

Amendment No. 1.<sup>9</sup> The Commission thereafter received six comment letters<sup>10</sup> and two response letters from the Exchange.<sup>11</sup>

Section 19(b)(2) of the Act<sup>12</sup> provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for notice and comment in the **Federal Register** on March 22, 2012. September 18, 2012 is 180 days from that date, and November 17, 2012 is 240 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider this proposed rule change, the issues raised in the comment letters that have been submitted in response to the proposed rule change, including comment letters submitted in response to the Order Instituting Proceedings, and the Exchange's responses to such comments.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,<sup>13</sup> designates November 17, 2012 as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR-ISE-2012-22).

<sup>9</sup> See Securities Exchange Act Release No. 67225 (June 20, 2012), 77 FR 38100 (June 26, 2012) ("Order Instituting Proceedings").

<sup>10</sup> See letters to Elizabeth M. Murphy, Secretary, Commission, from Christopher Nagy, President, KOR Trading LLC, dated August 6, 2012; John L. Jacobs, Executive Vice President, NASDAQ OMX Global Index Group, NASDAQ OMX Group, Inc., dated August 10, 2012; Kenneth M. Vittor, Executive Vice President and General Counsel, McGraw-Hill Companies, Inc., dated August 10, 2012; Edward T. Tilly, President and Chief Operating Officer, CBOE, dated August 10, 2012; John V. O'Hanlon, Dechert LLP, on behalf of the Index Industry Association, dated August 10, 2012; and Edward T. Tilly, President and Chief Operating Officer, CBOE, dated August 27, 2012.

<sup>11</sup> See letters to Elizabeth M. Murphy, Secretary, Commission, from Michael J. Simon, Secretary, ISE, dated August 10, 2012 and August 27, 2012.

<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>13</sup> 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012-23180 Filed 9-19-12; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67863; File No. SR-NYSEARCA-2012-94]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Proposes [sic] To Amend Commentary .06 to NYSE Arca Options Rule 6.4 To Permit the Exchange To List Additional Strike Prices Until the Close of Trading on the Second Business Day Prior to Monthly Expiration.

September 14, 2012.

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> notice is hereby given that, on September 6, 2012, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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 .06 to NYSE Arca Options Rule 6.4 to permit the Exchange to list additional strike prices until the close of trading on the second business day prior to monthly expiration. The text of the proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, 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 amend Commentary .06 to NYSE Arca Options Rule 6.4 to permit the Exchange to add additional strikes until the close of trading on the second business day prior to a monthly expiration.

NYSE Arca Options Rule 6.4 currently permits the Exchange to open additional series of individual stock options until the first calendar day of the month in which the option expires or until the fifth business day prior to expiration if unusual market conditions exist.<sup>4</sup> Options market participants generally prefer to focus their trading in strike prices that immediately surround the price of the underlying security. However, if the price of the underlying stock moves significantly, there may be a market need for additional strike prices to adequately account for market participants risk management needs in a stock. In these situations, the Exchange

<sup>4</sup> See Commentary .06 to NYSE Arca Options Rule 6.4. 'Until the fifth business day prior' generally means up through the end of the day on the Friday of the week prior to expiration week. When options were first approved for listing and trading in the United States, the generally uniform rules of the options exchanges restricted the addition of new series "until the first calendar day of the month in which the option expires." At various times in 1985, exchanges were granted authority to list new equity options series until five business days prior to expiration under unusual market conditions. In 1985 there were two main concerns expressed by the Commission: (i) Worry over the proliferation of strikes and possible capacity concerns, and (ii) effective and timely communication to market participants about the new strikes. At the time, though, exchanges were only allowed to list three expiration months per issue, and were expanding from listing three strikes to listing five strikes. Since then, there has been a continual expansion of the number of strikes, the number of expiration months, and alternative expiration days. Following the restructuring of OPRA in 2003, each exchange became responsible for purchasing sufficient capacity to handle its own quotes generated by the series and classes it listed. Also, when options were first listed, additional strikes were communicated via teletype and firm wires to branch offices, firm back offices, and OCC. As communications were improved, through the use of fax machines and then email, the time to send notifications decreased significantly. Now, with the adoption of Streamline Options Series Adds ("SOSA") by OCC, notification of new strikes is in real time throughout the industry.

<sup>14</sup> 17 CFR 200.30-3(a)(57).

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

has the ability to add additional series at strike prices that are better tailored to the risk management needs of market participants.<sup>5</sup> The Exchange may make the determination to open additional series for trading when the Exchange deems it necessary to maintain an orderly market, to meet customer demand, or when certain price movements take place in the underlying market.<sup>6</sup> If the market need occurs prior to five business days prior to expiration, then the market participants may have access to an option contract that is more tailored to the movement in the underlying stock.<sup>7</sup> However, if the market need to manage risk due to unusual market conditions comes to light anytime from five to two days prior to expiration, then market participants are left without a contract that is tailored to manage their risk.<sup>8</sup> For example:

- On October 17, 2011, a Monday of the week that monthly options expired, Crocs Inc. (CROX) closed at \$26.65.
- After the close of trading the issuer published a warning regarding earnings, and on Tuesday morning the underlying opened at \$17.40.
- The lowest expiring series were the \$18 strike calls and puts. The Exchange was unable to add additional series to tailor the risk management needs of market participants in the stock due in a situation where the stock moves more than 35%.

In this situation, investors had no nearest term strikes to effectively manage their risk in the underlying stock, CROX. Because of the current five-days-before-expiration restriction, investors were unable to tailor their hedging activities in options and effectively manage their risk going into expiration.<sup>9</sup>

The Exchange proposes to permit the listing of additional strikes until the close of trading on the second business day prior to expiration in unusual market conditions. Since expiration of the monthly contract is on a Saturday, the close of trading on the second business day will typically fall on a Thursday. However, in the cases where

Friday is a holiday during which the Exchange is closed, the close of trading on the second business day will occur on a Wednesday. The Exchange will continue to make the determination to open additional series for trading when the Exchange deems it necessary to maintain an orderly market, to meet customer demand, or when certain price movements take place in the underlying market. The proposed change will provide an additional four days to the Exchange to gauge market impact of the underlying stock and to react to any market conditions that would render additional series prior to expiration beneficial to market participants. The Exchange believes that the impact on the market from the proposed change will be very minimal to market participants, however it will be extremely beneficial in that minority of situations where unusual market conditions dictate immediately prior to expiration. The proposal would simply allow participants to adjust their risk exposure in narrow situations when an unusual market event occurred on trading days 2, 3, 4, 5 prior to expiration.

This proposal does not raise any capacity concerns on the Exchange, because the changes have no material difference in impact from the current rules. The Exchange notes the proposed change allows for new strikes that would otherwise be permitted to add under existing rules either on the fifth day prior or immediately after expiration.<sup>10</sup> A strike which opens two days prior to expiration will have minimal impact on quoting, as it adds two series out of hundreds of thousands, and only for a small number of days.<sup>11</sup> Thus, any additional strikes that may be added under the proposed change would have no measurable effect on systems capacity.

The Exchange discussed the proposed listing and trading of series during expiration week with the OCC. The OCC represented that it is able to accommodate the proposal and would have no operational concerns with adding new series on any day except the last day of trading an expiring series.

<sup>10</sup> Any new strikes added under this proposal would be added in a manner consistent with the range limitations described in NYSE Arca Options Rule 6.4A.

<sup>11</sup> In the case of a multi-stock event where multiple stocks may be subject to unusual market conditions, a strike which opens two days prior to expiration will also have minimal impact on quoting, as it adds two series per stock out of hundreds of thousands, and only for a small number of days.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),<sup>12</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>13</sup> in particular, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that providing an additional four days to the Exchange to gauge market impact and to react to any market conditions prior to expiration beneficial [sic] will result in a continuing benefit to investors by giving them more flexibility to closely tailor their investment decisions and hedging decisions prior to expiration. The Exchange also believes that the additional four days will provide the investing public and other market participants with additional opportunities to hedge their investment thus allowing these investors to better manage their risk exposure with additional in the money series. While the four additional days may generate additional quote traffic, the Exchange does not believe that this increased traffic will become unmanageable since the proposal remains limited to the narrow situations when an unusual market event occurred on trading days 2, 3, 4, 5 prior to expiration.

### *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

Within 45 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

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

<sup>13</sup> 15 U.S.C. 78f(b)(5).

<sup>5</sup> See NYSE Arca Options Rule 6.4.

<sup>6</sup> See NYSE Arca Options Rule 6.4(a).

<sup>7</sup> See NYSE Arca Options Rule 6.4(a).

<sup>8</sup> While these situations are relatively rare, the Exchange represents that approximately two times a month there is a legitimate need to add additional strikes closer to expiration than the five business day limitation permits, due to it being necessary to maintain an orderly market, to meet customer demand, or when certain price movements take place in the underlying market.

<sup>9</sup> The Exchange notes that if the proposed rule were in place, the Exchange would have added \$15, \$16, and \$17 strikes expiring the following Saturday.

(ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEARCA-2012-94 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-2012-94. 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 10:00 a.m. and 3:00 p.m. The text of the proposed rule change is available on the Commission's Web site at <http://www.sec.gov>. 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-NYSEARCA-2012-94 and should be submitted on or before October 11, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012-23237 Filed 9-19-12; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67866; File No. SR-Phlx-2012-113]

### Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Electronic Firm Fee Discount

September 14, 2012.

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 September 4, 2012, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III 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 the Electronic Firm Fee Discount in Section II of the Exchange's Pricing Schedule titled "Multiply Listed Options Fees."<sup>3</sup>

The text of the proposed rule change is available on the Exchange's Web site at <http://www.nasdaqtrader.com/micro.aspx?id=PHLXfilings>, at the principal office of the Exchange, on the Commission's Web site at <http://www.sec.gov>, and at the Commission's Public Reference Room.

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> Section II includes options overlying equities, ETFs, ETNs, indexes and HOLDERS which are Multiply Listed.

#### 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 the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The purpose of the proposed rule change is to amend Section II of the Exchange's Pricing Schedule titled "Multiply Listed Options Fees." Specifically, the Exchange is proposing to continue to incentivize Firms to transact electronic orders by providing Firms with an opportunity to pay lower electronic Options Transaction Charges in Penny Pilot and non-Penny Pilot Options fees in Section II of the Pricing Schedule. The Exchange proposes to provide an additional incentive to Firms who have volume greater than 600,000 electronically-delivered contracts in a month.

Today, Firm electronic Options Transaction Charges in Penny Pilot (\$0.40 per contract) and non-Penny Pilot Options (\$0.45 per contract) are reduced to \$0.13 per contract for a given month provided that a Firm has volume greater than 600,000 electronically-delivered contracts in a month ("Electronic Firm Fee Discount"). Under this proposal, the Exchange would continue to assess Firms the reduced electronic Options Transaction Charges in Penny Pilot and non-Penny Pilot Options of \$0.13 per contract, provided the Firm meets the volume criteria. In addition, the Exchange now proposes to reduce the Firm electronic Options Transaction Charges in Penny Pilot (\$0.40 per contract) and non-Penny Pilot Options (\$0.45 per contract) for Complex Orders<sup>4</sup> that add liquidity to no fee or

<sup>4</sup> A Complex Order is any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, priced at a net debit or credit based on the relative prices of the individual components, for the same account, for the purpose of executing a particular investment strategy. Furthermore, a Complex Order can also be a stock-option order, which is an order to buy or sell a stated number