

### 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> At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-Phlx-2012-58 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-2012-58. This file number should be included on the subject line if email 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 10:00 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 No. SR-Phlx-2012-58 and should be submitted on or before June 1, 2012.

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

Kevin M. O'Neill,

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66937; File No. SR-NYSEArca-2012-05]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Adding New Paragraph (cc) to NYSE Arca Options Rule 6.62 To Provide for a Post No Preference Light Only Quotation

May 7, 2012.

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 May 3, 2012, 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 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 add new paragraph (cc) to NYSE Arca Options Rule 6.62 to provide for a Post No Preference Light Only Quotation ("PNPLO Quotation"). The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and [www.nyse.com](http://www.nyse.com).

<sup>8</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.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

###### 1. Purpose

The Exchange is proposing to add new paragraph (cc) to NYSE Arca Options Rule 6.62 to provide for a PNPLO Quotation.

As described in proposed new paragraph (cc), a PNPLO Quotation would be an electronic Market Maker quotation that, upon initial entry into the NYSE Arca System, would only be eligible to execute against displayed liquidity on the Consolidated Book. In this regard, a PNPLO Quotation would be similar to the Post No Preference Light Order ("PNP-Light Order") under NYSE Arca Options Rule 6.62(v), which is a non-routable order type that is only eligible to execute against displayed liquidity. Under the proposed rule, a PNPLO Quotation that, upon entry, would execute exclusively against non-displayed liquidity on the Consolidated Book will be immediately rejected by the NYSE Arca System. Additionally, a PNPLO Quotation that, upon entry, would execute against both displayed and non-displayed liquidity on the Consolidated Book will immediately execute only against the displayed liquidity, but not against the non-displayed liquidity, and any remaining size of the PNPLO Quotation will be immediately rejected by the NYSE Arca System. Furthermore, a PNPLO Quotation that, upon entry, would execute exclusively against displayed liquidity on the Consolidated Book will immediately execute against the displayed liquidity and any remaining size of the PNPLO Quotation will be placed on the Consolidated Book and treated like a standard Market Maker quotation.<sup>3</sup> Lastly, a PNPLO Quotation

<sup>3</sup> This would include being eligible to interact with non-displayed liquidity on the Consolidated Book.

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

that would not execute against either displayed or non-displayed liquidity will be placed in the Consolidated Book and treated as a standard Market Maker quotation.

The Exchange notes that the NYSE Arca System would automatically remove the pre-existing quotation(s) of a Market Maker upon entry of a PNPLO Quotation, as it does upon the entry of any other quotation, regardless of the acceptance or rejection of the PNPLO Quotation by the NYSE Arca System. Accordingly, in the event that a PNPLO Quotation is rejected by the NYSE Arca System, the Market Maker would be required to re-enter a quotation for purposes of satisfying any applicable quoting obligations under NYSE Arca Options Rule 6.37B.

The Exchange is proposing to offer this new quote type to provide Market Makers with greater control over the circumstances in which their quotations interact with contra-side trading interest on the Exchange by preventing interaction with non-displayed liquidity. This increase in control is desirable from the perspective of Market Makers because it is difficult for them to account for non-displayed liquidity in their quoting models. In addition, Market Makers on NYSE Arca in penny pilot issues receive post liquidity credits for electronic executions against their quotes that are resting in the Consolidated Book, and are charged take liquidity fees when their quotes execute against resting liquidity in the Consolidated Book. Market Makers consider these fees when calculating their quotes, and they may provide a wider quote than they otherwise would if they believe there is a chance that they would be charged a take liquidity fee for submitting a quote that executes against non-displayed liquidity (instead of receiving a post liquidity credit for executions against a resting quote). By eliminating the risk of incurring additional fees, the PNPLO Quotation may lead Markets Makers to provide narrower quotes on the Exchange, which in turn would benefit investors.

The Exchange further notes that the PNPLO Quotation would not be the only non-standard quote type at the Exchange. In this respect, the Exchange already offers a Price Improving Quote type, which allows a Market Maker to enter a quote that is better than the minimum price variation in an option and that is rounded for display purposes (up for offers and down for bids) so that it is displayed at the minimum price variation in the option.<sup>4</sup>

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),<sup>5</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>6</sup> in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

Like the existing Price Improving Quote, the proposed PNPLO Quotation would provide a Market Maker with the ability to control its interactions with contra-side liquidity.<sup>7</sup> Specifically, upon initial entry, a PNPLO Quotation would not be eligible to interact with non-displayed liquidity. In this regard, the Exchange understands that a Market Maker's quoting algorithm can take into account existing liquidity in the marketplace, but may not be able to accurately account for the risk of interacting with non-displayed liquidity. As noted, Market Makers on NYSE Arca in penny pilot issues receive post liquidity credits for electronic executions against their quotes that are resting in the Consolidated Book, [sic] and are charged take liquidity fees when their quotes execute against resting liquidity in the Consolidated Book. Market Makers consider these fees when calculating their quotes, and they may provide a wider quote than they otherwise would if they believe there is a chance that they would be charged a take liquidity fee for submitting a quote that executes against non-displayed liquidity (instead of receiving a post liquidity credit for executions against a resting quote). Accordingly, the PNPLO Quotation would permit Market Makers to eliminate from their quoting decisions the risk of incurring certain fees, and therefore may result in narrower quote widths, which would increase the quality of the Exchange's market and thereby benefit investors.

The Exchange believes that the PNPLO Quotation is just, equitable and not unfairly discriminatory. For example, the PNPLO Quotation treats all similarly situated market participants the same in that it would be available for use by all Market Makers on the

a quote "to buy or sell an option at a specified price at an increment smaller than the minimum price variation in the security," which "may be entered in increments as small as one cent."

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> See *supra* note 5.

Exchange. Moreover, the Exchange notes that all market participants, including Market Makers, already have the ability to avoid trading with non-displayed liquidity by entering PNP-Light Orders, which have existed on the Exchange since 2009.<sup>8</sup> The Exchange also notes that market participants that enter non-displayed liquidity (*i.e.*, orders with reserve size) are choosing not to have the full size of their trading interest displayed, which is in contrast to the Commission's encouragement of a market structure in which trading interest is displayed,<sup>9</sup> and accordingly do not receive all of the benefits with respect to that non-displayed liquidity that are afforded to displayed liquidity.<sup>10</sup> For the forgoing reasons, the Exchange believes that the proposal is not unfairly discriminatory. Overall, the Exchange believes that the proposal protects investors and the public interest because it may contribute to more aggressive quoting by Market Makers and may lead to more displayed liquidity on the Exchange, which, in turn, should increase the quality of the Exchange's market and benefit investors.

## 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.

<sup>8</sup> The Exchange notes that it adopted the PNP-Light Order type pursuant to Section 19(b)(3)(A) of the Exchange Act, and that the rule filing adopting that order type was not abrogated. See Securities Exchange Act Release 59603 (March 19, 2009), 74 FR 13279 (March 26, 2009) (SR-NYSEArca-2009-21) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Arca, Inc. Amending Rule 6.62 to Provide Additional Order Types).

<sup>9</sup> See, e.g., Securities Exchange Act Release No. 60684 (September 18, 2009), 74 FR 48632, 48636 (September 23, 2011) (File No. S7-21-09) (Proposed Elimination of Flash Order Exception from Rule 602 of Regulation NMS) ("The Commission long has emphasized the need to encourage displayed liquidity in the form of publicly displayed limit orders.").

<sup>10</sup> In this regard, the Exchange notes that non-displayed liquidity is not afforded trade-through protection under Section 5 of the Options Order Protection and Locked/Crossed Market Plan. See, e.g., Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009) (File No. 4-546).

<sup>4</sup> See NYSE Arca Options Rule 6.62(s), which provides, in part, that a Price Improving Quote is

### 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2012-05 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-2012-05. This file number should be included on the subject line if email 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-2012-05 and should be submitted on or before June 1, 2012.

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

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66934; File No. SR-CBOE-2012-040]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Proposed Rule Change Related to Permanent Approval of Its Pilot on FLEX Minimum Value Sizes

May 7, 2012.

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 25, 2012, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") 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 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 is proposing to make permanent its pilot program regarding minimum value sizes for Flexible Exchange Options ("FLEX Options").<sup>3</sup>

<sup>11</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> FLEX Options provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices. FLEX Options can be FLEX Index Options or FLEX Equity Options. In addition, other products are permitted to be traded pursuant to the FLEX

The text of the rule proposal is available on the Exchange's Web site (<http://www.cboe.org/legal>), at the Exchange's Office of the Secretary and at the Commission.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

###### 1. Purpose

On January 28, 2010, the Exchange received approval of a rule change that, among other things, established a pilot program that eliminated minimum value sizes for FLEX Options. The pilot program is currently set to expire on the earlier of November 2, 2012 or the date on which the pilot program is approved on a permanent basis.<sup>4</sup> The purpose of this rule change filing is to make the pilot program permanent.

trading procedures. For example, credit options are eligible for trading as FLEX Options pursuant to the FLEX rules in Chapters XXIVA and XXIVB. See CBOE Rules 24A.1(e) and (f), 24A.4(b)(1) and (c)(1), 24B.1(f) and (g), 24B.4(b)(1) and (c)(1), and 28.17. The rules governing the trading of FLEX Options on the FLEX Request for Quote ("RFQ") System platform are contained in Chapter XXIVA. The rules governing the trading of FLEX Options on the FLEX Hybrid Trading System platform are contained in Chapter XXIVB.

<sup>4</sup> At the same time the minimum value size pilot program was established, the Exchange also established a pilot program regarding permissible exercise settlement values for FLEX Index Options. Securities Exchange Act Release Nos. 61439 (January 28, 2010), 75 FR 5831 (February 4, 2010) (SR-CBOE-2009-087) (Approval Order); 61676 (March 9, 2010), 75 FR 13191 (March 18, 2010) (SR-CBOE-2010-026) (technical rule change to include original pilots' conclusion date of March 28, 2011 in the rule text); 64110 (March 24, 2011), 76 FR 17463 (March 29, 2011) (SR-CBOE-2011-024) (extending the pilots through March 30, 2012); and 66701 (March 30, 2012), 77 FR 20673 (April 5, 2012) (SR-CBOE-2012-027) (extending the pilots through the earlier of November 2, 2012 or the date on which the respective pilot program is approved on a permanent basis). The Exchange is not currently proposing permanent approval of the exercise settlement values pilot program for FLEX Index Options. Any such proposal would be the subject of a separate rule change filing.