

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

Florence E. Harmon,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57130; File No. SR-NYSEArca-2008-04]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Expand, and Make Permanent, the \$1 Strike Program

January 10, 2008.

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 January 8, 2008, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. NYSE Arca filed the proposal pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission. 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 its rules governing the \$1 Strike Program (“Program”) to expand, and make permanent, the Program. 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 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 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 the proposed rule change is to expand the Program and request permanent approval of the Program. The Program currently allows NYSE Arca to select a total of 5 individual stocks⁵ on which option series may be listed at \$1 strike price intervals. In order to be eligible for selection into the Program, the underlying stock must close below \$20 in its primary market on the previous trading day. If selected for the Program, the Exchange may list strike prices at \$1 intervals from \$3 to \$20, but no \$1 strike price may be listed that is greater than \$5 from the underlying stock’s closing price in its primary market on the previous day. The Exchange also may list \$1 strikes on any other option class designated by other securities exchanges that employ a similar \$1 strikes program under their respective rules. The Exchange may not list long-term option series (“LEAPS”) at \$1 strike price intervals for any class selected for the Program. The Exchange also is restricted from listing any series that would result in strike prices being \$0.50 apart.

The Exchange proposes to amend Commentary .04 to NYSE Arca Rule 6.4 to expand the Program to allow it to select a total of 10 individual stocks on which option series may be listed at \$1 strike price intervals. Additionally, the Exchange proposes to expand the price range on which it may list \$1 strikes, presently from \$3 to \$20, to now include stocks priced from \$3 to \$50. The existing restrictions on listing \$1 strikes will continue, e.g., no \$1 strike price may be listed that is greater than \$5 from the underlying stock’s closing price in its primary market on the previous day, and the Exchange is restricted from listing any series that would result in strike prices being \$0.50 apart. In addition, because it believes that the Program has been very successful by allowing investors to establish equity options positions that are better tailored to meet their investment objectives, the Exchange requests that the Program be approved on a permanent basis.

As stated in the Commission order approving NYSE Arca’s Program and in the subsequent extensions of the Program,⁶ the Exchange believes that \$1 strike price intervals provide investors with greater flexibility in the trading of equity options that overlie lower priced stocks by allowing investors to establish equity options positions that are better tailored to meet their investment objectives. The Exchange states that its member firms representing customers have requested that NYSE Arca seek to expand the Program, both in terms of the number of classes which can be selected and the range in which \$1 strikes may be listed.

With regard to the impact on systems capacities, the Exchange’s analysis of the Program shows that the impact on NYSE Arca’s, OPRA’s, and market data vendors’ respective automated systems has been minimal. In a previously filed proposed rule change,⁷ the Exchange included an analysis of quoting activity for all classes selected for the Program as a percentage of all quoting activity for all classes being quoted during a specific number of months. The Exchange concluded that, for the two-month period prior to the implementation of the Program in May 2003, the number of quotes sent to OPRA in the four classes selected for the Program represented approximately 0.29% of all quotes sent by the Exchange. For the two-month period ending March 31, 2007, the quote share in the four classes selected for the Program was 0.26%, slightly below the May 2003 levels. The Exchange notes that these quoting statistics may actually overstate the contribution of \$1 strike prices because these figures also include quotes for series listed in intervals higher than \$1 (e.g., \$2.50 strikes) in the same option classes. Even with the non-\$1 strike series quotes included in these

⁶ The Commission approved the Program on June 17, 2003. See Securities Exchange Act Release No. 48045 (June 17, 2003), 68 FR 37594 (June 24, 2003) (SR-PCX-2003-28). The Program has subsequently been extended and is presently due to expire on June 5, 2008. See Securities Exchange Act Release Nos. 49818 (June 4, 2004), 69 FR 33440 (June 15, 2004) (SR-PCX-2004-39) (extending the Program until August 4, 2004); 50152 (August 5, 2004), 69 FR 49931 (August 12, 2004) (SR-PCX-2004-61) (extending the Program until June 5, 2005); 51767 (May 31, 2005), 70 FR 33244 (June 7, 2005) (SR-PCX-2005-69) (extending the Program until June 5, 2006); 53807 (May 15, 2006), 71 FR 29373 (May 22, 2006) (SR-NYSEArca-2006-14) (extending the Program until June 5, 2007); and 55718 (May 7, 2007), 72 FR 27346 (May 15, 2007) (SR-NYSEArca-2007-42) (extending the Program until June 5, 2008).

⁷ See Securities Exchange Act Release No. 55718 (May 7, 2007), 72 FR 27346 (May 15, 2007) (SR-NYSEArca-2007-42).

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ The Exchange listed five issues for inclusion in the original Program. In February 2004, according to the Exchange, Celanese Corp. (CE) was acquired by another company and was removed from the Program, bringing the number of issues to four.

figures, NYSE Arca believes that the overall impact on capacity is still minimal. NYSE Arca represents that it has sufficient capacity to handle an expansion of the Program, as proposed.

The Exchange believes that the Program has provided investors with greater trading opportunities and flexibility and the ability to more closely tailor their investment strategies and decisions to the movement of the underlying security. Furthermore, the Exchange has not detected any material proliferation of illiquid options series resulting from the narrower strike price intervals. For these reasons, NYSE Arca requests that the Program be approved on a permanent basis.

2. Statutory Basis

The Exchange believes that \$1 strike prices stimulate customer interest in options overlying lower-priced stocks by creating greater trading opportunities and flexibility. The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁹ 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.

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

The Exchange states that it has neither solicited nor received written comments on the proposed rule change.

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

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of

this filing, 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 Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the Exchange can immediately implement these listing rules, as proposed, that are similar to those of other options exchanges¹² and thereby remain competitive with such exchanges.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change will provide the Exchange's members and customers with added flexibility in the trading of equity options and promote, without undue delay, additional competition in the market for such options.¹³ For these reasons, the Commission designates the proposed rule change as operative upon filing. The Commission expects the Exchange to continue to monitor for options with little or no open interest and trading activity and to act promptly to delist such options. In addition, the Commission expects that NYSE Arca will continue to monitor the trading volume associated with the additional options series listed as a result of this proposal and the effect of these additional series on market fragmentation and on the capacity of the Exchange's, OPRA's, and vendors' automated systems.

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written 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 fulfilled this requirement.

¹² See, e.g., Securities Exchange Act Release No. 57049 (December 27, 2007), 73 FR 528 (January 3, 2008) (SR-CBOE-2007-125) (approving the Chicago Board Options Exchange, Incorporated's proposal to expand and make permanent its equivalent \$1 strike program).

¹³ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2008-04 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 Number SR-NYSEArca-2008-04. 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, 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 available publicly. All

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

submissions should refer to File Number SR-NYSEArca-2008-04 and should be submitted on or before February 7, 2008.

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

Florence E. Harmon,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57135; File No. SR-NYSEArca-2006-83]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Changes Relating to Amendments to NYSE Arca Rules 2.17 and 4.5 Relating to Certain OTP Holder and OTP Firm Administrative Procedures

January 11, 2008.

I. Introduction

On November 7, 2006, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") 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")¹ and Rule 19b-4 thereunder,² a proposal to amend its Rules 2.17 and 4.5 relating to certain OTP Holder and OTP Firm administrative procedures. The proposed rule change was published for comment in the *Federal Register* on July 18, 2007.³ The Commission received no comments regarding the proposal. This order approves the proposed rule changes.

II. Description of the Proposal

NYSE Arca Rule 2.17 currently provides that all Options Trading Permit ("OTP") Firms⁴ must file their formation documents with the Exchange. The Exchange proposes to amend NYSE Arca Rule 2.17 in order to provide that only those OTP Firms for which the Exchange is the Designated Examining Authority must submit such formation documents to the Exchange.

NYSE Arca Rule 4.5(c) currently requires OTP Holders⁵ and OTP Firms that carry or clear accounts for

customers to file two manually signed copies of Part II of SEC Form X-17A-5 with the Exchange on a quarterly basis. The Exchange proposes to amend NYSE Arca Rule 4.5(c) to provide that such reports shall be filed electronically with the Exchange, rather than manually, and that the OTP Holder or OTP Firm, as applicable, shall maintain original copies of such reports with manual signatures in accordance with NYSE Arca Rule 11.16(a).⁶

NYSE Arca Rule 4.5(d) currently requires OTP Holders and OTP Firms that do not carry or clear accounts for customers to file two manually signed copies of Part IIA of SEC Form X-17A-5 with the Exchange on a quarterly basis. The Exchange proposes to amend NYSE Arca Rule 4.5(d) to provide that such reports shall be filed electronically with the Exchange, rather than manually, and that the OTP Holder or OTP Firm, as applicable, shall maintain original copies of such reports with manual signatures in accordance with NYSE Arca Rule 11.16(a).⁷

The Exchange proposes amending NYSE Arca Rule 4.5(c) and (d) to codify procedural changes that have been implemented by the Exchange and to be consistent with guidance that has been provided previously to OTP Holders and OTP Firms.

III. Discussion

After careful review and based on the Exchange's representations, the Commission finds that the proposed rule changes are consistent with the Act and the rules and regulations applicable to a national securities exchange.⁸ In particular, the Commission finds that the proposed rule changes are consistent with Section 6(b)(5)⁹ which requires, among other things, that the rules of a national securities exchange be 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

⁶ NYSE Arca Rule 11.16(a) provides that each OTP Holder and OTP Firm must make, keep current and preserve such books and records as the Exchange may prescribe and as may be prescribed by the Securities Exchange Act of 1934 (the "Exchange Act") and the rules and regulations thereunder (including any interpretation relating thereto) as though such OTP Holder or OTP Firm were a broker or dealer registered with the SEC pursuant to Section 15 of the Exchange Act.

⁷ *Id.*

⁸ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁹ 15 U.S.C. 78f(b)(5).

open market and a national market system.

The Commission believes it is reasonable and consistent with the Act for the Exchange to amend NYSE Arca Rules 2.17 and 4.5(c) and (d) in order to simplify the administrative procedures that OTP Holders and OTP Firms must follow, given the fact that the Exchange believes that such amendments will not compromise the Exchange's ability to regulate its OTP Holders and OTP Firms.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-NYSEArca-2006-83), as amended, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Florence E. Harmon,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57136; File No. SR-NYSEArca-2006-82]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Changes Relating to Amendments to NYSE Arca Equities Rules 2.16 and 4.5 Relating to Certain ETP Holder Administrative Procedures

January 11, 2008.

I. Introduction

On November 7, 2006, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange"), through its wholly owned subsidiary NYSE Arca Equities, Inc. ("NYSE Arca Equities" or the "Corporation"), 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")¹ and Rule 19b-4 thereunder,² a proposal to amend its Rules 2.16 and 4.5 relating to certain ETP Holder administrative procedures. The proposed rule change was published for comment in the *Federal Register* on July 18, 2007.³ The Commission received no comments

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 56057 (Jul. 12, 2007), 72 FR 39477.

¹⁴ 17 CFR 200.30-3(a)(12).

¹⁵ U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 56058 (Jul. 12, 2007), 72 FR 39476.

⁴ See NYSE Arca Rule 1.1(f).

⁵ See NYSE Arca Rule 1.1(g).