

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-55578; File No. SR-NYSEArca-2007-29)

April 4, 2007

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to NYSE Arca Rule 7.20 and 7.31

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 March 20, 2007, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder, which renders it effective upon filing with the Commission.<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

NYSE Arca, through its wholly owned subsidiary, NYSE Arca Equities, Inc. (“NYSE Arca Equities”), is proposing to amend its rules governing NYSE Arca, LLC (“NYSE Arca Marketplace”), the equities trading facility of NYSE Arca Equities. With this filing, the Exchange proposes to clarify: (1) that Equity Trading Permit (“ETP”) Holders who are not registered Market Makers<sup>5</sup> are prohibited from entering Q Orders

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<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).

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

<sup>5</sup> See NYSE Arca Rule 1.1(u).

pursuant to NYSE Arca Equities Rule 7.20(a), and (2) when Q Orders will automatically repost pursuant to NYSE Arca Equities Rule 7.31(l). The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.nyse.com>.

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 NYSE Arca 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 Exchange 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

Pursuant to NYSE Arca Equities Rule 7.23(a)(1) (Obligations of Market Makers), Market Makers are required to maintain continuous, two-sided Q Orders in those securities in which the Market Maker is registered to trade. NYSE Arca Equities Rule 7.31(k)(1)(A) provides that a Market Maker may instruct the NYSE Arca Marketplace before 6:28 a.m. (Pacific Time) to enter a Q Order on its behalf at price levels set forth in Rule 7.31(k)(1)(A).<sup>6</sup> Furthermore, Rule 7.31(k) provides that upon execution, the Q Order entered pursuant to the Market Maker's instructions will automatically repost with

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<sup>6</sup> These price levels are: (1) at the last price and size entered by the Market Maker during the previous trading day, either including or excluding reserve size; (2) at a specified percentage from the best bid or offer; or (3) at the standard Q defined as \$0.01 bid and 2 times the previous day's close for the offer with specified display and reserve sizes.

the original size at \$10 below the original bid or \$10 above the original offer, but never below \$0.01.

The amendment to Rule 7.31 reflected in this rule filing is consistent with the intent of the rule and how the system currently operates. Specifically, such automatic reposting will not occur if the Market Maker initially enters the Q Order without a reserve size, or if the Market Maker initially enters the Q Order with a reserve size and such reserve size is exhausted. The proposed amendment clarifies that under such circumstances, a Market Maker will be responsible for reposting a new Q Order in the security in order to remain in compliance with its continuous Q Order obligation pursuant to Rule 7.23(a)(1).

In addition, due to the broad definition of “Q Order” in Rule 7.31(k)(1), ETP Holders, who are not registered Market Makers, have been improperly acting as Market Makers by entering Q Orders on the NYSE Arca Marketplace. In order to prevent this practice, the Corporation is clarifying the language in NYSE Arca Equities Rule 7.20(a) to prohibit specifically ETP Holders not registered as Market Makers from acting as Market Markers (i.e., submitting Q Orders) and make Rule 7.20(a) more consistent with the proposed changes to Rule 7.31(k)(1).

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b)<sup>7</sup> of the Act, in general, and furthers the objectives of Section 6(b)(5)<sup>8</sup> in particular in that it is 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

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<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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)<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup> At any time within 60 days of the filing of the proposed 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.

NYSE Arca has asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay. The Commission believes such waivers are

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<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

consistent with the protection of investors and the public interest because they would permit the Exchange to codify the proposed clarifications without further delay.<sup>11</sup> For this reason, the Commission designates the proposal to be operative upon filing with the Commission.

#### 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2007-29 on the subject line.

##### Paper Comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2007-29. 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

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<sup>11</sup> For purposes only of waiving the 30-day pre-operative period, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

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 inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE Arca. 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-2007-29 and should be submitted on or before [insert date 21 days after publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

Florence E. Harmon  
Deputy Secretary

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