

NYSEArca-2010-108 and should be submitted on or before January 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63476; File No. SR-NYSEARCA-2010-109]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Re-establishing and Extending the Exchange's Pilot Program Relating to Cabinet Trades Until June 1, 2011

December 8, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on December 2, 2010, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. 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 re-establish and extend its program that allows transactions to take place at a price that is below \$1 per option contract until June 1, 2011. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.nyse.com>.

#### 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 the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The purpose of this filing is to re-establish the Pilot Program<sup>3</sup> under Rule 6.80 to allow accommodation transactions ("Cabinet Trades") to take place at a price that is below \$1 per option contract, and to extend the program to June 1, 2011. The Exchange proposes to extend the program to the same date as The Chicago Board Options Exchange ("CBOE").<sup>4</sup> The Pilot Program expired on July 1, 2010.

An "accommodation" or "cabinet" trade refers to trades in listed options on the Exchange that are worthless or not actively traded. Cabinet trading is generally conducted in accordance with the Exchange Rules, except as provided in Exchange Rule 6.80 Accommodation Transactions (Cabinet Trades), which sets forth specific procedures for engaging in cabinet trades. Rule 6.80 currently provides for cabinet transactions to occur via open outcry at a cabinet price of a \$1 per option contract in any options series open for trading in the Exchange, except that the Rule is not applicable to trading in option classes participating in the Penny Pilot Program. Under the procedures, bids and offers (whether opening or closing a position) at a price of \$1 per option contract may be represented in the trading crowd by a Floor Broker or by a Market-Maker or provided in response to a request by a Trading Official, a Floor Broker or a Market-Maker, but must yield priority to all resting orders in the Cabinet (those orders held by the Trading Official, and which resting cabinet orders may be closing only). So long as both the buyer and the seller yield to orders resting in the cabinet book, opening cabinet bids can trade with opening cabinet offers at \$1 per option contract.

The Exchange temporarily amended the procedures through July 1, 2010 to allow transactions to take place in open outcry at a price of at least \$0 but less than \$1 per option contract. These lower priced transactions were permitted to be traded pursuant to the same procedures applicable to \$1 cabinet trades, except

that (i) bids and offers for opening transactions were only permitted to accommodate closing transactions in order to limit use of the procedure to liquidations of existing positions, and (ii) the procedures were also made available for trading in option classes participating in the Penny Pilot Program.<sup>5</sup> The Exchange believed (and continues to believe) that allowing a price of at least \$0 but less than \$1 would better accommodate the closing of options positions in series that were worthless or not actively traded, particularly due to recent market conditions which had resulted in a significant number of series being out-of-the-money. For example, a market participant might have a long position in a call series with a strike price of \$100 and the underlying stock might be trading at \$30. In such an instance, there might not otherwise be a market for that person to close-out the position even at the \$1 cabinet price (e.g., the series might be quoted no bid).

As with other accommodation liquidations under Rule 6.80, transactions that occur for less than \$1 will not be disseminated to the public on the consolidated tape. In addition, as with other accommodation liquidations under Rule 6.80, the transactions will be exempt from the Consolidated Options Audit Trail ("COATS") requirements of Exchange Rule 6.67 Order Format and System Entry Requirements. However, the Exchange will maintain quotation, order and transaction information for the transactions in the same format as the COATS data is maintained. In this regard, all transactions for less than \$1 must be reported to the Exchange following the close of each business day.

The Pilot Program lapsed on July 1, 2010. The Exchange is proposing to reinstate the Program at this time to be in place for end-of-year liquidations. During the period from July 1 to date, no sub-penny cabinet trades were executed on the Exchange.

##### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section

<sup>5</sup> Currently the \$1 cabinet trading procedures are limited to options classes traded in \$0.05 or \$0.10 standard increment. The \$1 cabinet trading procedures are not available in Penny Pilot Program classes because in those classes an option series can trade in a standard increment as low as \$0.01 per share (or \$1.00 per option contract with a 100 share multiplier). Because the instant rule change would allow trading below \$0.01 per share (or \$1.00 per option contract with a 100 share multiplier), the procedures would be made available for all classes, including those classes participating in the Penny Pilot Program.

<sup>3</sup> See Securities Exchange Act Release No. 61727 (March 17, 2010), 75 FR 14217 (March 24, 2010) (SR-NYSEArca-2010-13).

<sup>4</sup> See Securities Exchange Act Release No. 62192 (May 28, 2010), 75 FR 31828 (June 4, 2010) (SR-CBOE-2010-052).

<sup>10</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.

6(b)<sup>6</sup> of the Securities Exchange Act of 1934 (the "Act"), in general, and furthers the objectives of Section 6(b)(5)<sup>7</sup> in particular in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that allowing for liquidations at a price less than \$1 per option contract will better facilitate the closing of options positions that are worthless or not actively trading, especially in Penny Pilot issues where Cabinet Trades are not otherwise permitted.

#### *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 foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(6) thereunder<sup>9</sup> because the proposal does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.<sup>10</sup>

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission hereby grants the request. The Commission notes that

the proposal is nearly identical to the rules of another exchange.<sup>11</sup> Therefore, the Commission believes it is consistent with the protection of investors and the public interest to waive the 30-day operative delay and designates the proposal as operative upon filing.<sup>12</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 action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.<sup>13</sup>

### **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-2010-109 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-2010-109. 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 available publicly. All submissions should refer to File Number SR-NYSEARCA-2010-109 and should be submitted on or before January 4, 2011.

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

**Florence E. Harmon,**  
*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-63469; File No. SR-ISE-2010-113]

### **Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Payment for Order Flow Fees**

December 8, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on November 30, 2010, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission ("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 ISE is proposing to amend its payment for order flow program. The text of the proposed rule change is available on the Exchange's Web site (<http://www.ise.com>), at the principal

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

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

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

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>10</sup> In addition, Rule 19b-4(f)(6) provides that the self-regulatory organization must provide the Commission notice of its 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 this requirement.

<sup>11</sup> See CBOE Rule 6.54, Interpretations and Policies .03.

<sup>12</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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