

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 information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-Phlx-2009-89 and should be submitted on or before November 18, 2009.

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

**Elizabeth M. Murphy,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60855; File No. SR-NYSEArca-2009-92]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Amending Obligations of Lead Market Makers

October 21, 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 October 14, 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, 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 make changes to NYSE Arca Rule 6.82(c)—Obligations of Lead Market Makers. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and [www.nyse.com](http://www.nyse.com).

#### 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 proposes to amend NYSE Arca Options Rule 6.82(c)(5) to remove the requirement that an LMM designate a back-up LMM and add a provision obligating an LMM to notify a Trading Official in the event the LMM is not accessible. In addition, the Exchange proposes that if such LMM is not accessible, the Exchange may designate a back-up LMM.

The requirement that each LMM designates a back-up LMM was initially established to help ensure that there would be adequate liquidity in a given issue in the event the appointed LMM was unavailable. At the time, the NYSE Arca options market was strictly floor-based, many Lead Market Makers were individuals, and there may have only been a few Market Makers in any given issue. Therefore, it was necessary to have a designated back-up LMM ready to take over as LMM, should the appointed LMM be unable to fulfill its obligations. In return for fulfilling the obligations of the LMM, the back-up LMM (when acting in that capacity) would also be entitled to all rights afforded to the assigned LMM.

The rationale underlying this rule has since become antiquated because today's electronic-based trading results in fewer absences and there are a sufficient number of Market Maker firms assigned to each issue that are able to provide liquidity in the event of a LMM's temporary absence. Also, since nearly all option issues traded on NYSE Arca are traded on multiple exchanges, the historical risk to be managed by the current rule (namely, the ability of the Exchange to foster the provision of liquidity for investors) is no longer present.

Pursuant to the changes proposed to Rule 6.82(c)(5), an LMM must promptly

notify a Trading Official if it is not accessible during the trading day. In the event an LMM is not accessible, it will not be eligible to receive any of the rights afforded to LMMs as contained in Rule 6.82(d). In those instances, the Exchange may designate an approved LMM<sup>3</sup> to act as a back-up LMM. In selecting an approved LMM to act in a back-up capacity, the Exchange will select an LMM that appears best able to perform the functions of the LMM. In designating a back-up LMM, the Exchange will use criteria consistent with LMM allocation procedures contained in Rule 6.82(e). The Exchange believes that this process is more beneficial to all market participants because the Exchange is in the best position to identify an appropriate back-up LMM.

It should be noted that the Exchange intends to designate a back-up LMM only in situations where the incumbent LMM is temporarily not accessible. In the event of a long-term absence, or permanent vacancy, the Exchange may either designate an Interim LMM pursuant to Rule 6.82(b)(4) or reallocate the issue to another LMM pursuant to Rule 6.82(f).

Upon the operative date of this rule change, all previously executed agreements between LMMs and back-up LMMs will be considered null and void. In addition, OTP Holders will no longer be required to designate a back-up LMM when applying to become an LMM. This rule change does not in any way revise or amend any other Exchange rules, including those rules pertaining to qualifications, obligations, and rights of LMMs.

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)<sup>4</sup> of the Act, in general, and furthers the objectives of Section 6(b)(5),<sup>5</sup> 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.

<sup>3</sup> An "approved LMM" is an individual or entity that has been deemed qualified to be an LMM pursuant to Rule 6.82.

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

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

<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.

*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 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 Act<sup>6</sup> and Rule 19b-4(f)(6) thereunder.<sup>7</sup>

A proposed rule change filed under Rule 19b-4(f)(6) of the Act<sup>8</sup> normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b-4(f)(6)<sup>9</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.

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-2009-92 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-2009-92. 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 Section, 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 will also 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-NYSEArca-2009-92 and should be submitted on or before November 18, 2009.

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

**Elizabeth M. Murphy,**  
Secretary.

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-60858; File No. SR-CBOE-2009-077]

**Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Chicago Board Options Exchange Stock Exchange Fees Schedule Related to Stock Component of Stock-Option Cross Trade**

October 21, 2009.

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> notice is hereby given that on October 16, 2009, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") 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. CBOE has designated this proposal as one establishing or changing a due, fee, or other charge applicable only to a member under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. 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 CBOE Stock Exchange ("CBSX") Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.org/legal>), at the Exchange's Office of the Secretary, and at the Commission.

**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,

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

<sup>2</sup> 17 CFR 240.19b-4.

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

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

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</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 has satisfied this requirement.

<sup>8</sup> 17 CFR 240.19b-4(f)(6).

<sup>9</sup> *Id.*

<sup>10</sup> 17 CFR 200.30-3(a)(12).