

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were either solicited or received.

**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) becomes 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>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</sup>

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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2009-70 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-Phlx-2009-70. 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 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 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 publicly available. All submissions should refer to File Number SR-Phlx-2009-70 and should be submitted on or before September 18, 2009.

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

**Florence E. Harmon,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-60560; File No. SR-FINRA-2009-045]**

**Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change Relating to Transaction-Related Charges for Trade Reporting to the OTC Reporting Facility**

August 21, 2009.

On July 1, 2009, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to amend Rule 7710, OTC Reporting Facility. The proposed rule change clarifies the application of transaction-related charges for trade reporting to the OTC Reporting Facility ("ORF") by deleting the reference to "OTC Equity Security" in Rule 7710 to

clarify that, from March 5, 2007, until June 17, 2009,<sup>3</sup> the trade reporting charges imposed by the rule applied to trade reports in any security sent to the ORF that were not subject to comparison through the ORF. This change to the rule is necessary to correct an inadvertent mistake made in SR-NASD-2007-018.<sup>4</sup> In SR-NASD-2007-018, FINRA deleted a catch-all phrase from Rule 7010(g) which had the effect of excluding from the rule securities such as PORTAL equity securities, which are specifically excluded from the definition of OTC Equity Security. On June 17, 2009, FINRA filed SR-FINRA-2009-043<sup>5</sup> to correct this mistake prospectively. The change made in the instant rule filing corrects the mistake for the period from March 5, 2007 until June 17, 2009, the date of effectiveness of SR-FINRA-2009-043.

The proposed rule change was published for comment in the **Federal Register** on July 13, 2009.<sup>6</sup> The Commission received no comments on the proposal.

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 association.<sup>7</sup> In particular, the Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>8</sup> which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission believes that the proposed rule change does not raise any novel issues; it is merely designed to accurately reflect FINRA's intent when it filed SR-NASD-2007-018,<sup>9</sup> as well as its members' understanding of the coverage of the rule. The proposal clarifies that the charges that FINRA assessed with respect to transactions that were reported to the ORF from March 5, 2007, until June 17, 2009 are consistent with

<sup>3</sup> March 5, 2007, is the effective date for SR-NASD-2007-018 *infra* and June 17, 2009 is the effective date for SR-FINRA-2009-043.

<sup>4</sup> See Securities Exchange Act Release No. 55538 (March 27, 2007), 72 FR 15924 (April 3, 2007).

<sup>5</sup> See Securities Exchange Act Release No. 60168 (June 24, 2009), 74 FR 31471 (July 1, 2009).

<sup>6</sup> See Securities Exchange Act Release No. 60239 (July 2, 2009), 74 FR 33492.

<sup>7</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>8</sup> 15 U.S.C. 78o-3(b)(6).

<sup>9</sup> See footnote 4, *supra*.

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>10</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.

FINRA's intent when it filed SR-NASD-2007-018.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR-FINRA-2009-045) be, and it hereby is, approved.

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

**Florence E. Harmon,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60549; File No. SR-NYSEArca-2009-75]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Arca, Inc. Amending Permissible Expiration Dates for Flexible Exchange Options

August 20, 2009.

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 August 12, 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 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 amend its rules regarding permissible expiration dates for Flexible Exchange Options ("FLEX Options").<sup>4</sup> The text of the proposed rule change 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 proposal is to correct certain cross-references and modify the permissible expiration dates for FLEX Options. These options are governed by Flexible Exchange Options, Section 4 pursuant to the Rules of NYSE Arca, Inc. Under current NYSE Arca Rule 5.32, FLEX options may not expire on any business day that falls on, or within two business days of, a third Friday-of-the-month expiration day for any Non-FLEX Options (an "Expiration Friday").<sup>5</sup> However, subject to aggregation requirements<sup>6</sup> for cash settled options, the current FLEX Rules do permit the expiration of FLEX Options on the same day that Non-FLEX quarterly index options ("QIX") expire.

The Exchange is now proposing to eliminate the expiration date restriction so that FLEX Options may expire on any given business day. Although the expiration date restrictions would be eliminated, the Exchange notes that position and exercise limits under applicable NYSE Arca rules will continue to apply. FLEX Index Options remain subject to position limits under NYSE Arca Rules 6.8 and 5.35, as applicable. Additionally, all FLEX Options remain subject to the position reporting requirements of NYSE Arca

Rule 6.8. Moreover, the Exchange has the authority, pursuant to NYSE Arca Rule 5.25, to impose additional margin requirements as deemed advisable.

Beyond the above described position limit and reporting requirements for FLEX Options that expire on Expiration Friday, the proposed rule change includes an aggregation requirement under NYSE Arca Rule 5.35 for position limit purposes. Specifically, for as long as the options positions remain open, positions in FLEX Options that expire on Expiration Friday shall be aggregated with positions in Non-FLEX options on the same underlying (e.g., the same underlying security in the case of a FLEX Equity Option and the same underlying index in the case of a FLEX Index Option) (referred to as "Comparable Non-FLEX options"). Such FLEX Options and comparable Non-FLEX options would be subject to the position and exercise limits that are applicable to the Non-FLEX Options.<sup>7</sup> The aggregation requirement would apply to both cash and physically settled options.

In addition, in the case of FLEX Index Options only, the proposed rule change provides that FLEX Index Options expiring on or within two business days of an Expiration Friday may not have an exercise settlement value on the expiration date determined by reference to the closing price of the index or specified averages. Therefore, the exercise settlement value on such expiration dates may only be determined by a.m. settlement values. These limitations on exercise settlement value calculations are intended to serve as a safeguard against potential adverse effects that might be associated with triple witching.<sup>8</sup>

In conjunction with the elimination of the expiration date restriction, the proposed rule change also states that, provided the options on an underlying security or index are otherwise eligible for FLEX trading, FLEX Options will be permitted in puts and calls that do not have the same exercise style, same expiration date and same exercise price

<sup>10</sup> 15 U.S.C. 78s(b)(2).

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

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

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

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

<sup>4</sup> FLEX Options provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices. FLEX Options can be FLEX Index Options or FLEX Equity Options. FLEX Index Options Series may be approved and open for trading on any index that has been approved for Non-FLEX Options trading on the Exchange. FLEX Equity Options may be on underlying securities that have been approved by the Exchange in accordance with NYSE Arca Rule 5.3, which includes but is not limited to stock options and exchange-traded fund options. Both FLEX Index Options and FLEX Equity Options are subject to the FLEX rules in Section 4.

<sup>5</sup> For example, under the current rule, a FLEX Option could expire on the Tuesday before Expiration Friday, but could not expire on the Wednesday or Thursday before Expiration Friday. Similarly, a FLEX Option could expire on the Wednesday after Expiration Friday, but could not expire on the Monday or Tuesday after Expiration Friday. This restriction is hereinafter referred to as the "three business day" expiration restriction.

<sup>6</sup> See NYSE Arca Rule 5.35(b).

<sup>7</sup> Position Limits for Non-FLEX equity options are governed by NYSE Arca Rule 6.8; Exercise Limits for Non-FLEX equity options are governed by NYSE Arca Rule 6.9; Position Limits for Non FLEX index options are governed by Rules 5.15 and 5.16; Exercise Limits for Non Flex index options are governed by Rule 5.18.

<sup>8</sup> The expiration of the contracts for stock index futures, stock index options, and stock options all expire on the same days occurring on the third Friday of March, June, September, and December (which is referred to as "triple witching"). The Exchange's proposed limitations on p.m. exercise settlement values and exercise settlement values based on a specified average would apply during triple witching expirations, as well as on all other Expiration Fridays.