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For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-20473 Filed 8-17-10; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62706; File No. SR-NYSEArca-2010-76]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Arca, Inc. Amending Rule 6.24 Exercise of Options Contracts

August 12, 2010.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on August 3, 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 6.24—Exercise of Options Contracts. The text of the proposed rule change is attached as Exhibit 5 to the 19b-4 form. 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

The purpose of the proposed rule change is to amend Rule 6.24 in order to, (i) extend the cut-off time to submit Contrary Exercise Advices ("CEA")<sup>4</sup> to the Exchange, and (ii) make a technical change to the rule by revising all Pacific Time ("PT") references to reflect Eastern Time ("ET").<sup>5</sup>

###### Change in Cut-Off Time

The Options Clearing Corporation ("OCC") has an established procedure, under OCC Rule 805, that provides for the automatic exercise of certain options that are in-the-money by a specified amount known as "Exercise-by-Exception" or "Ex-by-Ex." Under the Ex-by-Ex process, options holders holding option contracts that are in-the-money by a requisite amount and who wish to have their contracts automatically exercised need take no further action. However, under OCC Rule 805, option holders who do not want their options automatically exercised or who want their options to be exercised under different parameters than that of the Ex-by-Ex procedures must instruct OCC of their "contrary intention."

In addition to and separately from the OCC requirement, under NYSE Arca Rule 6.24 option holders must file a CEA with the Exchange notifying it of the contrary intention. Rule 6.24 is designed, in part, to deter individuals from taking improper advantage of late breaking news by requiring evidence of an option holder's timely decision to exercise or not exercise expiring equity options. OTP Holders and OTP Firms<sup>6</sup>

satisfy this evidentiary requirement by submitting a CEA form directly to the Exchange, or by electronically submitting the CEA to the Exchange through OCC's electronic communications system. The submission of the CEA allows the Exchange to satisfy its regulatory obligation to verify that the decision to make a contrary exercise was made timely and in accordance with Rule 6.24.

Under Rule 6.24, option holders have until 2:30 p.m. PT (5:30 p.m. ET) on the last business day before their expiration to make a final decision to exercise or not exercise an expiring option that would otherwise either expire or be automatically exercised. OTP Holders may not accept CEA instructions from their customer or non-customer accounts after 2:30 p.m. PT (5:30 p.m. ET). However, the current rule gives OTP Holders and OTP Firms additional time to submit the CEA instructions if they use an electronic submission process.<sup>7</sup> Specifically, an OTP Holder or OTP Firm may currently submit CEA instructions until 3:30 p.m. PT (6:30 p.m. ET) when using an electronic submission.

This current process allowing OTP Holders and OTP Firms an additional one hour after the decision making cut off time of 2:30 p.m. PT (5:30 p.m. ET) to submit a CEA to the various options exchanges was approved by the Commission in 2003.<sup>8</sup> In 2003, the Ex-by-Ex thresholds were \$0.75 for customers and \$0.25 for broker-dealer accounts. In 2009, the Ex-by-Ex threshold is \$0.01 for all accounts. This decrease in the Ex-by-Ex threshold, coupled with the dramatic increase in option trading volume from 2003 to 2009, has led to a larger number of CEA instructions and has increased the

securities transactions on the Exchange. OTP Holders and OTP Firms have the status of "member" of the Exchange as that term is defined in Section 3 of the Securities Exchange Act of 1934, as amended.

<sup>7</sup> If an OTP Holder does not employ an electronic submission procedure, they are required to submit CEAs for non-customer accounts by the 2:30 p.m. (5:30 p.m. ET) deadline. This deadline for manual submission is required in order to prevent firms from improperly extending the 2:30 p.m. (5:30 p.m. ET) deadline to exercise or not exercise an option. This requirement is based on the difficulty in monitoring a manual procedure that has different times for deciding whether or not to exercise the option and for the submission of the CEA.

<sup>8</sup> See Securities Exchange Act Release Nos. 47885 (May 16, 2003), 68 FR 28309 (May 23, 2003) (SR-Amex-2001-92); 48505 (September 17, 2003), 68 FR 55680 (September 26, 2003) (SR-ISE-2003-20); 48640 (October 16, 2003), 68 FR 60757 (October 23, 2003) (SR-PCX-2003-47); and 48639 (October 16, 2003), 68 FR 60764 (October 23, 2003) (SR-Phlx-2003-65).

<sup>14</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> Contrary Exercise Advices are also referred to as Expiring Exercise Declarations ("EED").

<sup>5</sup> Presently, all referenced times in Rule 6.24 are noted in Pacific Time.

<sup>6</sup> The term OTP refers to an Options Trading Permit issued by the Exchange for effecting

burden on firms to process and submit instructions timely.

The Exchange proposes to extend the current 3:30 p.m. PT (6:30 p.m. ET) deadline for submitting CEA instructions to the Exchange by one additional hour, up to 4:30 p.m. PT (7:30 p.m. ET). The Exchange believes that this proposed rule change is necessary to address concerns that, given the decrease in the Ex-by-Ex threshold and the increase in trading, the existing deadline for submitting CEAs to the Exchange is problematic for timely back-office processing. The proposed additional one hour will address this concern by further enabling firms to more timely manage, process, and submit the instructions to the Exchange. The Exchange also proposes to modify the language in subsection (g) of the current rule, which allows OTP Holders and OTP Firms up to 2 hours and 30 minutes to submit a CEA to the Exchange in the event of a modified close of trading on the day of expiration, by removing the two hour and thirty minute restriction and allowing for submission of a CEA to the Exchange in the event of a modified close of trading of up to the proposed 4:30 p.m. PT (7:30 p.m. ET) deadline. This will make consistent the submission deadline for both regular and modified close expiration days. Moreover, this will provide uniformity with submission deadlines for both regular and modified close expiration days which will remove any possibility for error when determining what the submission deadline is on any modified close expiration day.

In addition, the Exchange proposes to revise Commentary .04(i) to reflect that OTP Holders and OTP Firms, who electronically submit Contrary Exercise Advice decisions on behalf of non-customer option holders, will now have one additional hour, until 4:30 p.m. PT (7:30 p.m. ET), to submit such decisions to the Exchange.

This proposal does not change the substantive requirement that option holders make a final decision by 2:30 p.m. PT (5:30 p.m. ET). The options exchanges currently enforce the 2:30 p.m. PT (5:30 p.m. ET) requirement while giving members additional time to process and submit the CEA instructions. This proposal seeks to increase that additional submission time by one hour, and the Exchange believes that this proposal will be beneficial to the marketplace, particularly as it concerns back-office processing. The initiative to address OTP Holder concerns is industry-wide. The International Securities Exchange recently adopted a rule change which

extended, by one hour, the submission time for CEAs.<sup>9</sup> NYSE Arca anticipates that all other options exchanges will also propose similar rule changes. This additional processing time and Exchange submission deadline will not conflict with OCC submission rules or cause any OCC processing issues.

#### Technical Changes Related to Time Zones

All time references in current Rule 6.24 are reflected in Pacific Time. Rule 6.24 dates back to when NYSE Arca (f/k/a The Pacific Exchange) was headquartered in California and all business on the Exchange was conducted on the physical trading floor.

While the Exchange still operates a trading floor in California, OTP Holders and OTP Firms are no longer geographically limited to California and able to conduct business from remote locations throughout the country. NYSE Arca now proposes to remove references to Pacific Time in Rule 6.24 and replace them with the more commonly recognized Eastern Time. All existing and proposed time references in Rule 6.24 will now be reflected as Eastern Time. This is simply a technical change and does not alter the period of time that OTP Holders and OTP Firms are afforded when making decisions to exercise options contracts.

#### Implementation of Proposed Rule Change

If the operative date of this proposed rule change is more than five business days prior to the date of the next options expiration Friday, i.e., the third Friday of the month ("Expiration Friday"),<sup>10</sup> the Exchange will implement the rule change so as to be effective for that Expiration Friday. If the operative date of this proposed rule change is five business days or less prior to the date of the next Expiration Friday, the Exchange will implement the rule change so as to be effective for the following Expiration Friday. NYSE Arca will notify OTP Holders of the implementation date of the rule change via a Regulatory Bulletin.

#### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),<sup>11</sup> in general, and furthers the

objectives of Section 6(b)(5) of the Act,<sup>12</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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. This proposed rule change will foster coordination with back office personnel engaged in processing information and is consistent with the facilitating of transactions in securities as set forth in Section 6(b)(5) in that it, by providing OTP Holders and OTP Firms an additional hour within which to complete the necessary processing of CEAs, will thereby decrease the burden of processing an increasing number of contrary exercise advices and enable OTP Holders and OTP Firms to more easily manage and process these instructions.

#### 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 Regarding the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing 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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>13</sup> and Rule 19b-4(f)(6) thereunder.<sup>14</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such

<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> See Securities and Exchange Act Release No. 61710 (March 15, 2010), 75 FR 13636 (March 22, 2010) Approval order for SR-ISE-2010-02.

<sup>10</sup> For example, Expiration Friday for August 2010 options will be August 20, 2010, Expiration Friday for September 2010 options will be September 17, 2010.

<sup>11</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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 this requirement.

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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2010-76 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-2010-76. 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 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 publicly available. All submissions should refer to File Number SR-NYSEArca-2010-76 and should be

submitted on or before September 8, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-20470 Filed 8-17-10; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62715, File No. SR-MSRB-2009-17]

### **Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Consisting of (i) Amendments to Rule G-8 (Books and Records To Be Made by Brokers, Dealers and Municipal Securities Dealers), Rule G-9 (Preservation of Records), and Rule G-11 (New Issue Syndicate Practices); (ii) a Proposed Interpretation of Rule G-17 (Conduct of Municipal Securities Activities); and (iii) the Deletion of a Previous Rule G-17 Interpretive Notice**

August 13, 2010.

#### I. Introduction

On November 18, 2009, the Municipal Securities Rulemaking Board ("MSRB" or "Board"), filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change consisting of (i) proposed amendments to Rule G-8 (books and records to be made by brokers, dealers and municipal securities dealers), Rule G-9 (preservation of records), and Rule G-11 (new issue syndicate practices); (ii) a proposed interpretation (the "proposed interpretive notice") of Rule G-17 (conduct of municipal securities activities); and (iii) the deletion of a previous Rule G-17 interpretive notice on priority of orders dated December 22, 1987 (the "1987 interpretive notice"). The proposed rule change was published for comment in the **Federal Register** on December 10, 2009.<sup>3</sup> The Commission received four comment

<sup>15</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 61110 (December 3, 2009), 74 FR 65573 (December 10, 2009) ("Commission's Notice") (the "original proposed rule change").

letters about the proposed rule change.<sup>4</sup> On August 4, 2010, the MSRB filed with the Commission, pursuant to Section 19(b)(1) of the Exchange Act<sup>5</sup> and Rule 19b-4 thereunder,<sup>6</sup> Amendment No. 1 to the proposed rule change, which made technical changes to the proposed rule change and responded to the comment letters received by the Commission in response to the Commission's Notice. The text of Amendment No. 1 is available on the MSRB's Web site (<http://www.msrb.org>), at the MSRB's principal office, and for Web site viewing and printing in the Commission's Public Reference Room. This order provides notice of Amendment No. 1 and approves the proposed rule change as modified by Amendment No. 1 on an accelerated basis.

#### II. Description of the Proposed Rule Change, As Modified by Amendment No. 1 to the Proposed Rule Change

The proposed amendments to Rule G-11 would: (1) Apply the rule to all primary offerings, not just those for which a syndicate is formed; (2) require that all dealers (not just syndicate members) disclose whether their orders are for their own account or a related account; and (3) require that priority be given to orders from customers over orders from syndicate members for their own accounts or orders from their respective related accounts, to the extent feasible and consistent with the orderly distribution of securities in the offering, unless the issuer otherwise agrees or it is in the best interests of the syndicate not to follow that order of priority.

The proposed amendments to Rules G-8 and G-9 would require that records be retained for all primary offerings of: (1) All orders, whether or not filled; (2) whether there was a retail order period and, if so, the issuer's definition of "retail;" and (3) those instances when the syndicate manager allocated bonds other than in accordance with the priority provisions of Rule G-11 and the specific reasons why it was in the best interests of the syndicate to do so.

The proposed interpretive notice would provide that violation of these priority provisions would be a violation

<sup>4</sup> See letters from: John C. Melton, Sr., Houston, Texas, dated December 15, 2009; Karrie McMillan, General Counsel, Investment Company Institute ("ICI"), dated December 23, 2009 ("ICI Letter"); Mike Nicholas, CEO, Regional Bond Dealers Association ("RBDA"), dated December 30, 2009 ("RBDA Letter"); Leon J. Bijou, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association ("SIFMA"), dated December 31, 2009 ("SIFMA Letter").

<sup>5</sup> 15 U.S.C. 78s(b)(1).

<sup>6</sup> 17 CFR 240.19b-4.