

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60507; File No. 4-546]

Joint Industry Plan; Notice of Summary Effectiveness on a Temporary Basis of Joint Amendment No. 1 to the Options Order Protection and Locked/Crossed Market Plan, and Notice of Filing of Such Amendment

August 14, 2009.

I. Introduction

Pursuant to Section 11A of the Securities Exchange Act of 1934 (the "Act")¹ and Rule 608 of Regulation NMS thereunder ("Rule 608"),² notice is hereby given that on August 7, 2009, August 7, 2009, August 7, 2009, August 7, 2009, August 11, 2009, August 11, 2009, and August 11, 2009, NYSE Arca, Inc. ("NYSE Arca"), NYSE Amex, LLC ("NYSE Amex"), International Securities Exchange, LLC ("ISE"), NASDAQ OMX BX, Inc. ("BOX"), Chicago Board Options Exchange, Incorporated ("CBOE"), NASDAQ OMX PHLX, Inc. ("Phlx"), and The NASDAQ Stock Market LLC ("Nasdaq") (collectively, "Participants"),³ respectively, filed with the Securities and Exchange Commission ("Commission") an amendment to the Options Order Protection and Locked/Crossed Market Plan ("Plan")⁴ ("Joint Amendment No. 1"). In Joint Amendment No. 1, the Participants propose to modify Section 5(b) of the Plan to eliminate the requirement that policies and procedures be submitted to the Commission for approval. This order summarily puts into effect Joint

Amendment No. 1 on a temporary basis not to exceed 120 days and solicits comment on Joint Amendment No. 1 from interested persons.⁵

II. Description of the Proposed Amendment

The purpose of Joint Amendment No. 1 is to clarify that, while each Participant is required under the Plan to establish, maintain and enforce written policies and procedures that are reasonably designed to prevent Trade-Throughs, there would not be a requirement that these policies and procedures be submitted to the Commission for approval. The Plan requires, and each Participant has represented, that its policies and procedures will be reasonably designed to prevent Trade-Throughs in the Exchange's market in Eligible Options Classes, unless they fall within an exception set forth in Section 5(b) of the Plan. If relying on such exception, the policies and procedures will be reasonably designed to assure compliance with the terms of the exception.

The Participants request that the Commission provide summary effectiveness pursuant to Rule 608(b)(4) of the Act for the purpose of effecting Joint Amendment No. 1 on a temporary basis for 120 days.

III. Discussion

After careful consideration, the Commission finds that the proposed amendment to the Plan is consistent with the requirements of the Act and the rules and regulations thereunder.⁶ Specifically, the Commission finds that the proposed amendment to the Plan is consistent with Section 11A of the Act⁷ and Rule 608 of Regulation NMS thereunder⁸ in that it is appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets. The Commission notes that, as a general matter, it does not approve specific policies and procedures that exchanges use to ensure compliance with their rules or NMS Plan provisions. Rather, the

Commission uses its authority to review and examine exchanges to ensure that exchanges are meeting their regulatory obligations.

In addition, the Commission finds that it is appropriate to summarily put into effect Joint Amendment No. 1 upon publication of this notice on a temporary basis for 120 days. The Commission believes that such action is appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets because it would allow the amendment to become effective prior to the anticipated implementation date of the Plan.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the Joint Amendment No. 1 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. Please include File Number 4-546 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 4-546. 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 Joint Amendment that are filed with the Commission, and all written communications relating to the proposed Joint Amendment 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the proposed Joint Amendment also will be available for inspection and copying at the respective

¹ U.S.C. 78k-1.

² 17 CFR 242.608.

³ See letter from Peter G. Armstrong, NYSE Arca, to Elizabeth Murphy, Secretary, Commission, dated August 6, 2009; letter from Michael Babel, NYSE Amex, to Elizabeth Murphy, Secretary, Commission, dated August 6, 2009; letter from Michael J. Simon, ISE, to Elizabeth Murphy, Secretary, Commission, dated August 6, 2009; letter from Maura A. Looney, Associate Vice President, BX, to Elizabeth Murphy, Secretary, Commission, dated August 6, 2009; letter from Edward J. Joyce, CBOE, to Elizabeth Murphy, Secretary, Commission, dated August 10, 2009; letter from Richard S. Rudolph, Assistant General Counsel, Phlx, to Elizabeth Murphy, Secretary, Commission, dated August 10, 2009; and letter from Jeffrey S. Davis, Vice President and Deputy General Counsel, Nasdaq, to Elizabeth Murphy, Secretary, Commission, dated August 10, 2009. On August 12, 2009, Nasdaq and Phlx submitted letters correcting technical errors in their letters to Elizabeth Murphy, Secretary, Commission, dated August 10, 2009.

⁴ On July 30, 2009, the Commission approved a national market system plan relating to Options Order Protection and Locked/Crossed Markets proposed by CBOE, ISE, Nasdaq, BOX, Phlx, NYSE Amex, and NYSE Arca. See Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009).

⁵ A proposed amendment may be put into effect summarily upon publication of notice of such amendment, on a temporary basis not to exceed 120 days, if the Commission finds that such action is necessary or appropriate in the public interest, for the protection of investors or the maintenance of fair and orderly markets, to remove impediments to, and perfect mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act. See 17 CFR 242.608(b)(4).

⁶ In summarily putting into effect this Joint Amendment No. 1, the Commission has considered its impact on efficiency, competition, and capital formation.

⁷ 15 U.S.C. 78k-1.

⁸ 17 CFR 242.608.

principal office of CBOE, ISE, Nasdaq, BOX, Phlx, NYSE Amex, and NYSE Arca. 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 4–546 and should be submitted on or before September 14, 2009.

IV. Conclusion

It is therefore ordered, pursuant to Section 11A of the Act⁹ and Rule 608 of Regulation NMS,¹⁰ that the proposed Joint Amendment No. 1 is summarily put into effect until December 22, 2009.

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

Florence E. Harmon,
Deputy Secretary.

[FR Doc. E9–20191 Filed 8–21–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60522; File No. SR–NYSEArca–2009–76]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Arca, Inc. Amending NYSE Arca Options Rule 6.76A

August 18, 2009.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b–4 thereunder,³ notice is hereby given that, on August 13, 2009, 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, II, and III below, which Items have been substantially 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 eliminate Rule 6.76A(c) reflecting unimplemented routing functionality. 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 Exchange hereby proposes to eliminate references to exposure before routing functionality from NYSE Arca Options Rule 6.76A(c).⁴ The Exchange has not implemented this functionality and has no plans to implement it. The Exchange does not believe that this functionality is appropriate for the marketplace. As such, the Exchange proposes to delete references to this functionality from its rules.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)⁵ of the Act, in general, and furthers the objectives of Section 6(b)(5),⁶ in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, to enhance competition, and to protect investors and the public interest.

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act⁷ and Rule 19b–4(f)(6) thereunder.⁸ Because the 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 prior to 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁹ and Rule 19b–4(f)(6)(iii) thereunder.¹⁰

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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. Please include File Number SR–NYSEArca–2009–76 on the subject line.

⁷ 15 U.S.C. 78s(b)(3)(A)(iii).

⁸ 17 CFR 240.19b–4(f)(6).

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 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 Commission deems this requirement to be met.

⁹ 15 U.S.C. 78k–1.

¹⁰ 17 CFR 242.608.

¹¹ 17 CFR 200.30–3(a)(29).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b–4.

⁴ See Securities Exchange Act Release No. 34–59846 (April 29, 2009), 74 FR 21033 (May 6, 2009) (notice of filing and immediate effectiveness of SR–NYSEArca–2009–34).

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).