

The Commission believes that the thirteen options classes to be included in the penny pilot program represent a diverse group of options classes with varied trading characteristics. This diversity should facilitate analyses by the Commission, the options exchanges and others. The Commission also believes that the Penny Pilot Program is sufficiently limited that it is unlikely to increase quote message traffic beyond the capacity of market participants' systems and disrupt the timely receipt of quote information.¹³ Nevertheless, because the Commission expects that the Penny Pilot Program will increase quote message traffic, the Commission is also approving the Exchange's proposals to reduce the number of quotations it disseminates.

In this regard, the commenters expressed concern about ISE's proposed quote mitigation strategy. In particular, although OptionsXpress generally supported ISE's Holdback Timer, it expressed concern that a longer holdback timer period could negatively impact market quality and undermine transparency in the options market.¹⁴

In addition, SIFMA recommends that all six of the option exchanges adopt a comprehensive and uniform quote mitigation strategy.¹⁵ In particular, SIFMA strongly supports the adoption of the Holdback Timer mitigation proposal as the most efficient means of reducing quotation traffic. SIFMA, however, expressed concern that the lack of uniformity among the quote mitigation proposals adopted by the exchanges will impose a burden on member firms and cause confusion for market participants, especially retail investors.

Although SIFMA urges the adoption of a uniform and comprehensive approach to quote mitigation, it does not oppose ISE's quote mitigation proposals. In fact, SIFMA acknowledges that certain of ISE's proposals, such as notifying members whose quote activity suggests systems malfunctions or wrong settings and delisting inactive series can contribute to quote mitigation. SIFMA, however, expressed its belief that these proposals do not go far enough to resolve the industry's concerns regarding systems capacity.

The Commission supports efforts to implement a uniform, industry-wide

quote mitigation plan. It does not, however, believe such efforts preclude individual exchanges from initiating their own quote mitigation strategies. The Commission does not believe that ISE's proposed quote mitigation strategies will lead to confusion among market participants.

Finally, CBOE commented that it did not have a fundamental objection to ISE's use of the Holdback Timer, but instead sought additional information concerning how the Holdback Timer functions and how orders sent to ISE by CBOE members or by CBOE though linkage might be impacted by the Holdback Timer.¹⁶ Specifically, CBOE requested additional information about the extent to which the Holdback Timer is utilized throughout the day and whether it is used uniformly in all option classes traded on ISE. In response, ISE indicated that it intends to use the Holdback Timer uniformly in all option classes.¹⁷ In addition, the ISE committed to apply the Holdback Timer mechanism throughout the trading day for a period of up to, but no more than, one second.¹⁸ In further response to inquiry from CBOE, the ISE represented that it does not intend to disclose the precise length of the timer to its members, to non-members or to the other exchanges.¹⁹

In addition, CBOE inquired whether the Holdback Timer will apply only to market maker quotations and asked the Exchange to clarify what information will be delayed by the Holdback Timer. ISE clarified that the Holdback Timer will be applied when there is a change in the price and/or size of the security underlying an option. The Exchange will wait (for a period up to one second) until multiple market participants have adjusted their quotes and then will disseminate a new quotation. The Exchange will apply the Holdback Timer to all data that it sends to OPRA.²⁰ Finally, in response to CBOE's inquiry regarding the treatment of incoming marketable orders, ISE indicated that Holdback Timer "does not affect the receipt or processing of quotes, orders or trades within the

Exchange's system in any way."²¹ Therefore, incoming marketable orders sent to the Exchange will be executed against the prices and sizes available in ISE's system without regard to the application of the Holdback Timer.²²

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²³ that the proposed rule change (SR-ISE-2006-62), as modified by Amendment Nos. 1 and 2, be, and hereby is, approved on a six-month pilot basis, which will commence on January 26, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁴

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55170; File Nos. SR-NASD-2006-131; SR-NYSE-2006-111; SR-Amex-2007-05]

Self-Regulatory Organizations: National Association of Securities Dealers, Inc.; New York Stock Exchange LLC; American Stock Exchange LLC; Notice of Filing of Proposed Rule Changes To Increase the Frequency of the Short Interest Reporting Requirements

January 26, 2007.

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 December 4, 2006, December 7, 2006, and January 10, 2007, the National Association of Securities Dealers, Inc. ("NASD"), the New York Stock Exchange LLC ("NYSE"), and the American Stock Exchange LLC ("Amex") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes as described in Items I, II and III below, which Items have been prepared substantially by NASD, NYSE, or Amex. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

²¹ *Id.*

²² *Id.*

²³ 15 U.S.C. 78s(b)(2).

²⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹⁶ See CBOE Letter, *supra* note 4.

¹⁷ Telephone conversation between Katherine Simmons, Deputy General Counsel, ISE, and Jennifer L. Colihan, Special Counsel and Cyndi N. Rodriguez, Special Counsel, Division of Market Regulation, Commission, on January 23, 2007. See also Exchange Response, *supra* note 6.

¹⁸ Telephone conversation between Katherine Simmons, Deputy General Counsel, ISE and Jennifer L. Colihan, Special Counsel, and Cyndi N. Rodriguez, Division of Market Regulation, Commission, on January 23, 2007.

¹⁹ *Id.*

²⁰ See Exchange Response, *supra* note 7.

¹³ In addition, the Commission believes that it is appropriate for ISE to amend ISE Rule 716 to clarify that options trading in penny increments is not eligible for split pricing.

¹⁴ See OptionsXpress Letter, *supra* note 4. OptionsXpress also stated its view that current problems with the intermarket linkage will be exacerbated in the option classes participating in the Penny Pilot Program. *Id.*

¹⁵ See SIFMA Letter, *supra* note 4.

I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Changes

A. NASD

NASD is proposing to increase the frequency of the short interest reporting requirements under Rule 3360 from monthly to twice per month. No changes to the text of NASD rules are required by this proposed rule change.

B. NYSE

NYSE is proposing an amendment to NYSE Rule 421.10 (Short Positions), which would increase the frequency of the short interest reporting requirements under Rule 421.10 from monthly to twice per month. In addition, NYSE is proposing additional amendments to the Rule 421.10's text in light of recent changes to NYSE organizational structure.

The text of the proposed rule change is available at <http://www.NYSE.com>, at the NYSE, and at the Commission's Public Reference Room.

C. Amex

Amex proposes to increase the frequency of the short interest reporting requirements from monthly to twice a month, and to codify the short interest reporting requirement authorized by Amex Rule 30.

The text of the proposed rule change is available at <http://www.Amex.com>, at Amex, and at the Commission's Public Reference Room.

II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In filings with the Commission, NASD, NYSE, and Amex included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. NASD, NYSE, and Amex have prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

A. NASD

NASD is proposing to require members to record and report short interest position information to NASD twice per month. Currently, Rule 3360, Short-Interest Reporting, requires

members to maintain a record of total short positions³ in all customer and proprietary firm accounts in OTC Equity Securities⁴ and securities listed on a national securities exchange if not reported to another self-regulatory organization ("SRO") and to regularly report such information in the manner prescribed by NASD.⁵

Specifically, Rule 3360 requires that members report short positions as of the close of the settlement date designated by NASD and that the data be received by NASD no later than the second business day following the reporting settlement date designated by NASD. Currently, the designated settlement date is the 15th of each month, unless the 15th falls on a weekend or other non-settlement date, in which case the designated settlement date is the preceding settlement day.⁶ The aggregate short interest data is, in turn, made publicly available. Investors and other interested parties may obtain the aggregate short interest data from NASDAQ's Web site, the OTCBB Web site, other commercial Web sites and certain newspapers.

NASD is proposing to require that members maintain and report to NASD short interest positions twice per month, such that the designated settlement dates would be the 15th (unless the 15th falls on a weekend or other non-settlement date, in which case the designated settlement date will be the preceding settlement day) and the last business day of each month. NASD will then make the short interest information publicly available twice per month. NASD believes that increasing the frequency of short interest reporting will provide additional and more timely

³ Short positions required to be reported under Rule 3360 are those resulting from "short sales" as the term is defined in Rule 200 of Regulation SHO, with the exception of positions that meet the requirements of subsections (e)(1), (6), (7), (8), and (10) of Rule 10a-1 under the Exchange Act. See NASD Rule 3360(b)(1).

As part of the Commission's approval of amendments to expand Rule 3360 to OTC equity securities, the Commission urged NASD to review these exceptions to short interest reporting to determine whether further rulemaking is appropriate. NASD is currently conducting such a review. If, based on this review, NASD concludes that further rulemaking is warranted, NASD will file a separate rule change with the Commission. See Exchange Act Release No. 53224 (February 3, 2006), 71 FR 7101 (February 10, 2006).

⁴ The term "OTC Equity Securities" refers to any equity security that is not listed on The Nasdaq Stock Market or a national securities exchange.

⁵ Non-self-clearing broker-dealers generally are considered to have satisfied their reporting requirement by making appropriate arrangements with their respective clearing organizations. See *Notice to Members* 03-08 (January 2003).

⁶ A schedule of NASD's designated settlement dates can be found on NASD's Web site at <http://www.nasd.com>.

information to public investors and other interested parties related to short selling.

In recognition of the technological and systems changes the proposed rule change may require, the effective date will be six (6) months following Commission approval of the proposed rule change.

B. NYSE

Proposal to Increase Frequency of Short Interest Reporting Requirement

NYSE Rule 421 requires that member organizations submit to NYSE periodic reports with respect to short positions in securities, covering such time period as may be designated by NYSE. NYSE makes available to the marketplace the total short interest in each individual stock and warrant traded on NYSE. NYSE releases this data each month to media outlets such as Dow Jones, The Wall Street Journal, The New York Times, The New York Daily News and Bloomberg Services. This information provides some indication of market sentiment with respect to securities listed on NYSE. To better inform the investing public, NYSE is proposing to increase the frequency of short interest reporting pursuant to Rule 421.10 from monthly to twice per month.

Specifically, NYSE is proposing that member organizations be required to maintain and report to NYSE short interest positions twice per month, such that the designated settlement dates would be the 15th⁷ (unless the 15th falls on a weekend or other non-settlement date, in which case the designated settlement date will be the preceding settlement day) and the last business day of each month. Increased frequency of short interest reporting would provide additional and more timely information to public investors and other interested parties related to short selling. Upon Commission approval, NYSE membership would be notified of the new reporting requirement via Information Memo. NYSE proposes that this proposed rule change become effective 180 days after Commission approval of the filing in order to allow firms sufficient time to make any systems changes necessary to comply with the new requirement.

Amendments to Update NYSE Rule 421

NYSE is also proposing amendments that would update Rule 421.10 to reflect

⁷ See ISG Regulatory Memorandum 95-01 (March 6, 1995), announcing, among other things, the adoption by the SROs of policies and procedures that require short interest position reporting for all securities traded in the United States as well as the frequency of reporting short interest positions to SROs.

the adoption of the Commission's Regulation SHO.⁸ Further, amendments are proposed to Rule 421.40 to update the rule by deleting subsections (2) and (3) which reference "convertible bond margin accounts" and "subscription accounts,"⁹ because these types of accounts no longer exist. Rules 421.40(4) and (5) are accordingly repositioned as 421.40(2) and (3).

Further, NYSE is proposing amendments to Rule 421 that would delete all references to the terms "member" and "allied member" as categories of Exchange association. The term "member" no longer has the same regulatory meaning in the context of the NYSE/ARCA¹⁰ business model, which now authorizes "licensees" to trade on behalf of member organizations. Likewise, the term "allied member" has an incongruous connotation in the context of NYSE's current business model.

C. Amex

Amex is proposing to formalize the requirement that member organizations record short interest position information and report it to Amex twice a month. Currently, the Amex requires members to maintain a record of total short positions in all customer and proprietary firm accounts in equity securities (stocks, ETFs and other equity products) and to regularly report such information in the manner authorized by Amex Rule 30 and described in the Amex Minor Rule Violation Fine Systems (Amex Rule 590, Part 3), Amex Information Circulars¹¹ and an Intermarket Surveillance Group ("ISG") Regulatory Memorandum.¹² The proposed amendment would incorporate the short interest reporting requirements into new Amex Rule 30A as well as increase the frequency of public reporting from once to twice a month for all equity securities.

Amex makes available to the marketplace the total short interest in each equity and equity-type security traded on Amex. Amex releases this data each month to major media outlets, such as Dow Jones, and posts it to Amex's Web site. This information provides some indication of market sentiment with respect to securities listed on Amex. Other exchanges and

the NASD release comparable short interest information.

As set forth in Amex Information Circular #95-136 and ISG Regulatory Memorandum 95-01, members must report short positions as of the close of the settlement dates designated by Amex and the data must be received by Amex no later than the second business day following the reporting settlement dates designated by Amex. Currently, the designated settlement date is the 15th of each month, unless the 15th falls on a weekend or other non-settlement date, in which case the designated settlement date is the preceding settlement day, and, for ETFs only, a second designated settlement date is the last business day of the month.

The aggregate short interest data is, in turn, made publicly available to major news sources, twice a month with respect to ETFs, and once a month with respect to stocks, warrants and other equity products.

Amex is proposing to increase the frequency with which it makes short interest reporting information publicly available for stocks, warrants and other equity securities (in addition to ETFs) from once a month (settlement date of the 15th) to twice a month. As proposed, the increased frequency of public short interest reporting will provide additional and timelier information to public investors and other interested parties related to short selling.

Implementation of the proposed new Rule 30A will formalize the authority Amex currently obtains from a broad rule (Amex Rule 30) concerning periodic reports and the informational notices referenced above.

The effective date will be 180 days following Commission approval of the proposed rule change.

2. Statutory Basis

NASD, NYSE, and Amex believe that the proposed rule changes are consistent with the provisions of Sections 6(b)(5)¹³ and 15A(b)(6)¹⁴ of the Act, which require, among other things, that NASD, NYSE, and Amex rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD, NYSE, and Amex believe that the proposed rule changes will provide additional and more timely information related to short selling.

B. Self-Regulatory Organizations' Statement on Burden on Competition

NASD, NYSE, and Amex do 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 Organizations' Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

A. NASD

The proposed rule change was published for comment in NASD *Notice to Members* 05-63 (September 2005). Two comments were received in response to the *Notice*.¹⁵ A copy of the *Notice to Members* is attached as Exhibit 2a and copies of the comment letters received in response to the *Notice* are attached as Exhibit 2c to NASD's filing which is available at <http://www.NASD.com>, at NASD, and at the Commission's Public Reference Room.

Of the two comment letters received, both were in favor of the proposed rule change. One commenter noted that minimal programming and costs would be required to implement this proposal, but recommended six months for implementation of the proposal.¹⁶ The other commenter indicated that increases or decreases in short interest positions are significant indicators of investor sentiment.¹⁷ As such, the commenter stated that timelier reporting of short interest data provides additional relevant information and more accurate indications of changes in investor outlook.¹⁸

As noted above, in recognition of technological and systems changes that may be required to implement the proposed rule change, NASD has proposed an extended implementation period, which NASD believes will provide members adequate time to make any necessary changes.

B. NYSE

NYSE has neither solicited nor received written comments on the proposed rule change.

C. Amex

Amex has neither solicited nor received written comments on the proposed rule change.

¹⁵ Comments were received from the following: Lisa Morel-Misener of Cognos Incorporated, dated October 27, 2005 and Christopher Charles of Wulff Hansen & Co., dated November 15, 2005.

¹⁶ See *supra* note 14, Wulff Hansen & Co. letter.

¹⁷ See *supra* note 14, Cognos Incorporated letter.

¹⁸ *Id.*

⁸ 17 CFR 242.200 through 242.203.

⁹ In 1984, the Federal Reserve Board amended Regulation T to eliminate convertible bond margin accounts and subscription accounts.

¹⁰ See Release No. 34-53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (order approving SR-NYSE-2005-77).

¹¹ See Amex Information Circulars #95-136 and #98-0234.

¹² See ISG Regulatory Memorandum 95-01.

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ 15 U.S.C. 78o-3(b)(5).

III. Date of Effectiveness of the Proposed Rule Changes 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

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

IV. Solicitation of Comments

The Commission notes that NASD, NYSE and Amex, are proposing an implementation period for the proposed rule changes. Specifically, the Commission notes that NASD, NYSE, and Amex are proposing that the proposed rule changes become effective 180 days (six months) after the Commission approval in order to allow firms sufficient time to make any systems changes necessary to comply with the new requirements. The Commission specifically requests comment regarding whether this implementation period could be shorter.

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 Numbers SR-NASD-2006-131, SR-NYSE-2006-111, or SR-Amex-2007-05 as appropriate 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 Numbers SR-NASD-2006-131, SR-NYSE-2006-111, or SR-AMEX-2007-05, as appropriate.

These file numbers 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 offices of NASD, NYSE or Amex, as appropriate.

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 Numbers SR-NASD-2006-131, SR-NYSE-2006-111, or SR-Amex-2007-05, as appropriate, and should be submitted on or before February 22, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁹

Florence E. Harmon,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55156; File No. SR-NYSEArca-2006-73]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval to Proposed Rule Change as Modified by Amendment No. 1 Thereto, To Create an Options Penny Pilot Program

January 23, 2007.

I. Introduction

On October 10, 2006, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to amend the NYSE Arca Rules to permit certain option classes to be quoted in pennies on a pilot basis and to adopt a quote mitigation strategy. The

proposed rule change was published for comment in the **Federal Register** on October 18, 2006.³ The Commission received three comment letters on the proposed rule change.⁴ On December 1, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.⁵ The Exchange responded to the comment letters on January 9, 2007.⁶ This order approves the proposed rule change as modified by Amendment No. 1.

II. Description of the Proposal

A. Scope of the Penny Pilot Program

NYSE Arca proposes to amend its rules to permit certain options classes to be quoted in pennies during a six-month pilot ("Penny Pilot Program"), which would commence on January 26, 2007. Specifically, the Exchange proposes to (1) clarify the language in NYSE Arca Rule 6.72, which sets forth the minimum increments for options quoted on the Exchange; (2) add a reference in Rule 6.72 to the Penny Pilot Program; and (3) provide for an approved quote mitigation exception to NYSE Arca Rule 6.86.

Currently, all six options exchanges, including NYSE Arca, quote options in nickel and dime increments. The minimum price variation for quotations in options series that are quoted at less than \$3 per contract is \$0.05 and the minimum price variation for quotations in options series that are quoted at \$3 per contract or greater is \$0.10. Under the Penny Pilot Program, beginning on January 26, 2007, market participants would be able to begin quoting in penny increments in certain series of option classes.

The Penny Pilot Program would include the following thirteen options: Ishares Russell 2000 (IWM); NASDAQ-100 Index Tracking Stock (QQQQ); Semiconductor Holders Trust (SMH); General Electric Company (GE);

³ See Securities Exchange Act Release No. 54590 (October 12, 2006), 71 FR 61525.

⁴ See letters to Nancy M. Morris, Secretary, Commission, from Wayne Jervis, Managing Member of the General Partner, Jervis Alternative Asset Management Co. ("JAAMCO"), dated January 7, 2007 ("JAAMCO Letter"); from Christopher Nagy, Chair, Securities Industry and Financial Markets Association ("SIFMA") Options Committee, dated December 20, 2006 ("SIFMA Letter"); and from Peter J. Bottini, Executive Vice-President, optionsXpress, Inc. ("optionsXpress"), dated October 31, 2006 ("optionsXpress Letter").

⁵ Among other things, Amendment No. 1 proposed to replace Glamis Gold, which was delisted, with Agilent Tech, Inc. in the list of options classes permitted to be quoted in pennies. Amendment No. 1 is technical in nature, and the Commission is not publishing Amendment No. 1 for public comment.

⁶ See letter to Nancy M. Morris, Secretary, Commission, from Mary Yeager, Corporate Secretary, NYSE Arca, dated January 9, 2007 ("Exchange Response").

¹⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.