

since the rule's enactment, and (2) update the "subject market" language to make it consistent with the language used in the SEC's Firm Quote Rule (Rule 602 of Regulation NMS), specifically that, if at the time an order for the purchase or sale of the quoted security is presented the member is in the process of effecting a transaction and immediately after the completion of such transaction communicates a revised quotation size, such member shall not be obligated to purchase or sell the quoted security in an amount greater than such revised quotation size.

FINRA will announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following Commission approval.

## 2. Statutory Basis

FINRA believes 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 must 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. FINRA believes that adopting the proposed rules as part of the Consolidated FINRA Rulebook will continue to enhance market quality by providing for increased reliability and usefulness of quotation information. FINRA notes that the proposed rules have been in operation for numerous decades and believes that they have since proven effective in achieving the statutory mandates.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

FINRA does not believe that the proposed rule change will result in 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*

Written comments were neither solicited nor received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 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 (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2009-055 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-FINRA-2009-055. 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 the filing also will be available for inspection and copying at the principal office of FINRA. 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-FINRA-2009-055 and should be submitted on or before October 2, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-21883 Filed 9-10-09; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60614; File No. SR-NYSE-2009-90]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC To Modify Rebates Payable to Designated Market Makers

September 2, 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 31, 2009, New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes 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 changes 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 schedule of rebates payable to Designated Market Makers ("DMMs"), with effect from September 1, 2009. The text of the proposed rule change is available on the Exchange's Web site (<http://www.nyse.com>), at the Exchange's Office of the Secretary, 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

<sup>9</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 *et seq.*

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

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

on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE 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 Statutory Basis for, the Proposed Rule Change*

**1. Purpose**

The Exchange proposes to revise its schedule of rebates paid to DMMs for providing liquidity on the Exchange, with effect from September 1, 2009.

Currently, DMMs receive:

- A rebate of \$0.0030 per share when adding liquidity in round lots of active securities (*i.e.*, securities with an average daily consolidated volume ("ADV") in the previous month equal to or greater than 1,000,000 shares per month) ("More Active Securities") if the More Active Security has a stock price of \$1.00 or more; and

- A rebate of \$0.0035 per share when adding liquidity in round lots of securities that have an ADV of less than 1,000,000 shares per month in the previous month ("Less Active Securities") if the Less Active Security has a stock price of \$1.00 or more. Each DMM also receives all of the market data quote revenue (the "Quoting Share") received by the Exchange from the Consolidated Tape Association under the Revenue Allocation Formula of Regulation NMS with respect to any Less Active Security (regardless of whether the stock price exceeds \$1.00) in any month in which the DMM meets the quoting requirement of Rule 104(a)(1)(A) for that specific security.

DMMs are entitled to the foregoing rebates when (i) posting displayed and non-displayed orders on Display Book, including s-quote and s-quote reserve orders; (ii) when providing liquidity on non-displayed interest using the Capital Commitment Schedule; or, prior to the implementation of the Capital Commitment Schedule, using the following message activities: price improvement, size improvement (PRIN FILL), matching away market quotes;<sup>4</sup> (iii) when executing trades in the crowd and at Liquidity Replenishment Points; and (iv) when providing liquidity on market-at-the-close and limit-at-the-close transactions. Rebates do not apply to executions at the open.

Commencing September 1, 2009, the schedule of rebates for DMMs described

above will be replaced with a new schedule of rebates. Under the revised schedule of rebates, DMMs will receive:

- A rebate of \$0.0025 per share when adding liquidity in round lots of More Active Securities if the More Active Security has a stock price of \$1.00 or more and the DMM quotes at the National Best Bid or Offer ("NBBO") in the applicable security at least 10% of the time in the applicable month ("More Active Securities Quoting Requirement");

- A rebate of \$0.0030 per share when adding liquidity in round lots of More Active Securities if the More Active Security has a stock price of \$1.00 or more and the DMM meets both (i) the More Active Securities Quoting Requirement and (ii) the More Active Securities Quoted Size Ratio Requirement. A DMM will meet the "More Active Securities Quoted Size Ratio Requirement" when the DMM Quoted Size Ratio for an applicable month is 15% of the NYSE Quoted Size. The "NYSE Quoted Size" will be calculated by multiplying the average number of shares quoted on the NYSE at the NBBO by the percentage of time the NYSE had a quote posted at the NBBO. The "DMM Quoted Size Ratio" will be calculated by multiplying the average number of shares of the applicable security quoted at the NBBO by the DMM by the percentage of time during which the DMM quoted at the NBBO;<sup>5</sup>

- A rebate of \$0.0015 per share when adding liquidity in round lots of More Active Securities if the More Active Security has a stock price of \$1.00 or more and the DMM does not meet the More Active Securities Quoting Requirement in the applicable security in the applicable month;

- A rebate of \$0.0035 per share when adding liquidity in round lots of Less Active Securities, if the Less Active Security has a stock price of \$1.00 or more and the DMM quotes at the NBBO in the applicable security at least 15% of the time in the applicable month (the "Less Active Securities Quoting

<sup>5</sup> The following is an example of how the DMM Quoted Size will be calculated:

- The numerator is calculated as follows: if the DMM quotes at the NBBO for an average of 1000 shares for 60% of the time over the course of the month in stock ABC, then the numerator would be 600 shares = (1000 shares × 60% of the time over the course of the month);

- The denominator is calculated as follows: if the NYSE was at the NBBO for an average of 10,000 shares for 70% of the time over the course of the month, then the NYSE Quoted Size is 7,000 shares = (10,000 shares × 70% of the time over the course of the month);

- The DMM Quoted Size Ratio is 8.5% = 600/7000.

Requirement"). Each DMM will also receive all of the Quoting Share the Exchange receives from the Consolidated Tape Association under the Revenue Allocation Formula of Regulation NMS with respect to any Less Active Security (regardless of whether the stock price exceeds \$1.00) in any month in which the DMM meets the Less Active Securities Quoting Requirement for that specific security; and

- A rebate of \$0.0015 per share when adding liquidity in round lots of Less Active Securities if the Less Active Security has a stock price of \$1.00 or more and the DMM does not meet the Less Active Securities Quoting Requirement in the applicable security in the applicable month.

Rebates under the new rebate schedule will be applied when (i) posting displayed and non-displayed orders on Display Book, including s-quote and s-quote reserve orders; (ii) when providing liquidity on non-displayed interest using the Capital Commitment Schedule, and (iii) when executing trades in the crowd and at Liquidity Replenishment Points.<sup>6</sup>

**2. Statutory Basis**

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6<sup>7</sup> of the Act in general and Section 6(b)(4) of the Act<sup>8</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange believes that the proposal does not constitute an inequitable allocation of dues, fees and other charges as providing credits to DMMs when they add liquidity to the market assists in the effective operation of the NYSE's market model. The removal of the reference to the types of messages for which the associated executions qualified for rebates prior to the implementation of the Capital Commitment Schedule is not a substantive change as the Capital Commitment Schedule has been implemented.

*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 purpose of the Act.

<sup>6</sup> When providing liquidity on market-at-the-close and limit-at-the-close transactions, DMMs will continue to receive a rebate of \$0.0005 per share. Rebates do not apply to executions at the open.

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

<sup>8</sup> 15 U.S.C. 78f(b)(4).

<sup>4</sup> The Capital Commitment Schedule has been implemented since this language was included in the Price List and the language is now moot.

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

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)<sup>9</sup> of the Act and Rule 19b-4(f)(2)<sup>10</sup> thereunder.

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-NYSE-2009-90 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-NYSE-2009-90. 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 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 Number SR-NYSE-2009-90 and should be submitted on or before October 2, 2009.

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

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-21884 Filed 9-10-09; 8:45 am]

BILLING CODE 8010-01-P

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-60621; File No. SR-NYSEArca-2009-77]

**Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Amending NYSE Arca Options Rule 5.3(j)**

September 3, 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 19, 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 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 the definition of Futures-Linked Securities for the trading of options on Index-Linked Securities. 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 [www.nyse.com](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 Statutory Basis for, the Proposed Rule Change*

**1. Purpose**

NYSE Arca Rules [sic] 5.3(j) designates the listing and trading of options on equity index-linked securities ("Equity Index-Linked Securities"), commodity-linked securities ("Commodity-Linked Securities"), currency-linked securities ("Currency-Linked Securities"), fixed income index-linked securities ("Fixed Income Index-Linked Securities"), futures-linked securities ("Futures-Linked Securities") and multifactor index-linked securities ("Multifactor Index-Linked Securities"), collectively known as "Index-Linked Securities" (as defined in NYSE Arca Equities Rule 5.2(j)(6)) that are principally traded on a national securities exchange and an "NMS Stock" (as defined in Rule 600 of Regulation NMS under the Securities and Exchange Act of 1934). The Exchange proposes to amend the definition of Futures-Linked Securities for the trading of options on Index-Linked Securities to include products linked to CBOE Volatility Index (VIX) Futures. This proposal is substantially similar to the previously approved NYSE Arca Equities Rule 5.2(j)(6)(v).<sup>4</sup>

Specifically, the Exchange proposes to add the CBOE Volatility Index (VIX) Futures to the definition of a Futures Reference Asset in NYSE Arca Rule 5.3(j)(1)(E).

Index-Linked Securities are designed for investors who desire to participate in a specific market segment by providing exposure to one or more identifiable

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

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

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

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

<sup>25</sup> U.S.C. 78a.

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

<sup>4</sup> See Securities Exchange Act Release No. 34-58968 (November 17, 2008), 73 FR 64647 (SR-NYSEArca-2008-111).