

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62013; File No. SR-NYSEArca-2010-35]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Market Maker Requirements for Certain Covered Products

April 30, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4² thereunder, notice is hereby given that on April 23, 2010, 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 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 Substance of the Proposed Rule Change

The Exchange proposes to (i) amend NYSE Arca Equities Rule 6.3 and (ii) remove the requirement that Market Makers in certain covered products enumerated below maintain certain specifically prescribed information barrier procedures, but instead apply the standards established with the Commission’s order approving SR-NYSEArca-2009-78 (hereinafter referred to as the “Order”).³ A copy of this filing is available on the Exchange’s Web site at <http://www.nyse.com>, at the Exchange’s principal office, at the Commission’s Public Reference Room, and on the Commission’s Web site at <http://www.sec.gov>.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text

of those statements may be examined at the places 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

Background Information

The Exchange eliminated the requirement set forth in NYSE Arca Equities Rule 7.26 that Market Makers on the Corporation maintain certain specifically prescribed information barrier procedures.⁴ At the same time, the Exchange further proposed new NYSE Arca Equities Rule 6.7, which (i) prohibits ETP Holders from trading ahead of research reports and (ii) requires each ETP Holder to establish, maintain and enforce procedures regarding the flow of information between research department personnel and trading department personnel. Finally, the Exchange revised NYSE Arca Equities Rule 6.18 to incorporate compliance with NASD Rule 3010(a)(1), (b)(1), and (c)(1).

NYSE Arca Equities Rules 5 & 8

Currently, certain product related NYSE Arca Equities rules cross reference NYSE Arca Equities Rule 7.26 regarding information barriers. These cross references to NYSE Arca Equities Rule 7.26 and the attendant obligations, contained in Rules 5.2(j)(6), 8.200, 8.201, 8.202, 8.203, 8.204, 8.300, 8.400, 8.500, and 8.700, generally expanded the definition of “other business activities” as set forth in NYSE Arca Equities Rule 7.26 so as to require ETP Holders acting as a Market Maker in the covered products to maintain information barrier procedures when the Market Maker (or an affiliate) engages in certain other business activities related to the covered products. At the time the Exchange eliminated NYSE Arca Equities rule 7.26, it did not further eliminate or otherwise amend the obligations set forth in Rules 5.2(j)(6), 8.200, 8.201, 8.202, 8.203, 8.204, 8.300, 8.400, 8.500, and 8.700. The current limitations and prohibitions set forth in these rules also specifically prohibit ETP Holders acting as Market Makers in the covered products from using any material nonpublic information received from any person associated with an ETP Holder or employee of such person

regarding trading by such person or employee in any components of the related products or any related derivative instruments. The purpose of this filing is to eliminate the requirement that Market Makers must maintain certain specifically prescribed information barrier procedures and thereby conform the standards applicable to the covered products to the standards established with the elimination of NYSE Arca Equities Rule 7.26, the adoption of NYSE Equities Rule 6.7, and the amendment to NYSE Arca Equities Rule 6.18. In so doing, the Exchange also seeks to amend NYSE Arca Rule 6.3 in order to confirm that ETP Holders acting as Market Makers in the covered products (and their affiliates) must establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of any material nonpublic information with respect to such products, any components of the related products, any physical asset or commodity underlying the product, applicable currencies, underlying indexes, related futures or options on futures, and any related derivative instruments. This proposal is consistent with the elimination of Rule 7.26 and the related changes to NYSE Arca Equities Rules 6.7 and 6.18. Removal of these cross references is also consistent with the current approach taken by Nasdaq.⁵ Furthermore, the Exchange notes that Market Makers on NYSE Arca must comply with their obligations to maintain and enforce written policies and procedures reasonably designed to prevent the misuse of material, non-public information.

Example of Rule Text To Be Removed, Commentary .01(a) to Rule 5.2(j)(6)

The following example identifies the typical cross reference to Rule 7.26 and the attendant text that the Exchange proposes to eliminate. Rule 5.2(j)(6) describes the Exchange’s listing standards for Equity Index-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities and Multifactor Index-Linked Securities. Commentary .01(a) to this rule states:

An ETP Holder acting as a registered Market Maker in Commodity-Linked Securities, Currency-Linked Securities, Futures-Linked Securities or Multifactor Index-Linked Securities, which is composed in part of Commodity or

⁵ See Nasdaq Rule 5710 (Securities Linked to the Performance of Indexes and Commodities (Including Currencies) and Nasdaq Rule 5740 (Derivative Securities Traded Under Unlisted Trading Privileges).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 60604 (September 1, 2009), 74 FR 46272 (September 8, 2009) (Order approving (i) the removal of NYSE Arca Equities Rule 7.26 “Limitations on Dealings”, (ii) the adoption of new NYSE Arca Equities Rule 6.7 “Trading Ahead of Research Reports”, and (iii) the amendment of NYSE Arca Equities Rule 6.18 “Supervision”).

⁴ *Id.*

Currency Reference Assets, is obligated to comply with Rule 7.26 pertaining to limitations on dealings when such Market Maker, or affiliate of such Market Maker, engages in Other Business Activities. For purposes of Commodity-Linked Securities, Currency-Linked Securities, Futures-Linked Securities or Multifactor Index-Linked Securities, if applicable, Other Business Activities shall include acting as a Market Maker or functioning in any capacity involving market-making responsibilities in the Commodity Reference Asset, Currency Reference Asset, or Futures Reference Asset as applicable (Commodity Reference Assets, Currency Reference Assets, and Futures Reference Assets together, "Index Assets"), the components underlying the Reference Asset, the commodities, currencies or futures underlying the Index Asset components, or options, futures or options on futures on the Index Asset, or any other derivatives (collectively, "derivative instruments") based on the Index Asset or based on any Index Asset component or any physical commodity, currency or futures underlying an Index Asset component. However, an approved person of an ETP Holder acting as a registered Market Maker in Commodity-Linked Securities, Currency-Linked Securities, Futures-Linked Securities or Multifactor Index-Linked Securities, if applicable, that has established and obtained Corporation approval of procedures restricting the flow of material, non-public market information between itself and the ETP Holder pursuant to Rule 7.26, and any member, officer or employee associated therewith, may act in a market making capacity, other than as a Market Maker in the Commodity-Linked Securities, Currency-Linked Securities, Futures-Linked Securities or Multifactor Index-Linked Securities, if applicable, on another market center, in the Index Asset components, the commodities, currencies or futures underlying the Index Asset components, or any derivative instruments based on the Index Asset or based on any Index Asset component or any physical commodity, currency or futures underlying an Index Asset component.

The first sentence of this commentary is designed to remind Market Makers on NYSE Arca of their obligation to comply with Rule 7.26 when it engages in "Other Business Activities"—a term that had been defined in Rule 7.26. The second sentence of this commentary defines, in the context of this product, the term "Other Business Activities". The third and final sentence of this

commentary reminds Market Makers that, consistent with Rule 7.26, they may act in certain market making capacities if they have established, and obtained the Exchange's approval of, appropriate procedures.

By removing this commentary and applying the standards established by the Order, the Exchange is amending its rules in a manner consistent with the standards previously approved by the Commission.⁶ Market Makers must comply with NYSE Arca Equities Rules 6.3 (as revised herein) and 6.18, which prohibit Market Makers from using material non-public information and require all ETP Holders to establish, maintain, and enforce written policies and procedures designed to supervise the business in which it engages and to prevent the misuse of material, non-public information. In this regulatory framework, it is no longer necessary for the Exchange to prescribe specific information barrier procedures. In addition, as revised, the requirements of Rule 5.2(j)(6) are generally consistent with those set forth in Nasdaq Rule 5710.

By eliminating Rule 7.26 and establishing standards similar to Nasdaq's, the Exchange has placed its participants on notice as to their obligations to maintain and enforce written policies and procedures reasonably designed to prevent the misuse of material, non-public information. Moreover, by revising Rule 6.3, as described herein, ETP Holders acting as Market Makers are on notice that they are prohibited from using material, non-public information. Finally, Market Makers on NYSE Arca (and their affiliates) remain on notice of their obligations to maintain and enforce written policies and procedures reasonably designed to prevent the misuse of material, non-public information.

Conforming Commentary to NYSE Arca Equities Rule 6.3

The Exchange proposes adding new commentary .04 to Rule 6.3, Prevention of the Misuse of Material, Nonpublic Information. By adding this commentary, described below, the Exchange seeks to extend the requirements of Rule 6.3 regarding each ETP Holder's obligation to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material, non-public information applies to Market Makers engaged in the trading of securities and/or any derivatives or non security components of any of the

products listed and traded on the Exchange pursuant to Rule 5 and Rule 8. The proposed language of commentary .04 to Rule 6.3 is as follows:

ETP Holders acting as a registered Market Maker in products listed under NYSE Arca Equities Rules 5 and 8, and their affiliates, shall also establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of any material nonpublic information with respect to such products, any components of the related products, any physical asset or commodity underlying the product, applicable currencies, underlying indexes, related futures or options on futures, and any related derivative instruments.

With the addition of this commentary, the Exchange proposes to remove similar commentary contained in each of the rules highlighted below. The specific proposed changes, consistent with the example described above, are identified in further as follows.

- NYSE Arca Equities Rule 5.2(j)(6), the Exchange's listing standards for Equity Index-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities and Multifactor Index-Linked Securities. The Exchange is removing Commentary .01 (a) and (d) and is changing the numbering within the rule to accommodate for this deletion.

- NYSE Arca Equities Rule 8.200, the Exchange's listing standards for Trust Issued Receipts. The Exchange is removing Commentary .02 (e)(1) and (4) and is changing the numbering within the rule to accommodate for this deletion.

- NYSE Arca Equities Rule 8.201, the Exchange's listing standards for Commodity-Based Trust Shares. The Exchange is removing Sections (g) and (i) and is changing the numbering within the rule to accommodate for this deletion.

- NYSE Arca Equities Rule 8.202, the Exchange's listing standards for Currency Trust Shares. The Exchange is removing Sections (g) and (i) and is changing the numbering within the rule to accommodate for this deletion.

- NYSE Arca Equities Rule 8.203, the Exchange's listing standards for Commodity Index Trust Shares. The Exchange is removing Sections (g) and (i) and is changing the numbering within the rule to accommodate for this deletion.

- NYSE Arca Equities Rule 8.204, the Exchange's listing standards for Commodity Futures Trust Shares. The

⁶ See note 3, *supra*.

Exchange is removing Subsection (f)(1) and (4) and is changing the numbering within the rule to accommodate for this deletion.

- NYSE Arca Equities Rule 8.300, the Exchange's listing standards for Partnership Units. The Exchange is removing Subsection (e)(1) and (4) and is changing the numbering within the rule to accommodate for this deletion.

- NYSE Arca Equities Rule 8.400, the Exchange's listing standards for Paired Trust Shares. The Exchange is removing Subsection (e)(1) and (4) and is changing the numbering within the rule to accommodate for this deletion.

- NYSE Arca Equities Rule 8.500, the Exchange's listing standards for Trust Units. The Exchange is removing Sections (f) and (h) and is changing the numbering within the rule to accommodate for this deletion.

- NYSE Arca Equities Rule 8.700, the Exchange's listing standards for Managed Trust Securities. The Exchange is removing Subsection (f)(1) and (4) and is changing the numbering within the rule to accommodate for this deletion.

Conforming Commentary to NYSE Arca Equities Rule 6.18

Finally, the Exchange is adding new Commentary .02 to NYSE Arca Equities Rule 6.18. Currently, NYSE Arca Equities Rule 6.18 refers to the obligation of an ETP Holder to supervise the business in which it engages as well as the activities of its associated persons. By virtue of the obligations set forth in NYSE Arca Equities Rule 6.3 (as discussed above), however, ETP Holders that are registered Market Makers in products listed under NYSE Arca Equities Rules 5 and 8, must also supervise the activity of its affiliates. The Exchange is hereby adding Commentary .02 in order to conform the supervisory obligations of such ETP Holders to the standards of NYSE Arca Equities Rule 6.3.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁸ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and 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. The Exchange believes that the proposed rule change will eliminate unnecessary confusion in its rule structure, while conforming the standards applicable to covered products regarding the obligations of its participants to maintain and enforce written policies and procedures reasonably designed to prevent the misuse of material, non-public information to the standards established with the elimination of NYSE Arca Equities Rule 7.26, the adoption of NYSE Equities Rule 6.7, and the amendment to NYSE Arca Equities Rule 6.18.

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

⁹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁰ 17 CFR 240.19b-4(f)(6).

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.

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:

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 Number SR-NYSEArca-2010-35 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR-NYSEArca-2010-35. 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 Web site 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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

available publicly. All submissions should refer to File Number SR–NYSEArca–2010–35 and should be submitted on or before June 1, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Florence E. Harmon,
Deputy Secretary.

[FR Doc. 2010–10967 Filed 5–7–10; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62029; File No. SR–NASDAQ–2010–053]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the NASDAQ Stock Market LLC to Add Seventy-Five Options Classes to the Penny Pilot Program

May 4, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) ¹, and Rule 19b–4 ² thereunder, notice is hereby given that on April 27, 2010, The NASDAQ Stock Market LLC (“Nasdaq”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by Nasdaq. 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

Nasdaq is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal for the NASDAQ Options Market (“NOM” or “Exchange”) to designate seventy-five options classes to be added to the Penny Pilot Program (“Penny Pilot” or “Pilot”) on May 3, 2010.³ The Exchange is not proposing to amend any rule text, but simply administering or enforcing an existing rule.⁴

The text of the proposed rule change is available from Nasdaq’s website at <http://nasdaq.cchwallstreet.com/Filings/>, at Nasdaq’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, Nasdaq 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. Nasdaq 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 purpose of this filing is to identify the next seventy-five options classes to be added to the Penny Pilot effective May 3, 2010.

In the Exchange’s immediately effective filing to extend and expand the Penny Pilot through December 31, 2010,⁵ the Exchange proposed expanding the Pilot four times on a quarterly basis. Each such quarterly expansion would be of the next seventy-five most actively traded multiply listed options classes based on the national average daily volume (“ADV”) for the six months prior to selection, closing under \$200 per share on the Expiration Friday prior to expansion; however, the month immediately preceding the addition of options to the Penny Pilot will not be used for the purpose of the six month analysis. Index option products would be included in the quarterly expansions if the underlying index levels were under 200.

The Exchange is identifying, in the chart below, seventy-five options classes that it will add to the Penny Pilot on May 3, 2010, based on ADVs for the six months ending March 31, 2010.

Nat'l ranking	Symbol	Security name	Nat'l ranking	Symbol	Security name
153	XLV	Health Care Select Sector SPDR Fund	247	JCP	JC Penney Co Inc.
155	CIEN	Ciena Corp	248	ACL	Alcon Inc.
157	AMLN	Amylin Pharmaceuticals Inc	249	STP	Suntech Power Holdings Co Ltd.
158	CTIC	Cell Therapeutics Inc	250	TLB	Talbots Inc.
159	MDT	Medtronic Inc	251	SYMC	Symantec Corp.
162	TIVO	TiVo Inc	253	AMED	Amedisys Inc.
163	MNKD	MannKind Corp	255	TM	Toyota Motor Corp.
171	MDVN	Medivation Inc	257	HK	Petrohawk Energy Corp.
176	BRKB	Berkshire Hathaway Inc	258	ENER	Energy Conversion Devices Inc.
178	APOL	Apollo Group Inc	259	STT	State Street Corp.
181	BSX	Boston Scientific Corp	260	BHP	BHP Billiton Ltd.
185	XLY	Consumer Discretionary Sel. Sec. SPDR Fund.	261	NFLX	NetFlix Inc.
188	CLF	Cliffs Natural Resources Inc	262	LDK	LDK Solar Co Ltd.
190	ZION	Zions Bancorporation	263	SPG	Simon Property Group Inc.
194	IOC	InterOil Corp	264	TIF	Tiffany & Co.
197	ITMN	InterMune Inc	265	BUCY	Bucyrus International Inc.
204	GME	GameStop Corp	266	WAG	Walgreen Co.
209	XLK	Technology Select Sector SPDR Fund	268	IP	International Paper Co.
210	AKS	AK Steel Holding Corp	271	XME	SPDR S&P Metals & Mining ETF.
212	GRMN	Garmin Ltd	272	KGC	Kinross Gold Corp.

¹³ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ The Penny Pilot was established in March 2008 and in October 2009 was expanded and extended through December 31, 2010. See Securities Exchange Act Release Nos. 57579 (March 28, 2008), 73 FR 18587 (April 4, 2008)(SR–NASDAQ–2008–026)(notice of filing and immediate effectiveness

establishing Penny Pilot); 60874 (October 23, 2009), 74 FR 56682 (November 2, 2009)(SR–NASDAQ–2009–091)(notice of filing and immediate effectiveness expanding and extending Penny Pilot); 60965 (November 9, 2009), 74 FR 59292 (November 17, 2009)(SR–NASDAQ–2009–097)(notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); and 61455 (February 1, 2010), 75 FR 6239 (February 8,

2010)(SR–NASDAQ–2010–013)(notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot).

⁴ See Chapter VI, Section 5 regarding the Penny Pilot.

⁵ See Securities Exchange Act Release No. 60874 (October 23, 2009), 74 FR 56682 (November 2, 2009) (SR–NASDAQ–2009–091) (notice of filing and immediate effectiveness).