

relative performance index, including in situations in which one of the reference securities of a relative performance. The Commission and Commodity Futures Trading Commission ("CFTC") have previously approved changes to OCC's By-Laws clarifying that options on the CBOE Gold ETF Volatility Index will be cleared and treated as securities.<sup>6</sup>

In its capacity as a "derivatives clearing organization" registered as such with the CFTC, OCC is filing this proposed rule change for prior approval by the CFTC pursuant to provisions of the Commodity Exchange Act (the "CEA") in order to foreclose any potential liability under the CEA based on an argument that the clearing by OCC of such options as securities options constitutes a violation of the CEA. The rule filing has been amended at the request of the CFTC. The CFTC requested that the rule filing be amended to clarify that OCC will clear and treat as options on securities any options on relative performance indexes for which a reference security is an exchange-traded fund designed to measure the return of gold or silver.<sup>7</sup>

OCC believes that the proposed interpretation of OCC's By-Laws is consistent with the purposes and requirements of Section 17A of the Exchange Act because it is designed to promote the prompt and accurate clearance and settlement of transactions in securities options, to foster cooperation and coordination with persons engaged in the clearance and settlement of such transactions, to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of such transactions, and, in general, to protect investors and the public interest. It accomplishes this purpose by reducing the likelihood of a dispute as to the Commission's jurisdiction over relative performance indexes in situations where one of the reference securities of an underlying relative performance index is a gold- or silver-based ETF. The proposed rule change is not inconsistent with the By-Laws and Rules of OCC.

<sup>6</sup> See Securities Exchange Act Release No. 34-62290, 75 FR 35861 (June 23, 2010); CFTC Order Exempting the Trading and Clearing of Certain Products Related to the CBOE Gold ETF Volatility Index and Similar Products, 75 FR 81977 (December 29, 2010).

<sup>7</sup> The staff notes that Amendment Nos. 2 and 3 provide that the interpretation will not include options on relative performance indexes for which a reference security is an exchange-traded fund designed to measure the return of a commodity other than gold or silver.

#### *(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 as amended and none have been received.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) As the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove the proposed rule change or
- (B) Institute proceedings to determine whether the proposed rule change should be disapproved.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change as amended is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commissions Internet comment form (<http://www.sec.gov/rules/sro.shtml>) or send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-OCC-2011-13 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-OCC-2011-13. This file number should be included on the subject line if email 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 Section, 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 filings will also be available for inspection and copying at the principal office of OCC and on OCC's Web site at [http://www.optionsclearing.com/components/docs/legal/rules\\_and\\_bylaws/sr\\_occ\\_11\\_13\\_a\\_3.pdf](http://www.optionsclearing.com/components/docs/legal/rules_and_bylaws/sr_occ_11_13_a_3.pdf).

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-OCC-2011-13 and should be submitted on or before December 20, 2011.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Kevin M. O'Neill,**  
*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-65806; File No. SR-NYSEArca-2011-88]

### **Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Increase From 20 to 30 the Number of Short Term Options Series That May Be Opened for Each Option Class That Participates in the Exchange's Short Term Option Series Program**

November 22, 2011.

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 November 18, 2011, NYSE Arca, Inc. (the "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

<sup>8</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.

been prepared by the Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> 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 Commentary .07 to NYSE Arca Options Rule 6.4 to increase the number of Short Term Options Series that may be opened for each option class that participates in the Exchange's Short Term Option Series Program (“Program”) from 20 series to 30 series. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, <http://www.nyse.com>, and <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 Exchange proposes to amend Commentary .07 to NYSE Arca Options Rule 6.4 to increase the number of Short Term Options Series that may be opened for each option class that participates in the Program from 20 series to 30 series.<sup>5</sup>

The Program is codified in NYSE Arca Options Rule 6.4 and Commentary .07 thereto. This rule text provides that,

after an option class has been approved for listing and trading on the Exchange, the Exchange may open for trading on any Thursday or Friday that is a business day (“Short Term Option Opening Date”) series of options on no more than five (5) classes<sup>6</sup> that expire on the next Friday that is a business day (“Short Term Option Expiration Date”).<sup>7</sup>

The strike price of each Short Term Option Series will be fixed at a price per share, with approximately the same number of strike prices being opened above and below the value of the underlying security (or, in the case of index options, the calculated value of the index) at about the time that the Short Term Option Series are initially opened for trading on the Exchange (e.g., if seven series are initially opened, there will be at least three strike prices above and three strike prices below the value of the underlying security). Any strike prices listed by the Exchange must be within thirty percent (30%) above or below the closing price of the underlying security from the preceding day. The Exchange is not proposing any changes to these additional Program limitations.

The principal reason for the proposed expansion is market demand for additional Short Term Option Series in classes included in the Program in which the maximum number of series (20) has already been reached. Specifically, the Exchange has observed increased demand for additional Short Term Option Series when market-moving events, such as corporate events and large price swings, have occurred during the lifespan of an affected class included in the Program.

Currently, in order to be able to respond to market demand, the Exchange is forced to delist certain Short Term Option Series in order to make room for higher-demand Short Term Option Series.<sup>8</sup> The Exchange finds this method to be problematic for

two reasons. First, the Exchange has received requests to maintain certain Short Term Option Series that it intends to delist to make room for higher-demand Short Term Option Series. While market participants may often access other markets for the delisted Short Term Option Series, the Exchange would prefer to provide market participants with their preferred choice of markets on which to trade—NYSE Arca. Second, this method can lead to competitive disadvantages among exchanges. If one exchange is actively responding to market demand by delisting and adding series and another exchange is the last to delist the less desirable series with open interest, then that exchange is required to maintain those series and is potentially unable to list the in-demand Short Term Option Series (because to do so could result in more than 20 Short Term Option Series being listed on that exchange). As a result, the Exchange believes that the maximum number of Short Term Option Series per class of options that participates in the Program should be increased to 30 so that exchanges can list the full panoply of Short Term Option Series that other exchanges list and that the market demands.

To effect this change, the Exchange is proposing to amend Commentary .07 to NYSE Arca Options Rule 6.4. Specifically, the Exchange is proposing to limit the initial number of Short Term Option Series that may be opened for trading to 20 series and to limit the number of additional Short Term Option Series that may be opened for trading to 10 series.<sup>9</sup>

With regard to the impact of this proposal on system capacity, the Exchange has analyzed its capacity and represents that it and the Options Price Reporting Authority (“OPRA”) have the necessary systems capacity to handle the potential additional traffic associated with trading of an expanded number of Short Term Option Series for classes that participate in the Program.

The Exchange believes that the Program has provided investors with

<sup>6</sup> In addition to the five-option class restriction, the Exchange also may list Short Term Option Series on any option classes that are selected by other securities exchanges that employ a similar program under their respective rules.

<sup>7</sup> If the Exchange is not open for business on the respective Thursday or Friday that is a business day, the Short Term Option Opening Date will be the first business day immediately prior to that respective Thursday or Friday. Similarly, if the Exchange is not open for business on the Friday of the following business week, the Short Term Option Expiration Date will be the first business day immediately prior to that Friday. Short Term Option Series are P.M.-settled, except for Short Term Option Series on indexes, which are A.M.-settled. No Short Term Option Series may expire in the same week in which monthly or Quarterly Option Series on the same class expire.

<sup>8</sup> The Exchange delists Short Term Option Series with no open interest regardless of whether those series are open for trading on another exchange.

<sup>9</sup> Short Term Option Series must be added pursuant to the existing listing parameters set forth in Commentary .07 to NYSE Arca Options Rule 6.4. Initial Short Term Option Series must be within 30% above or below the closing price of the underlying security on the preceding day. Any additional strike prices listed by the Exchange must be within 30% above or below the current price of the underlying security. The Exchange may also open additional strike prices of Short Term Option Series that are more than 30% above or below the current price of the underlying security provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate or individual customers or their brokers. Market-Makers trading for their own account are not considered when determining customer interest.

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

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

<sup>5</sup> On July 12, 2005, the Commission approved the Program on a pilot basis. See Securities Exchange Act Release No. 52013 (July 12, 2005), 70 FR 41471 (July 19, 2005) (SR-PCX-2005-32). The Program was expanded and made permanent on June 23, 2010. See Securities Exchange Act Release No. 62369 (June 23, 2010), 75 FR 37868 (June 30, 2010) (SR-NYSEArca-2010-59).

greater trading opportunities and flexibility and the ability to more closely tailor their investment and risk management strategies and decisions. Therefore, the Exchange requests a modest expansion of the current Program. It is expected that other options exchanges that have adopted a similar program will submit similar proposals.

## 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"),<sup>10</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>11</sup> in particular, because 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 mechanisms 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 expanding the number of Short Term Option Series per option class eligible to participate in the Program will allow the investing public and other market participants to better manage their risk exposure, and would benefit investors by giving them more flexibility to closely tailor their investment decisions in a greater number of securities. While the expansion of the Program will generate additional quote traffic, the Exchange does not believe that this increased traffic will become unmanageable since the proposal is limited to a fixed number of series per class. Further, the Exchange does not believe that the proposal will result in a material proliferation of additional series because it is limited to a fixed number of series per class and the Exchange does not believe that the additional price points will result in fractured liquidity.

### *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 foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not 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>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</sup>

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal is substantially similar to that of another exchange that has been approved by the Commission.<sup>14</sup> Therefore, the Commission designates the proposal operative upon filing.<sup>15</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.

### **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:

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 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 this requirement.

<sup>14</sup> See Securities Exchange Act Release No. 65772 (November 17, 2011) (SR-CBOE-2011-086) (order approving expansion of Short Term Option Program).

<sup>15</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).

### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2011-88 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-2011-88. This file number should be included on the subject line if email 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 available publicly. All submissions should refer to File Number SR-NYSEArca-2011-88 and should be submitted on or before December 20, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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<sup>16</sup> 17 CFR 200.30-3(a)(12).

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).