

Dated: March 17, 2010.

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-6505 Filed 3-23-10; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

*Upon Written Request, Copies Available*

From: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549-0213.

*Extension:*

Rule 17a-12, SEC File No. 270-442, OMB Control No. 3235-0498.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for approval of extension of the previously approved collection provided for in Rule 17a-12 (17 CFR 240.17a-12) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) ("Exchange Act").

Rule 17a-12 under the Exchange Act requires OTC derivatives dealers to file quarterly Financial and Operational Combined Uniform Single Reports ("FOCUS" reports) on Part IIB of Form X-17A-5,<sup>1</sup> the basic document for reporting the financial and operational condition of OTC derivatives dealers. Rule 17a-12 also requires that OTC derivatives dealers file audited financial statements annually. The reports required under Rule 17a-12 provide the Commission with information used to monitor the operations of OTC derivatives dealers and to enforce their compliance with the Commission's rules. These reports also enable the Commission to review the business activities of OTC derivatives dealers and to anticipate, where possible, how these dealers may be affected by significant economic events.

The staff estimates that the average amount of time necessary to prepare and file the information required by Rule 17a-12 is 180 hours per OTC derivatives dealer annually—an average of twenty hours preparing each of four quarterly reports and an additional 100 hours for the annual audit. Four entities are presently registered as OTC derivatives dealers and the staff expects that one additional OTC derivatives dealer, with an application pending, will become

registered within the next three years. Thus the total burden is estimated to be 900 hours annually ((180 × 4) + (180 × 1)).

Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an email to:

*Shagufta\_Ahmed@omb.eop.gov*; and

(ii) Charles Boucher, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to *PRA\_Mailbox@sec.gov*.

Comments must be submitted to OMB within 30 days of this notice.

Dated: March 17, 2010.

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61727; File No. SR-NYSEArca-2010-13]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Accommodate Cabinet Trades That Take Place Below \$1 Per Option Contract Until July 1, 2010

March 17, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on March 3, 2010, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. 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 adopt Commentary .01 to Rule 6.80, Accommodation Transactions (Cabinet Trades), to permit transactions to take place at a price that is below \$1 per

option contract. 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 the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The purpose of this filing is to allow accommodation transactions ("Cabinet Trades") to take place at a price that is below \$1 per option contract. The Exchange proposes to adopt a rule based on CBOE Rule 6.54, Interpretations and Policies .03.<sup>3</sup>

Cabinet trading is generally conducted in accordance with the Exchange Rules, except as provided in Exchange Rule 6.80 Accommodation Transactions (Cabinet Trades), which sets forth specific procedures for engaging in cabinet trades. Rule 6.80 currently provides for cabinet transactions to occur via open outcry at a cabinet price of a \$1 per option contract in any options series open for trading in the Exchange, except that the Rule is not applicable to trading in option classes participating in the Penny Pilot Program. Under the procedures, bids and offers (whether opening or closing a position) at a price of \$1 per option contract may be represented in the trading crowd by a Floor Broker or by a Market-Maker or provided in response to a request by a Trading Official, a Floor Broker or a Market-Maker, but must yield priority to all resting orders in the Cabinet (those orders held by the Trading Official, and which resting cabinet orders may be closing only). So long as both the buyer and the seller yield to orders resting in

<sup>1</sup> Form X-17A-5 (17 CFR 249.617).

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

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

<sup>3</sup> See Securities Exchange Act Release No. 59188 (December 30, 2008), 74 FR 480 (January 6, 2009)(SR-CBOE-2008-133).

the cabinet book, opening cabinet bids can trade with opening cabinet offers at \$1 per option contract.

The purpose of this rule change is to temporarily amend the procedures through July 1, 2010 to allow transactions to take place in open outcry at a price of at least \$0 but less than \$1 per option contract. These lower priced transactions would be traded pursuant to the same procedures applicable to \$1 cabinet trades, except that (i) bids and offers for opening transactions would only be permitted to accommodate closing transactions in order to limit use of the procedure to liquidations of existing positions, and (ii) the procedures would also be made available for trading in option classes participating in the Penny Pilot Program.<sup>4</sup> The Exchange believes that allowing a price of at least \$0 but less than \$1 will better accommodate the closing of options positions in series that are worthless or not actively traded, particularly due to recent market conditions which have resulted in a significant number of series being out-of-the-money. For example, a market participant might have a long position in a call series with a strike price of \$100 and the underlying stock might now be trading at \$30. In such an instance, there might not otherwise be a market for that person to close-out its position even at the \$1 cabinet price (e.g., the series might be quoted no bid).

As with other accommodation liquidations under Rule 6.80, transactions that occur for less than \$1 will not be disseminated to the public on the consolidated tape. In addition, as with other accommodation liquidations under Rule 6.80, the transactions will be exempt from the Consolidated Options Audit Trail ("COATS") requirements of Exchange Rule 6.67 Order Format and System Entry Requirements. However, the Exchange will maintain quotation, order and transaction information for the transactions in the same format as the COATS data is maintained. In this regard, all transactions for less than \$1 must be reported to the Exchange following the close of each business day.

<sup>4</sup> Currently the \$1 cabinet trading procedures are limited to options classes traded in \$0.05 or \$0.10 standard increment. The \$1 cabinet trading procedures are not available in Penny Pilot Program classes because in those classes an option series can trade in a standard increment as low as \$0.01 per share (or \$1.00 per option contract with a 100 share multiplier). Because the instant rule change would allow trading below \$0.01 per share (or \$1.00 per option contract with a 100 share multiplier), the procedures would be made available for all classes, including those classes participating in the Penny Pilot Program.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)<sup>5</sup> of the Securities Exchange Act of 1934 (the "Act"), in general, and furthers the objectives of Section 6(b)(5)<sup>6</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. The Exchange believes that allowing for liquidations at a price less than \$1 per option contract will better facilitate the closing of options positions that are worthless or not actively trading, especially in Penny Pilot issues where Cabinet Trades are not otherwise permitted.

### 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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>7</sup> and Rule 19b-4(f)(6) thereunder because the proposal does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.<sup>8</sup>

The Exchange has requested that the Commission waive the 30-day operative

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

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

<sup>8</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 the pre-filing requirement.

delay period. In making such request, the Exchange stated that immediate operability will level the current competitive landscape by permitting the Exchange to implement changes similar to those implemented by the CBOE. The Commission hereby grants the request. The Commission notes that the proposal is nearly identical to the rules of another self-regulatory organization,<sup>9</sup> and believes that waiver of the 30-day period will enable the Exchange to provide a means for investors to close out positions that are worthless or not actively trading without delay. Based on the above, the Commission believes it is consistent with the protection of investors and the public interest to waive the 30-day operative delay and designates the proposal as 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 proposed 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.<sup>11</sup>

## 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-2010-13 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-NYSEArca-2010-013. 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

<sup>9</sup> See CBOE Rule 6.54, Interpretations and Policies .03.

<sup>10</sup> For purposes only of waiving the operative delay for this proposal, 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> 15 U.S.C. 78s(b)(3)(C).

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 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 offices 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-2010-13, and should be submitted on or before April 14, 2010.

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

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-6509 Filed 3-23-10; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61733; File No. SR-CHX-2010-06]

### Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend CHX Article 8, Rule 14 To, Among Other Things, Prohibit Broker Discretionary Voting on the Elections of Directors

March 18, 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 March 9, 2010, the Chicago Stock Exchange, Inc. ("CHX" or 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 CHX. 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

CHX proposes to amend Article 8, Rule 14 regarding proxy voting by Participants which hold stock on behalf of the beneficial owner. Specifically, the Exchange would like to enumerate in its rules certain matters that affect substantially the rights and privileges of stock and therefore should not be voted on by Participants without instructions from the beneficial owner. The text of this proposed rule change is available on the Exchange's Web site at (<http://www.chx.com>) and in 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 CHX included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX 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 Changes

###### 1. Purpose

The CHX is proposing to amend Article 8, Rule 14 regarding proxy voting by Participants which hold stock on behalf of the beneficial owner. Specifically, the Exchange would like to enumerate in its rules certain matters that affect substantially the rights and privileges of stock and therefore should not be voted on by Participants without instructions from the beneficial owner.

Under the current CHX and SEC proxy rules, Participants must deliver proxy materials to beneficial owners and request voting instructions in return. If voting instructions have not been received by the tenth day

preceding the meeting date, Rule 14 provides that Participants may vote on certain matters deemed "routine" by the CHX. One of the most important results of Participant votes of uninstructed shares is their use in establishing a quorum at shareholder meetings.

At present, matters considered routine by the CHX are those in which the person signing the proxy has no knowledge of any contest as to the action to be taken at the meeting and provided such action does not include authorization for a merger, consolidation or any other matter which may affect substantially the legal rights or privileges of such stock. In addition to this guidance, CHX rules specifically state that a Participant may not give a proxy to vote when the matter to be voted upon authorizes the implementation of any equity compensation plan, or any material revision to the terms of any existing equity compensation plan.

With this rule filing, CHX would like to amend its rules to conform to the NYSE's rules<sup>5</sup> to eliminate any disparities involving voting depending on where the shares are held.<sup>6</sup> CHX would also like to enumerate in its rules certain matters that affect substantially the rights and privileges of stock and therefore should not be voted on by Participants without instructions from the beneficial owner. These include: Any matter that is not submitted to stockholders by means of a proxy statement comparable to that specified in Schedule 14-A of Securities and Exchange Commission; any matter that is the subject of a counter-solicitation or is part of a proposal made by a stockholder which is being opposed by management (*i.e.*, a contest); any matter that relates to a merger or consolidation (except when the company's proposal is to merge with its own wholly owned subsidiary, provided its shareholders dissenting thereto do not have rights of appraisal); and, matters that involve a right of appraisal. Additionally, matters that authorize mortgaging of property, authorize or create indebtedness or increase the authorized amount of indebtedness, authorize or create a preferred stock or increase the authorized amount of an existing preferred stock or alter the terms or conditions of existing stock or indebtedness will also be prohibited

<sup>5</sup> See NYSE Rule 452.

<sup>6</sup> The Commission has indicated that, while other self-regulatory organizations currently allow discretionary voting, it expects these markets to make changes to conform to the NYSE's rules to eliminate any disparities involving voting depending on where shares are held. See Securities Exchange Act Release No. 34-60215 (July 1, 2009).

<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)(iii).

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