

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55789; File No. SR-NYSEArca-2007-34]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to Trading a Class of Options Without Designating a Lead Market Maker

May 21, 2007.

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 April 3, 2007, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. On May 2, 2007, NYSE Arca filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comment on the proposed rule change, as amended, from interested persons.

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

NYSE Arca is proposing to modify Exchange Rules 6.35, 6.38, 6.92, and 6.93 to allow an option issue to trade without designating a Lead Market Maker (“LMM”). In those options without an LMM, the Exchange will designate a Market Maker as the sender of a Principal Acting as Agent (“P/A”) Order<sup>3</sup> through the Options Intermarket Linkage (“Linkage”).

#### 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 proposed rule changes would allow the Exchange to trade a class of options without designating an LMM, yet still meet the requirements of the Linkage Plan.<sup>4</sup>

An LMM designation on the Exchange obligates a Market Maker to a 99% quoting requirement in all appointed series of an underlying class,<sup>5</sup> in return for up to a 40% guaranteed allocation on trades executed on the Exchange when the LMM is quoting at the national best bid or offer (“NBBO”).<sup>6</sup> The Exchange states that, in large part, LMMs are designated in option classes to foster liquidity. The Exchange believes that certain highly liquid, highly active options classes, however, have sufficient participation by OTP Holders<sup>7</sup> that there is no need for an LMM. In not designating an LMM in certain option issues, orders would be processed in price/time priority, meaning any market participant, regardless of status, may gain priority by improving the market. The Exchange believes that this change to price/time order execution will create more competition and liquidity in the selected option issues.

To accommodate the Linkage Plan, the Exchange proposes modifications to its Rules 6.35, 6.38, 6.92, and 6.93 to allow for the designation of an Exchange Market Maker, assigned on a rotating basis, as the responsible Intermarket Linkage Market Maker (“IMM”) on outbound P/A Orders.<sup>8</sup> Under the terms of the Linkage Plan as applied in the NYSE Arca rules,<sup>9</sup> the LMM currently is

the responsible party on outbound P/A Orders sent through the Linkage. Although the Exchange intends to rely solely on the use of its outbound routing broker to access away markets when the Exchange is not at the NBBO, there may be instances when the Exchange’s routing broker is not available because of system malfunctions. As a result, the Exchange proposes that designated IMM be responsible for outbound P/A Orders sent through the Linkage. The IMM would be required to submit prior written instructions to the Exchange for routing of any P/A Orders the IMM may send through the Exchange to the Linkage.

Under Section 2(16)(a) of the Linkage Plan, however, a P/A Order may be routed to another exchange only through the principal account of a market maker that is authorized to represent customer orders, “reflecting the terms of a related unexecuted Customer order for which the Market Maker is acting as agent.” Market Makers on the Exchange other than LMMs, however, are not permitted to act as an agent on behalf of an order submitted to the Exchange, so as to avoid any appearance of a conflict of interest.<sup>10</sup> In order to comply with the Linkage Plan, therefore, the Exchange proposes to amend Exchange Rule 6.38(a) to provide an exception for Market Makers acting as an IMM for the purpose of settling P/A Orders sent to away markets pursuant to Exchange Rules 6.92 and 6.93. This proposed exception is limited to Market Makers acting in the capacity of an IMM strictly for the purpose of settling P/A Orders sent over the Linkage. The proposed exception does not confer any other rights or create any other obligations to any Market Maker.

The Exchange also proposes to amend Exchange Rule 6.93 to clarify that the Exchange will be responsible for the receipt, processing, and execution of inbound Linkage orders received from other Participant exchanges. Inbound Linkage orders sent to NYSE Arca are routed directly to the trading system for immediate automatic execution; any remaining unexecuted portion, or any order not executable because a quote is no longer available, will be immediately

the General Counsel, NYSE Group, Inc., and Timothy C. Fox, Special Counsel, Division of Market Regulation, Commission, on May 16, 2007.

<sup>10</sup> See Exchange Rule 6.38(b)(1), which provides that Market Makers other than LMMs are restricted from acting as a principal and an agent in the same issue on the same business day. See also Exchange Rule 6.38(b)(5), which provides Market Makers are restricted from acting as a floor broker in options covering the same underlying security to which its primary appointment extends.

<sup>4</sup> On July 28, 2000, the Commission approved Linkage proposed by Amex, CBOE, and ISE. See Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, Phlx, Pacific Exchange, Inc. (n/k/a NYSE Arca), and BSE joined the Linkage Plan. See Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000); 43574 (November 16, 2000), 65 FR 70850 (November 28, 2000); and 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004).

<sup>5</sup> NYSE Arca Rule 6.37B(b).

<sup>6</sup> NYSE Arca Rule 6.76B(a)(1)(A)(i).

<sup>7</sup> See NYSE Arca Rule 1.1(q) for the definition of “OTP Holder.”

<sup>8</sup> The IMM will be selected from the pool of all Market Makers who have been appointed in the particular class. Market Makers requesting appointment in the underlying class will need to agree to participate in the rotation of IMM assignment.

<sup>9</sup> Telephone conversation between Peter Armstrong, Managing Director, Options, Office of

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4

<sup>3</sup> Section 2(16)(a) of the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (“Linkage Plan”) defines a P/A Order as an order for the principal account of a market maker that is authorized to represent customer orders, reflecting the terms of a related unexecuted customer order for which the market maker is acting as agent.

returned by the Exchange to the originating away market.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act<sup>11</sup> in general and furthers the objectives of Section 6(b)(5)<sup>12</sup> in particular in that 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 mechanisms 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 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

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 self-regulatory organization 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

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-2007-34 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-2007-34. 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. Copies of such filing will also 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-2007-34 and should be submitted on or before June 19, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55788; File No. SR-OCC-2006-19]

### Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Close-Out Netting Procedures

May 21, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on October 10, 2006, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") and on May 15, 2007, amended the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. 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 proposed rule change would amend OCC's By-Laws and Rules to provide for close-out netting procedures to be followed in the highly unlikely event that OCC becomes insolvent or otherwise defaults on its clearing obligations. The proposed rule would clarify the impact of transactions between OCC and its Clearing Members on the capital requirements applicable to Clearing Members and other affiliated entities on a consolidated basis.

#### 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 such statements.<sup>2</sup>

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> The Commission has modified parts of these statements.

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

<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> 17 CFR 200.30-3(a)(12).