have rules that permit the listing of identical expiration months across exchanges for products that are multiply listed and fungible with one another. The Exchange believes that the proposed rule change should encourage competition and be beneficial to traders and market participants by providing them with a means to trade on the Exchange securities that are listed and traded on other exchanges.

## 2. Statutory Basis

The Exchange believes that this proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (“Act”)<sup>7</sup>, in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>8</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to

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<sup>6</sup> See Note 4.

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

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

protect investors and the public interest. In particular, the proposed rule change will permit the Exchange to accommodate requests made by its permit holders and other market participants to list the additional expiration months and thus encourage competition without harming investors or the public interest.

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

The Exchange does not believe that the proposed rule change will 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

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

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup>

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal should promote competition by allowing

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

<sup>10</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 Commission has waived the five-day prefiling requirement in this case.

the Exchange to list and trade option series that are trading on other options exchanges without undue delay. Therefore, the Commission designates the proposal operative upon filing.<sup>11</sup>

At any time within 60 days of the filing of such 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.

#### 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 Number SR-NYSEArca-2011-28 on the subject line.

##### Paper comments:

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

All submissions should refer to File Number SR-NYSEArca-2011-28. 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

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<sup>11</sup> 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).

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; 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-2011-28 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>12</sup>

Cathy H. Ahn  
Deputy Secretary

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