

non-ATP Holder broker-dealers and vendors.<sup>6</sup>

The Exchange also proposed to amend its Price List to establish a fee applicable to Users that provide hosting services to their customers ("Hosted Users") at the Exchange's data center.<sup>7</sup> "Hosting" would be a service offered by a User to a Hosted User and could include, for example, a User supporting its Hosted User's technology, whether hardware or software, through the User's co-location space. Specifically, the Exchange proposed to charge each User a fee of \$500.00 per month for each Hosted User that the User hosts in the Exchange's data center. Users would independently set fees for their Hosted Users and the Exchange would not receive a share of any such fees.

### III. Discussion and Commission's Findings

After careful review, 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> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>9</sup> which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities, and 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 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, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange noted that the expansion of the scope of potential Users of the Exchange's co-location services increases access to the Exchange's co-location facilities and that the co-location services would be offered to these additional Users in a

manner that is not unfairly discriminatory.<sup>11</sup> The Commission believes that this expansion of the scope of potential Users is consistent with the Exchange Act and should increase access to the Exchange co-location facilities by allowing additional categories of market participants to access the Exchange's co-location services.

Regarding the proposed hosting fee, the Exchange represented that it will be applied uniformly and will not unfairly discriminate between Users of co-location services, as the hosting fee will be applicable to all interested Users that provide hosting services.<sup>12</sup> The Exchange also represented that the hosting fee is reasonable because it is designed to defray expenses incurred or resources expended by the Exchange.<sup>13</sup> In light of the Exchange's representations, the Commission believes that the hosting fee is consistent with Section 6(b)(4) of the Exchange Act.

### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>14</sup> that the proposed rule change (SR-NYSEAmex-2011-82) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

Kevin M. O'Neill,  
Deputy Secretary.

[FR Doc. 2011-32668 Filed 12-20-11; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65977; File No. SR-NYSEArca-2011-93]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Commentary .02 to NYSE Arca Options Rule 6.72 in Order To Extend the Penny Pilot in Options Classes in Certain Issues Through June 30, 2012

December 15, 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 December 2, 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 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 amend Commentary .02 to NYSE Arca Options Rule 6.72 in order to extend the Penny Pilot in options classes in certain issues ("Pilot Program"), previously approved by the Securities and Exchange Commission ("Commission"), through June 30, 2012. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and [www.nyse.com](http://www.nyse.com).

### 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 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 Exchange hereby proposes to amend Commentary .02 to NYSE Arca Options Rule 6.72 to extend the time period of the Pilot Program,<sup>3</sup> which is currently scheduled to expire on December 31, 2011, through June 30, 2012. The Exchange also proposes that the date to replace issues in the Pilot Program that have been delisted be revised to the second trading day following January 1, 2012<sup>4</sup> and that the replacement issues will be selected

<sup>3</sup> See Securities Exchange Act Release No. 63376 (November 24, 2010), 75 FR 75527 (December 3, 2010) (SR-NYSEArca-2010-104).

<sup>4</sup> The Exchange is proposing to extend the Pilot Program only for an additional six months. Therefore, a date for adding replacement issues to the Pilot Program during the second half of the calendar year, *i.e.*, after June 30, 2012, is not applicable, as reflected in the proposed change to Commentary .02.

<sup>6</sup> *Id.* The Exchange anticipated that the potential additional Users would provide, for example, hosting, service bureau, technical support, risk management, order routing and market data delivery services to their customers while the User is co-located in the Exchange's data center.

<sup>7</sup> *Id.*

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

<sup>9</sup> 15 U.S.C. 78f(b)(4).

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

<sup>11</sup> See Notice, 76 FR at 67507.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> 15 U.S.C. 78s(b)(2).

<sup>15</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.

based on trading activity for the six month period beginning June 1, 2011 and ending November 30, 2011.<sup>5</sup>

This filing does not propose any substantive changes to the Pilot Program: all classes currently participating will remain the same and all minimum increments will remain unchanged. The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh the increase in quote traffic.

The Exchange agrees to reports that will analyze the impact of the Pilot Program on market quality and options systems capacity. These reports will include, but are not limited to: (1) Data and written analysis on the number of quotations generated for options selected for the Pilot Program; (2) an assessment of the quotation spreads for the options selected for the Pilot Program; (3) an assessment of the impact of the Pilot Program on the capacity of the Exchange's automated systems; (4) any capacity problems or other problems that arose related to the operation of the Pilot Program and how the Exchange addressed them; and (5) an assessment of trade through complaints that were sent by the Exchange during the operation of the Pilot Program and how they were addressed.

The Exchange also proposes a technical change to NYSE Arca Options Rule 6.72(a)(3)(A) to reflect that QQQQ is now referred to as "PowerShares QQQ Trust<sup>SM</sup>, Series 1" and is traded under the symbol "QQQ."<sup>6</sup>

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b)<sup>7</sup> of the Securities Exchange Act of 1934 (the "Act"), in general, and furthers the objectives of Section 6(b)(5),<sup>8</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. The

Exchange believes that the Pilot Program promotes just and equitable principles of trade by enabling public customers and other market participants to express their true prices to buy and sell options.

### 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: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) 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>9</sup> and Rule 19b-4(f)(6)(iii) thereunder.<sup>10</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:

### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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 Commission notes that the Exchange has satisfied this requirement.

- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-NYSEArca-2011-93 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 No. SR-NYSEArca-2011-93. 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 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 No. SR-NYSEArca-2011-93 and should be submitted on or before January 11, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

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

[FR Doc. 2011-32670 Filed 12-20-11; 8:45 am]

**BILLING CODE 8011-01-P**

<sup>5</sup> The Exchange will announce the replacement issues to the Exchange's membership through a Trader Update.

<sup>6</sup> NASDAQ, Nasdaq-100 Index, Nasdaq-100 Index Tracking Stock and QQQ are trade/service marks of The Nasdaq Stock Market, Inc. and have been licensed for use by Invesco PowerShares Capital Management LLC.

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> 17 CFR 200.30-3(a)(12).