

recommendations, and private sales; (3) excessive trading by members, excessive trading in discretionary accounts, successive transactions by members, manipulative operations, reopening contracts, and loans for accounts of non-members; (4) disciplinary proceedings concerning conduct that is inconsistent with just and equitable principles of trade; (5) reporting of certain information concerning short sales and proprietary transactions; (6) reporting and certification of member or member organization's supervision and compliance efforts; (7) formation and approval or merger organizations; (8) reporting of short positions; (9) notification requirements for listed securities; and (10) disclosure and monitoring of non-managed fee based accounts. In place of the deleted rules and interpretations, NYSE Amex proposes to adopt rules that conform the NYSE Amex Equities Rules with changes made to the corresponding NYSE Rules on which they are based.²²

The Commission believes that the proposed rule change, as amended, is appropriate and would provide greater harmonization among NYSE Rules, NYSE Amex Equities Rules and FINRA Rules, thereby resulting in less burdensome and more efficient regulatory compliance for their common members and member organizations. With respect to the Exchange's proposal to delete NYSE Amex Equities Rule 350 and to adopt NYSE Amex Equities Rule 3220, (relating to influencing or rewarding employees of others), the Commission notes that NYSE Amex has stated that, immediately upon Commission approval of new NYSE Amex Equities Rule 3220, it will issue an Information Memorandum to its members and member organizations including NYSE Amex-only members and those members registered with FINRA, clarifying that FINRA's interpretive guidance related to FINRA Rule 3220 is considered part of NYSE Amex Equities Rule 3220, and that such members and member organizations are required to regulate their conduct according to Rule 3220 and the interpretive guidance related to FINRA Rule 3220.²³ Accordingly, the Commission believes that the proposed rule change, as amended, is consistent with the requirements of the Act.

The Commission also finds good cause for approving the proposed rule change as modified by Amendment No.

2 prior to the thirtieth day after the date of publication of notice in the **Federal Register**. Amendment No. 2 simply clarifies certain points relating to proposed changes to NYSE Amex Equities Rules. Because Amendment No. 2 does not significantly alter the proposed rule change, which was subject to a full notice and comment period, the Commission finds that it is in the public interest to approve the proposed rule change, as modified by Amendment No. 2, without delay to expedite implementation. Accordingly, the Commission finds that there is good cause, consistent with and in furtherance of the objectives of Sections 6²⁴ and 19(b)(2)²⁵ of the Exchange Act, to approve Amendment No. 2 on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²⁶ that the proposed rule change (SR-NYSEALTR-2009-26) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁷

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-12714 Filed 6-1-09; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59978; File No. SR-NYSEArca-2009-41]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rules Related to Doing a Public Business in Options

May 27, 2009.

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 May 7, 2009, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") 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 substantially prepared by the

Exchange.⁴ 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 amend Exchange Rule 9.18—Doing a Public Business in Options. 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.

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.

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

1. Purpose

The purpose of the proposed rule change is to amend Exchange Rule 9.18(f) to provide that the market on which an options transaction is executed need not be disclosed on a written confirmation furnished to a customer of an Options Trading Permit Holder ("OTP Holder") or Options Trading Permit Firm ("OTP Firm").⁵

⁴ The Exchange and Commission staff agreed to several clarifying changes in text of Items I, II, and III during a telephone conversation between Andrew Stevens, Chief Counsel U.S. Equities and Derivatives, Exchange, and Darren Vieira, Attorney Advisor, Division of Trading and Markets, Commission on May 21, 2008.

⁵ The proposed filing is being done pursuant to an industry-wide initiative under the auspices of the Options Self-Regulatory Council ("OSRC"), which is a committee comprised of representatives from each of the options exchanges functioning pursuant to the OSRC Plan (the "Plan"). See Securities Exchange Act Release No. 20158 (September 8, 1983), 48 FR 41256 (September 14, 1983). The Plan is not a National Market System ("NMS") plan under Section 11A of the Act, but rather is a plan to allocate regulatory responsibilities under Rule 17d-2 under the Act. 17 CFR 240.17d-2. As a result of the introduction of multiply listed options and the introduction of the Plan for the Purpose of Creating and Operating an Intermarket Options Market Linkage ("Options Linkage Plan"), the contracts in a customer options order could be executed on more than one options

Continued

²² See NYSE Order, *supra* note 4.

²³ Telephone conversation between Clare F. Saperstein, Managing Director, NYSE Regulation, Inc., and Nancy J. Burke-Sanow, Assistant Director, Division of Trading and Markets, Commission, May 21, 2009.

²⁴ 15 U.S.C. 78f.

²⁵ 15 U.S.C. 78s(b)(2).

²⁶ 15 U.S.C. 78s(b)(2).

²⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a *et seq.*

³ 17 CFR 240.19b-4.

Pursuant to proposed Rule 9.18(f), the OTP Holders and OTP Firms would continue to be required to furnish a written confirmation that contains a description of each transaction in the option contracts which shows: The type of option; the underlying security (e.g., stock or exchange traded fund); the expiration month; the exercise price; the number of option contracts; the premium and commissions; the transaction and settlement dates; whether the transaction was a purchase or a sale (writing) transaction; and whether the transaction was effected on a principal or agency basis.

The Exchange believes that with the expansion of multi-listing of options and the introduction of new options exchanges, it has become operationally inefficient to require the disclosure of the market center on which an order was executed on the confirmation. As an example, a customer may have a single option order containing numerous option contracts executed on multiple exchanges. As such, it would be inefficient for the executing firm to be required to identify the exchange symbol for each contract executed on that customer's order. This proposal would clarify that written confirmations furnished to a customer will not need to specify the exchange or exchanges on which such option contracts were executed.

This proposal is similar to rule change proposals that have been filed by the American Stock Exchange LLC, the Financial Industry Regulatory Authority, Inc., the Chicago Board Options Exchange, the NASDAQ OMX PHLX, Inc., the Boston Stock Exchange, Inc., and the International Securities Exchange, LLC and approved by the Commission.⁶

exchange, and the significance of the options exchange, or exchanges, that execute a particular options transaction has diminished significantly. See Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Furthermore, the OSRC believes that in light of best execution and disclosure requirements, the usefulness of including on an options confirmation the name of the options exchange, or exchanges, on which the options transaction was effected does not outweigh the operational difficulties of capturing the information given the multiple trading of options and the application of the Options Linkage Plan industry wide.

⁶ See Securities Exchange Act Release No. 58814 (October 20, 2008), 73 FR 63527 (October 24, 2008) (approval order); Securities Exchange Act Release No. 58932 (November 12, 2008), 73 FR 69696 (November 19, 2008) (approval order); Securities Exchange Act Release No. 58980 (November 19, 2008), 73 FR 72091 (November 26, 2008) (approval order); Securities Exchange Act Release No. 59166 (December 29, 2008), 74 FR 328 (January 5, 2009) (approval order); Securities Exchange Act Release No. 59434 (February 23, 2009), 74 FR 9012 (February 27, 2009) (approval order); and Securities

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b) of the Act⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act⁸ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest, and that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in, securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Additionally, this proposed rule change would promote consistency between NYSE Arca and other self-regulatory organization rules and clarify the Exchange's options confirmation procedure rules to better reflect the realities of the modern options market.

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

The proposed rule change does 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 were neither solicited nor received.

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)(iii) of the Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰ Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 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

Exchange Act Release No. 59806 (April 21, 2009), 74 FR 19254 (April 28, 2009) (approval order).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁰ 17 CFR 240.19b-4(f)(6).

effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6)(iii) thereunder.¹²

A proposed rule change filed under Rule 19b-4(f)(6)¹³ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁴ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. Because the proposed rule change is based on rule changes previously approved by the Commission and the proposed rule change does not present any novel issues, the Commission believes that waiving the 30-day operative delay period to permit the proposed rule change to be implemented immediately is consistent with the protection of investors and the public interest. The proposed rule will promote consistency between the rules of the NYSE Arca and other self-regulatory organizations. Thus, the Commission, consistent with the protection of investors and the public interest, has determined to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.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 is consistent with the Act. Comments may be submitted by any of the following methods:

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 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 Exchange has satisfied the pre-filing requirement.

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ 17 CFR 240.19b-4(f)(6)(iii).

¹⁵ For purposes only of waiving the operative date of the proposal, the Commission 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-2009-41 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.

All submissions should refer to File Number SR-NYSEArca-2009-41. 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 20549-1090 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at NYSE Arca's principal office and on its Internet Web site at <http://www.nyse.com>. 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-2009-41 and should be submitted on or before June 23, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-12715 Filed 6-1-09; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59974; File No. SR-NSX-2009-03]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Fee and Rebate Schedule Issued Pursuant to Exchange Rule 16.1(c) in Order to Include Securities Priced at Less Than One Dollar in the Calculation of Volume Thresholds Used To Determine Rebates Payable for Displayed Order Liquidity Adding Tape A and C Securities Executed at One Dollar or Above

May 26, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 15, 2009, National Stock Exchange, Inc. ("NSX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change, as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comment 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 is proposing to amend the Fee and Rebate Schedule (the "Fee Schedule") issued pursuant to Exchange Rule 16.1(c) in order to include securities priced at less than one dollar in the calculation of volume thresholds used to determine rebates payable for displayed order liquidity adding Tape A and C securities executed at one dollar or above.

The text of the proposed rule change is available on the Exchange's Web site at <http://www.nsx.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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 parts of such statements.

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

Purpose

With this rule change, the Exchange is proposing to modify the Fee Schedule's calculation of "Liquidity Adding Average Daily Volume" ("Liquidity Adding ADV") used to determine rebates payable for displayed orders of Tape A and C securities in the Automatic Execution Mode of order interaction ("AutoEx")³ (the "AutoEx Displayed Order Liquidity Adding Tape A/C Rebate") so as to include securities priced under one dollar for purposes of determining whether a volume tier has been achieved.

The AutoEx Displayed Order Liquidity Adding Tape A/C Rebate is currently \$0.0026, \$0.0027 or \$0.0028 per share where an ETP Holder achieves Liquidity Adding ADV⁴ of less than 25 million, less than 40 million and 40 million or more, respectively. Currently, securities priced under one dollar are excluded from the calculation of "Liquidity Adding ADV". The Proposed Rule Change would modify the definition of "Liquidity Adding ADV" with respect only to the tiers used in calculation of the AutoEx Displayed Order Liquidity Adding Tape A/C Rebate so as to include securities under one dollar in the calculation of whether the above referenced tiers are achieved. The Proposed Rule Change would not modify other calculations of average daily volume in the Fee Schedule.

Rationale

The Exchange has determined that these changes are necessary to increase the volume of Displayed Orders of sub-dollar Tape A and C securities in

³ The Exchange's two modes of order interaction are described in NSX Rule 11.13(b).

⁴ As set forth in the Explanatory Endnotes to the Fee Schedule, prior to implementation of the instant rule change, "Liquidity Adding ADV" means, with respect to an ETP Holder, "the number of shares such ETP Holder has executed as a liquidity provider on average per trading day (excluding partial trading days and securities under one dollar) across all tapes on NSX for the calendar month (or partial month, as applicable) in which the executions occurred". The proposed rule change would modify the foregoing definition by adding the following statement: "Notwithstanding the foregoing, for purposes of determining whether the volume tier thresholds are achieved in AutoEx with respect to rebates applicable to displayed orders that add liquidity for Tape A and C securities, securities priced under one dollar will be included".

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹⁶ 17 CFR 200.30-3(a)(12).