

is consistent with Section 6(b) of the Act<sup>5</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>6</sup> in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The fees assessed for XDV are the same fees assessed on members and member organizations for other U.S. Dollar-Settled Foreign Currency Options.

#### *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 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 either solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>7</sup> and paragraph (f)(2) of Rule 19b-4<sup>8</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 proposal 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 No. SR-Phlx-2010-46 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 No. SR-Phlx-2010-46. 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 changes 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 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 No. SR-Phlx-2010-46 and should be submitted on or before April 20, 2010.

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

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-6994 Filed 3-29-10; 8:45 am]

**BILLING CODE 8011-01-P**

### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-61759; File No. SR-NYSEArca-2010-16]

### **Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Amending Rule 6.37A and Rule 6.64**

March 23, 2010.

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 March 11, 2010, 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 Rule 6.37A and Rule 6.64. The text of the proposed rule change is available on the Commission's Web site at <http://www.sec.gov>. 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 Statutory Basis for, the Proposed Rule Change*

##### **1. Purpose**

The purpose of the proposed rule change is to: (i) Amend the bid-ask differentials for Market Maker quotations outlined in Rule 6.37A(b)(4), and (ii) amend Rule 6.64(b) by establishing guidelines for the use of bid-ask parameters in the OX System to be used during the opening auction process ("Auction").<sup>4</sup>

Currently, Rule 6.37A(b)(4) specifies the bid-ask differential requirements applicable to Market Maker quotations when electronically bidding and offering on the OX System during an Auction. With respect to bidding and

<sup>4</sup> An Auction is the process by which trading is initiated in a specified options class on NYSE Arca. Auctions are conducted automatically by the OX system, NYSE Arca's electronic system for order handling, execution and reporting.

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

<sup>6</sup> 15 U.S.C. 78f(b)(4).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>8</sup> 17 CFR 240.19b-4(f)(2).

<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.

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

offering during an Auction, the bid-ask differentials<sup>5</sup> vary depending on the price of the bid. Rule 6.37A(b)(4)(A)–(E) states that the quote widths shall not be more than: \$0.25 if the bid is less than \$2; \$0.40 where the bid is at least \$2 but does not exceed \$5; \$0.50 where the bid is more than \$5 but does not exceed \$10; \$0.80 where the bid is more than \$10 but does not exceed \$20; and \$1 where the bid is more than \$20. With respect to electronic quoting on the OX System, after an Auction, the bid-ask differential requirement is \$5. The Exchange now proposes to replace the applicable bid-ask differentials for Market Maker quoting obligations during an Auction, with the \$5 quote differential that is in place at all other times.

The obligation for market makers to provide opening quotes at the widths described in 6.37A(b)(4)(A)–(E) had been adapted from the era when the Exchange conducted open outcry opening rotations, had only open outcry quotes available to respond to an order, and did not disseminate Firm Quotes. Further, an open outcry opening rotation only required a response from a single Market Maker. The opening quote represented the quote of any Market Maker who did not respond vocally to the Order Book Official, and any such Market Maker could be held to fill orders at that quoted market.

With the advent of electronic quote submission, a Market Maker was required to submit an electronic quote to participate in the opening process. Originally, electronic openings in options were designed to mimic open outcry opening rotations, with trading systems gathering opening electronic quotes for a brief period of time after the underlying security opened.

The original intent of maintaining the obligation for Market Makers to submit narrow, traditional bid-ask requirements for OX was to encourage a narrower aggregated Exchange market during the opening auction. This was especially necessary as NYSE Arca was often the first market to open a series, and there was not necessarily an accurate National Best Bid/Offer available, and OX did not require a “legal width” NBBO quote to open a series.

Since the time of the original introduction of the OX System, however, NYSE Arca has instituted increased functionality to define price parameters during the auction process. The system will not conduct an auction in a series until one of two conditions is met: (i) A market maker submits a

legal width quote, or (ii) a legal width NBBO is received from OPRA. This is a systemic solution which renders the rules based quoting obligation moot.

At the introduction of the OX system for NYSE Arca in the fall of 2006, the quoting obligation for all Market Makers other than Lead Market Makers was set at 60%. In January 2008, with the approval of NYSE Arca–2007–121,<sup>6</sup> the Lead Market Maker quoting obligation was lowered to 90%. With these reduced obligations, there is no requirement for a Market Maker to submit a quotation for an opening auction. The auction quote width requirement thus imposes limits on a non-existent obligation.

In this regard, the Exchange notes that the market structure on NYSE Arca creates strong incentives for competing Market Makers to disseminate competitive prices for the opening. To ensure that orders executed during an Auction are not subject to disadvantageous pricing, NYSE Arca proposes to establish parameters for the opening auction as described in Rule 6.64. Pursuant to this proposed rule change, the OX System will not conduct an Auction in a given series unless the composite NYSE Arca bid-ask (“BBO”) <sup>7</sup> is within an acceptable range. For the purposes of the Auction, an acceptable range will be the bid-ask parameters pursuant to Rule 6.37(b)(1)(A)–(E). The Exchange notes that these bid-ask differentials are identical to the existing legal width differentials for Market Maker Auction quotations which this filing proposes to delete. The Exchange feels that by establishing price protection parameters within the Auction process of the OX System, rather than just as a requirement for submitted quotes, Customers and other market participants will be afforded a higher level of price protection than they presently have on NYSE Arca. The Exchange notes that this proposed change is for trading on the Exchange’s electronic trading platform, and does not in any way affect the bid-ask differentials applicable to open-outcry trading.

The Exchange also proposes at this time a minor change to Rule 6.87–Obvious Errors and Catastrophic Errors. Rule 6.87(b)(2)(B) presently contains a reference to bid-ask differentials pursuant to Rule 6.37A(b)(4)–(5). Due to

<sup>6</sup> Exchange Act Release No. 57186 (January 22, 2008) FR73–4931 [sic] (January 28, 2008).

<sup>7</sup> The composite BBO may be made up an individual market maker quote, a combination of different market maker quotes where one quote represents the bid and another represents the offer, or a combination of market maker quotes and limited orders in the Consolidated Book.

the proposed changes contained in this filing related to the bid-ask differentials of Rule 6.37A(b)(4)–(5), the Exchange proposes to now reference the bid-ask differentials contained in Rule 6.37(b)(1)(A)–(E). The bid-ask differentials of each rule are identical, therefore the change will not alter in any way the methods used by the Exchange when making Obvious Error determinations.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>9</sup> in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system by setting price parameters for the opening Auction rather than rely on a restriction that does not have obligatory performance.

### *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

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 the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

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

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>5</sup> The Auction bid-ask differentials are known in common parlance as “legal-width quotes”.

#### 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-2010-16 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-2010-16. 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 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 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-2010-16 and should be submitted on or before April 20, 2010.

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

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-6992 Filed 3-29-10; 8:45 am]

**BILLING CODE 8011-01-P**

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61754; File No. SR-CBOE-2010-029]

#### **Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delete Outdated References in the Exchange Fees Schedule**

March 22, 2010.

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 March 16, 2010, Chicago Board Options Exchange, Incorporated ("CBOE" 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 Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> 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 delete outdated references to the old linkage plan in its fees schedule. The text of the proposed rule change is available on CBOE's Web site at <http://www.cboe.org/legal>, on the Commission's Web site at <http://www.sec.gov>, at CBOE, 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

The filing proposes to (i) eliminate references in the fee schedule to execution charges for inbound "Linkage Orders" which only applied to the execution of linkage orders under the old linkage plan (which is no longer in use); (ii) delete references to the old linkage in footnote (6) regarding the marketing fee; (iii) delete references to the old linkage in footnote (14) regarding a surcharge fee; and (iv) eliminate Section 21 of the fee schedule which provided for DPM linkage fee credits under the old linkage plan.

##### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act")<sup>5</sup> and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.<sup>6</sup> Specifically, the Exchange believes that by simplifying the fee schedule to delete outdated references, the proposed rule change is consistent with the Section 6(b)(5)<sup>7</sup> requirements that the rules of an exchange be 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.

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

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

<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.

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

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

<sup>5</sup> 15 U.S.C. 78a.

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

<sup>7</sup> 15 U.S.C. 78f(b)(5).