

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.

#### IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>20</sup> that the proposed rule change (SR-NYSEArca-2010-110) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>21</sup>

**Elizabeth M. Murphy,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63747; File No. SR-NYSEArca-2011-03]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Adopting Standards for Market Maker Electronic Quotes That Are Present During an Opening Auction

January 20, 2011.

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 January 13, 2011, 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 and II 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 adopt standards for Market Maker electronic quotes that are present during an opening auction. The text of the proposed rule change is available at the Exchange, the Commission's Public

establishing position limits on futures in commodities, even though such limits could impact a commodity-based exchange-traded product that is under the jurisdiction of the Commission.

<sup>20</sup> 15 U.S.C. 78f(b)(2).

<sup>21</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.

Reference Room, and <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 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 adopt rules governing quote widths for Market Maker electronic quotes that are present during an opening auction, based on a provision of the Rules of NASDAQ OMX PHLX ("Phlx"), by revising the Obligations of Market Makers—OX in Rule 6.37A.

Currently, the only restriction on quote widths for NYSE Arca Market Maker electronic quotes is that they be no more than \$5 wide. The Exchange has found that the absence of more narrow quotes during an opening auction has prevented series from opening promptly and is unnecessarily delaying the execution of orders.

The Exchange proposes to adopt a provision based on Phlx Rule 1014(c)(i)(A)(2)(a). The Phlx rule sets the maximum bid/ask differential for electronic quotes at \$5, but also requires electronic quotes that are submitted during an opening rotation to have a bid/ask differential that is consistent with the quote width requirements for open outcry trading. NYSE Arca intends to modify the requirements of NYSE Arca Rule 6.37A(b) to apply the open outcry quote widths in NYSE Arca Rule 6.37(b)(1) to electronic quotes submitted for possible participation in a Trading Auction as defined in Rule 6.64.<sup>3</sup>

<sup>3</sup> While our proposed rule text is not exactly identical to Phlx Rule 1014(c)(i)(A)(2)(a), the intent and impact of the rule is the same—namely, to provide for narrower quotes during an opening auction, which in turn helps facilitate a prompt and efficient opening. As discussed below, we believe that this proposed rule change qualifies for immediate effectiveness as a "non-controversial" rule change under paragraph (f)(6) of Rule 19b-4. 17 CFR 240.19b-4(f)(6).

Specifically, the Exchange proposes that an electronic quote that is submitted for possible participation in an opening auction must have a bid/ask differential of no more than:

(A) .25 between the bid and the offer for each option contract for which the bid is less than \$2,

(B) no more than .40 where the bid is \$2 or more but does not exceed \$5,

(C) no more than .50 where the bid is more than \$5 but does not exceed \$10,

(D) no more than .80 where the bid is more than \$10 but does not exceed \$20, and

(E) no more than \$1 when the last bid is \$20.10 or more.

These differentials are common in the options industry,<sup>4</sup> and are often referred to as "legal width".

As is currently the case, different bid/ask differentials would be permitted to be established, but only with the approval of at least two Trading Officials.

The Exchange believes that setting a narrower differential for opening auction quotes will expedite the opening of all options series on the Exchange promptly after the opening of the underlying security.

NYSE Arca will implement this rule change upon notification to OTP Holders through the issuance of a Regulatory Bulletin.

###### 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, by expediting the opening auction process and the execution of Customer orders submitted for the opening.

##### 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.

<sup>4</sup> See e.g., Boston Options Exchange Rule Chapter VI Sec. 5(a)(vii), International Securities Exchange Rule 803(b)(4), NASDAQ OMX PHLX Rule 1014(c)(i)(A)(1)(a).

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

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

*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: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>7</sup> and Rule 19b-4(f)(6)(iii) thereunder.<sup>8</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
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2011-03 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-2011-03. 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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549-1090, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange.<sup>9</sup> 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-2011-03 and should be submitted on or before February 17, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Elizabeth M. Murphy,**  
Secretary.

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-63751; File No. SR-FINRA-2011-004]

**Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to the Trading Activity Fee Rate for Transactions in Asset-Backed Securities**

January 21, 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 January 10, 2011, the Financial Industry Regulatory Authority, Inc. ("FINRA") 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 FINRA. 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**

FINRA is proposing to amend Section 1 of Schedule A to the FINRA By-Laws to provide an alternative method of calculating the Trading Activity Fee ("TAF") for transactions in Asset-Backed Securities.

The text of the proposed rule change is available on FINRA's Web site at <http://www.finra.org>, at the principal office of FINRA, on the Commission's Web site at <http://www.sec.gov>, 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, FINRA 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. FINRA has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

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

<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 a self-regulatory organization to provide the Commission with written notice of its 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 fulfilled this requirement.

<sup>9</sup> The text of the proposed rule change is available on the Commission's Web site at <http://www.sec.gov>.

<sup>10</sup> 17 CFR 200.30-3(a)(12).