

financial services holding company that also owned a Nasdaq member established a joint venture for trading precious metals in the spot market or for brokering commercial real estate in lower Manhattan, Nasdaq explained, the underlying activity would not be subject to a filing requirement under Section 19 because the joint venture would engage in activities not subject to Commission jurisdiction and would not be operated as a facility of Nasdaq. Although the joint venture would arguably result in an indirect affiliation between Nasdaq and one of its members, Nasdaq pointed out that its rule would not require a filing if the specified conditions of separation between the parties were in place. Nasdaq contrasted this scenario with a joint venture in which the hypothetical financial services holding company in question sold Nasdaq market data, in which case Section 19 of the Act would require a filing, regardless of its Rule 2140.

V. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change, as amended, the comment letters, and the Nasdaq Response Letter, and finds that the proposed rule change, as amended, is consistent with the requirements of the Act³⁰ and the rules and regulations thereunder applicable to a national securities exchange.³¹ In particular, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of Section 6(b)(5) of the Act,³² which requires that the an exchange have rules designed, among other things, to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

The Commission recently stated that it "is concerned about [the] potential for unfair competition and conflicts of interest between an exchange's self-regulatory obligations and its commercial interests that could exist if an exchange were to otherwise become affiliated with one of its members, as well as the potential for unfair competitive advantage that the affiliated member could have by virtue of informational or operational advantages, or the ability to receive preferential

treatment."³³ The Commission believes that Nasdaq's proposed rule is designed to mitigate these concerns. Nasdaq's rule makes it clear that affiliations between Nasdaq and its members must be filed with the Commission unless such affiliation is due to a member's interest in The Nasdaq Stock Market, Inc. permitted under Rule 2130 or conforms to the specified information barrier requirements.

In its response letter, Nasdaq correctly noted that its rule does not, in any way, limit the Commission's authority under the Act. If Nasdaq entered into an affiliation with a member (or any other party) that resulted in a change to a Nasdaq rule or the need to establish new Nasdaq rules, as defined under the Act, then such affiliation would be subject to the rule filing requirements of Section 19(b) of the Act. Nasdaq Rule 2140 would have no effect on this statutory rule filing requirement.

Finally, the Commission believes that Nasdaq's revisions to certain disciplinary rules are consistent with the Act and are designed to protect the integrity of the disciplinary process. These modifications, which specify that Nasdaq may not be involved in certain disciplinary actions involving members with which it is affiliated, insulate Nasdaq's role as an SRO from its commercial interests.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,³⁴ that the proposed rule change (SR-Nasdaq-2006-006) be, and hereby is, approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³⁵

Nancy M. Morris,

Secretary.

[FR Doc. E6-11796 Filed 7-24-06; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54166; File No. SR-NYSE Arca-2006-45]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto To Permit the Listing and Trading of Quarterly Options Series

July 18, 2006.

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 12, 2006, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") 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 Exchange filed Amendment No. 1 to the proposed rule change on July 18, 2006.⁵ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules to permit the listing and trading of quarterly options series.⁶ The text of the proposed rule change, as amended, is set forth below. Proposed new language is in *italics*; language proposed to be deleted is in [brackets].

* * * * *

Rules of NYSE Arca, Inc.

Rule 5. Option Contracts Traded on the Exchange

* * * * *

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).

⁵ In Amendment No. 1, a partial amendment, the Exchange made minor modifications to the proposed rule text.

⁶ This proposal is substantially identical to a recently approved proposal by the International Securities Exchange ("ISE") to list Quarterly Options Series on a pilot basis. See Securities Exchange Act Releases No. 53857 (May 24, 2006), 71 FR 31246 (June 1, 2006) (notice of filing); and 54113 (July 7, 2006), 71 FR 39694 (July 13, 2006) (approval order).

³⁰ 15 U.S.C. 78f.

³¹ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See U.S.C. 78c(f).

³² 15 U.S.C. 78f(b)(5).

³³ See Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (order approving the New York Stock Exchange's merger with the Pacific Exchange).

³⁴ 15 U.S.C. 78s(b)(2).

³⁵ 17 CFR 200.30-3(a)(12).

Rule 5.10. Applicability, Definitions and References

(a) No change.

(b) Definitions. Unless the context indicates otherwise, the following terms as used in this Section 3 shall have the meanings specified below.

(1)–(25) No change.

(26) *The term “Quarterly Options Series” means, for the purposes of this Rule 5, a series in an index options class that is approved for listing and trading on the Exchange in which the series is opened for trading on any business day and that expires at the close of business on the last business day of a calendar quarter.*

* * * * *

Rule 5.15. Position Limits for Broad-Based Index Options

(a)–(d) No change.

(e) Positions in One Week Option[s] Series and Quarterly Options Series shall be aggregated with positions in options contracts on the same index.

Rule 5.16. Position Limits for Industry (Narrow-Based) Index Options

(a)–(c) No change.

(d) Positions in One Week Option Series and Quarterly Options Series shall be aggregated with positions in options contracts on the same index.

(e)–(g) No change.

* * * * *

Rule 5.19. Terms of Index Option Contracts

(a) General

(1)–(2) No change.

(3) Expiration Months. Index Option contracts may expire at three (3) month intervals or in consecutive months. The Exchange may list up to six (6) months at any one time, but will not list index options that expire more than twelve (12) months out.

One Week Option Series Pilot Program. Notwithstanding the preceding restriction, after an index option class has been approved for listing and trading on the Exchange, the Exchange may open for trading on any Friday that is a business day (“One Week Option Opening Date”) series of options on that class that expire at the close of business on the next Friday that is a business day (“One Week Option Expiration Date”). If the Exchange is not open for business on a Friday, the One Week Option Opening Date will be the first business day immediately prior to that Friday. Similarly, if the Exchange is not open for business on a Friday, the One Week Option Expiration Date will be the first business day immediately prior to that Friday. One Week Option Series shall be

P.M. settled, except for One Week Option Series on indexes. One Week Option Series on indexes shall be A.M. settled.

The Exchange may select up to five currently listed option classes on which One Week Option Series may be opened on any One Week Option Opening Date. In addition, to the five-option class restriction, the Exchange also may list One Week Option Series on any option classes that are selected by other securities exchanges that employ a similar Pilot Program under their respective rules. For each index option class eligible for participation in the One Week Option Series Pilot Program, the Exchange may open up to five One Week Option Series index options for each expiration date in that class. The strike price of each One Week Option Series will be fixed at a price per share, with at least two strike prices above and two strike prices below the calculated value of the underlying index value at about the time the One Week Option Series is opened for trading on the Exchange. No One Week Option Series on an index option class may expire in the same week during which any A.M. settled monthly option series on the same index class expire.

The Exchange may continue to list One Week Option Series until the One Week Option Series Pilot Program expires on July 12, 2007.

Quarterly Options Series Pilot Program. Notwithstanding the restriction in this Rule 5.19(a)(3) above, for a pilot period, the Exchange may list and trade options series that expire at the close of business on the last business day of a calendar quarter (“Quarterly Options Series”). The Exchange may list Quarterly Options Series for up to five (5) currently listed options classes that are either index options or options on exchange traded funds. In addition, the Exchange may also list Quarterly Options Series on any options classes that are selected by other securities exchanges that employ a similar pilot program under their respective rules. The pilot will commence the day the Exchange first initiates trading in a Quarterly Options Series or July 24, 2006, whichever is earlier. The Pilot Program will expire on July 10, 2007.

The Exchange will list series that expire at the end of the next consecutive four (4) calendar quarters, as well as the fourth quarter of the next calendar year. For example, if the Exchange is trading Quarterly Options Series in the month of May 2006, it will list series that expire at the end of the second, third and fourth quarters of 2006, as well as the first and fourth quarters of 2007. Following the second quarter 2006

expiration, the Exchange will add series that expire at the end of the second quarter of 2007.

The Exchange will not list a One Week Option Series on an options class whose expiration coincides with that of a Quarterly Options Series on that same options class.

Quarterly Options Series shall be P.M. settled.

The strike price of each Quarterly Options Series will be fixed at a price per share, with at least two strike prices above and two strike prices below the value of the underlying security at about the time that a Quarterly Options Series is opened for trading on the Exchange. The Exchange shall list strike prices for a Quarterly Options Series that are within \$5 from the closing price of the underlying security on the preceding day. The Exchange may open for trading additional Quarterly Options Series of the same class if the current index value of the underlying index moves substantially from the exercise price of those Quarterly Options Series that already have been opened for trading on the Exchange. The exercise price of each Quarterly Options Series opened for trading on the Exchange shall be reasonably related to the current index value of the underlying index to which such series relates at or about the time such series of options is first opened for trading on the Exchange. The term “reasonably related to the current index value of the underlying index” means that the exercise price is within thirty percent (30%) of the current index value. The Exchange may also open for trading additional Quarterly Options Series that are more than thirty percent (30%) away from the current index value, provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate, or individual customers or their brokers. Market Makers trading for their own account shall not be considered when determining customer interest under this provision.

The interval between strike prices on Quarterly Options Series shall be the same as the interval for strike prices for series in that same options class that expire in accordance with the normal monthly expiration cycle.

(4)–(7) No change.

(b)–(e) No change.

* * * * *

Rule 6. Options Trading**Rule 6.1. Applicability, Definitions and References**

(a) No change.

(b) Definitions. The following terms as used in Rule 6 shall, unless the context

otherwise indicates, have the meanings herein specified:

(1)–(16) No change.

(17) Expiration Date. The term “expiration date” in respect of an option contract or Exchange-Traded Fund Share means 2:00 p.m. on the Saturday immediately following the third Friday of the expiration month. For a One Week Option Series the term “expiration date” shall mean the close of business on the next Friday that is a business day. If a Friday is not a business day, the “expiration date” shall be the close of business on the first business day immediately prior to that Friday. *For a Quarterly Options Series, the term “expiration date” shall mean the close of business on the last business day of a calendar quarter.*

(18)–(41) No change.

(42) Quarterly Options Series. *The term “Quarterly Options Series” means a series in an options class that is approved for listing and trading on the Exchange in which the series is opened for trading on any business day and that expires at the close of business on the last business day of a calendar quarter.*

(c)–(e) No change.

* * * * *

Rule 6.4. Series of Options Open for Trading

(a) After a particular class of options (call option contracts or put option contracts relating to a specific underlying stock, Exchange-Traded Fund Share or calculated index) has been approved for listing and trading on the Exchange, the Exchange shall from time to time open for trading series of options therein. Prior to the opening of trading in any series of options, the Exchange shall fix the expiration month and exercise price of option contracts included in each such series. For One Week Option Series, the Exchange will fix a specific expiration date and exercise price, as provided in Commentary .07 below. *For Quarterly Options Series, the Exchange will fix a specific expiration date and exercise price, as provided in Commentary .08 below.* Except for One Week Option Series and Quarterly Options Series, at the commencement of trading on the Exchange of a particular class of options, series of options therein having four different expiration months will normally be opened. Additional series of options of the same class may be opened for trading on the Exchange at or about the time a prior series expires. The exercise price of each series of options opened for trading on the Exchange shall be fixed at a price per share which is reasonably close to the price per share at which the underlying

stock or Exchange-Traded Fund Share is traded in the primary market at or about the time such series of options is first opened for trading on the Exchange. Additional series of options of the same class may be opened for trading on the Exchange as the market price of the underlying stock or Exchange-Traded Fund Share moves substantially from the initial exercise price or prices. The opening of a new series of options on the Exchange shall not affect any other series of options of the same class previously opened. Commentary .07 will govern the procedures for opening One Week Option Series. *Commentary .08 will govern the procedures for opening Quarterly Options Series.*

(b)–(e) No change.

Commentary

.01 through .07 No change.

.08 *Quarterly Options Series Pilot Program. For a pilot period, the Exchange may list and trade options series that expire at the close of business on the last business day of a calendar quarter (“Quarterly Options Series”). The Exchange may list Quarterly Options Series for up to five (5) currently listed options classes that are either index options or options on exchange traded funds. In addition, the Exchange may also list Quarterly Options Series on any options classes that are selected by other securities exchanges that employ a similar pilot program under their respective rules. The pilot will commence the day the Exchange first initiates trading in a Quarterly Options Series or July 24, 2006, whichever is earlier. The Pilot Program will expire on July 10, 2007.*

The Exchange will list series that expire at the end of the next consecutive four (4) calendar quarters, as well as the fourth quarter of the next calendar year. For example, if the Exchange is trading Quarterly Options Series in the month of May 2006, it will list series that expire at the end of the second, third and fourth quarters of 2006, as well as the first and fourth quarters of 2007. Following the second quarter 2006 expiration, the Exchange will add series that expire at the end of the second quarter of 2007.

The Exchange will not list a One Week Option Series on an options class whose expiration coincides with that of a Quarterly Options Series on that same options class.

The strike price of each Quarterly Options Series will be fixed at a price per share, with at least two strike prices above and two strike prices below the value of the underlying security at about the time that a Quarterly Options Series is opened for trading on the Exchange.

The Exchange shall list strike prices for a Quarterly Options Series that are within \$5 from the closing price of the underlying security on the preceding day. Additional Quarterly Options Series of the same class may be opened for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the market price of the underlying security moves substantially from the initial exercise price or prices. To the extent that any additional strike prices are listed by the Exchange, such additional strike prices shall be within \$5 from the closing price of the underlying on the preceding day. The opening of new Quarterly Options Series shall not affect the series of options of the same class previously opened.

The interval between strike prices on Quarterly Options Series shall be the same as the interval for strike prices for series in that same options class that expire in accordance with the normal monthly expiration cycle.

* * * * *

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 proposes to amend its rules to accommodate the listing of options series that would expire at the close of business on the last business day of a calendar quarter (“Quarterly Options Series”). Quarterly Options Series could be opened on any approved options class⁷ on a business day (“Quarterly Options Opening Date”) and would expire at the close of business on the last business day of a calendar quarter (“Quarterly Options Expiration Date”). The Exchange would list series

⁷ Quarterly Options Series may be opened in options on indexes or options on Exchange Traded Fund (“ETFs”) that satisfy the applicable listing criteria under NYSE Arca rules.

that expire at the end of the next four consecutive calendar quarters, as well as the fourth quarter of the next calendar year. For example, if the Exchange were trading Quarterly Options Series in the month of May 2006, it would list series that expire at the end of the second, third, and fourth quarters of 2006, as well as the first and fourth quarters of 2007. Following the second quarter 2006 expiration, the Exchange would add series that expire at the end of the second quarter of 2007.

Quarterly Options Series listed on currently approved options classes would be P.M.-settled and, in all other respects, would settle in the same manner as do the monthly expiration series in the same options class.

The proposed rule change would allow the Exchange to open Quarterly Options Series on up to five currently listed options classes that are either index options or options on ETFs. The strike price for each series would be fixed at a price per share, with at least two strike prices above and two strike prices below the approximate value of the underlying security at about the time that a Quarterly Options Series is opened for trading on the Exchange. The Exchange may list strike prices for a Quarterly Options Series that are within \$5 from the closing price of the underlying security on the preceding trading day. The proposal would permit the Exchange to open for trading additional Quarterly Options Series of the same class when the Exchange deems it necessary to maintain an orderly market, to meet customer demand, or when the current market price of the underlying security moves substantially from the exercise prices of those Quarterly Options Series that already have been opened for trading on the Exchange. In addition, the exercise price of each Quarterly Options Series on an underlying index would be required to be reasonably related to the current index value of the index at or about the time such series of options were first opened for trading on the Exchange. The term "reasonably related to the current index value of the underlying index" means that the exercise price is within thirty percent of the current index value. The Exchange would also be permitted to open for trading additional Quarterly Options Series on an underlying index that are more than thirty percent away from the current index value, provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate, or individual customers or their brokers. Market-Makers trading for their own account shall not be considered when

determining customer interest under this provision.

Because monthly options series expire on the third Friday of their expiration month, a Quarterly Options Series, which would expire on the last business day of the quarter, could never expire in the same week in which a monthly options series in the same class expires. The same, however, is not the case for One Week Option Series. Quarterly Options Series and One Week Option Series on the same options class could potentially expire concurrently under the proposal.⁸ Therefore, to avoid any confusion in the marketplace, the proposal stipulates that the Exchange may not list a One Week Option Series that expires at the end of the day on the same day as a Quarterly Options Series in the same class expires. In other words, the proposed rules would not permit the Exchange to list a P.M.-settled One Week Option Series on an ETF or an index that would expire on a Friday that is the last business day of a calendar quarter if a Quarterly Options Series on that ETF or index were scheduled to expire on that day.

However, the proposed rules would permit the Exchange to list an A.M.-settled One Week Option Series and a P.M.-settled Quarterly Options Series in the same options class that both expire on the same day (*i.e.*, on a Friday that is the last business day of the calendar quarter). The Exchange believes that the concurrent listing of an A.M.-settled One Week Option Series and a P.M.-settled Quarterly Options Series on the same underlying ETF or index that expire on the same day would not tend to cause the same confusion as would P.M.-settled short term and quarterly series in the same options class, and would provide investors with an additional hedging mechanism.

Finally, the interval between strike prices on Quarterly Options Series would be the same as the interval for strike prices for series in the same options class that expires in accordance with the normal monthly expiration cycles.

The Exchange believes that Quarterly Options Series would provide investors with a flexible and valuable tool to manage risk exposure, minimize capital outlays, and be more responsive to the timing of events affecting the securities that underlie option contracts. At the same time, the Exchange is cognizant of the need to be cautious in introducing a product that can increase the number of outstanding strike prices. For that reason, the Exchange intends to employ

⁸ The Exchange currently does not have any One Week Option Series listed for trading.

a limited pilot program ("Pilot Program") for Quarterly Options Series. Under the terms of the Pilot Program, the Exchange could select up to five option classes on which Quarterly Options Series may be opened on any Quarterly Options Opening Date. The Exchange would also be allowed to list those Quarterly Options Series on any options class that is selected by another securities exchange with a similar pilot program under its rules. The Exchange believes that limiting the number of options classes in which Quarterly Options Series may be opened would help to ensure that the addition of the new series through this Pilot Program will have only a negligible impact on the Exchange's and the Option Price Reporting Authority's ("OPRA") quoting capacity. Also, limiting the term of the Pilot Program to a period of approximately one year will allow the Exchange and the Commission to determine whether the program should be extended, expanded, and/or made permanent.

If the Exchange were to propose an extension or an expansion of the program, or were the Exchange to propose to make the Pilot Program permanent, the Exchange would submit, along with any filing proposing such amendments to the Pilot Program, a Pilot Program report ("Report") that will provide an analysis of the Pilot Program covering the entire period during which the Pilot Program was in effect. The Report would include, at a minimum: (1) Data and written analysis on the open interest and trading volume in the classes for which Quarterly Option Series were opened; (2) an assessment of the appropriateness of the options classes selected for the Pilot Program; (3) an assessment of the impact of the Pilot Program on the capacity of NYSE Arca, 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 NYSE Arca addressed such problems; (5) any complaints that NYSE Arca received during the operation of the Pilot Program and how NYSE Arca addressed them; and (6) any additional information that would assist in assessing the operation of the Pilot Program. The Report must be submitted to the Commission at least sixty days prior to the expiration date of the Pilot Program.

Alternatively, at the end of the Pilot Program, if the Exchange determines not to propose an extension or an expansion of the Pilot Program, or if the Commission determines not to extend or

expand the Pilot Program, the Exchange would no longer list any additional Quarterly Options Series and would limit all existing open interest in Quarterly Options Series to closing transactions only.

Finally, the Exchange represents that it has the necessary systems capacity to support new options series that will result from the introduction of Quarterly Options Series.

2. Statutory Basis

The Exchange believes that the introduction of Quarterly Options Series will attract order flow to the Exchange, increase the variety of listed options available to investors, and provide investors with a valuable hedging tool. For these reasons, the Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act⁹ in general and furthers the objectives of Section 6(b)(5) of the Act¹⁰ in particular in that it is designed to facilitate transaction in securities, to promote just and equitable principles of trade, to enhance competition, and, in general, to protect investors and 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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act¹¹ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹² Because the foregoing 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 from the date on which it was filed, 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 Act and Rule 19b-4(f)(6)(iii) thereunder.¹³

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to waive the operative delay if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the operative delay to permit the Pilot Program extension to become effective prior to the 30th day after filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that the proposal is substantially identical to the ISE's Quarterly Option Series Pilot Program, previously published for comment and approved by the Commission,¹⁴ and thus the Exchange's proposal raises no new issues of regulatory concern. Moreover, waiving the operative delay will allow the Exchange to immediately compete with other exchanges that list and trade quarterly options under similar programs, and consequently will benefit the public. Therefore, the Commission has determined to waive the 30-day delay and allow the proposed rule change to become operative immediately.¹⁵

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

¹³ Rule 19b-4(f)(6)(iii) requires the Exchange to give written notice to the Commission of its intent to file the proposed rule change five business days prior to filing. The Commission has determined to waive the five-day pre-filing requirement for this proposal.

¹⁴ See *supra* note 6.

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

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-2006-45 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-2006-45. 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. 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-2006-45 and should be submitted on or before August 15, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Nancy M. Morris,
Secretary.

[FR Doc. E6-11797 Filed 7-24-06; 8:45 am]

BILLING CODE 8010-01-P

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6).

¹⁶ 17 CFR 200.30-3(a)(12).