

the Commission of any written comments received by OCC.

### 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)(iii) of the Act<sup>12</sup> and Rule 19b-4(f)(4)<sup>13</sup> thereunder because the proposed rule change effects a change in an existing service of a registered clearing agency that: (i) Does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and (ii) does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. At any time within sixty days of the filing of such 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*

- Electronic comments may be submitted by using 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-OCC-2010-06 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-OCC-2010-06. 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, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings also will be available for inspection and copying at the principal office of OCC and on OCC's Web site at [http://www.optionsclearing.com/components/docs/legal/rules\\_and\\_bylaws/sr\\_occ\\_10\\_06.pdf](http://www.optionsclearing.com/components/docs/legal/rules_and_bylaws/sr_occ_10_06.pdf).

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-OCC-2010-06 and should be submitted on or before May 14, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

[FR Doc. 2010-9272 Filed 4-22-10; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61937; File No. SR-NYSEArca-2010-23]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To Modify NYSE Arca Trades Fees, To Establish the NYSE Arca BBO Service and Related Fees, and To Provide an Alternative Unit-of-Count Methodology for Those Services

April 16, 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 April 1, 2010, the NYSE Arca, Inc. ("NYSE Arca" or "Exchange"), 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 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

NYSE Arca proposes: (A) To modify the professional subscriber fees for its NYSE Arca Trades Service; (B) to establish the NYSE Arca BBO Service, a service that will make available the Exchange's best bids and offers; (C) to establish fees for the NYSE Arca BBO Service; and (D) to provide an alternative unit-of-count methodology for the NYSE Arca Trades and BBO Services. The text of the proposed rule change is available on the Exchange's Web site at <http://www.nyse.com>, on the Commission's Web site at <http://www.sec.gov>, at NYSE Arca, 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

##### a. NYSE Arca Trades Fees and Unit-of-Count Methodology

On March 18, 2009, the Commission approved the NYSE Arca Trades Service and its fees.<sup>3</sup> NYSE Arca Trades is a NYSE Arca-only market data service that allows a vendor to redistribute on a real-time basis the same last sale information that the Exchange reports under the CTA Plan and the "Nasdaq/UTP Plan"<sup>4</sup> for inclusion in those plans' consolidated data streams and certain other related data elements ("NYSE Arca Last Sale Information").

The Commission approved two professional subscriber fees for the NYSE Arca Trades Service. It approved a fee of \$5 per month per display device

<sup>3</sup> See Release No. 34-59598; 74 FR 12919 (March 25, 2009); File No. SR-NYSEArca-2009-05.

<sup>4</sup> Formally referred to as "the Reporting Plan for Nasdaq/National Market System Securities Traded on an Exchange on an Unlisted or Listed Basis."

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

<sup>13</sup> 17 CFR 240.19b-4(f)(4).

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

<sup>27</sup> 17 CFR 240.19b-4.

for the receipt and use of NYSE Arca Last Sale Information relating to Network A and Network B Eligible Securities and \$5 per month per display device for the receipt and use of NYSE Arca Last Sale Information relating to securities listed on Nasdaq.

The Exchange proposes to make two changes to these fees. First, the Exchange proposes to consolidate the two \$5.00 fees into one \$10.00 fee. That is, the Exchange proposes to set the professional subscriber fee for the NYSE Arca Trades Service at \$10.00. This fee would entitle professional subscribers to receive NYSE Arca Last Sale Information relating to all securities for which last sale information is reported under the CTA Plan and the Nasdaq/UTP Plan. Consolidating the two fees into one fee makes the NYSE Arca Trades professional subscriber fee consistent with the professional subscriber fee that the Exchange understands that NYSE Amex LLC ("NYSE Amex") will propose for a substantially similar last sale information service that NYSE Arca expects NYSE Amex to file with the Commission in the near future.

Second, the Exchange proposes to offer an alternative to the per-device fee, the traditional means for calculating charges. Under the alternative, a Vendor could elect to pay on the basis of the number of "Subscriber Entitlements" rather than the basis of the number of devices. The "Subscriber Entitlements" methodology is the unit-of-count methodology that the Commission approved earlier this year for the proposed rule change that the New York Stock Exchange, LLC ("NYSE") submitted in respect of its NYSE OpenBook® service (the "Unit-of-Count Filing").<sup>5</sup>

Under that unit-of-count methodology, the Exchange does not define the Vendor-subscriber relationship based on the manner in which a datafeed recipient or subscriber receives data (*i.e.*, through controlled displays or through data feeds). Instead, the Exchange uses more subjective billing criteria. Those criteria define "Vendors," "Subscribers," "Subscriber Entitlements" and "Subscriber Entitlement Controls" as the basis for setting professional subscriber fees. The Exchange believes that these changes more closely align with current data consumption and will reduce costs for the Exchange's customers.

The following basic principles underlie the "Subscriber Entitlement" unit-of-count methodology.

- i. Vendors.
  - "Vendors" are market data vendors, broker-dealers, private network providers and other entities that control Subscribers' access to data through Subscriber Entitlement Controls.
- ii. Subscribers.
  - "Subscribers" are unique individual persons or devices to which a Vendor provides data. Any person or device that receives data from a Vendor is a Subscriber, whether the person or device works for or belongs to the Vendor, or works for or belongs to an entity other than the Vendor.
  - Only a Vendor may control Subscriber access to data.
  - Subscribers may not redistribute data in any manner.
- iii. Subscriber Entitlements.
  - A Subscriber Entitlement is a Vendor's permissioning of a Subscriber to receive access to data through an Exchange-approved Subscriber Entitlement Control.
  - A Vendor may not provide data access to a Subscriber except through a unique Subscriber Entitlement.
  - The Exchange will require each Vendor to provide a unique Subscriber Entitlement to each unique Subscriber.
  - At prescribed intervals (normally monthly), the Exchange will require each Vendor to report each unique Subscriber Entitlement.
- iv. Subscriber Entitlement Controls.
  - A Subscriber Entitlement Control is the Vendor's process of permissioning Subscribers' access to data.
  - Prior to using any Subscriber Entitlement Control or changing a previously approved Subscriber Entitlement Control, a Vendor must provide the Exchange with a demonstration and a detailed written description of the control or change and the Exchange must have approved it in writing.
  - The Exchange will approve a Subscriber Entitlement Control if it allows only authorized, unique end-users or devices to access data or monitors access to data by each unique end-user or device.
  - Vendors must design Subscriber Entitlement Controls to produce an audit report and make each audit report available to the Exchange upon request. The audit report must identify:
    - A. Each entitlement update to the Subscriber Entitlement Control;
    - B. The status of the Subscriber Entitlement Control; and
    - C. Any other changes to the Subscriber Entitlement Control over a given period.
  - Only the Vendor may have access to Subscriber Entitlement Controls.

Subject to the rules set forth below, the Exchange will require NYSE Arca-

Only Vendors to count every Subscriber Entitlement, whether it be a person or a device. This means that the Vendor must include in the count every person and device that has access to the data, regardless of the purposes for which the person or device uses the data. The Exchange will require Vendors to report and count all entitlements in accordance with the following rules.

i. As explained below, the Exchange also proposes to adopt the "Subscriber Entitlement" unit-of-count methodology for the NYSE Arca BBO Service. The count shall be separate for the NYSE Arca Trades and NYSE Arca BBO Services. This means that a device that is entitled to receive both NYSE Arca Last Sale Information and NYSE Arca BBO Information would count as a Subscriber Entitlement for the purposes of the NYSE Arca Trades Service and as a separate Subscriber Entitlement for the purposes of the NYSE Arca BBO Service.

ii. In connection with a Vendor's external distribution of either type of NYSE Arca "Market Data" (*i.e.*, NYSE Arca Last Sale Information or NYSE Arca BBO Information), the Vendor should count as one Subscriber Entitlement each unique Subscriber that the Vendor has entitled to have access to that type of Market Data. However, where a device is dedicated specifically to a single person, the Vendor should count only the person and need not count the device.

iii. In connection with a Vendor's internal distribution of a type of NYSE Arca Market Data, the Vendor should count as one Subscriber Entitlement each unique person (but not devices) that the Vendor has entitled to have access to that type of Market Data.

iv. The Vendor should identify and report each unique Subscriber. If a Subscriber uses the same unique Subscriber Entitlement to receive multiple services, the Vendor should count that as one Subscriber Entitlement. However, if a unique Subscriber uses multiple Subscriber Entitlements to gain access to one or more services (*e.g.*, a single Subscriber has multiple passwords and user identifications), the Vendor should report all of those Subscriber Entitlements.

v. The Vendor should report each Subscriber device serving multiple users individually as well as each person who may access the device. As an example, for a single device to which the Vendor has granted two people access, the Vendor should report three Subscriber Entitlements. Only a single, unique device that is dedicated to a single,

<sup>5</sup> See Release No. 34-59544; 74 FR 11162 (March 16, 2009); File No. SR-NYSE-2008-131.

unique person may be counted as one Subscriber Entitlement.

vi. Vendors should report each unique person who receives access through multiple devices as one Subscriber Entitlement so long as each device is dedicated specifically to that person.

vii. The Vendor should include in the count as one Subscriber Entitlement devices serving no users.

By way of examples, if a Subscriber's device has no users or multiple users, the Vendor should count that device as one Subscriber Entitlement. If a Vendor entitles five individuals to use one of a Subscriber's devices, the Vendor should count five individual entitlements and one device entitlement, for a total of six Subscriber Entitlements. If a Vendor entitles an individual to receive a type of NYSE Arca Market Data over a Subscriber device that is dedicated to that individual, the Vendor should count that as one Subscriber Entitlement, not two.

#### b. The NYSE Arca BBO Service

The NYSE Arca BBO Service is a new NYSE Arca-only market data service that allows a vendor to redistribute on a real-time basis the same best-bid-and-offer information that NYSE Arca reports under the CQ Plan and the Nasdaq/UTP Plan for inclusion in the those Plans' consolidated quotation information data streams ("NYSE Arca BBO Information"). NYSE Arca BBO Information would include the best bids and offers for all securities that are traded on the Exchange and for which NYSE Arca reports quotes under the CQ Plan or the Nasdaq/UTP Plan. NYSE Arca will make the NYSE Arca BBO service available over a single datafeed, regardless of the markets on which the securities are listed.

The NYSE Arca BBO Service would allow vendors, broker-dealers, private network providers and other entities ("NYSE Arca-Only Vendors") to make available NYSE Arca BBO Information on a real-time basis. NYSE Arca-Only Vendors may distribute the NYSE Arca BBO Service to both professional and nonprofessional subscribers.

The Exchange would make NYSE Arca BBO Information available through its new NYSE Arca BBO Service no earlier than it makes that information available to the processor under the CQ Plan or the Nasdaq/UTP Plan, as applicable.

#### c. NYSE Arca BBO Service Fees

##### i. Access Fee

For the receipt of access to the NYSE Arca BBO datafeed, the Exchange proposes to charge \$750 per month.

NYSE Arca also currently charges \$750 for access to the NYSE Arca Trades datafeed. However, one \$750 monthly access fee entitles an NYSE Arca-Only Vendor to receive both the NYSE Arca BBO datafeed as well as the Exchange's NYSE Arca Trades datafeed. The fee applies to receipt of NYSE Arca Market Data within the Vendor's organization or outside of it.

##### ii. Professional Subscriber Fee

For the receipt and use of NYSE Arca BBO Information, the Exchange proposes to charge \$10 per month per professional subscriber device.

In addition, the Exchange proposes to offer an alternative methodology to the traditional device fee. Instead of charging \$10 per month per device, it proposes to offer Vendors the option of paying \$10 per month per "Subscriber Entitlement".

The fee entitles the end-user to receive and use NYSE Arca BBO Information relating to all securities traded on NYSE Arca, regardless of the market on which a security is listed.

For the purpose of calculating Subscriber Entitlements, the Exchange proposes to adopt the unit-of-count methodology that the Commission approved earlier this year in approving the Unit-of-Count Filing and that the Exchange has proposed to adopt for the NYSE Arca Trades Service, as described above.

##### iii. Nonprofessional Subscriber Fees

The Exchange proposes to charge each NYSE Arca-Only Vendor \$5.00 per month for each nonprofessional subscriber to whom it provides NYSE Arca BBO Information. The Exchange proposes to impose the charge on the NYSE Arca-Only Vendor, rather than on the nonprofessional Subscriber. At this time, the Exchange does not propose to establish a nonprofessional subscriber fee for NYSE Arca Last Sale Information because the Exchange has recently submitted to the Commission an inexpensive alternative to that product, the NYSE Arca Realtime Reference Prices service.<sup>6</sup>

In addition, the Exchange proposes to establish as an alternative to the fixed \$5.00 monthly fee a fee of \$.005 for each response that a NYSE Arca-Only Vendor disseminates to a nonprofessional Subscriber's inquiry for a best bid or offer under the NYSE Arca BBO service. The Exchange proposes to limit a NYSE Arca-Only Vendor's exposure under this alternative fee. It proposes to set at \$5.00 per month, the same amount as

the proposed fixed monthly nonprofessional Subscriber flat fee, as the maximum fee that a NYSE Arca-Only Vendor would have to pay in respect of each nonprofessional Subscriber for the receipt of the NYSE Arca BBO service in any calendar month.

In order to take advantage of the per-query fee, a NYSE Arca-Only Vendor must document in its Exhibit A that it has the ability to measure accurately the number of queries from each nonprofessional Subscriber and must have the ability to report aggregate query quantities on a monthly basis.

The Exchange will impose the per-query fee only on the dissemination of best bids and offers to nonprofessional Subscribers. The per-query charge is imposed on NYSE Arca-Only Vendors, not end-users, and is payable on a monthly basis. NYSE Arca-Only Vendors may elect to disseminate the NYSE Arca BBO service pursuant to the per-query fee rather than the fixed monthly fee.

In establishing nonprofessional Subscriber fees for the NYSE Arca BBO Service, the Exchange proposes to apply the same criteria for qualification as a "nonprofessional subscriber" as the CTA and CQ Plan Participants use. As is true under the CTA and CQ Plans, classification as a nonprofessional subscriber is subject to Exchange review and requires the subscriber to attest to his or her nonprofessional subscriber status. A "nonprofessional subscriber" is a natural person who uses the data solely for his personal, non-business use and who is neither:

A. Registered or qualified with the Securities and Exchange Commission, ("SEC"), the Commodities Futures Trading Commission, any State securities agency, any securities exchange or association, or any commodities or futures contract market or association,

B. Engaged as an "investment adviser" as that term is defined in Section 202(a)(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that act), nor

C. Employed by a bank or other organization exemption from registration under Federal and/or State securities laws to perform functions that would require him/her to be so registered or qualified if he/she were to perform such function for an organization not so exempt.

##### d. Justification of Fees

The proposed monthly access fee, professional subscriber fee and nonprofessional subscriber fees for the NYSE Arca BBO Service, and the

<sup>6</sup> See Release No. 34-61404; 75 FR 5363 (February 2, 2010); File No. SR-NYSEArca-2009-85.

proposed combining of the fees for the NYSE Arca Trades Service, enable NYSE Arca-Only Vendors and their subscribers to contribute to the Exchange's operating costs in a manner that is appropriate for the distribution of NYSE Arca Market Data in the form taken by the two services.

In setting the level of the proposed fees, the Exchange took into consideration several factors, including:

(i) NYSE Arca's expectation that the NYSE Arca Trades Service and NYSE Arca BBO Services are likely to be premium services, taken by investors most concerned with receiving NYSE Arca Market Data on a low latency basis;

(ii) The fees that Nasdaq, NYSE, NYSE Amex and the Participants in the CTA, CQ and Nasdaq/UTP Plans are charging for similar services (or that NYSE Arca anticipates they will soon propose to charge);

(iii) Consultation with some of the entities that the Exchange anticipates will be the most likely to take advantage of the proposed service;

(iv) The contribution of market data revenues that the Exchange believes is appropriate for entities that are most likely to take advantage of the proposed service;

(v) The contribution that revenues accruing from the proposed fee will make to meet the overall costs of the Exchange's operations;

(vi) The savings in administrative and reporting costs that the NYSE Arca Trades Service and NYSE Arca BBO Service will provide to NYSE Arca-Only Vendors (relative to counterpart services under the CTA, CQ and Nasdaq/UTP Plans); and

(vii) The fact that the proposed fees provide alternatives to existing fees under the CTA, CQ and Nasdaq/UTP Plans, alternatives that vendors will purchase only if they determine that the perceived benefits outweigh the cost.

The Exchange believes that the levels of the fees are consistent with the approach set forth in the order by which the Commission approved ArcaBook fees for NYSE Arca.<sup>7</sup> In the ArcaBook Approval Order, the Commission stated that "when possible, reliance on competitive forces is the most appropriate and effective means to assess whether the terms for the distribution of non-core data are equitable, fair and reasonable, and not unreasonably discriminatory."<sup>8</sup> It noted that if significant competitive forces apply to a proposal, the Commission

would approve it unless a substantial countervailing basis exists.

NYSE Arca BBO Information constitutes "non-core data." The Exchange does not require a central processor to consolidate and distribute the product to the public pursuant to joint-SRO plans. Rather, the Exchange distributes the product voluntarily.

In the case of the NYSE Arca BBO Service and the NYSE Arca Trades Service, both of the two types of competitive forces that the Commission described in the ArcaBook Approval Order are present: The Exchange has a compelling need to attract order flow and the product competes with a number of alternative products.

The Exchange must compete vigorously for order flow to maintain its share of trading volume. This requires the Exchange to act reasonably in setting market data fees for non-core products such as the NYSE Arca BBO Service. The Exchange hopes that the proposed NYSE Arca BBO Service will enable vendors to distribute NYSE Arca BBO Information widely among investors, and thereby provide a means for promoting the Exchange's visibility in the marketplace.

In addition to the need to attract order flow, the availability of alternatives to the NYSE Arca BBO Service and the NYSE Arca Trades Service significantly constrain the prices at which the Exchange can market those services. All national securities exchanges, the several Trade Reporting Facilities of FINRA, ECNs that produce proprietary data, as well as the core data feed under the CQ Plan, are all sources of competition for the NYSE Arca BBO Service and the NYSE Arca Trades Service. Currently:

(i) Nasdaq offers its last sale information and best-bid-and-offer information under services that would provide an alternative to the proposed NYSE Arca services;

(ii) NYSE offers last sale information in services that are substantially similar to the NYSE Arca Trades Service and NYSE Arca anticipates that NYSE Amex will soon do so too; and

(iii) The Exchange anticipates that NYSE and NYSE Amex will soon propose to provide best-bid-and-offer services that are substantially similar to the NYSE Arca BBO Service.

As an alternative, investors can receive NYSE Arca BBO Information from ArcaBook. The information available in the NYSE Arca Trade Service or the NYSE Arca BBO Service is also included in the calculation of the consolidated last sale price information and best-bid-and-offer calculations under the CTA, CQ and Nasdaq/UTP

Plans, which comprise core datafeeds. Investors may select the NYSE Arca Trade Service or the NYSE Arca BBO Service as less expensive alternatives to the CTA, CQ and Nasdaq/UTP Plans' consolidated data streams for certain purposes. (Rule 603(c) of Regulation NMS requires vendors to make the consolidated, core datafeeds available to customers when trading and order-routing decisions can be implemented.)

#### e. Administrative Requirements

In regard to NYSE Arca BBO Information, the Exchange will require each Vendor to enter into the form of "vendor" agreement into which the CTA and CQ Plans require recipients of the Network A datafeeds to enter (the "Consolidated Vendor Form"). That agreement will authorize the Vendor to provide NYSE Arca BBO Information to its customers or to distribute the data internally.

In addition, the Exchange will require each professional end-user that receives NYSE Arca BBO Information from a vendor or broker-dealer to enter into the form of professional subscriber agreement into which the CTA and CQ Plans require end users of Network A data to enter. It will also require Vendors to subject nonprofessional subscribers to the same contract requirements as the CTA and CQ Plan Participants require of Network A nonprofessional subscribers. The Network A Participants submitted the Consolidated Vendor Form and the professional subscriber form to the Commission for comment and notice.<sup>9</sup>

#### 2. Statutory Basis

The bases under the Securities Exchange Act of 1934 (the "Act") for the proposed rule change are the requirement under Section 6(b)(4)<sup>10</sup> that an exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities and the requirements under Section 6(b)(5)<sup>11</sup> that the rules of an exchange be designed to promote just and equitable principles of trade and not to permit unfair discrimination between customers, issuers, brokers or dealers.

The proposed rule change would benefit investors by facilitating their prompt access to real-time best-bid-and-offer information contained in the NYSE Arca BBO Service and by providing a

<sup>7</sup> See Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR-NYSE ArcaArca-2006-21) (the "ArcaBook Approval Order").

<sup>8</sup> *Id.* at 74771.

<sup>9</sup> See Securities Exchange Act Release Nos. 34-22851 (January 31, 1986), 34-28407 (September 10, 1990), 34-49185 (February 4, 2004), and 34-22851 (January 31, 1986).

<sup>10</sup> 15 U.S.C. 78f(b)(4).

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

modern methodology alternative for counting fee-liable units. In addition, the Exchange believes that the proposed fee would allow entities that are most likely to take advantage of the proposed service to make an appropriate contribution towards meeting the overall costs of the Exchange's operations.

The Exchange notes that Nasdaq, NYSE and NYSE Amex already impose charges for services that are similar to the NYSE Arca Trades service and Nasdaq already imposes charges for services that are similar to the NYSE Arca BBO service. NYSE Arca anticipates NYSE and NYSE Arca will soon propose to establish fees for best-bid-and-offer services that are substantially similar to the NYSE Arca BBO service. Thus, the Exchange's proposed fees offer any vendor that wishes to provide its customers with a single market's last sale information or best-bid-and-offer information (as opposed to a more expensive consolidated last sale or quotation information service) an alternative to Nasdaq, NYSE and NYSE Amex.

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

The NYSE Arca BBO Service proposes to provide an alternative to existing services that the Participants make available under the CQ Plan. The proposed fees do not alter or rescind any existing fees. In addition, it amounts to a competitive response to the products that Nasdaq, NYSE and NYSE Amex make available or will soon make available. For those reasons, the Exchange does not believe that the proposed rule change will result in 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*

The Exchange has discussed the proposed rules change with those entities that the Exchange believes would be the most likely to take advantage of the proposed NYSE Arca BBO Service by becoming NYSE Arca-Only Vendors. While those entities have not submitted formal, written comments on the proposal, the Exchange has incorporated some of their ideas into the proposal and the proposed rule change reflects their input. The Exchange has not received any unsolicited written comments from members or other interested parties.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing of 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 Exchange 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 No. SR-NYSEArca-2010-23 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-2010-23. 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 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-2010-23 and should be submitted on or before May 14, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2010-9401 Filed 4-22-10; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-61933; File No. SR-Phlx-2010-56]

### **Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees and Rebates for Adding and Removing Liquidity**

April 16, 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 April 1, 2010, NASDAQ OMX PHLX, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, 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 its fees and rebates for adding and removing liquidity by establishing that professional orders will not be assessed a charge for electronic auctions.

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaqtrader.com/micro.aspx?id=PHLXfilings>, at the principal office of the Exchange, at the Commission's Public Reference Room, and at the Commission's Public

<sup>12</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.