

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-64692; File No. SR-NYSEArca-2011-37)

June 16, 2011

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rules 5.30 and 5.32 to Permit the Exchange to List Flexible Exchange Options on Index and Equity Securities that are Eligible for Non-FLEX Options Trading, and that have Non-FLEX Options on Such Index and Equity Securities Listed and Traded on at Least One National Securities Exchange, Even If the Exchange Does Not List Such Non-FLEX Options

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 June 3, 2011, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend Rules 5.30 and 5.32 to permit the Exchange to list Flexible Exchange Options (“FLEX Options”) on index and equity securities that are eligible for Non-FLEX Options trading, and that have Non-FLEX Options on such index and equity securities listed and traded on at least one national securities exchange, even if the Exchange does not list such Non-FLEX Options. The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and www.nyse.com.

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 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 Exchange is proposing to amend Rule 5.30 Applicability, Definitions, and References, and Rule 5.32, Terms of FLEX Options, to delete obsolete references and to permit trading of FLEX Options series in securities whose Non-FLEX Options are listed and traded on a national securities exchange(s), based on a recently adopted rule change of the Chicago Board Options Exchange ("CBOE").⁴

Rules 5.30(a)(1) and 5.32(e)(1) currently permit FLEX Index Options on only four specific indexes, none of which are currently listed or traded on the Exchange. In addition, Rule 5.30(a)(2) currently permits FLEX Options on only one Exchange-Traded Fund Share ("ETF"). The Commission originally only approved trading of FLEX Options on a limited number of index products,⁵ prior to approval of generic listing standards for index options, and the Exchange adopted rule text in a rule filing that restricted FLEX options to only one ETF, despite

⁴ See Securities Exchange Act Release No. 60585 (August 28, 2009), 74 FR 46257 (September 8, 2009). Unlike CBOE's rule, we have clarified that our proposed rule would only permit the trading of FLEX Options on securities whose Non-Flex Options are listed and traded on at least one options exchange.

⁵ See Securities Exchange Act Release No. 34364 (July 13, 1994), 59 FR 36813 (July 19, 1994).

other general rule language in that rule filing that permitted FLEX options on any ETF.⁶ In 2004, the Exchange had, in fact, deleted the references to specific indexes and to a specific ETF in the rules noted above,⁷ but inadvertently reinstated the deleted text in a contemporaneous filing.⁸ Subsequent listing of options on other index products did not include updating the relevant rule text in Rules 5.30 or 5.32.

The deletion of the restrictive language in Rules 5.30 and 5.32 will be accompanied by the adoption of new rule text, by which the Exchange is proposing to adopt a rule change similar to a rule change recently adopted by the CBOE to allow FLEX Equity Options⁹ on any security that meets the standards of NYSE Arca Rule 5.3, and that has Non-FLEX Options on such security listed and traded on at least one options exchange, regardless of whether the Exchange trades such Non-FLEX Options.

Similarly, the CBOE rule change also adopted a provision to allow FLEX Index Options on any index that meets its listing standards. NYSE Arca proposes to adopt a similar provision that would permit FLEX Index Options on any index that meets the standards of Rule 5.12 or 5.13, and that has Non-FLEX Options on such index listed and traded on at least one options exchange, even if the Exchange does not list and trade such Non-FLEX Options.

⁶ See Exchange Act Release No. 34-44025 (February 28, 2001), 66 FR 13986 (March 8, 2001). In particular, as part of this rule filing, the Exchange adopted the following rule text in Rule 8.102(f)(1), “FLEX Equity Option transactions are limited to transactions in options on underlying securities or Exchange-Traded Fund Shares that have been approved by the Exchange in accordance with Rule 3.6.” Rule 8.102 was subsequently renumbered as Rule 5.32.

⁷ See Securities Exchange Act Release No. 49340 (February 27, 2004), 69 FR 10804 (March 8, 2004) (Notice of Filing and Immediate Effectiveness of PCX-2004-06).

⁸ See Securities Exchange Act Release No. 49718 (May 17, 2004), 69 FR 29611 (May 24, 2004) (Order Approving PCX-2004-08).

⁹ The Commission notes that options on ETFs, as discussed above, are considered FLEX Equity Options under NYSE Arca’s rules. See NYSE Arca Rule 5.30(b)(5).

As an alternative to the over-the-counter marketplace and other national security exchanges, the Exchange proposes in this rule filing to increase the spectrum of indexes and equity securities that are eligible for FLEX Options trading on the Exchange, even if the Exchange does not list Non-FLEX Options on such indexes or equity securities. In this regard, the Exchange does not list options on every NMS stock or index that is eligible for options trading, even if permitted to do so according to its listing standards, but recognizes that market participants may want access to options on such indexes and equity securities, subject to the certainty and safeguards that a regulated and standardized marketplace provides.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act¹⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that its proposal to permit the Exchange to list FLEX Options on indexes and equity securities that are eligible for Non-FLEX Options trading and whose Non-FLEX Options are listed and traded on at least one national securities exchange, even if the Exchange does not list such Non-FLEX Options, would provide market participants with additional means to manage their risk exposures and carry out their investment objectives with listed options. In this regard, the Exchange's proposal would increase competition in the FLEX Options market. In addition, the Exchange's proposal is consistent with investor protection and the public interest in that it is limited to FLEX Options on securities that would be eligible to have, and in fact have, Non-FLEX Options listed and traded on them.

¹⁰ 15 U.S.C. 78f (b).

The criteria for such underlying securities has been carefully crafted over the years to ensure that only appropriate securities have standardized options listed on them (e.g., securities with sufficient trading volume and shareholders).

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 proposed rule change: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, 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 Act¹¹ and Rule 19b-4(f)(6) thereunder.¹²

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹³ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹⁴ permits the Commission to designate a shorter time if such action is consistent with the

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6). Pursuant to Rule 19b-4(f)(6)(iii) under the Act, the Exchange is required to give the Commission 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 Commission notes that the Exchange has satisfied this requirement.

¹³ 17 CFR 240.19b-4(f)(6).

protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the Exchange could immediately list FLEX Options on indexes and equity securities that are eligible for non-FLEX Options trading, and that have non-FLEX Options on such index and equity securities listed and traded on at least one national securities exchange, even if the Exchange does not list non-FLEX Options on such indexes and equity securities. In support of the waiver, the Exchange believes that its proposal is consistent with CBOE's rules, which were previously published for public comment, and would allow the Exchange to immediately compete with other exchanges for the trading of such FLEX Options.

The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest. In making this determination, the Commission notes that NYSE Arca's proposed rule change is substantially similar to CBOE's FLEX rules, which also permit CBOE to list FLEX options on securities that are eligible for non-FLEX options trading, even if CBOE does not list non-FLEX options on such securities.¹⁵ The Commission notes that the CBOE's proposal was subject to full notice and comment, and the Commission received no comments on CBOE's rule proposal. Further, the Commission notes that NYSE Arca's proposal adds clarification to the rules, noting expressly that its rules would only permit the trading of FLEX Options on securities whose non-FLEX Options are listed and traded on at least one national securities exchange. This provision will help to ensure that adequate exchange requirements are met for trading these products and that the FLEX market will provide an alternative to certain investors that want to customize specified options terms not available in the standardized market. In addition to the factors noted above, the Commission

¹⁴ 17 CFR 240.19b-4(f)(6)(iii).

¹⁵ See supra note 4.

also believes that waiver of the operative delay will allow the NYSE Arca to immediately compete with other exchanges for the trading of such FLEX options, thereby providing investors another venue on which to trade these products. For these reasons, the Commission designates, consistent with the protection of investors and the public interest, that the proposed rule change become operative immediately upon filing.¹⁶

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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.

¹⁶ 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. 15 U.S.C. 78c(f).

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-2011-37 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 No. SR-NYSEArca-2011-37. 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 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 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-2011-37 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.¹⁷

Cathy H. Ahn
Deputy Secretary

¹⁷ 17 CFR 200.30-3(a)(12).