

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64273; File No. SR-NYSE-2011-09]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change Amending Exchange Rule 103B To Modify the Application of the Exchange's Designated Market Maker Allocation Policy in the Event of a Merger Involving One or More Listed Companies

April 8, 2011.

On February 24, 2011, New York Stock Exchange LLC ("Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Exchange Rule 103B to modify the application of the Exchange's Designated Market Maker allocation policy in the event of a merger involving one or more listed companies. The proposed rule change was published for comment in the **Federal Register** on March 10, 2011.³

Section 19(b)(2) of the Act⁴ provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is April 24, 2011.

The Commission is hereby extending the 45-day period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change. In particular, the extension of time will ensure that the Commission has sufficient time to consider and take action on the Exchange's proposal.

Accordingly, pursuant to Section 19(b)(2)(A)(ii)(I) of the Act⁵ and for the reasons stated above, the Commission designates June 8, 2011, as the date by

which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change File No. SR-NYSE-2011-09.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011-8920 Filed 4-12-11; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64266; File No. SR-C2-2011-008]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Allow the Listing and Trading of a P.M.-Settled S&P 500 Index Option Product

April 8, 2011.

I. Introduction

On February 28, 2011, C2 Options Exchange, Incorporated (the "Exchange" or "C2") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to permit the listing and trading of P.M.-settled S&P 500 Index options on C2. The proposed rule change was published for comment in the **Federal Register** on March 8, 2011.³ The Commission received two comments on the proposal.⁴

Section 19(b)(2) of the Act⁵ provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the

⁶ 17 CFR 200.30-3(a)(31).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 64011 (March 2, 2011), 76 FR 12775 ("Notice").

⁴ See letter from Randall Mayne, Blue Capital Group, to Elizabeth M. Murphy, Secretary, Commission, dated March 18, 2011; letter from Andrew Stevens, Legal Counsel, IMC Chicago, LLC, to Elizabeth M. Murphy, Secretary, Commission, dated March 24, 2011.

⁵ 15 U.S.C. 78s(b)(2).

proposed rule change should be disapproved. The 45th day for this filing is April 22, 2011.

The Commission is hereby extending the 45-day period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change. In particular, the extension of time will ensure that the Commission has sufficient time to consider and take action on the Exchange's proposal in light of, among other things, the comments received on the proposal.

Accordingly, pursuant to Section 19(b)(2)(A)(ii)(I) of the Act⁶ and for the reasons stated above, the Commission designates June 6, 2011, as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change File No. SR-C2-2011-008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011-8918 Filed 4-12-11; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64225; File No. SR-FINRA-2011-006]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Granting Approval of a Proposed Rule Change Relating To Motions in Arbitration

April 7, 2011.

I. Introduction

On February 4, 2011, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to amend FINRA Rules 12206, 12503, and 12504 of the Code of Arbitration Procedure for Customer Disputes, and Rules 13206, 13503, and 13504 of the Code of Arbitration Procedure for Industry Disputes (collectively, "Codes"), to provide moving parties with a five-day period to reply to responses to motions. The proposed rule

⁶ 15 U.S.C. 78s(b)(2)(A)(ii)(I).

⁷ 17 CFR 200.30-3(a)(31).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 64039 (March 4, 2011), 76 FR 13251.

⁴ 15 U.S.C. 78s(b)(2).

⁵ 15 U.S.C. 78s(b)(2)(A)(ii)(I).

change was published for comment in the **Federal Register** on February 22, 2011.³ The Commission received three comment letters on the proposed rule change.⁴ FINRA responded to these comments in a letter dated April 1, 2011.⁵ This order approves the proposed rule change.

II. Description of Proposal

The Codes specify time periods for a party to respond to a motion,⁶ including a motion to dismiss.⁷ They do *not* expressly provide time periods for the party that made the original motion (the “moving party”) to reply to a response, which happens on occasion. FINRA’s practice has been to forward the reply to the arbitrators, even when staff already have sent the motion and response to the arbitrators. Since the Codes do not prescribe a time period for replying to responses to motions, there have been instances where arbitrators reviewed the motion papers and even ruled on a motion before receiving a reply, causing confusion and wasting time.

FINRA proposed to amend Rules 12206 and 13206 (Time Limits), Rules 12503 and 13503 (Motions), and Rules 12504 and 13504 (Motions to Dismiss), to provide a moving party with a five-day period to reply to a response to a motion. The proposed amendments would codify FINRA’s practice relating to replies to responses to motions and make it transparent. The proposal would provide parties with an opportunity to brief fully the issues in dispute, and ensure that arbitrators have all of the motion papers before issuing a final decision on the motion.

³ See Exchange Act Release No. 63910 (February 15, 2011), 76 FR 9840 (February 22, 2010) (“Notice”).

⁴ See letter from William A. Jacobson, Esq., Associate Clinical Professor and Director, Cornell Securities Law Clinic, and Negisa Balluku, Cornell Law School, dated March 15, 2011 (“Cornell Letter”); letter from Lisa A. Catalano, Esq., Director and Associate Professor of Clinical Legal Education, Christine Lazaro, Esq., Supervising Attorney, Clair S. Seu, Student Intern, and Stephen Chou, Student Intern, St. John’s University School of Law Securities Arbitration Clinic, dated March 15, 2011 (“St. John’s Letter”); and letter received by FINRA from David M. Foster, Esq. dated March 21, 2011, which addressed issues beyond the scope of the proposed rule change.

⁵ See letter from Margo A. Hassan, Assistant Chief Counsel, FINRA, to Elizabeth M. Murphy, Secretary, Commission, dated April 1, 2011 (“FINRA Response”).

⁶ Rules 12503(b) and 13503(b) (Responding to Motions) provide, generally, that parties have 10 days from the receipt of a written motion to respond to the motion.

⁷ Rules 12206(b) and 13206(b) (Dismissal under Rule) provide that parties have 30 days to respond to motions. Rules 12504(a) and 13504(a) (Motions to Dismiss Prior to Conclusion of Case in Chief) provide that parties have 45 days to respond to motions.

FINRA considered whether codifying a reply period might encourage additional replies to responses to motions, or cause significant delays in the arbitration proceeding. FINRA believes that a five-day period for replies gives moving parties sufficient time to react to responses to motions without causing significant delays to proceedings. Currently, FINRA Rules 12512 and 13512 (Subpoenas) provide moving parties with a 10-day period in which to reply to opposing parties’ objections to motions. FINRA has not experienced any increase in replies related to subpoenas because of these rules and the 10-day reply period has not caused significant delays.

Further, on June 21, 2010, FINRA revised its practice relating to responses to motions and published a Notice to Parties on its website stating that moving parties have five calendar days from receipt of a response to a motion to submit a reply to the response.⁸ After the five-day period, FINRA forwards to the panel at the same time the motion, any response to the motion, and any reply. If FINRA receives a reply after the five-day period expires, staff forwards the reply to the panel upon its receipt. However, FINRA staff does not delay sending the motion, response to the motion, and reply to the panel after the five-day period expires, and the panel may issue a decision upon receipt of those documents.

Based on FINRA’s experience with the subpoena rules and its revised practice relating to replies to responses, FINRA does not expect the proposed five-day period to result in undue delays.

III. Discussion of Comment Letters

One commenter asked FINRA to consider amending the subpoena rules to provide for a five-day period to reply to responses to motions in order to maintain consistency in the Codes’ timeframes.⁹ FINRA stated that as it is not amending the subpoena rules in the proposed rule change, the Cornell Letter is outside the scope of the proposal. However, FINRA did express its intention to consider the suggestion made in the Cornell Letter for possible future rulemaking.¹⁰

One commenter raised a concern that the proposed five-day period may not provide *pro se* claimants with adequate time to prepare their replies.¹¹ FINRA responded that *pro se* claimants would

have enough time to reply under the proposed rule change, noting that *pro se* claimants would already be aware of the issues raised in a response, having drafted the initial motion, and that if *pro se* claimants need additional time to reply to a response, the Director may extend the deadline for good cause pursuant to FINRA Rule 12207(c).¹² This commenter also suggested that *pro se* claimants receive additional guidance regarding their procedural rights, including those not expressly codified in a rule, such as the ability to file a sur-reply.¹³ In response, FINRA indicated that sur-replies and additional guidance regarding sur-replies are outside the scope of the current rulemaking,¹⁴ noting that it did not wish to encourage additional filings by addressing sur-replies in the Codes at this time.¹⁵ Finally, the commenter asked that FINRA amend the rules to include express language limiting the scope of motion replies to those issues and facts previously raised in the motion and response.¹⁶ FINRA responded that it does not intend to amend the proposal in response to this comment, as it believes that arbitrators are in the best position to determine the scope of motions and replies thereto and would address any such concerns directly with the parties.¹⁷

IV. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change, the comments received, and FINRA’s response to the comments, and 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 association.¹⁸ In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,¹⁹ which, among other things, requires that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. More specifically, the Commission finds that the proposed rule change codifies

¹² FINRA Response.

¹³ St. John’s Letter.

¹⁴ Telephone conversation with Margo Hassan of FINRA on April 6, 2011.

¹⁵ FINRA Response.

¹⁶ St. John’s Letter.

¹⁷ FINRA Response.

¹⁸ In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁹ 15 U.S.C. 78o–3(b)(6).

⁸ See <http://www.finra.org/ArbitrationMediation/Parties/ArbitrationProcess/NoticesToParties/P121652>.

⁹ Cornell Letter.

¹⁰ FINRA Response.

¹¹ St. John’s Letter.

existing practice and helps to promote a fair and efficient process for the resolution of claims.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²⁰ that the proposed rule change (SR-FINRA-2011-006), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011-8896 Filed 4-12-11; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64260; File No. SR-FINRA-2011-016]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delay the Implementation date of FINRA Rule 2090 (Know Your Customer) and FINRA Rule 2111 (Suitability)

April 8, 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 April 7, 2011, Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been substantially prepared by FINRA. FINRA has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,³ which renders the proposal effective upon receipt of this filing by the Commission. 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

FINRA is proposing a rule change to delay the implementation date for FINRA Rule 2090 (Know Your Customer) and FINRA Rule 2111

(Suitability), as approved in SR-FINRA-2010-039, until July 9, 2012.

The text of the proposed rule change is available on FINRA’s Web site at <http://www.finra.org>, at the principal office of FINRA 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, FINRA 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. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

On November 17, 2010, the SEC approved FINRA’s proposal to adopt rules governing know-your-customer and suitability obligations⁴ for the consolidated FINRA rulebook.⁵ On January 10, 2011, FINRA issued *Regulatory Notice* 11-02, which provided guidance regarding the new rules and announced an implementation date of October 7, 2011. Following SEC approval of the rules and publication of the *Regulatory Notice*, numerous firms requested that the approved rules’ implementation date be delayed to allow firms additional time to determine the types of systems and procedural changes they need to make, implement those changes, and educate associated persons and supervisors regarding compliance with the rules. FINRA is filing this rule change to move the implementation date for Rules 2090 and 2111 from October 7, 2011, to July 9,

⁴ See Securities Exchange Act Release No. 63325 (November 17, 2010), 75 FR 71479 (November 23, 2010) (Order Approving File No. SR-FINRA-2010-039).

⁵ The current FINRA rulebook consists of (1) FINRA rules; (2) NASD rules; and (3) rules incorporated from NYSE (“Incorporated NYSE rules”) (together, the NASD Rules, and Incorporated NYSE Rules are referred to as the “Transitional Rulebook”). While the NASD rules generally apply to all FINRA member firms, the Incorporated NYSE rules apply only to those members of FINRA that are also members of the NYSE (“Dual Members”). The FINRA rules apply to all FINRA member, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, see *Information Notice*, March 12, 2008 (Rulebook Consolidation Process).

2012, and has filed it as a “non-controversial” rule change that is effective upon filing.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁶ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposed rule change furthers these purposes because it will allow firms to better prepare procedures and systems and better educate associated persons to comply with the requirements of these important rules.

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

FINRA 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

Written comments were neither solicited nor received.

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

Because the foregoing proposed rule change 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, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁷ and Rule 19b-4(f)(6) thereunder.⁸

A proposed rule change filed under Rule 19b-4(f)(6)⁹ normally may not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)¹⁰ permits the Commission to

⁶ 15 U.S.C. 78o-3(b)(6).

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(6).

⁹ 17 CFR 240.19b-4(f)(6).

¹⁰ 17 CFR 240.19b-4(f)(6)(iii). Among other things, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its 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 Commission notes that FINRA has satisfied the pre-filing notice requirement.

²⁰ 15 U.S.C. 78s(b)(2).

²¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).