

6(b)(5) of the Act,<sup>10</sup> which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in securities; to 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. Section 6(b)(5) also requires that the rules of an exchange not be designed to permit unfair discrimination among customers, issuers, brokers, or dealers.

Recognizing that the Commission has expressed concern regarding the potential for conflicts of interest in instances where a member firm is affiliated with an exchange to which it is routing orders, the Exchange previously implemented limitations and conditions to Arca Securities's affiliation with the Exchange to permit the Exchange to accept orders routed inbound to NYSE Arca by Arca Securities from its affiliates, NYSE Amex and NYSE Arca, on a pilot basis.<sup>11</sup> The Exchange now seeks to make this pilot permanent, and to more accurately reflect in its rule text its RSA with FINRA. Specifically, the Exchange states it is in compliance with the following obligations and conditions:<sup>12</sup>

- First, the Exchange will maintain an agreement pursuant to Rule 17d-2 under the Exchange Act with FINRA to relieve the Exchange of regulatory responsibilities for Arca Securities with respect to rules that are common rules between the Exchange and FINRA, and maintain an RSA with FINRA to perform regulatory responsibilities for Arca Securities for unique Exchange rules.

- Second, the RSA will require the Exchange to provide FINRA with information, in an easily accessible manner, regarding all exception reports, alerts, complaints, trading errors, cancellations, investigations, and enforcement matters (collectively "Exceptions") in which Arca Securities is identified as a participant that has potentially violated Exchange or Commission Rules and of which the Exchange becomes aware, and shall require that FINRA provide a report, at least quarterly, to the Exchange

quantifying all Exceptions in which Arca Securities is identified as a participant that has potentially violated Exchange or Commission Rules;<sup>13</sup>

- Third, the Exchange, on behalf of its parent, NYSE Euronext, will establish and maintain procedures and internal controls reasonably designed to prevent Arca Securities from receiving any benefit, taking any action or engaging in any activity based on non-public information regarding planned changes to Exchange systems, obtained as a result of its affiliation with the Exchange, until such information is available generally to similarly situated member organizations of the Exchange in connection with the provision of inbound order routing to the Exchange; and

- Fourth, the Exchange may furnish to Arca Securities the same information on the same terms that the Exchange makes available in the normal course of business to any other member organization.<sup>14</sup> The Exchange believes that by meeting the above-listed conditions it has set up mechanisms that protect the independence of the Exchange's regulatory responsibility with respect to Arca Securities, and has demonstrated that Arca Securities cannot use any information it may have because of its affiliation with the Exchange to its advantage.<sup>15</sup>

In the past, the Commission has expressed concern that the affiliation of an exchange with one of its members raises potential conflicts of interest, and the potential for unfair competitive advantage.<sup>16</sup> Although the Commission

<sup>13</sup> See Notice, 76 FR at 53514, n.8 and accompanying text. The Exchange proposed to modify this provision, as set forth in NYSE Rule 17(c)(2)(A)(ii) to more accurately reflect its RSA with FINRA and specify that the quarterly report of Exceptions shall be provided to the Exchange's Chief Regulatory Officer ("CRO"). The Exchange states that upon approval of this change, it will continue to comply with the obligations and conditions as set forth in NYSE Rule 17(c)(2). See Notice, 76 FR at 53514.

<sup>14</sup> See NYSE Rule 17(c)(2). See also Notice, 76 FR at 53514.

<sup>15</sup> See Notice, 76 FR at 53514.

<sup>16</sup> See, e.g., Securities Exchange Act Release Nos. 54170 (July 18, 2006), 71 FR 42149 (July 25, 2006) (SR-NASDAQ-2006-006) (order approving Nasdaq's proposal to adopt Nasdaq Rule 2140, restricting affiliations between Nasdaq and its members); 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR-NYSE-2005-77) (order approving the combination of the New York Stock Exchange, Inc. and Archipelago Holdings, Inc.); 58673 (September 29, 2008), 73 FR 57707 (October 8, 2008) (SR-Amex-2008-62) (order approving the combination of NYSE Euronext and the American Stock Exchange LLC); 59135 (December 22, 2008), 73 FR 79954 (December 30, 2008) (SR-ISE-2009-85) (order approving the purchase by ISE Holdings of an ownership interest in DirectEdge Holdings LLC); and 59281 (January 22, 2009), 74 FR 5014

continues to be concerned about potential unfair competition and conflicts of interest between an exchange's self-regulatory obligations and its commercial interest when the exchange is affiliated with one of its members, for the reasons discussed below, the Commission believes that it is consistent with the Act to permit Arca Securities to provide inbound routing to the Exchange on a permanent basis instead of a pilot basis, subject to the other conditions described above.

The Exchange has proposed four ongoing conditions applicable to Arca Securities's routing activities, which are enumerated above. The Commission believes that these conditions mitigate its concerns about potential conflicts of interest and unfair competitive advantage. In particular, the Commission believes that FINRA's oversight of Arca Securities,<sup>17</sup> combined with FINRA's monitoring of Arca Securities's compliance with the Exchange's rules and quarterly reporting to NYSE's CRO, will help to protect the independence of the Exchange's regulatory responsibilities with respect to Arca Securities.

## V. Conclusion

*It Is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act,<sup>18</sup> that the proposed rule change (SR-NYSE-2011-45) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

Elizabeth M. Murphy,  
Secretary.

[FR Doc. 2011-25825 Filed 10-5-11; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65452; File No. SR-C2-2011-023]

### Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend C2 Rule 8.2 Concerning the Market-Maker Registration Cost for SPXPM

September 30, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the

(January 28, 2009) (SR-NYSE-2008-120) (order approving a joint venture between NYSE and BIDS Holdings L.P.).

<sup>17</sup> This oversight will be accomplished through the Regulatory Contract between the Exchange and FINRA and a 17d-2 Agreement.

<sup>18</sup> 15 U.S.C. 78s(b)(2).

<sup>19</sup> 17 CFR 200.30-3(a)(12).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> See Routing Pilot Release. See also *supra* note 6 and accompanying text.

<sup>12</sup> See Notice, 76 FR at 53514.

“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 20, 2011, the C2 Options Exchange, Incorporated (“Exchange” or “C2”) 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 Exchange has designated the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### **I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change**

The filing proposes to amend C2 rules relating to the Market-Maker registration cost for P.M.-settled S&P 500 Index options (SPXPM). The text of the proposed rule change 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**

The purpose of this rule change is to amend C2 Rule 8.2 to establish Market-Maker registration costs for SPXPM options before trading commences in that options class.<sup>5</sup> The Exchange proposes to amend Rule 8.2(d) to specifically reference SPXPM options as

having a registration cost of 1.0. The Exchange notes that the new registration cost for SPXPM options will be the initial registration cost because this options class is not currently trading. Thus, to trade SPXPM, a C2 Market-Maker will be required to obtain a dedicated Market-Maker permit. Pursuant to the C2 fee schedule, a Market-Maker permit costs \$5,000 per month (additionally the Exchange anticipates adopting an SPXPM Tier Appointment cost in the near future).

Among other reasons, the Exchange believes that the registration cost change for SPXPM is reasonable in light of the fact that it is a new product and the registration cost is comparable to the 1.0 appointment cost for A.M.-settled S&P 500 Index options traded on the Chicago Board Options Exchange, Incorporated (“CBOE”) under CBOE Rule 8.2(c)(iii).

##### **2. Statutory Basis**

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act. Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) Act<sup>6</sup> requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest. Among other reasons, the Exchange believes that the registration cost change for SPXPM is reasonable in light of the fact that it is a new product and the registration cost is comparable to the 1.0 appointment cost for A.M.-settled S&P 500 Index options traded on the CBOE under CBOE Rule 8.2(c)(iii).

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

C2 does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

#### **C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others**

No written comments were 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 rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>7</sup> and Rule 19b-4(f)(6) thereunder.<sup>8</sup>

The Exchange has requested that the Commission waive the 30-day operative delay period. Waiving the operative delay will enable the Exchange to impose the market-maker registration cost for SPXPM options before the commencement of trading in that options class. Because C2’s proposal for a 1.0 registration cost for SPXPM is comparable to the existing 1.0 registration cost for the similar S&P 500 index option traded on CBOE, C2’s proposal is consistent with CBOE’s current rule and does not raise any new or novel issues. Accordingly, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and designates the proposed rule change to be operative upon filing with the Commission.<sup>9</sup>

At any time within 60 days of the filing of such 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.

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

<sup>8</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange’s intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>9</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

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

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

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

<sup>5</sup> See Securities Exchange Act Release No. 34-65256 (September 2, 2011), 76 FR 55969 (September 9, 2011) (SR-C2-2011-008).

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

#### 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-C2-2011-023 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-C2-2011-023. 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 C2. 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 publicly available. All submissions should refer to File Number SR-C2-2011-023 and should be submitted on or before October 27, 2011.

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

Elizabeth M. Murphy,  
Secretary.

[FR Doc. 2011-25823 Filed 10-5-11; 8:45 am]

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65451; File No. SR-NYSEAmex-2011-64]

#### **Self-Regulatory Organizations; NYSE Amex LLC; Order Approving a Proposed Rule Change Amending NYSE Amex Options Rule 993NY(b)(2) To Make Permanent the Pilot Program that Permits the Exchange To Accept Inbound Orders Routed by Archipelago Securities LLC in Its Capacity as a Facility of Affiliated Exchanges and To Clarify the Text of NYSE Amex Options Rule 993NY(b)(1)(B) to More Accurately Reflect the Regulatory Services Agreement Between the Exchange and the Financial Industry Regulatory Authority**

September 30, 2011.

#### **I. Introduction**

On August 18, 2011, NYSE Amex LLC ("NYSE Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to make permanent the existing pilot program that permits the Exchange to accept inbound orders routed by Archipelago Securities LLC ("Arca Securities") in its capacity as a facility of an affiliated exchange (with the attendant obligations and conditions), and to clarify the text of NYSE Amex Options Rule 993NY(b)(2) to more accurately reflect the regulatory services agreement ("RSA") between the Exchange and the Financial Industry Regulatory Authority ("FINRA"). The proposed rule change was published for comment in the **Federal Register** on August 26, 2011.<sup>3</sup> The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change.

#### **II. Background**

Arca Securities is a broker-dealer that is an NYSE Amex trading permit holder

("ATP Holder"),<sup>4</sup> and, among other things, is permitted to provide to members of NYSE Arca optional routing services to other market centers.<sup>5</sup> On June 16, 2011, the Exchange filed an immediately effective proposed rule change to, among other things, permit the Exchange to receive inbound routes of option orders that Arca Securities routes in its capacity as a facility of NYSE Arca on a pilot basis ending September 30, 2011.<sup>6</sup> The Exchange now seeks permanent approval of this inbound routing pilot.<sup>7</sup>

#### **III. Discussion and Commission Findings**

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>8</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(1) of the Act,<sup>9</sup> which requires, among other things, that a national securities exchange be so organized and have the capacity to carry out the purposes of the Act, and to comply and enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulation thereunder, and the rules of the Exchange. Further, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>10</sup> which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in

<sup>4</sup> "ATP Holder" is defined in NYSE Amex Options Rule 900.2NY(5). Arca Securities is owned indirectly by NYSE Euronext ("NYSE Euronext"), which also indirectly owns three registered securities exchanges—NYSE Arca, Inc. ("NYSE Arca"), the Exchange, and New York Stock Exchange LLC ("NYSE"). Thus, Arca Securities is an affiliate of each of these exchanges.

<sup>5</sup> Arca Securities operates as a facility of NYSE Arca that provides outbound routing from NYSE Arca to other market centers, subject to certain conditions. See Securities Exchange Act Release No. 52497 (September 22, 2005), 70 FR 56949, 56952-56953 (September 29, 2005) (SR-PCX-2005-90).

<sup>6</sup> See Securities Exchange Act Release No. 64732 (June 23, 2011), 76 FR 38240 (June 29, 2011) (SR-NYSEAmex-2011-40) ("Routing Pilot Release"). See also Notice, 76 FR at 53517, n.5 and accompanying text.

<sup>7</sup> See Notice.

<sup>8</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>9</sup> 15 U.S.C. 78f(b)(1).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<sup>11</sup> 15 U.S.C. 78s(b)(1).

<sup>12</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 65181 (August 22, 2011), 76 FR 53516 ("Notice").