

input. The Exchange has not received any unsolicited written comments from members or other interested parties.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve 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 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 No. SR-NYSEAmex-2010-35 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-NYSEAmex-2010-35. 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-NYSEAmex-2010-35 and should be submitted on or before May 13, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2010-9361 Filed 4-21-10; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61920; File No. SR-NYSEArca-2010-29]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 6.4 Commentary .04.

April 15, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on April 12, 2010, NYSE Arca, Inc. (the "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) 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 Rule 6.4 Commentary .04 to permit the concurrent listing of \$3.50 and \$4

strikes for classes that participate in both the \$0.50 Strike and \$1 Strike Programs. 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 and at the Commission's Public Reference Room.

#### 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 this filing is to amend Rule 6.4 Commentary .04 to permit the concurrent listing of \$3.50 and \$4 strikes for classes that participate in both the \$0.50 Strike and \$1 Strike Programs.

The Exchange recently implemented a rule change that permits strike price intervals of \$0.50 for options on stocks trading at or below \$3.00 ("\$0.50 Strike Program").<sup>5</sup> As part of the filing to establish the \$0.50 Strike Program, the Exchange contemplated that a class may be selected to participate in both the \$0.50 Strike Program and the \$1 Strike Program.

Under the \$1 Strike Program, new series with \$1 intervals are not permitted to be listed within \$0.50 of an existing \$2.50 strike price in the same series, except that strike prices of \$2 and \$3 are permitted to be listed within \$0.50 of a \$2.50 strike price for classes also selected to participate in the \$0.50 Strike Program. Under NYSE Arca's existing rule, for classes selected to participate in both the \$0.50 Strike Program and the \$1 Strike Program, the Exchange may either: (a) List a \$3.50 strike but not list a \$4 strike; or (b) list a \$4 strike but not list a \$3.50 strike. For example, under the Exchange's current rules, if a \$3.50 strike for an option class in both the \$0.50 and \$1 Strike

<sup>12</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).

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

<sup>5</sup> See Exchange Act Release No. 60721 (September 25, 2009) 74 FR 50858 (October 1, 2009).

Programs was listed, the next highest permissible strike price would be \$5.00. Alternatively, if a \$4 strike was listed, the next lowest permissible strike price would be \$3.00. The intent of the \$.50 Strike Program was to expand the ability of investors to hedge risks associated with stocks trading at or under \$3 and to provide finer intervals of \$.50, beginning at \$1 up to \$3.50. As a result, the Exchange believes that the current filing is consistent with the purpose of the \$.50 Strike Program and will permit the Exchange to fill in any existing gaps resulting from having to choose whether to list a \$3.50 or \$4 strike for options classes in both the \$.50 and \$1 Strike Programs.

Therefore, the Exchange is submitting the current filing to permit the listing of concurrent \$3.50 and \$4 strikes for classes that are selected to participate in both the \$.50 Strike Program and the \$1 Strike Program. To effect this change, the Exchange is proposing to add \$4 to the strike prices of \$2 and \$3 currently permitted if a class participates in both the \$.50 Strike Program and the \$1 Strike Program.

The Exchange is also proposing to amend the current rule text to delete references to "\$2.50 strike prices" (and the example utilizing \$2.50 strike prices) and to replace those references with broader language, e.g., "existing strike prices."

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 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 by permitting the Exchange to list more granular strikes on options overlying lower priced securities, which the Exchange believes will provide investors with greater flexibility by allowing them to establish positions that are better tailored to meet their investment objectives.

### *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) <sup>8</sup> of the Act and Rule 19b-4(f)(6) <sup>9</sup> thereunder. The Exchange 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 five business days prior to the date of filing the proposed rule change.

The Exchange has requested that the Commission waive the 30-day operative delay to permit the Exchange to list series available on other exchanges. The Commission finds that waiver of the operative delay is consistent with the protection of investors and the public interest because such waiver will enable the Exchange to compete with other exchanges whose rules permit concurrent listing of \$3.50 and \$4 strikes for classes similarly participating in both a \$.50 strike program and a \$1 strike program. Therefore, the Commission designates the proposal operative upon filing.<sup>10</sup>

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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2010-29 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-2010-29. 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,<sup>11</sup> 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-2010-29 and should be submitted on or before May 13, 2010.

<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> 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).

<sup>11</sup> The text of the proposed rule change is available on the Commission's Web site at <http://www.sec.gov/>.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2010-9357 Filed 4-21-10; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61912; File No. SR-NYSE-2010-15]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change Making Permanent the Exchange's Pilot Program With Respect to Its Continued Listing Standards

April 15, 2010.

#### I. Introduction

On February 26, 2010, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission"), 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> a proposal to make permanent an amendment to the continued listing requirements in Section 802.01B of the Exchange's Listed Company Manual (the "Manual") that is currently in effect on a pilot program basis (the "Pilot Program"). The proposed rule change was published for comment in the **Federal Register** on March 12, 2010.<sup>4</sup> The Commission received no comments regarding the proposal. This order approves the proposed rule change.

#### II. Description of the Proposal

The Exchange proposes to make its Pilot Program permanent. Prior to the adoption of the Pilot Program,<sup>5</sup> Section 802.01B(I) of the Manual provided that any company that qualified to list under the Earnings Test set out in Section 102.01C(I) or in Section 103.01B(I) (in the case of foreign private issuers) or pursuant to the requirements set forth under the Assets and Equity Test set forth in Section 102.01C(IV) or the "Initial Listing Standard for Companies Transferring from NYSE Arca" (the "NYSE Arca Transfer Standard") set

forth in Section 102.01(C)(V) (the NYSE Arca Transfer Standard expired by its terms on August 31, 2009) was considered to be below compliance standards if such company's average global market capitalization over a consecutive 30 trading-day period was less than \$75 million and, at the same time, total stockholders' equity was less than \$75 million. Under the Pilot Program, companies that listed under the initial listing standards set forth in the immediately preceding sentence are considered to be below compliance standards if average global market capitalization over a consecutive 30 trading-day period is less than \$50 million and, at the same time, total stockholders' equity is less than \$50 million.

The Pilot Program originally expired by its terms on October 31, 2009, but the Exchange extended its application for an additional five months, until February 28, 2010.<sup>6</sup> NYSE filed an immediately effective proposed rule change to extend the Pilot Program for a further four months, until June 30, 2010.<sup>7</sup> This order approves the Pilot Program on a permanent basis.

#### III. Discussion and Commission Findings

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange<sup>8</sup> and, in particular, the requirements of Section 6 of the Act.<sup>9</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>10</sup> 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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 and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

The development and enforcement of adequate standards governing the initial and continued listing of securities on an exchange is an activity of critical importance to financial markets and the investing public. Listing standards serve as a means for an exchange to screen issuers and to provide listed status only to bona fide companies that have, or in the case of an initial public offering will have, sufficient public float, investor base, and trading interest to provide the depth and liquidity necessary to promote fair and orderly markets. Adequate standards are especially important given the expectations of investors regarding exchange trading and the imprimatur of listing on a particular market. Once a security has been approved for initial listing, maintenance criteria allow an exchange to monitor the status and trading characteristics of that issue to ensure that it continues to meet the exchange's standards for market depth and liquidity so that fair and orderly markets can be maintained.

The Commission believes that the proposal to make permanent the Pilot Program is reasonable and consistent with the Act, and furthers investor protection and the public interest. Under the proposal, companies that initially listed under the Earnings Test, Assets and Equity Test, or NYSE Arca Transfer Standard are considered to be below compliance standards if average global market capitalization over a consecutive 30 trading-day period is less than \$50 million and, at the same time, total stockholders' equity is less than \$50 million. The Commission notes that for companies listed under the Earnings Test, the Pilot Program returned continued listing requirements to those in place prior to the higher standards adopted on June 9, 2005.<sup>11</sup> Thus, even prior to implementation of the Pilot Program, the Exchange had had considerable historical experience with the continued listing of companies that had continued to trade on the Exchange with global market capitalization and stockholders' equity each below \$75 million but greater than \$50 million. In addition, the Exchange represents that its experience under the Pilot Program has been very positive, as only one of the companies that was deemed back in compliance as a result of the adoption

<sup>6</sup> See Securities Exchange Act Release No. 60911 (November 2, 2009), 74 FR 57730 (November 9, 2010) (SR-NYSE-2009-109).

<sup>7</sup> See Securities Exchange Act Release No. 61609 (March 1, 2010), 75 FR 10336 (March 5, 2010) (SR-NYSE-2010-13).

<sup>8</sup> In approving this proposed rule change the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>9</sup> 15 U.S.C. 78f.

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>12</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> See Securities Exchange Act Release No. 61657 (March 5, 2010), 75 FR 11970.

<sup>5</sup> See Securities Exchange Act Release No. 59996 (May 28, 2009), 74 FR 26912 (June 4, 2009) (SR-NYSE-2009-48) (the "Pilot Program Notice").

<sup>11</sup> See Securities Exchange Act Release No. 51813 (June 9, 2005), 70 FR 35484 (June 20, 2005) (SR-NYSE-2004-20). The Assets and Equity Test set forth in Section 102.01C(IV) and the NYSE Arca Transfer Standard set forth in Section 102.01C(V) were adopted subsequent to this amendment.