

they apply uniformly to all ETP Holders. The proposed changes will become operative on July 1, 2010.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934 (the "Act"),<sup>4</sup> in general, and Section 6(b)(4) of the Act,<sup>5</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 proposed changes to the Schedule are reasonable and equitable in that they apply uniformly to all ETP Holders.

### 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

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)<sup>6</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>7</sup> thereunder, because it establishes a due, fee, or other charge imposed by NYSE Arca on its members.

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-2010-62 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-2010-62. 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 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 offices 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-2010-62, and should be submitted on or before August 2, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Elizabeth M. Murphy,**  
Secretary.

[FR Doc. 2010-16852 Filed 7-9-10; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62454; File No. SR-FINRA-2010-030]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Adopt FINRA Rule 11000 Series (Uniform Practice Code) in the Consolidated FINRA Rulebook

July 6, 2010.

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 June 14, 2010, Financial Industry Regulatory Authority, Inc. ("FINRA") (t/k/a National Association of Securities Dealers, Inc. ["NASD"]) filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by FINRA. 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 the Substance of the Proposed Rule Change

FINRA is proposing to adopt the NASD Rule 11000 Series (Uniform Practice Code ["UPC"]) as FINRA rules in the consolidated FINRA rulebook, subject to certain amendments, and to delete NASD Rule 3370 (Purchases) and the following corresponding provisions in the Incorporated NYSE Rules and Interpretations: 176 (Delivery Time), 180 (Failure to Deliver), 282 (Buy-in Procedures) and its Supplementary Material paragraphs .10-.80, 291 (Failure to Fulfill Closing Contract), 292 (Restrictions on Members' Participation in Transaction to Close Defaulted Contracts), 293 (Closing Contracts in Suspended Securities), 294 (Default in Loan of Money), 387 (COD Orders) and its Supplementary Material paragraphs .10-.60, Rule 387 Interpretations/01-/18, 430 (Partial Delivery of Securities to Customers on C.O.D. Purchases), and Rule 430 Interpretation/01.<sup>3</sup>

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning

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

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

<sup>3</sup> The text of the proposed rule change is available on FINRA's Web site at <http://www.finra.org>.

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

<sup>5</sup> 15 U.S.C. 78f(b)(4).

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

<sup>7</sup> 17 CFR 240.19b-4(f)(2).

<sup>8</sup> 17 CFR 200.30-3(a)(12).

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. FINRA has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.<sup>4</sup>

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

As part of the process of developing a new consolidated rulebook ("Consolidated FINRA Rulebook"),<sup>5</sup> FINRA is proposing to adopt the NASD Rule 11000 Series (Uniform Practice Code ["UPC"]) into the Consolidated FINRA Rulebook, subject to certain amendments described below. The UPC was originally adopted on January 20, 1941, and became effective on August 1, 1941. The UPC prescribes the manner in which over-the-counter securities transactions other than those cleared through a registered clearing agency are compared, cleared, and settled between member firms.

As a general matter, the UPC does not apply to:

- a. Transactions in securities between members that are compared, cleared, or settled through the facilities of a registered clearing agency;
- b. Transactions in securities exempted under Section 3(a)(12) of the Act or municipal securities as defined in Section 3(a)(29) of the Act;
- c. Transactions in redeemable securities issued by companies registered under the Investment Company Act of 1940; or
- d. Transactions in Direct Participation Program securities.

The UPC is designed to make uniform, where practicable, custom, practice, usage, and trading technique in the investment banking and securities business, particularly with respect to operational and settlement issues. This

<sup>4</sup> Some of the text of the summaries prepared by FINRA may have been modified by the Commission.

<sup>5</sup> The current FINRA rulebook consists of (1) FINRA Rules, (2) NASD Rules, and (3) rules incorporated from NYSE ("Incorporated NYSE Rules") (together, the NASD Rules and Incorporated NYSE Rules are referred to as the "Transitional Rulebook"). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). The FINRA Rules apply to all FINRA members unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, see *Information Notice*, March 12, 2008 (Rulebook Consolidation Process).

can include such matters as trade terms, deliveries, payments, dividends, rights, interest, stamp taxes, claims, assignments, powers of substitution, due-bills, transfer fees, and marking to the market. The UPC, among other things, was created so that the transaction of day-to-day business by members may be simplified and facilitated.

1. UPC Rules Generally

FINRA is proposing to transfer a significant portion of the NASD Rule 11000 Series into the Consolidated FINRA Rulebook with the minor changes detailed below.<sup>6</sup> Specifically, FINRA is proposing to update certain terminology in the UPC. For example, NASD Rule 11120 defines the term "written notice" as used in the UPC to include a notice delivered by hand, letter, teletype, telegraph, TWX, facsimile transmission, or other comparable media. FINRA is proposing to delete the references to teletype, telegraph, and TWX and to include notice delivered by electronic mail. In addition, FINRA is proposing to update cross-references throughout the rules and to make other minor changes primarily to reflect the new conventions of the Consolidated FINRA Rulebook.

2. Proposed FINRA Rules 11111 (Refusal To Abide by Rulings of the Committee) and 11112 (Review by Panels of the UPC Committee)

FINRA is proposing to adopt two new provisions that are largely based on former NASD IM-11890-1 (Refusal To Abide by Rulings) and NASD IM-11890-2 (Review by Panels of the UPC Committee).<sup>7</sup> FINRA is proposing that the provisions of former NASD IM-11890-1 be incorporated into and merged with current NASD IM-11110 (Refusal To Abide by Rulings of the Committee) into proposed new FINRA Rule 11111, as the two provisions are largely identical. Former NASD IM-11890-1 provided that a refusal by a member to take action necessary to effectuate a final decision of a FINRA officer or the UPC Committee under NASD Rule 11890 (Clearly Erroneous Transactions) would be considered conduct inconsistent with just and

<sup>6</sup> NASD Rules 11890 (Clearly Erroneous Transactions), IM-11890-1 (Refusal To Abide by Rulings), and IM-11890-2 (Review by Panels of the UPC Committee) were adopted, with significant changes, into the Consolidated FINRA Rulebook as the FINRA Rule 11890 Series (Clearly Erroneous Transactions) pursuant to a separate rule filing and are not being addressed as part of this rule filing. Securities Exchange Act Release No. 61080 (Dec. 1, 2009), 74 FR 64117 (Dec. 7, 2009) (SR-FINRA-2009-068).

<sup>7</sup> *Id.*

equitable principles of trade. Current NASD IM-11110 provides that a refusal by a member to abide by an official ruling of the UPC Committee, acting within its appropriate sphere, shall be considered conduct inconsistent with just and equitable principles of trade. Proposed FINRA Rule 11111 would merge the two provisions by providing that a refusal by a member to take action necessary to effectuate a final decision of a FINRA officer or the UPC Committee under the UPC Code (FINRA Rule 11000 Series) or other FINRA rules that permit review of FINRA decisions by the UPC Committee would be considered conduct inconsistent with just and equitable principles of trade.

FINRA is also proposing that the provisions of former NASD IM-11890-2, which applied only to rulings under NASD Rule 11890, be adopted as proposed new FINRA Rule 11112 (Review by Panels of the UPC Committee) and be generally applicable to all rulings by the UPC Committee. Proposed FINRA Rule 11112 would provide that a decision of the UPC Committee may be rendered by a panel of the Committee, which shall consist of three or more members of the UPC Committee, provided no more than 50 percent of the members of any panel are directly engaged in market making activity or employed by a firm whose revenues from market making activity exceed ten percent of its total revenues.

3. Proposed FINRA Rules 11810 (Buying-In) and 11810.03 (Sample Buy-In Forms)

FINRA is proposing that NASD Rule 11810 (Buying-In) be adopted as FINRA Rule 11810 (Buy-In Procedures and Requirements) in the Consolidated FINRA Rulebook with certain clarifications and changes and that Incorporated NYSE Rules 282 (Buy-in Procedures) and related Supplementary Material paragraphs .10-.80 be deleted. The proposed changes are intended to harmonize the differences between the NYSE rule and the NASD rule and to update certain procedures and time frames. FINRA is also proposing to adopt NASD IM-11810, which contains the sample buy-in forms, into the Consolidated FINRA Rulebook as accompanying Supplementary Material .03 to FINRA Rule 11810 with minor changes to replace references to NASD with FINRA.

Proposed FINRA Rule 11810 would continue to set forth the required steps that members must follow to effect the "buy-in" of securities including the procedures to be followed in issuing a "buy-in" notice, the contents of such notice, the expectations of the receiving

party to respond to such notice, and the time frames in which a “buy-in” may be issued, retransmitted, and effected.

FINRA is proposing to make certain minor clarifications and to add the following more substantive provisions to proposed FINRA Rule 11810, which are contained in NYSE Rule 282 either with or without modifications, as specified:

a. Include as proposed paragraph (a) a statement clarifying that the rule does not apply to, among other things, securities contracts that are subject to the requirements of a national securities exchange or a registered clearing agency.

b. Amend certain time frames for action specified in the proposed rule:

i. Clarify the time frames within which members must take action to effect the “buy-in” of securities as required therein. Specifically, the NASD rule requires that a member act within the specified *local* time at the member’s location, whereas the NYSE rule requires action to be taken based on Eastern Time (ET). To promote operational consistency among members, the proposal would amend the required time frame for action to be ET.

ii. Amend the current time frame specified by the NASD and NYSE rules for the acknowledgement of a “buy-in” notice and the notification of an execution of the buy-in from 5 p.m. to 6 p.m. ET. FINRA understands that the 5 p.m. time may be operationally difficult for members to achieve in some cases and the 6 p.m. ET time frame would be more operationally feasible.

iii. Add Supplementary Material .01 (Early Closure of Markets) to clarify that in the event of an announced early closure of the market upon which the security subject to the “buy-in” notice is traded, members may take the action required by the proposed rule not earlier than one hour prior to the announced early closure of such market.

c. Add new paragraph (b)(4) (Notice of “Buy-In” and Confirmation of Receipt) to specify that (1) the buyer must maintain as part of its records, confirmation of receipt of the notice by the seller and (2) if the seller does not accept the notice of “buy-in,” it must reject it by response to the buyer no later than 6 p.m. ET on the same date that it receives such notice, and in the absence of doing so, the seller will have been deemed by the buyer to have accepted such notice. The proposed provision would clarify that the seller, in such case, would have the right to request proof of the fail obligation from the buyer, which the buyer must deliver to the seller prior to the effective date

of the “buy-in.” However, in no event would a buyer be entitled to a “buy-in” that exceeds the liability of a seller under an unsettled securities contract because of the failure of the seller to reject a “buy-in” notice as provided in the rule, and a buyer may not execute a “buy-in” notice to such extent the buyer fails to deliver the proof of fail obligation in accordance with the requirements of the rule. Requirements (1) and (2) described above are contained in the NYSE rule, in a similar form, except FINRA is proposing to change the time to 6 p.m. ET. FINRA is also proposing to add new provisions regarding “passive acceptance” of the “buy-in” by the seller as described above, subject to certain safeguards for the benefit of the seller such as requiring the buyer to provide the proof of fail obligation and “buying-in” the seller only for the securities contract amount in accordance with the proposed rule.

d. Add new paragraph (b)(5) (Notice of “Buy-In” and Confirmation of Receipt) to specify that the receiving party shall immediately retransmit a notice of “buy-in” to other parties from which the securities may be due in the form of a retransmitted “buy-in” notice. Consistent with proposed paragraph (b)(4) described above, the provision would clarify that each party receiving a retransmitted “buy-in” notice will be required to maintain confirmation of receipt of the notice as part of its books and records and either reject a retransmitted “buy-in” notice that it has received by 6 p.m. ET on the date such notice is received or be deemed to have accepted the notice (“passive acceptance”). The safeguards described above in proposed paragraph (b)(4) would also apply to sellers receiving a retransmitted notice.

e. Add new paragraph (b)(6) (Notice of “Buy-In” and Confirmation of Receipt), which is contained in the NYSE rule, to clarify that when a notice of “buy-in” or a retransmitted notice thereof is given for less than the full amount of securities due, it shall not be for less than one trading unit.

f. Amend proposed paragraph (d) (Procedures for Closing of Contracts) as follows:

i. Retitle proposed paragraph (d) from the current rule title “Seller’s Failure to Deliver After Receipt of Notice” to “Procedures for Closing of Contracts” to better align with the content of that paragraph.

ii. Amend the time frames, as discussed generally above, to generally require the party receiving the “buy-in” notice to deliver the securities to the

party issuing the notice by 3 p.m. ET on the effective date of the “buy-in” notice.

iii. Add language to clarify that if the buyer/issuing party prior to executing the “buy-in” is notified by the seller/delivering party that some or all of the securities are in the seller’s physical possession and will be delivered to the issuing party then the order to “buy-in” shall not be executed with respect to such securities and the member that initiated the original order to “buy-in” shall accept and pay for such securities. However, if such securities are not promptly delivered the seller that represented that it would make such delivery shall be liable for any resulting damages.

iv. Add language contained in the NYSE rule to clarify the operation of the rule when a retransmitted notice is sent to the defaulting party but not received by such party prior to the delivery of shares or the execution of the “buy-in.” In such case, the sender of the notice may unless otherwise agreed promptly reestablish by a new sale the contract subject to the notice of “buy-in.”

g. Amend proposed paragraph (h) (Notice of Executed “Buy-In”) as follows:

i. Amend the time frame, as discussed above, for notice to be made to the party for whose account the securities were bought to 6 p.m. ET on the date of execution of the “buy-in.”

ii. Add new language, not contained in either legacy rule, to clarify that the confirmation of the executed “buy-in” provided for by the rule shall be forwarded to the party entitled to such by no later than 9:30 a.m. ET on the following business day after the execution of the “buy-in.”

iii. Add a provision contained in the NYSE rule that requires that a statement of any resulting money differences from the execution of the “buy-in” be provided immediately and that such money differences shall be paid by no later than 3 p.m. ET on the business day after the settlement date of the executed “buy-in.”

h. Amend proposed paragraph (i) (“Close-Out” Under the Uniform Practice Code Committee Rulings) to clarify, as provided in the NYSE rule, that notification of all close-outs as provided by the paragraph shall be sent immediately to the member in question pursuant to the confirmation provisions of the Rule 11200 Series at least thirty minutes before such “close-out.”

i. Add proposed Supplementary Material .02 (Securities Delivered by Seller After Execution of “Buy-In”) to clarify, as provided in the NYSE rule, that where securities have been delivered by the seller after the “buy-in”

order has been placed but not executed, such securities may be returned to the seller if the "buy-in" was executed in accordance with the rule before it could reasonably be cancelled by the initiating party.

#### 4. Proposed FINRA Rule 11820 (Selling-Out)

FINRA is proposing that NASD Rule 11820 (Selling-Out) be adopted as FINRA Rule 11820 (Selling-Out) into the Consolidated FINRA Rulebook, subject to minor changes. There is no comparable NYSE Incorporated Rule. NASD Rule 11820 generally requires the party executing the "sell-out" to notify the buyer on the day of execution, but no later than the close of business local time, where the buyer maintains his office, of the quantity sold and the price received. FINRA is proposing to conform the time frames in the proposed rule to the time frames in proposed FINRA Rule 11810 (Buy-In Procedures and Requirements). Specifically, the proposal would replace the requirement to provide notice "no later than the close of business local time, where the buyer maintains his office," with the requirement that such notice must be provided no later than "6:00 p.m. ET." FINRA believes this change provides clarity and uniformity to the industry. In addition, the proposal would amend certain references in the proposed rule from "should" to "shall." Specifically, in proposed paragraph (b) (Notice of "Sell-Out"), notification by the party executing a "sell-out" shall be in written or electronic form and a formal confirmation of such sale shall be forwarded as promptly as possible after execution of the "sell-out."

#### 5. Proposed FINRA Rule 11860 (COD Orders)

FINRA is proposing to adopt NASD Rule 11860 (Acceptance and Settlement of COD Orders) as FINRA Rule 11860 (COD Orders) into the Consolidated FINRA Rulebook, subject to minor changes and to delete NASD Rule 3370 (Purchases) and Incorporated NYSE Rule 387 (COD Orders) and its Supplementary Material paragraphs .10–.60, NYSE Rule 387 Interpretations/01–/18, Rule 430 (Partial Delivery of Securities to Customers on C.O.D. Purchases), and NYSE Rule 430 Interpretation/01.

NASD Rule 11860 and NYSE Rule 387 provide generally that no member can accept an order from a customer pursuant to an arrangement whereby payment for the securities purchased or delivery of the securities sold is to be made to or by an agent of the customer

unless certain specified procedures are followed. NASD Rule 3370 and NYSE Rule 430 both generally provide that no member or associated person may accept a customer's purchase order for securities unless it has first ascertained that the customer placing the order or its agent has agreed to receive the securities against payment in an amount equal to the execution price even though such purchase may represent only a part of a larger order. NYSE Rule 430 has an exception for obligations of the U.S. government.

Proposed FINRA Rule 11860 would continue the requirement in NYSE Rule 430 and NASD Rule 3370 that members prior to accepting a purchase order for a security (without the exception of U.S. government obligations contained in Rule 430) ascertain that the customer or its agent will receive against payment securities in an amount equal to any execution confirmed to the customer even if such execution may represent a partial fill of the order. In that members have been subject to NASD Rule 3370, which includes transactions in U.S. government obligations, FINRA is proposing to eliminate the exemption for such securities as provided by Rule 430. Further, the proposed rule would continue to require the use of either a Clearing Agency or a Qualified Vendor for the electronic confirmation and affirmation of all depository eligible transactions. FINRA is proposing to clarify that the proposed rule would, similar to NYSE Rule 387, apply to (1) transactions of foreign customers and broker-dealers that settle in the U.S. and (2) eligible sinking funds and/or dividend reinvestment transactions. The proposed rule would add a new requirement that is contained in NYSE Rule 387 that requires a "Qualified Vendor" to provide FINRA with copies of its required submissions to the SEC staff.

#### 6. Proposed FINRA Rules 11870 (Customer Account Transfer Contracts) and 11870.03 (Sample Transfer Instruction Forms)

FINRA is proposing to adopt NASD Rule 11870 as FINRA Rule 11870 (Customer Account Transfer Contracts) into the Consolidated FINRA Rulebook with the following changes. There is no comparable NYSE Incorporated Rule.<sup>8</sup>

<sup>8</sup> Previously, NYSE Rule 412 (Customer Account Transfer Contracts) and its related interpretations similarly regulated the transfer of customer accounts. FINRA eliminated NYSE Rule 412 and its interpretations from the Transitional Rulebook as part of a rule change to reduce regulatory duplication for Dual Members during the period before completion of the Consolidated FINRA Rulebook. The NYSE subsequently amended its

FINRA is also proposing that NASD IM-11870, which contains the Sample Transfer Instruction Forms, be adopted into the Consolidated FINRA Rulebook with minor changes to replace references to NASD with FINRA.

Generally, NASD Rule 11870 provides that when a brokerage customer wishes to transfer his or her account to another member and gives written notice of that fact to the receiving member, both members must expedite and coordinate the transfer. Proposed FINRA Rule 11870 would continue to set forth the required steps that members must follow to effect the transfer of customers' accounts, including the initial request to transfer an account, the time frame in which a transfer request must be acted upon, the validation of such transfer request, and the documentation required to effect the transfer. However, FINRA is proposing to add minor clarifications as well as the following more substantive provisions to proposed FINRA Rule 11870, which were interpretations to the prior version of NYSE Rule 412<sup>9</sup>:

a. Add a new provision regarding the procedures for the transfer of book-entry mutual fund shares that clarifies the obligations of the parties when transferring a customer's positions in such securities. FINRA proposes to add this provision to paragraph (f)(9) of proposed FINRA Rule 11870.

b. Add a definition of the term "participant in a registered clearing agency" for purposes of the rule to mean a member that is eligible to use the agency's automated customer securities account transfer capabilities.

c. Add Supplementary Material .01 to clarify that members must establish written procedures to effect and supervise the transfer of customer account assets pursuant to the requirements of the proposed rule.

d. Add Supplementary Material .02 to require members to inform customers with respect to retirement plan securities that the choice of the method of disposition of such assets may result in liability for the payment of taxes and penalties.

e. Amend the time frames in the proposed rule for notice and completion of close-outs of fail contracts resulting from the not completing a transfer of a customer's account to conform to the

version of NYSE Rule 412 to state that NYSE members and member organizations shall comply with NASD Rule 11870, concerning the transfer of customer accounts between members, and any amendments thereto, as if such rule is part of the NYSE's rules. See Securities Exchange Act Release No. 58640 (Sept. 12, 2008), 73 FR 54652 (Sept. 22, 2008) (Approval Order; SR-FINRA-2008-036).

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

time frames for all close-outs as specified in proposed FINRA Rule 11810 (Buy-In Procedures and Requirements). Specifically, the proposed rule would require the receiving member to provide notice to the carrying member not later than 12 noon ET two business days preceding the execution of the proposed close-out (as opposed to 12 noon "his" time). In addition, the proposed rule would require that every notice of close-out state that the securities may be closed out "unless delivery is effected at or before a certain specified time, which may not be prior to 3 p.m. ET," as opposed to "the local time in the community where the carrying member maintains his office." The proposed rule also would replace the requirement that the party executing the "close-out" notify the seller as to the quantity purchased and the price paid not later than "the close of business, local time, where the seller maintains his office," with the requirement to provide such notice not later than "6 p.m. ET on the date of the execution of such "close-out"."

f. Amend certain references in the proposed rule from "should" to "shall." Specifically, (1) In proposed paragraph (f) (Fail Contracts Established) the obligation that fail contracts established pursuant to the rule shall be clearly marked or captioned as such and that a receiving member shall reject delivery of a security that cannot be deemed a safekeeping position against a fail contract; (2) in proposed paragraph (h) (Close-Out Procedures) that notification shall be in written or electronic form and that confirmation of purchase along with a billing or payment shall be forwarded as promptly as possible; (3) in proposed paragraph (i) (Sell-Out Procedures) that notification shall be in written or electronic form; and (4) in proposed paragraph (m) (Participant in a Registered Clearing Agency) that when both members are participants in a registered clearing agency, the securities account asset transfer procedures shall be accomplished in accordance with the rule and the rules of the registered clearing agency.

g. Eliminate paragraph (n)(3) which requires that a copy of each customer account transfer instruction issued on an "ex-clearing house" basis be sent to the local District Office of NASD having jurisdiction over the carrying member. FINRA believes that a majority of customer account transfers now occur between members of a clearing agency and the volume of transactions that occur "ex-clearing" has significantly decreased.

FINRA will announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than ninety days following Commission approval. The implementation date will be no later than 365 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>10</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 the proposed rule change will adopt a majority of the UPC Rules into the new Consolidated FINRA Rulebook without significant changes. FINRA is primarily proposing the changes to update cross-references and reflect the new conventions of the Consolidated FINRA Rulebook. Certain other UPC Rules are being updated to reflect current industry practices.

### (B) Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change would impose any burden on competition.

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

Written comments relating to the proposed rule change have not been solicited or received. FINRA will notify the Commission of any written comments received by FINRA.

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

Within thirty-five 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 ninety 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.

## 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-2010-030 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-2010-030. 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 Section, 100 F Street, NE., Washington, DC 20549-1090, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings will also be available for inspection and copying at the principal office of FINRA and on FINRA's Web site at <http://www.finra.org>. 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-2010-030 and should be submitted on or before August 2, 2010.

<sup>10</sup> 15 U.S.C. 78o-3(b)(6).

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

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010-16866 Filed 7-9-10; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62453; File No. SR-NYSEArca-2010-65]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Arca, Inc. To List Options on Trust Issued Receipts in \$1 Strike Intervals

July 6, 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 July 2, 2010, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission ("SEC" or "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 Rule 6.4 Commentary .05 to establish strike price intervals for options on Trust Issued Receipts. 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, on the Commission's Web site at <http://www.sec.gov>, 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 this filing is to amend Rule 6.4 Commentary .05 to establish strike price intervals for options on Trust Issued Receipts ("TIRs"), including Holding Company Depositary Receipts ("HOLDRs"), in \$1 or greater strike price intervals, where the strike price is \$200 or less, and \$5 strike price intervals where the strike price is greater than \$200.<sup>3</sup>

Currently, the strike price intervals for options on TIRs are as follows: (1) \$2.50 or greater where the strike price is \$25.00 or less; (2) \$5.00 or greater where the strike price is greater than \$25.00; and (3) \$10.00 or greater where the strike price is greater than \$200.<sup>4</sup>

The Exchange is seeking to permit \$1 strikes for options on TIRs where the strike price is less than \$200 because TIRs have characteristics similar to exchange traded funds ("ETFs"). Specifically, TIRs are exchange-listed securities representing beneficial ownership of the specific deposited securities represented by the receipts. They are negotiable receipts issued by a trust representing securities of issuers that have been deposited and held on behalf of the holders of the TIRs. TIRs, which trade in round-lots of 100, and multiples thereof, may be issued after their initial offering through a deposit with the trustee of the required number of shares of common stock of the underlying issuers. This characteristic of TIRs is similar to that of ETFs which also may be created on any business day upon receipt of the requisite securities or other investment assets comprising a creation unit. The trust only issues receipts upon the deposit of the shares of the underlying securities that are represented by a round-lot of 100 receipts. Likewise, the trust will cancel, and an investor may obtain, hold, trade or surrender TIRs in a round-lot and round-lot multiples of 100 receipts.

Strike prices for ETF options are permitted in \$1 or greater intervals where the strike price is \$200 or less and \$5 or greater where the strike is greater than \$200. Accordingly, the Exchange believes that the rationale for

permitting \$1 strikes for ETF options equally applies to permitting \$1 strikes for options on TIRs.<sup>5</sup>

The Exchange has analyzed its capacity and believes the Exchange and the Options Price Reporting Authority ("OPRA") have the necessary systems capacity to handle the additional traffic associated with the listing and trading of \$1 strikes where the strike price is less than \$200 for options on TIRs.

##### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)<sup>6</sup> of the Securities Exchange Act of 1934 (the "Act"), in general, and furthers the objectives of Section 6(b)(5)<sup>7</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 by allowing the Exchange to list options on TIRs at \$1 strike price intervals. The Exchange believes that the marketplace and investors expect options on TIRs to trade in a similar manner to ETF options. The Exchange further believes that investors will be better served if \$1 strike price intervals are available for options on TIRs where the strike price is less than \$200.

#### 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

<sup>11</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> HOLDRs are a type of Trust Issued Receipt and the current proposal would permit \$1 strikes for options on HOLDRS (where the strike price is less than \$200).

<sup>4</sup> See NYSE Arca Rule 6.4 Commentary .05.

<sup>5</sup> *Id.*

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

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