

In its response to the comment, FINRA notes that the Supplementary Material as currently drafted already provides that written policies and procedures regarding orders in foreign securities with no U.S. market be “reasonably designed to obtain the most favorable terms available for the customer” and also requires that members “regularly review these policies and procedures to assess the quality of executions received and update or revise the policies and procedures as necessary.”²⁴ FINRA contends that the commenter’s request for a requirement to provide reasonable notice to customers of a member’s policies and procedures regarding foreign securities with no U.S. market would inappropriately differentiate among a member’s best execution policies and procedures by specifically requiring notification in the context of foreign securities and would be irrelevant to those retail customers that do not trade in foreign securities with no U.S. market.²⁵ FINRA also argues that a requirement requiring periodic review for compliance with the policies at issue is redundant since, under existing FINRA rules, a member is already responsible for reviewing the conduct of its associated persons for compliance with both its policies and procedures and applicable laws and rules in all aspects of its business.²⁶ The Commission believes that the proposed rule, and FINRA’s response, respond to the concerns raised by the commenter.

With respect to the proposed deletion of the Three Quote Rule, FINRA has represented that replacing the Three Quote Rule with the proposed Supplementary Material will improve the handling of customer orders involving securities with limited quotation or pricing information by decreasing the likelihood that execution of these orders will be unnecessarily delayed while still ensuring that members recognize that their best execution obligations apply to these orders.²⁷ The Commission believes that this proposed change will help promote just and equitable principles of trade

and will protect investors and the public interest.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²⁸ that the proposed rule change (SR-FINRA-2011-052) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁹

Kevin M. O’Neill,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65894; File No. SR-NYSEArca-2011-89]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Specifying in Its Rules an Existing Policy Related to the Application of NYSE Arca Options Rule 6.47A

December 5, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that, on November 23, 2011, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ 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 specify in its rules an existing policy related to the application of NYSE Arca Options Rule 6.47A. The text of the proposed rule change is available at the Exchange, at <http://www.nyse.com>, at the

Commission’s Public Reference Room, and at <http://www.sec.gov>.

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

The Exchange proposes to specify in its rules an existing policy related to the application of NYSE Arca Options Rule 6.47A.

NYSE Arca Options Rule 6.47A provides, in part, that Users⁵ may not execute as principal orders they represent as agent unless agency orders are first exposed on the Exchange for at least one second. This requirement gives other market participants an opportunity to participate in the execution of orders before the entering User executes them. The Exchange recognizes, however, that because the Exchange does not identify the User that entered an order to the NYSE Arca system, orders from the same OTP Holder or OTP Firm may inadvertently execute against each other as a result of being entered by different persons and/or systems at the same OTP Holder or OTP Firm. Therefore, when enforcing NYSE Arca Options Rule 6.47A, the Exchange does not consider the inadvertent interaction of orders from the same OTP Holder or OTP Firm within one second to be a violation of the exposure requirement.

When investigating potential violations of NYSE Arca Options Rule 6.47A, the Exchange takes into consideration whether orders that executed against each other within one second in the NYSE Arca system were entered by persons, business units and/or systems at the same OTP Holder or OTP Firm that did not have knowledge

with no U.S. market: (1) Are reasonably designed to obtain favorable terms; (2) provide reasonable notice to customers of the policies and procedures; (3) require periodic review for compliance with policies; and (4) require periodic review of the policies themselves to ensure that they meet the requirements of the rule. *See id.*

²⁴ See FINRA Response to Comment, *supra* note 5, at 2, 3 (citing Supplementary Material .07 to FINRA Rule 5310).

²⁵ *See id.* at 2.

²⁶ *See id.* at 3 (citing NASD Rule 3010(b)(1)).

²⁷ *See* Notice at 65551.

²⁸ 15 U.S.C. 78s(b)(2).

²⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ The term “User” means any OTP Holder, OTP Firm or Sponsored Participant that is authorized to obtain access to the NYSE Arca system pursuant to NYSE Arca Options Rule 6.2A. *See* NYSE Arca Options 6.1A(a)(19).

of the order in the NYSE Arca system.⁶ Commonly, OTP Holders and OTP Firms are able to demonstrate that orders were entered by individuals or systems that did not have the ability to know of the preexisting order in the NYSE Arca system due to information barriers in place at the time the orders were entered.

The Exchange proposes to codify this policy in Commentary .05 to NYSE Arca Options Rule 6.47A. Proposed Commentary .05 would specify that OTP Holders and OTP Firms may demonstrate that orders were entered without knowledge of a preexisting order in the NYSE Arca system represented by the same OTP Holder or OTP Firm by providing evidence that effective information barriers between the persons, business units and/or systems entering the orders on the Exchange were in existence at the time the orders were entered. Commentary .05 would require that such information barriers be fully documented and provided to the Exchange upon request.⁷

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"),⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁹ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. In particular, the Exchange believes that codifying the Exchange's policy that appropriate information barriers may be used to demonstrate that the execution of two orders within one second was inadvertent because the orders were entered without knowledge of each other, would clarify the intent and

application of NYSE Arca Options Rule 6.47A for OTP Holders and OTP Firms.

The Exchange also believes that the proposed rule change is consistent with Section 6(b)(7) of the Act,¹⁰ which requires the rules of an exchange to provide a fair procedure for the disciplining of members and persons associated with members. In particular, by specifying that the information barriers must be fully documented for the purpose of demonstrating that orders were entered without knowledge that there was a pre-existing unexecuted agency or proprietary order on the Exchange, OTP Holders and OTP Firms would be better prepared to properly respond to requests for information by the Exchange in the course of a regulatory investigation. Moreover, while OTP Holders and OTP Firms are generally required to provide information to the Exchange as requested, specifying that OTP Holders and OTP Firms must provide written documentation regarding information barriers within the context of NYSE Arca Options Rule 6.47A would require that all OTP Holders and OTP Firms adhere to the same standard for demonstrating compliance with NYSE Arca Options Rule 6.47A.

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

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become 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 Act¹¹ and Rule 19b-4(f)(6) thereunder.¹²

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 email to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2011-89 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-2011-89. 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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and

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 Exchange has satisfied this requirement.

⁶ The Financial Industry Regulatory Authority, Inc. ("FINRA"), on behalf of the Exchange and pursuant to a Regulatory Services Agreement ("RSA"), conducts routine surveillance to identify instances when an order in the NYSE Arca system is executed against an order entered by the same OTP Holder or OTP Firm within one second.

⁷ Information barrier documentation is reviewed by FINRA on the Exchange's behalf to evaluate whether an OTP Holder or OTP Firm has implemented processes that are reasonably designed to prevent the flow of pre-trade order information given the particular structure of the OTP Holder or OTP Firm. Additionally, information barriers are reviewed as part of the Exchange's examination program, which is also administered by FINRA pursuant to the RSA.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 15 U.S.C. 78f(b)(7).

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the

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–2011–89 and should be submitted on or before December 30, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Kevin M. O'Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65888; File No. SR–Phlx–2011–160]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Firm Related Equity Option Cap

December 5, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on November 22, 2011, 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 Section II of the Fee Schedule entitled “Equity Options Fees” to apply the Firm Related Equity Option Cap to certain proprietary orders of affiliated member organizations.

While fee changes pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on December 1, 2011.

The text of the proposed rule change is available on the Exchange’s Web site at <http://nasdaqtrader.com/micro.aspx?id=PHLXfilings>, 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 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 this proposed rule change is to apply the Firm Related Equity Option Cap to proprietary orders of certain affiliates of member organizations. Currently, Firms are subject to a maximum fee of \$75,000 (“Firm Related Equity Option Cap”). Firm equity option transaction fees and QCC Transaction Fees³, in the aggregate, for one billing month will not exceed the Firm Related Equity Option Cap per member organization when such members are trading in their own proprietary account.⁴ The Firm equity options transaction fees⁵ will be waived for members executing facilitation orders⁶ pursuant to Exchange Rule 1064

³ QCC Transaction Fees apply to QCC Orders as defined in Exchange Rule 1080(o) and 1064(e). For QCC Orders as defined in Exchange Rule 1080(o), and Floor QCC Orders, as defined in 1064(e), a Service Fee of \$0.05 per side will apply once a Firm has reached the Firm Related Equity Option Cap. This \$0.05 Service Fee will apply to every contract side after a Firm has reached the Firm Related Equity Option Cap.

⁴ Once Firms reach the Firm Related Equity Option Cap by incurring qualifying fees, they will not incur additional transaction fees beyond the \$75,000 Firm Related Equity Option Cap for that month as long as those transactions occurred in their own proprietary account. Member organizations must notify the Exchange in writing of all accounts in which the member is not trading in its own proprietary account. The Exchange will not make adjustments to billing invoices where transactions are commingled in accounts which are not subject to the Firm Related Equity Option Cap.

⁵ See Section II of the Exchange’s Fee Schedule for equity option transaction fees.

⁶ A facilitation occurs when a floor broker holds an options order for a public customer and a contra-side order for the same option series and, after providing an opportunity for all persons in the trading crowd to participate in the transaction, executes both orders as a facilitation cross. See

when such members are trading in their own proprietary account.⁷

The Exchange proposes to apply the Firm Related Equity Option Cap to proprietary orders effected for the purpose of hedging the proprietary over-the-counter trading of an affiliate of a member organization that qualifies for the Firm Related Equity Option Cap (“Qualifying Member Organization”). A Qualifying Member Organization would be a 100% wholly-owned affiliate or subsidiary of a member organization that is not a Phlx member organization and is registered as a United States or foreign broker-dealer. In other words, a Qualifying Member Organization must be either a wholly-owned subsidiary of a Phlx member organization or a wholly-owned subsidiary of the parent company of a Phlx member organization. These orders must clear in the customer range at The Options Clearing Corporation and be subject to the fees assessed to Broker-Dealers in order for the trade to be eligible for the Firm Related Equity Option Cap. The Exchange would aggregate the Qualifying Member Organization’s fees in Multiply-Listed options⁸ on the Exchange with the transaction fees of affiliated member organizations in Multiply-Listed options on the Exchange for purposes of determining whether the Qualifying Member Organization has reached the Firm Related Equity Option Cap.

A member organization would be required to certify the affiliate status of any Qualifying Member Organization whose trading activity it seeks to aggregate and to certify that the trades identified as eligible for the Firm Related Equity Option Cap were made for the purposes of hedging proprietary over-the counter [sic] trading of the member organization or its affiliates. The member organization would be required to inform the Exchange immediately of any event that causes an entity to cease to be an affiliate. In addition, member organizations must notify the Exchange in writing of the account(s) designated for purposes of hedging the proprietary over-the-counter trading of the Qualifying Member Organization or its affiliates.⁹

Exchange Rule 1064 entitled “Crossing, Facilitation and Solicited Orders.”

⁷ The waiver would not apply to orders where a member is acting as agent on behalf of a non-member.

⁸ Multiply Listed Securities include those symbols which are subject to rebates and fees in Section I, Rebates and Fees For Adding and Removing Liquidity in Select Symbols, and Section II, Equity Options Fees.

⁹ The Exchange assesses a \$50 Account Fee for each account beyond the number of permits billed to the member organization.

¹³ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.