

why FINRA Rule 4240 addresses in particular CDS transactions that are cleared using the central counterparty clearing facilities of the CME. In response, FINRA notes that, as explained in the Approval Order, the CME requested that FINRA adopt customer margin rules for CDS and suggested a specific customer margin methodology that could be employed.<sup>13</sup> FINRA performed an analysis of the margin methodology suggested by CME, as well as the alternative methodology set forth in Rule 4240(c)(2), prior to proposing Rule 4240. The Approval Order further noted that FINRA will consider proposals it receives from CDS central clearing counterparties in addition to the CME to amend the customer margin rules for CDS and, if appropriate, will propose changes to such rules.

SIFMA suggested certain changes to the margin requirements set forth in FINRA Rule 4240. FINRA believes these suggestions are premature and that additional time is needed to make a meaningful determination about whether Rule 4240 should be made permanent and whether certain provisions should be modified and, if so, to what extent. Consequently, at this time, FINRA is only seeking to extend the Interim Pilot Program and make minor technical changes. Lastly, SIFMA requested clarification as to certain net capital requirements and implementation issues, as well as documentation issues discussed in *Regulatory Notice* 09–30. FINRA notes that it will provide further guidance working with the SEC regarding implementation of Rule 4240, as appropriate.

### 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) 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 Act<sup>14</sup> and Rule 19b–(f)(6) thereunder.<sup>15</sup>

<sup>13</sup> See 74 FR 25589.

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file 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. FINRA has satisfied this requirement.

Normally, a proposed rule change filed under 19b–4(f)(6) may not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. FINRA requested that the Commission waive the 30-day operative delay, so that the proposed rule change may become operative upon filing. The Commission believes that the earlier operative date is consistent with the protection of investors and the public interest because the proposed rule change permits the Exchange to implement without further delay the extension of its pilot program.<sup>16</sup> This will prevent FINRA Rule 4240 from lapsing. Additionally, the Commission extended the temporary exemptions for eligible credit default swaps and therefore agrees with FINRA that it is appropriate to extend the implementation of the Interim Pilot Program to November 30, 2010.<sup>17</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–FINRA–2009–063 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Florence E. Harmon, Deputy Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2009–063. This file number should be included on the subject line if e-mail is used. To help the

<sup>16</sup> For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation.

<sup>17</sup> See *supra* note 6 and accompanying text.

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 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–2009–063 and should be submitted on or before October 22, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–23699 Filed 9–30–09; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60721; File No. SR–NYSEArca–2009–85]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Arca, Inc. Amending Commentary .04 to Rule 6.4 Series of Options Open for Trading

September 25, 2009.

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 September 23, 2009, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange

<sup>18</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.

Commission (the "Commission") the proposed rule change as described in Items I and II 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 Commentary .04 to Rule 6.4 Series of Options Open for Trading in order to establish strike price intervals of \$0.50, beginning at \$1, for certain options classes whose underlying security closed at or below \$3 in its primary market on the previous trading day. 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 proposed rule change is based on a filing submitted by NASDAQ OMX PHLX Inc ("Phlx") that was recently noticed for comment and approved by the Commission.<sup>3</sup>

The purpose of the proposed rule change is to expand the ability of investors to hedge risks associated with stocks trading at or under \$3. Currently, the interval of strike prices of series of options on individual stocks is \$2.50 where the strike price is \$25 or less. Commentary .04 to NYSE Arca Rule 6.4 allows the Exchange to establish \$1 strike price intervals (the "\$1 Strike

Program") on options classes overlying no more than fifty-five individual stocks designated by the Exchange. In order to be eligible for selection into the \$1 Strike Program, the underlying stock must close below \$50 in its primary market on the previous trading day. If selected for the \$1 Strike Program, the Exchange may list strike prices at \$1 intervals from \$1 to \$50, but no \$1 strike price may be listed that is greater than \$5 from the underlying stock's closing price in its primary market on the previous day. The Exchange may also list \$1 strikes on any other option class designated by another securities exchange that employs a similar \$1 Strike Program its own rules.<sup>4</sup> The Exchange is restricted from listing any series that would result in strike prices being within \$0.50 of a strike price set pursuant to Rule 6.4, Commentary .04.

The Exchange is now proposing to establish strike prices of \$1, \$1.50, \$2, \$2.50, \$3, and \$3.50 for certain stocks that trade at or under \$3.00.<sup>5</sup> The listing of these strike prices will be limited to options classes whose underlying security closed at or below \$3 in its primary market on the previous trading day, and which have national average daily volume that equals or exceeds 1000 contracts per day as determined by The Options Clearing Corporation during the preceding three calendar months. The listing of \$0.50 strike prices would be limited to options classes overlying no more than 5 individual stocks (the "\$0.50 Strike Program") as specifically designated by the Exchange. The Exchange would also be able to list \$0.50 strike prices on any other option classes if those classes were specifically designated by other securities exchanges that employed a similar \$0.50 Strike Program under their respective rules.

Currently, the Exchange may list options on stocks trading at \$3 at strike prices of \$1, \$2, \$3, \$4, \$5, \$6, \$7, and \$8 if they are designated to participate

in the \$1 Strike Program.<sup>6</sup> If these stocks have not been selected for the Exchange's \$1 Strike Program, the Exchange may list strike prices of \$2.50, \$5, \$7.50, and so forth, but not strike prices of \$1, \$2, \$3, \$4, \$6, \$7, and \$8.<sup>7</sup> The Exchange is now proposing to amend Commentary .04 to Rule 6.4 by adding new sub-paragraph (b) to list strike prices on options on a number of qualifying stocks that trade at or under \$3.00, not simply those stocks also participating in the \$1 Strike Program, in finer intervals of \$0.50, beginning at \$1 up to \$3.50. Thus, a qualifying stock trading at \$3 would have option strike prices established not just at \$2.50, \$5.00, \$7.50, and so forth (for stocks not in the Exchange's \$1 Strike Program) or just at \$1, \$2, \$3, \$4, \$5, \$6, \$7, and \$8 (for stocks designated to participate in the \$1 Strike Program), but rather at strike prices established at \$1, \$1.50, \$2, \$2.50, \$3, and \$3.50.<sup>8</sup>

The Exchange believes that current market conditions demonstrate the appropriateness of the new strike prices. Recently the number of securities trading below \$3.00 has increased dramatically.<sup>9</sup> Unless the underlying stock has been selected for the \$1 Strike Program, there is only one possible in-the-money call (at \$2.50) to be traded if an underlying stock trades at \$3.00. Similarly, unless the underlying stock has been selected for the \$1 Strike Program, only one out-of-the-money strike price choice within 100% of a stock price of \$3 is available if an investor wants to purchase out-of-the-money calls. Stated otherwise, a purchaser would need over a 100% move in the underlying stock price in order to have a call option at any strike price other than the \$5 strike price become in-the-money. If the stock is selected for the \$1 Strike Program, the available strike price choices are somewhat broader, but are still greatly limited by the proximity of the \$3 stock

<sup>6</sup> Additionally, market participants may be able to trade \$2.50 strikes on the same option at another exchange, if that exchange has elected not to select the stock for participation in its own similar \$1 Strike Program.

<sup>7</sup> Again, market participants may also be able to trade the option at \$1 strike price intervals on other exchanges, if those exchanges have selected the stock for participation in their own similar \$1 Strike Program.

<sup>8</sup> The option on the qualifying stock could also have strike prices set at \$5, \$7.50, and so forth at \$2.50 intervals or, if it has been selected for the \$1 Strike Program, at \$4, \$5, \$6, \$7, and \$8.

<sup>9</sup> As of July 31, 2009, stocks trading at or below \$3 include E\*Trade Financial Corporation, Ambac Financial Group, Inc., Alcatel-Lucent, Federal Home Loan Mortgage Corporation (Freddie Mac) and Federal National Mortgage Association (Fannie Mae). A number of these stocks are widely held and actively traded equities, and the options overlying these stocks also trade actively on NYSE Arca.

<sup>3</sup> See Exchange Act Release No. 60466 (August 10, 2009), 74 FR 41475 (August 17, 2009) (SR-Phlx-2009-65). Approved in Exchange Act Release No. 60694 (September 18, 2009).

<sup>4</sup> The Exchange may not list long-term option series ("LEAPS") at \$1 strike price intervals for any class selected for the Program.

<sup>5</sup> The Exchange recently amended NYSE Arca Rule 5.4, Withdrawal of Approval of Underlying Securities or Options, to eliminate the \$3 market price per share requirement for continued approval for an underlying security. The amendment eliminated the prohibition against listing additional series or options on an underlying security at any time when the price per share of such underlying security is less than \$3. The Exchange explained in that proposed rule change that the market price for a large number of securities has fallen below \$3 in the current volatile market environment. See Securities Exchange Act Release No. 59349, SR-NYSEArca-2009-07 (February 3, 2009), 74 FR 6939 (February 11, 2009).

price to zero, and the very large percent gain or loss in the underlying stock price, relative to a higher priced stock, that would be required in order for strikes set at \$1 or away from the stock price to become in-the-money and serve their intended hedging purpose.

As a practical matter, a low-priced stock by its very nature requires narrow strike price intervals in order for investors to have any real ability to hedge the risks associated with such a security or execute other related options trading strategies. The current restriction on strike price intervals, which prohibits intervals of less than \$2.50 (or \$1 for stocks in the \$1 Strike Program) for options on stocks trading at or below \$3, could have a negative affect on investors. The Exchange believes that the proposed \$0.50 strike price intervals would provide investors with greater flexibility in the trading of equity options that overlie lower priced stocks by allowing investors to establish equity option positions that are better tailored to meet their investment objectives. The proposed new strike prices would enable investors to more closely tailor their investment strategies and decisions to the movement of the underlying security. As the price of stocks decline below \$3 or even \$2, the availability of options with strike prices at intervals of \$0.50 could provide investors with opportunities and strategies to minimize losses associated with owning a stock declining in price.

With regard to the impact on system capacity, NYSE Arca has analyzed its capacity and represents that it and the Options Price Reporting Authority have the necessary systems capacity to handle the additional traffic associated with the listing and trading of an expanded number of series as proposed by this filing.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) <sup>10</sup> of the Securities Exchange Act of 1934 (the "Act"), in general, and furthers the objectives of Section 6(b)(5) <sup>11</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 expanding the ability of investors to hedge risks associated with stocks trading at or below \$3. The proposal should create

greater trading and hedging opportunities and flexibility, and provide customers with the ability to more closely tailor investment strategies to the price movement of the underlying stocks, trading in many of which is highly liquid.

### 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: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to 19(b)(3)(A) of the Act <sup>12</sup> and Rule 19b-4(f)(6) thereunder. <sup>13</sup>

The Exchange has requested that the Commission waive the 30-day operative delay to permit the Exchange to compete effectively with Phlx by being able to list the same strike prices as Phlx. The Commission recently approved SR-Phlx-2009-65, <sup>14</sup> and therefore finds that waiver of the operative delay is consistent with the protection of investors and the public interest because such waiver will encourage fair competition among the exchanges. Therefore, the Commission designates the proposal operative upon filing. <sup>15</sup>

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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 is deemed to have satisfied this requirement.

<sup>14</sup> See Securities Exchange Act Release No. 60694 (September 18, 2009) (SR-Phlx-2009-65) (order approving a \$0.50 strike program substantially the same as the \$0.50 Strike Program proposed by NYSEArca).

<sup>15</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the

proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-NYSEArca-2009-85 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-2009-85. 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 the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying

proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

<sup>11</sup> 15 U.S.C. 78f(b)(5).

information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2009-85 and should be submitted on or before October 22, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-23698 Filed 9-30-09; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60716; File No. SR-NYSEArca-2009-70]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving Proposed Rule Change Amending Rule 10.12 (Minor Rule Plan)

September 24, 2009.

On July 29, 2009, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") 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 amending NYSE Arca Rule 10.12 (Minor Rule Plan) ("MRP") to incorporate additional violations into the MRP, and to increase the fine levels for certain MRP violations. The proposed rule change was published for comment in the **Federal Register** on August 24, 2009.<sup>3</sup> The Commission received no comments regarding the proposal. This order approves the proposed rule change.

The Exchange proposes to amend its MRP to incorporate violations for trading in restricted classes, and failure to report position and account information. Specifically, the Exchange proposes to implement a fine schedule for Options Trading Permit ("OTP") Holders that affect opening transactions in restricted series of options, inconsistent with the terms of any such restriction, in violation of Rule 5.4(a). This fine will consist of \$1,000 for the first violation during a rolling 24-month period, \$2,500 for a second violation within the same period, and \$5,000 for a third violation during the same period. The Exchange also proposes to incorporate violations for failing to

accurately report position and account information to the Exchange on a Large Option Position Report ("LOPR") pursuant to Rule 6.6(a). This fine will consist of \$1,000 for the first violation in a rolling 24-month period, \$2,500 for a second violation within the same period, and \$5,000 for a third violation within the same period. The Exchange believes that, in most cases, violations of trading in restricted classes and violations of LOPR reporting may be handled efficiently through the MRP. However, any egregious activity or activity that is believed to be manipulative will continue to be subject to formal disciplinary proceedings.<sup>4</sup>

The Exchange also proposes to increase fines for violations of NYSE Arca Rules 6.46(a),<sup>5</sup> 6.47A,<sup>6</sup> and 6.75<sup>7</sup> to \$1,000 for the first violation in a rolling 24-month period, \$2,500 for a second violation within the same period, and \$5,000 for a third violation within the same period. The MRP currently provides for fines of \$1,000 for the first violation of Rule 6.46(a) in a rolling 24-month period, \$2,500 for a second violation within the same period, and \$3,500 for a third violation within the same period. The MRP currently provides for fines of \$500 for the first violation of Rule 6.47A in a rolling 24-month period, \$1,000 for a second violation within the same period, and \$2,500 for a third violation within the same period. The MRP currently provides for a fine of \$500 for the first violation of Rule 6.75 in a rolling 24-month period, \$1,000 for a second violation within the same period, and \$2,000 for a third violation within the same period. The Exchange believes that, given the nature of these violations, the current fine levels are inadequate, and that increased fines for

these violations are needed to deter future violations.<sup>8</sup>

The Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>9</sup> In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,<sup>10</sup> which requires that the rules of an exchange be designed to, among other things, protect investors and the public interest. The Commission also believes that the proposal is consistent with Sections 6(b)(1) and 6(b)(6) of the Act,<sup>11</sup> which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of Commission and exchange rules. Furthermore, the Commission believes that the proposed changes to the MRP should strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities as a self-regulatory organization in cases where full disciplinary proceedings are unsuitable in view of the minor nature of the particular violation. Therefore, the Commission finds that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d-1(c)(2) under the Act,<sup>12</sup> which governs minor rule violation plans.

In approving this proposed rule change, the Commission in no way minimizes the importance of compliance with NYSE Arca rules and all other rules subject to the imposition of fines under the MRP. The Commission believes that the violation of any self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, the MRP provides a reasonable means of addressing rule violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Commission expects that NYSE Arca will continue to conduct surveillance with due diligence and make a determination based on its findings, on a case-by-case basis, whether a fine of more or less than the recommended amount is appropriate for a violation under the MRP or whether a violation requires formal disciplinary

<sup>4</sup> See Notice, *supra* note 3, 74 FR at 42725-26.

<sup>5</sup> NYSE Arca Rule 6.46(a) requires that a Floor Broker handling an order use due diligence to execute the order at the best price or prices available to him, in accordance with the Rules of the Exchange.

<sup>6</sup> NYSE Arca Rule 6.47A states that users may not execute as principal orders they represent as agent unless (i) agency orders are first exposed on the Exchange for at least one second or (ii) the user has been bidding or offering on the Exchange for at least one second prior to receiving an agency order that is executable against such bid or offer.

<sup>7</sup> NYSE Arca Rule 6.75 states that the highest bid/lowest offer shall have priority over all other orders. In the event there are two or more bids/offers for the same option contract representing the best price and one such bid/offer is displayed in the Consolidated Book, such bid shall have priority over any other bid at the post. In addition, if two or more bids/offers represent the best price and a bid/offer displayed in the Consolidated Book is not involved, priority shall be afforded to such bids in the sequence in which they are made. Rule 6.75 also contains certain provisions related to split-price priority and priority of complex orders.

<sup>8</sup> See Notice, *supra* note 3, 74 FR at 42726.

<sup>9</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> 15 U.S.C. 78f(b)(1) and 78f(b)(6).

<sup>12</sup> 17 CFR 240.19d-1(c)(2).

<sup>16</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.

<sup>3</sup> See Securities Exchange Act Release No. 60518 (August 18, 2009), 74 FR 42725 ("Notice").