

represent and execute an order unless first inputted in FESC. Floor brokers and RCMMs, moreover, are not permitted to use call-forwarding or conference calling and must implement procedures designed to deter anyone calling the Exchange Phones from concealing the phone number from which a call is being made. Further, the Exchange has the right to request from the Exchange Phone service provider any records relating to incoming and outgoing calls.<sup>20</sup> The Exchange represents that it has received, and will continue to receive, records of such calls on a monthly basis. With respect to Exchange Phones, these requirements and records should help the Exchange detect and deter any violations of the Exchange rules and the Act.

The Commission, therefore, finds that the proposal is consistent with the Act.<sup>21</sup> The conditions stated above should continue to aid the Exchange in surveilling for compliance with Exchange rules and the Act and address concerns identified in the adoption of the original prohibition.<sup>22</sup> The Commission also believes that the operation of the Pilot without incident since its inception helps to address the Commission's initial concerns. Accordingly, as noted by the Commission when it approved the Original Pilot, the Commission continues to believe that the Pilot helps to expedite orders and make the flow of information more direct.

### III. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>23</sup> that the proposed rule change (SR-NYSE-2008-20), as modified by Amendments No. 1 and 2 be, and it hereby is, approved.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>24</sup>

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8-15485 Filed 7-8-08; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58079; File No. SR-NYSEArca-2008-69]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Permit the Use of a New Order Type Known as Price Improving Orders and Quotes

July 2, 2008.

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 June 25, 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 designated the proposed rule change as "non-controversial" under Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> 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 various rules to permit the use of a new order type known as Price Improving Orders and Quotes that may be submitted in increments as small as one cent, and to govern their use. 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 this rule change is to permit all authorized Exchange participants to submit Price Improving Orders and Quotes in increments smaller than the minimum price variation ("MPV") in the security. The Exchange will designate the classes/series eligible for this penny pricing, and the penny pricing will be available electronically and in open outcry.

Price Improving Orders and Quotes will allow market participants to submit an order priced between the MPV that will be rounded to the nearest lower MPV bid or the nearest higher MPV offer for display, but would maintain the one-cent increment limit for trade allocation purposes. Without this order type, market participants would not be able to submit orders priced between the disseminated MPV. However, since the orders will be displayed in aggregate at the nearest MPV, the order type will not "take away" transparency that would already exist. Incoming market and marketable limit orders will receive price improvement when executed against Price Improving Orders or Quotes resting in the Consolidated Book. For example, where the NYSE Arca market is 1.00-1.20 and an order is received to buy 10 contracts at 1.08, NYSE Arca would disseminate a 1.05 bid for 10 contracts, and any subsequent sell market order received by the Exchange would trade at 1.08 for up to 10 contracts (after which the quote would revert back to 1.00-1.20).

The Exchange also proposes to allow OTP Holders to execute Price Improving Orders in open outcry in one-cent increments and to allow Market Makers to respond to a call for a market with bids and offers in one-cent increments. However, the Exchange will require OTP Holders, prior to effecting any transactions in open outcry in one-cent increments, to electronically "sweep" any Price Improving Orders or Quotes in the NYSE Arca System. The "sweep" would ensure that better-priced orders resting in one-cent increments are executed prior to the open outcry transaction and would also ensure that same priced orders receive executions consistent with existing rules governing priority of orders in the Consolidated Book when trading with an order represented in open outcry (NYSE Arca Rules 6.47 and 6.75).

The applicability of split-price priority under NYSE Arca Rule 6.75(h) to transactions effected under proposed

<sup>20</sup> See note 10 *supra*.

<sup>21</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>22</sup> In this regard, the Commission notes that proper surveillance is an essential component of any telephone access policy to an Exchange Floor.

<sup>23</sup> 15 U.S.C. 78s(b)(2).

<sup>24</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> 15 U.S.C. 78s(b)(3)(A)(iii).

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

NYSE Arca Rule 6.73(b) would be determined by the Exchange, and the mechanics of split-price priority in those instances would be the same as the mechanics of split-price priority in five- and ten-cent increments.

In addition, open outcry penny pricing would generally be available in instances where a Floor Broker is attempting to cross an order pursuant to NYSE Arca Rule 6.47(a) through (d). However, it would not be available in those instances where a Floor Broker is utilizing the Exchange's Size Quote Mechanism (NYSE Arca Rule 6.47(f)).

The Exchange believes that this order type will provide investors the opportunity to trade at a better price than otherwise would be available—inside the disseminated best bid and offer for a security. The Exchange also believes that this order type may serve to increase liquidity to the extent that market participants find the order type results in better executions. Further, market participants may be incented to compete by putting forth their best price—priced in a penny increment—to potentially match or better any other trading interest resident in the system. This may result in more aggressive, rather than less aggressive, trading interest.

This rule change is based on Chapter VI, Section 1(e)(6) and Section 5 of the NASDAQ Options Rules<sup>5</sup> and Chicago Board Options Exchange Rule 6.13B.<sup>6</sup>

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

### *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**

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 for 30 days after the date of 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 Act<sup>7</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>8</sup> As required under Rule 19b-4(f)(6)(iii),<sup>9</sup> NYSE Arca provided 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 5 days prior to the filing of the proposed rule change.

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to the 30th day after the date of filing.<sup>10</sup> However, Rule 19b-4(f)(6)(iii)<sup>11</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. NYSE Arca requested that the Commission waive the 30-day operative delay and make the proposed rule change operative upon filing because the proposal is similar to rules on the Chicago Board Options Exchange and the NASDAQ Options Market,<sup>12</sup> raises no new issues, and will allow NYSE Arca to compete for Price Improving Orders and Quotes. For these reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.<sup>13</sup>

At any time within 60 days of the filing of the proposed rule change, the

Commission may summarily abrogate the 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2008-69 on the subject line.

#### *Paper Comments*

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

All submissions should refer to File Number SR-NYSEArca-2008-69. 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 such filing also will be available for inspection and copying at the principal office of the NYSE Arca. 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-2008-69 and

<sup>5</sup> See Securities Exchange Act Release No. 57478 (March 12, 2008) 73 FR 14521 (March 18, 2008) (order approving SR-NASDAQ-2007-004, as modified by Amendment 2, and SR-NASDAQ-2007-080).

<sup>6</sup> See Securities Exchange Act Release No. 57716 (April 25, 2008), 73 FR 24329 (May 2, 2008) (SR-CBOE-2007-39) (order approving CBOE-2007-39 as modified by Amendment No. 2).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(6).

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

<sup>10</sup> See *id.*

<sup>11</sup> *Id.*

<sup>12</sup> See *supra* notes 5 and 6.

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

should be submitted on or before July 30, 2008.

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

**Florence E. Harmon,**  
Acting Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58059; File No. SR-OCC-2008-10]

### Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the New Methodology for Adjusting Options Contracts for Cash Dividends and Distributions

June 30, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on June 2, 2008, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by OCC. OCC filed the proposed rule change pursuant to Section 19(b)(3)(A)(i) of the Act<sup>2</sup> and Rule 19b-4(f)(1) thereunder<sup>3</sup> so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would adopt interpretative guidance relating to the new adjustment method for adjusting options contracts for cash dividends or distributions ("New Methodology").

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

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.<sup>4</sup>

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

##### Background

Generally, options are not adjusted to reflect "ordinary" cash dividends or distributions. Under OCC's existing By-Laws, which remain operative until the New Methodology becomes effective, a cash dividend is considered ordinary unless it is greater than 10% of the value of the underlying security on the dividend declaration date. Dividends greater than 10% under this definition usually trigger an options contract adjustment, with the criterion for adjustment being the size of the cash dividend. Under the New Methodology, a cash dividend or distribution will be deemed to be ordinary (regardless of size) if it is declared pursuant to a policy or practice of paying such dividends on a quarterly or other regular basis. Dividends paid outside such practice would be considered extraordinary. Extraordinary dividends usually would trigger a contract adjustment unless the amount is less than \$12.50 per contract (*i.e.*, the minimum size threshold). The New Methodology will be effective for cash dividends and distributions announced on or after February 1, 2009, but will not be applied to certain grandfathered flex options as described in File No. SR-OCC-2006-01.<sup>5</sup>

##### Interpretative Guidance

OCC's adoption of the New Methodology has prompted market participants to ask how the New Methodology would be administered and applied. The OCC Securities Committee has reviewed those questions and has developed responses thereto, which OCC is proposing to adopt as a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule (*i.e.*, Article VI, Section 11A of OCC's By-Laws). The responses are intended to provide investors with useful guidance on how the New Methodology would be applied in practice, subject to an adjustment panel's authority to make adjustment decisions on a case-by-case

basis and to make exceptions to the general adjustment rules in cases where such exceptions are determined appropriate.<sup>6</sup> The interpretative guidance, which is attached as Exhibit 5 to the proposed rule change, reviews the mechanics of adjustments, the definition of ordinary cash dividends and distributions, the rationale for the New Methodology, the impact of the minimum size threshold, and actual and hypothetical examples to illustrate the application of the New Methodology.<sup>7</sup> OCC, however, does not propose to publish the interpretative guidance in its By-Laws and Rules. Rather, it would be published on OCC's public website, made available in an information memorandum accessible to clearing members or otherwise available in hard copy form on request.

The proposed rule change is consistent with the requirements of Section 17A of the Act<sup>8</sup> and the rules and regulations thereunder applicable to OCC because it provides market participants with interpretative guidance on the application of the New Methodology which will be applied to adjustments for cash dividends and distributions. The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

#### (B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

#### (C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

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

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(i) of the Act<sup>9</sup> and Rule 19b-4(f)(1)<sup>10</sup> thereunder because the

<sup>6</sup> Adjustments are individually determined by an adjustment panel of the OCC Securities Committee. Actions of an adjustment panel constitute the action of the Securities Committee. See Article VI, Section 11(c) of OCC's By-Laws.

<sup>7</sup> Exhibit 5 of the proposed rule change can be found on OCC's Web site at [http://www.theocc.com/publications/rules/proposed\\_changes/sr\\_occ\\_08\\_10.pdf](http://www.theocc.com/publications/rules/proposed_changes/sr_occ_08_10.pdf).

<sup>8</sup> 15 U.S.C. 78q-1.

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>10</sup> 17 CFR 240.19b-4(f)(1).

<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. 78s(b)(3)(A)(i).

<sup>3</sup> 17 CFR 240.19b-4(f)(1).

<sup>4</sup> The Commission has modified the text of the summaries prepared by OCC.

<sup>5</sup> Securities Exchange Act Release No. 55258 (February 8, 2007), 72 FR 7701 (February 16, 2007).