The Exchange believes that the proposal to exclude QCC orders from the Marketing Charges program is reasonable given the nature of a QCC order. QCC orders by design are not subject to competitive bidding or offering, instead a qualifying QCC order is printed to the tape allowing for a clean cross. Therefore, it is the Exchange's expectation that inducements such as payment for order flow will not factor into attracting QCC orders since a market maker being solicited to be a party to such a trade will simply ask for the order to be sent to a venue that does not collect marketing charges for QCC orders. One such exchange, the CBOE, already explicitly excludes QCC orders from its payment for order flow program.[17] The Exchange believes therefore that it is reasonable to exclude QCC orders from the Marketing Charges program.

The Exchange believes the proposed $.03 per contract rebate for Floor Brokers who enter QCC orders that execute is reasonable because it will allow Floor Brokers the opportunity to compete for QCC orders that would otherwise be entered into front-end order entry systems of competing exchanges.[18] The proposed rebate is comparable to that found on NASDAQ OMX PHLX [19] in that it is being offered to Floor Brokers as an inducement that may allow them to competitively price their services offered to all participants. To the extent that the rebate is successful in attracting additional order flow to the Exchange, all participants should benefit. As such, the Exchange believes that the rebate is appropriate and reasonable.

The Exchange believes the proposal to adopt a $.03 per contract rebate is equitable and not unfairly discriminatory because it would uniformly apply to all QCC orders entered by a Floor Broker for validation by the system and potential execution. Any participant will be able to engage a rebate-receiving Floor Broker in a discussion surrounding the appropriate level of fees that they may be charged for entrusting the entry of the QCC order to the Floor Broker into the Exchange systems for validation and execution. The additional order flow attracted by this rebate should benefit all participants. For this reason, the Exchange believes the adoption of the proposed rebate is both equitable and not unfairly discriminatory.

For the reasons noted above, the Exchange believes that the proposed fees are fair, equitable and not unfairly discriminatory.

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

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

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

No written comments were solicited or received with respect to the proposed rule change.

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

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [20] of the Act and subparagraph (f)(2) of Rule 19b–4 [21] thereunder, because it establishes a due, fee, or other charge imposed by the NYSE Amex.

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.

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 Number SR–NYSEAmex–2011–72 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–NYSEAmex–2011–72. 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, NW., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov.* 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–NYSEAmex–2011–72 and should be submitted on or before November 1, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–26102 Filed 10–7–11; 8:45 am]

BILLING CODE 8011–01–P

[17] *See* CBOE fee schedule, *supra* note 12, at page 4, footnote 6.

[18] *See supra* note 7.

[19] *See supra* note 8.

[20] 15 U.S.C. 78s(b)(3)(A).

[21] 17 CFR 240.19b–4(f)(2).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65477; File No. SR–FINRA–2011–028]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Withdrawal of Proposed Rule Change To Adopt Rules Regarding Supervision in the Consolidated FINRA Rulebook

October 4, 2011.

On June 10, 2011, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange

Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt rules regarding supervision in the consolidated FINRA rulebook. The proposed rule change was published for comment in the **Federal Register** on June 29, 2011.[3] The Commission received 12 comments on the proposal.[4] On July 26, 2011, FINRA extended the time period in which the Commission must approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change, to September 27, 2011.

On September 27, 2011, FINRA withdrew the proposed rule change (SR–FINRA–2011–028).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[5]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–26101 Filed 10–7–11; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 64736 (June 26, 2011), 76 FR 38245 (June 29, 2011) (Notice of Filing of File No. SR–FINRA–2011–028) (''Notice'').

[4] The comment period ended on July 20, 2011; all comments are posted on the Commission's Web site, *http://www.sec.gov/rules/sro.shtml.*

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65483 File No. SR–OCC–2011–13]

Self-Regulatory Organizations; Options Clearing Corporation; Notice of Filing of Proposed Rule Relating to Relative Performance Indexes

October 4, 2011.

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 September 21, 2011, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change. On October 4, 2011, OCC filed Amendment No. 1 to the proposed rule change. The proposed rule change as amended by Amendment No. 1 is described in Items I, II, and III below, which Items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change and Amendment No. 1 to the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would remove any potential cloud on the jurisdictional status of relative performance indexes.

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

In its filing with the Commission, OCC 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 these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

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

The purpose of the proposed rule change is to remove any potential cloud on the jurisdictional status of relative performance indexes. NASDAQ OMX PHLX has proposed to trade options on indexes (''Alpha Index Options'') that measure the relative total returns of a stock or exchange-traded fund (''ETF'') against another stock or ETF, including where one of the reference ETFs measured by the index is a gold- or silver-based ETF.[3] Generally, a relative performance index should be considered to be an index of securities since the components of a relative performance index are ETFs or other securities. However, OCC would like to confirm the jurisdictional treatment of relative performance indexes in situations in which one of the reference securities of an underlying relative performance index is an ETF designed to measure the return of gold or silver. To accomplish this purpose, OCC is proposing to add an interpretation following Section 2 in Article XVII of OCC's By-Laws,[4] clarifying that OCC will clear and treat as securities any relative performance index, including in situations in which one of the reference securities of a relative performance index is an ETF designed to measure the return of gold or silver. The Commission and Commodity Futures Trading Commission (''CFTC'') have previously approved changes to OCC's By-Laws clarifying that options on the CBOE Gold ETF Volatility Index will be cleared and treated as securities.[5]

In its capacity as a ''derivatives clearing organization'' registered as such with the CFTC, OCC is filing this proposed rule change for prior approval by the CFTC pursuant to provisions of the Commodity Exchange Act (the ''CEA'') in order to foreclose any potential liability under the CEA based on an argument that the clearing by OCC of such options as securities options constitutes a violation of the CEA.

OCC believes that the proposed interpretation of OCC's By-Laws is consistent with the purposes and requirements of Section 17A of the Exchange Act because it is designed to promote the prompt and accurate clearance and settlement of transactions in securities options, to foster cooperation and coordination with persons engaged in the clearance and settlement of such transactions, to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of such transactions, and, in general, to protect investors and the public interest. It accomplishes this purpose by reducing the likelihood of a dispute as to the Commission's jurisdiction over relative performance indexes in situations where one of the reference securities of an underlying relative performance index is a gold- or silver-based ETF. The proposed rule change is not inconsistent with the By-Laws and Rules of OCC.

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

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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The staff notes that on August 17, 2011, the Commission issued an Order granting approval this proposed rule change. *See* Securities Exchange Act Release No. 34–65149, 76 FR 52729 (August 23, 2011).

[4] The staff notes that OCC's is also adding a definition of ''relative performance index'' to Section 1, which will be defined as an index designed to measure the relative performance of a reference security or reference index in relation to another reference security or reference index.

[5] *See* Securities Exchange Act Release No. 34–62290, 75 FR 35861 (June 23, 2010); CFTC Order Exempting the Trading and Clearing of Certain Products Related to the CBOE Gold ETF Volatility Index and Similar Products, 75 FR 81977 (December 29, 2010).