III. Date of Effectiveness of the Proposed Rule Changes 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 such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

The Commission notes that NASD, NYSE and Amex, are proposing an implementation period for the proposed rule changes. Specifically, the Commission notes that NASD, NYSE, and Amex are proposing that the proposed rule changes become effective 180 days (six months) after the Commission approval in order to allow firms sufficient time to make any systems changes necessary to comply with the new requirements. The Commission specifically requests comment regarding whether this implementation period could be shorter.

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 Numbers SR–NASD–2006–131, SR–NYSE–2006–111, or SR–Amex–2007–05 as appropriate 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 Numbers SR–NASD–2006–131, SR–NYSE–2006–111, or SR–AMEX–2007–05, as appropriate.

These file numbers 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. Copies of such filing also will be available for inspection and copying at the principal offices of NASD, NYSE or Amex, as appropriate.

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 Numbers SR–NASD–2006–131, SR–NYSE–2006–111, or SR–Amex–2007–05, as appropriate, and should be submitted on or before February 22, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–1584 Filed 1–31–07; 8:45 am]

BILLING CODE 8011–01–P

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55156; File No. SR–NYSEArca–2006–73]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval to Proposed Rule Change as Modified by Amendment No. 1 Thereto, To Create an Options Penny Pilot Program

January 23, 2007.

I. Introduction

On October 10, 2006, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the NYSE Arca Rules to permit certain option classes to be quoted in pennies on a pilot basis and to adopt a quote mitigation strategy. The proposed rule change was published for comment in the **Federal Register** on October 18, 2006.[3] The Commission received three comment letters on the proposed rule change.[4] On December 1, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.[5] The Exchange responded to the comment letters on January 9, 2007.[6] This order approves the proposed rule change as modified by Amendment No. 1.

II. Description of the Proposal

A. Scope of the Penny Pilot Program

NYSE Arca proposes to amend its rules to permit certain options classes to be quoted in pennies during a six-month pilot (''Penny Pilot Program''), which would commence on January 26, 2007. Specifically, the Exchange proposes to (1) clarify the language in NYSE Arca Rule 6.72, which sets forth the minimum increments for options quoted on the Exchange; (2) add a reference in Rule 6.72 to the Penny Pilot Program; and (3) provide for an approved quote mitigation exception to NYSE Arca Rule 6.86.

Currently, all six options exchanges, including NYSE Arca, quote options in nickel and dime increments. The minimum price variation for quotations in options series that are quoted at less than $3 per contract is $0.05 and the minimum price variation for quotations in options series that are quoted at $3 per contract or greater is $0.10. Under the Penny Pilot Program, beginning on January 26, 2007, market participants would be able to begin quoting in penny increments in certain series of option classes.

The Penny Pilot Program would include the following thirteen options: Ishares Russell 2000 (IWM); NASDAQ–100 Index Tracking Stock (QQQQ); SemiConductor Holders Trust (SMH); General Electric Company (GE);

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 54590 (October 12, 2006), 71 FR 61525.

[4] *See* letters to Nancy M. Morris, Secretary, Commission, from Wayne Jervis, Managing Member of the General Partner, Jervis Alternative Asset Management Co. (''JAAMCO''), dated January 7, 2007 (''JAAMCO Letter''); from Christopher Nagy, Chair, Securities Industry and Financial Markets Association (''SIFMA'') Options Committee, dated December 20, 2006 (''SIFMA Letter''); and from Peter J. Bottini, Executive Vice-President, optionsXpress, Inc. (''optionsXpress''), dated October 31, 2006 (''optionsXpress Letter'').

[5] Among other things, Amendment No. 1 proposed to replace Glamis Gold, which was delisted, with Agilent Tech, Inc. in the list of options classes permitted to be quoted in pennies. Amendment No. 1 is technical in nature, and the Commission is not publishing Amendment No. 1 for public comment.

[6] *See* letter to Nancy M. Morris, Secretary, Commission, from Mary Yeager, Corporate Secretary, NYSE Arca, dated January 9, 2007 (''Exchange Response'').

Advanced Micro Devices, Inc. (AMD), (Microsoft Corporation (MSFT); Intel Corporation (INTC); Caterpillar, Inc. (CAT); Whole Foods Market, Inc. (WFMI); Texas Instruments, Inc. (TXN); Flextronics International Ltd. (FLEX); Sun Microsystems, Inc. (SUNW); and Agilent Technologies, Inc. (A).

The minimum price variation for all classes included in the Penny Pilot Program, except for the QQQQs, would be $0.01 for all quotations in option series that are quoted at less than $3 per contract and $0.05 for all quotations in option series that are quoted at $3 per contract or greater. The QQQQs would be quoted in $0.01 increments for all options series.[7]

NYSE Arca commits to deliver a report to the Commission during the fourth month of the pilot, which would be composed of data from the first three months of trading. The report would analyze the impact of penny pricing on market quality and options system capacity.

B. Quote Mitigation Proposal

NYSE Arca Rule 6.86 describes the obligations of the Exchange to collect, process and make available to quotation vendors the best bid and best offer for each option series that is a reported security. The Exchange proposes an exception to making quotes available to quotation vendors as part of an approved quote mitigation plan. The quote mitigation strategy proposed by the Exchange is intended to reduce the number of quotations generated by NYSE Arca for all option issues traded at NYSE Arca, not just issues included in the Penny Pilot Program. NYSE Arca plans to reduce the number of quote messages it sends to the Options Price Reporting Authority (''OPRA'') by only submitting quote messages for ''active'' options series. Active options series will be defined as: (i) The series has traded on any options exchange in the previous 14 calendar days; (ii) the series is solely listed on NYSE Arca; (iii) the series has been trading ten days or less; or (iv) the Exchange has an order in the series. For any option series that falls into one of the aforementioned categories, NYSE Arca will submit quotes to OPRA as it currently does. For any options series that falls outside of the above categories, NYSE Arca will still accept quotes from OTP Holders in these series; however, such quotes will not be disseminated to OPRA.

In addition, under the proposal, there are certain instances when a series would become active intraday. This would occur if: (i) The series trades at any options exchange; (ii) NYSE Arca receives an order in the series; or (iii) NYSE Arca receives a request for quote from a customer in that series. When one of the above circumstances exists, NYSE Arca would immediately begin disseminating quotes to OPRA in that particular series and would continue doing so until that series fell outside of the active series definition. If the series does not trade, and there are no orders in the series the next day, the series would no longer be considered active.

Finally, because NYSE Arca will continue to collect quotes from OTP Holders in inactive series, upon receiving an order in an inactive series, the Exchange will either execute that order against any marketable quotes in the trading system, or will link that order to the away market displaying the NBBO in that series. Accordingly, OTP Holders' orders will not be disadvantaged and will still have an opportunity to execute at the best price in such inactive series. By limiting quote dissemination to solely active series as described above, the Exchange anticipates that it will reduce quote message traffic by 20–30%.

III. Discussion

After careful review of the proposal, the comment letters, and the Exchange's response thereto, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[8] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[9] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, 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.

The Commission believes that the implementation of a limited six-month Penny Pilot Program by NYSE Arca and the five other options exchanges will provide valuable information to the exchanges, the Commission and others about the impact of penny quoting in the options market. In particular, the Penny Pilot Program will allow analysis of the impact of penny quoting on: (1) Spreads; (2) transaction costs; (3) payment for order flow; and (4) quote message traffic.

The Commission believes that the thirteen options classes to be included in the penny pilot program represent a diverse group of options classes with varied trading characteristics. This diversity should facilitate analyses by the Commission, the options exchanges and others. The Commission also believes that the Penny Pilot Program is sufficiently limited that it is unlikely to increase quote message traffic beyond the capacity of market participants' systems and disrupt the timely receipt of quote information.[10] Nevertheless, because the Commission expects that the Penny Pilot Program will increase quote message traffic, the Commission is also approving the Exchange's proposal to reduce the number of quotations it disseminates.

In this regard, two of the commenters expressed concern about NYSE Arca's proposed quote mitigation strategy.[11] In particular, optionsXpress was concerned that removing quotes from the market will reduce transparency and thereby undermine investor opportunity. SIFMA also objected to NYSE Arca's quote mitigation proposal because it believes that ''going dark'' in certain less active series will reduce investment opportunities for investors and may impede growth in the options industry.

In addition, SIFMA recommended that all six of the option exchanges adopt a comprehensive and uniform quote mitigation strategy. In particular, SIFMA strongly supports the adoption of the ''holdback timer'' mitigation proposal as the most efficient means of reducing quotation traffic. SIFMA expressed concern that the lack of uniformity among the quote mitigation proposals adopted by the exchanges will impose a burden on member firms and cause confusion for market participants, especially retail investors.

---

[7] In Amendment No. 1, NYSE Arca requested that an additional option class be designated to quote and trade all series in pennies. In its comment letter, JAAMCO also expressed strong support for penny increments in all listed options. *See* JAAMCO Letter, *supra* note 4.

[8] In approving this proposed rule change, the Commission 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).

[10] The Commission does not agree with the Exchange's recommendation to allow an additional options class to be quoted in pennies in all series at this time. The Commission believes that it is important to commence penny quoting in a measured manner so as not to exacerbate systems capacity constraints.

[11] JAAMCO did not comment directly on NYSE Arca's proposal, but rather stated its strong support for penny increment options trading that ''(1) includes all listed options, (2) prohibits Internalization of order flow to the extent that it disadvantages the customer, (3) has pricing linked to all listed options exchanges, (4) does not exclude options above $3.00 in value, and (5) does not exclude illiquid/not-daily-traded options.'' JAAMCO Letter, *supra* note 4.

Although the Commission supports efforts to implement a uniform, industry-wide quote mitigation plan, it does not believe such efforts preclude individual exchanges from initiating their own quote mitigation strategies. The Exchange stated its belief that, ''by not burdening the marketplace with excessive quotes, in series that have proven to have little or no investor interest, the Exchange will have the ability to supply additional quoting activity where most needed, thereby creating liquidity and a more competitive marketplace, which in turn should provide increased opportunities for all investors.'' [12] In addition, the Exchange clarified that it will continue to collect and process quotes from Exchange Market Makers and will publish a quote upon a trade at another market or upon receipt of an order in that series.

The Commission believes that NYSE Arca's proposed quote mitigation strategy is consistent with the Act and that it is unlikely to lead to confusion among market participants. In this regard, the Commission notes that Exchanges do not currently quote the identical series and classes of options. Furthermore, the Exchange has committed to provide a thorough study of the impact that its quote mitigation plan has on, among other things, system capacity problems or other problems that arose related to the operation of the Penny Pilot Program. Consequently, the Commission believes there are sufficient safeguards in place to analyze and, if necessary, address any negative impact that may result from NYSE Arca's proposal to disseminate quotes only in ''active options series'' as defined by Commentary .03 to NYSE Arca Rule 6.86.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–NYSEArca–2006–73), as modified by Amendment No. 1, be, and hereby is, approved on a six-month pilot basis, which will commence on January 26, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–1589 Filed 1–31–07; 8:45 am]

BILLING CODE 8011–01–P

[12] *See* Exchange Response, *supra* note 6.

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55178; File No. SR–NYSEArca–2007–02]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to NYSE Arca Marketplace Trading Sessions

January 25, 2007.

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 12, 2007, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange''), through its wholly owned subsidiary NYSE Arca Equities, Inc. (''NYSE Arca Equities''), 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. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission.

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

The Exchange proposes to update the list in NYSE Arca Equities Rule 7.34 of securities eligible to trade in one or more, but not all three, of the Exchange's trading sessions. The securities to be added to the list are : (1) Claymore MACROshares Oil Up Tradeable Shares and (2) Claymore MACROshares Oil Down Tradeable Shares. These securities are traded on NYSE Arca, L.L.C. (''NYSE Arca Marketplace''), the equities trading facility of NYSE Arca Equities, pursuant to unlisted trading privileges (''UTP'') and are described in NYSE Arca Equities Rule 8.400 (''Paired Trust Shares''). The Exchange also proposes to include a reference to NYSE Arca Equities Rule 8.400 in NYSE Arca Equities Rules 7.34(a)(3)(A) and 7.34(a)(4)(A).

The text of the proposed rule change is available on the Exchange's Web site (*http://www.nysearca.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

[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).

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. The text of these statements may be examined at the places specified in Item III 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

NYSE Arca Equities Rule 7.34 currently provides, in part, that the NYSE Arca Marketplace shall have three trading sessions each day: an Opening Session (1 a.m. Pacific Time (''PT'') to 6:30 a.m. PT), a Core Trading Session (6:30 a.m. PT to 1 p.m. PT), and a Late Trading Session (1 p.m. PT to 5 p.m. PT), and that the Core Trading Session for securities described in NYSE Arca Equities Rules 5.1(b)(13), 5.1(b)(18), 5.2(j)(3), 8.100, 8.200, 8.201, 8.202, 8.203, and 8.300 (each, a ''Derivative Securities Product'') shall conclude at 1:15 pm (PT).[5] The Exchange proposes to amend NYSE Arca Equities Rule 7.34(a)(3)(A) to add Paired Trust Shares described in NYSE Arca Equities Rule 8.400 to the securities for which the Core Trading Session concludes at 1:15 p.m. PT.[6]

The Exchange also includes in NYSE Arca Equities Rule 7.34 a list of those securities which are eligible to trade in one or more, but not all three, of the Exchange's trading sessions, and maintains on its Web site a list that

[5] NYSE Arca Equities Rules 5.1(b)(13), 5.2(j)(3), 8.100, 8.200, 8.201, 8.202, 8.203, and 8.300 relate to Unit Investment Trusts, Investment Company Units and Portfolio Depositary Receipts, Trust Issued Receipts, Commodity-Based Trust Shares, Currency Trust Shares, Commodity Index Trust Shares, and Partnership Units, respectively. *See* Securities Exchange Act Release No. 54997 (December 21, 2006), 71 FR 78501 (December 29, 2006) (SR–NYSEArca–2006–77) (relating to amendments to NYSE Arca Equities Rule 7.34).

[6] In Securities Exchange Act Release No. 55033 (December 29, 2006), 72 FR 1253 (January 10, 2007) (SR–NYSEArca–2006–75), the Commission approved NYSE Arca Equities Rule 8.400 to permit trading on the NYSE Arca Marketplace, either by listing or pursuant to UTP, of securities issued by a pair of related trusts and based on an index or other numerical variable whose value reflects the value of assets, prices, or other economic interests. The Commission also approved in this filing the trading, pursuant to UTP, of the Claymore MACROshares Oil Up Tradeable Shares and Claymore MACROshares Oil Down Tradeable Shares.