

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-65210; File No. SR-NYSEArca-2011-59)

August 26, 2011

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Adding Commentary .01 to Rule 6.37B to Indicate that Market Makers will not be Obligated to Quote in Adjusted Option Series and to Clarify an Existing Exception to the Quoting Obligations

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 16, 2011, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II 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 add Commentary .01 to Rule 6.37B to indicate that Market Makers will not be obligated to quote in adjusted option series and to clarify an existing exception to the quoting obligations. The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 proposal is to add Commentary .01 to Rule 6.37B to relieve Market Makers of the obligation to quote in adjusted option series and to propose a definition of adjusted options series. The proposal is similar to a rule change for NASDAQ OMX Phlx ("Phlx").³

Rule 6.37B discusses the quoting obligations that are applicable to Market Makers on the Exchange. The Rule states that, in addition to other requirements, Lead Market Makers ("LMMs") must provide continuous two-sided quotations throughout the trading day in its appointed issues for 90% of the time the Exchange is open for trading in each issue. Similarly, Market Makers must provide continuous two-sided quotations throughout the trading day in its appointed issues for 60% of the time the Exchange is open for trading in each issue.

Under Rule 6.4(e)(i), LEAPS are series added as part of an extended far term expiration month, and under the same provision, the Exchange Rules regarding continuity do not apply to index option series until the time to expiration is less than 12 months, and do not apply to equity option series or option series on Exchange Traded Fund Shares until the time to expiration is less than nine months.

The Exchange proposes to clarify that the exception for LEAPS is an exception to the obligations in Rule 6.37B by adding Commentary .01. The Exchange further proposes to extend

³ See Exchange Act Release No. 61095 (December 2, 2009) 74 FR 64786 (December 8, 2009).

the exception to certain adjusted series,⁴ and to define “adjusted series” for the purposes of Rule 6.37B. An “adjusted series” under the Rule would be defined as an option series wherein, as a result of a corporate action by the issuer of the underlying security, one option contract in the series represents the delivery of other than 100 shares of underlying stock or Exchange-Traded Fund Shares.

After a corporate action and a subsequent adjustment to the existing options, the series in question are identified by the Options Price Reporting Authority (“OPRA”) and at OCC with a separate symbol consisting of the underlying symbol and a numerical appendage. As a standard procedure, exchanges listing options on an underlying security which undergoes a corporate action resulting in adjusted series will list new standard option series across all appropriate expiration months the day after the existing series are adjusted. The adjusted series are generally active for a short period of time following adjustment, but orders to open an options position in the underlying are almost exclusively placed in the new standard contracts. Although the adjusted series may not expire for as much as 27 months, in a short time the adjusted series become inactive. Thus, the burden of quoting these series generally outweighs the benefit of being appointed in the class because of the lack of interest in the series by various market participants.

On NYSE Arca, such series may not meet the standards to be considered active, and, under Commentary .03 to NYSE Arca Rule 6.86, the Exchange shall no longer disseminate quotes in the series. Thus, the current obligation holds Market Makers to submit quotes in series

⁴ NYSE Arca Rule 6.4(c) states “Option contracts shall be subject to adjustments in accordance with the Rules of the Options Clearing Corporation.”

that are generally not published to OPRA unless requested.⁵ Since the obligation to submit electronic quotes upon request of a Trading Official will continue if the proposed rule is approved, a fair and orderly market in the inactive series is readily available.

The Exchange has recently noticed requests for withdrawals from appointment in classes that include adjusted series by Market Makers, including LMMs, resulting in a reduction in liquidity in these classes. Market Makers and LMMs that have withdrawn from assignments in these classes have informed the Exchange that the withdrawals were based in part on the obligation to continuously quote adjusted options series whereby the quoting obligations on these often less frequently traded option series impacted the risk parameters acceptable to the Market Makers and LMMs. The Market Makers and LMMs have also expressed that the adjusted nature of these series also complicates the calculation of an appropriate quote.

This lack of interest is exacerbated by Market Makers withdrawing from the appointments which in turn, has caused liquidity (as well as volume) to be negatively impacted in the affected options classes listed on the Exchange. The Exchange believes that the proposed Commentary will ameliorate the liquidity impact by allowing Market Makers and Lead Market Makers to continue their appointment in these option classes.

The proposed rule change is similar to the Phlx rule, in that the Exchange is merely proposing to exclude the adjusted series from the continuous quoting obligation, but not from other obligations under Rules 6.37, 6.37A, 6.37B and 6.82. The Phlx rule excludes adjusted series (and Quarterly Options) from the Streaming Quote Trader's assignment. Of particular

⁵ Commentary .03 to Rule 6.86 states, in part, "The Exchange may determine that a series has become active intraday if (i) the series trades at any options exchange; (ii) NYSE Arca receives an order in the series; or (iii) NYSE Arca receives a request for quote from a customer in that series. If a series becomes active intraday, the Exchange will immediately disseminate quotes in the series to OPRA, and continue to disseminate quotes for the balance of the trading day."

note, the proposal would not excuse a Market Maker from the obligation, when called upon by a Trading Official, to submit a single quote or maintain continuous quotes in one or more series of an option issue within the Market Maker's appointment whenever, in the judgment of such Trading Official, it is necessary to do so in the interest of maintaining fair and orderly markets.⁶

Further, the proposed rule does not excuse the Market Maker from the obligations to respond with a two-sided, legal width market to a call for a market by a Floor Broker.⁷

The current quoting obligation in such illiquid series is a minor part of a Market Maker's overall obligation, and the proposed modicum of relief is mitigated by the obligation to respond to a request for quote from a Trading Official or a Floor Broker. Because of the lack of interest in such series, there is little demonstrable benefit to being a market maker in them other than the ability to maintain market maker margins for what little activity may occur. In addition, the burden of continuous quoting in these series is counter to efforts to mitigate the number of quotes collected and disseminated.

The Exchange believes that the proposed rule change should incent Market Makers and Lead Market Makers to continue appointments and thereby expand liquidity in options classes listed on the Exchange to the benefit of the Exchange and its OTP Holders and public customers.

2. Statutory Basis

The Exchange believes that this proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 ("Act")⁸, in general, and furthers the objectives of Section 6(b)(5) of the Act⁹ in particular, in that it is designed to prevent fraudulent and manipulative acts

⁶ See NYSE Arca Rule 6.37B(d).

⁷ See NYSE Arca Rule 6.37(b)(5) and Commentary .05.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that its proposal is consistent with the Act because, on balance, the elimination of the continuous quoting obligations in adjusted series is a minor change and should not impact the quality of Arca's market. Among other things, adjusted series are not common, and trading interest is often very low after the corporate event has passed. Consequently, continuous quotes in such series increases quote traffic and burdens systems without a corresponding benefit. By not requiring Market Makers to continuously quote in such series, the Exchange's proposal would further its goal of measured quote mitigation. Further, while they will not be tasked with continually quoting such series, Market Makers will be obligated to quote the series when called upon by a Trading Official. In addition, a MM [sic] will be required to quote the series when it becomes "lit" in response to a request for quote being received. Accordingly, the proposal supports the quality of Arca's market by helping to ensure that Market Makers will continue to be obligated to quote in adjusted series when the need arises.

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 45 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 or disapprove 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. Please include File No. SR-NYSEArca-2011-59 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2011-59. 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 website (<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 website 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 10:00 a.m. and 3:00 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 Number SR-NYSEArca-2011-59 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

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

Elizabeth M. Murphy
Secretary

¹⁰ 17 CFR 200.30-3(a)(12).