

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-60607; File No. SR-NYSEArca-2009-80)

September 1, 2009

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish the Risk Management Gateway (“RMG”) Service

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 August 28, 2009, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) 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 self-regulatory organization. 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 establish its Risk Management Gateway (“RMG”) service. A copy of this filing is available on the Exchange’s Web site at [www.nyse.com](http://www.nyse.com), at the Exchange’s principal office 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, 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.

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

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

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

1. Purpose

The Exchange proposes to offer, through its wholly-owned subsidiary NYSE Euronext Advanced Trading Solutions, Inc., the Risk Management Gateway (“RMG”) service as a facility<sup>3</sup> of the Exchange, to NYSE Arca Users.<sup>4</sup> NYSE Transact Tools, Inc, a division of the NYSE Euronext Advanced Trading Solutions Group (“NYXATS”), owns RMG.

Traditionally, the customers of an ETP Holder gave orders to the ETP Holder who then submitted those orders to the Exchange on behalf of the customer. By means of sponsored access, an ETP Holder may allow its customers to enter orders directly into the trading systems of the Exchange as Sponsored Participants, without the Sponsoring ETP Holder acting as an intermediary.<sup>5</sup>

To facilitate the ability of Sponsoring ETP Holders to monitor and oversee the sponsored access activity of their Sponsored Participants, NYXATS will offer an order-verification service to Sponsoring ETP Holders. This service will act as a risk filter by causing the orders of Sponsored Participants to pass through RMG prior to entering the Exchange’s trading systems for execution. When a Sponsored Participant’s order passes through RMG, RMG software determines whether the order complies with order criteria that the ETP Holder has established for

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<sup>3</sup> The term “facility” as defined in Section 3(a)(2) of the Act, as amended, provides, when used with respect to an exchange includes its premises, tangible or intangible property whether on the premises or not, any rights to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange), and any right of the exchange to the use of any property or service. See 15 U.S.C. 78c(a)(2).

<sup>4</sup> See NYSE Arca Equities Rule 1.1(yy).

<sup>5</sup> See NYSE Arca Equities Rule 7.29(b)

that Sponsored Participant. The order criteria pertain to such matters as the size of the order (per order or daily quantity limits) or the credit limit (per order or daily value) that the Sponsoring ETP Holder has established for the Sponsored Participant. Additional risk filters may also be selected by the Sponsoring ETP Holder's relating to specific symbols or end users.

If the order is consistent with the parameters set by the ETP Holder, then RMG allows the order to continue along its path to the Exchange's trading systems. If the order falls outside of those parameters, then RMG returns the order to the Sponsored Participant. RMG will only return an order to the Sponsored Participant when the order fails to comply with the criteria set by the Sponsoring ETP Holder.

RMG software interacts with orders only prior to the orders' entry into the Exchange's trading system for execution. RMG does not have order execution or trade reporting capabilities (though it will allow a Sponsoring ETP Holder to monitor the orders of its Sponsored Participants). RMG maintains a record of all messages relating to Sponsored Participants' transactions and supplies a copy of such messages to the applicable Sponsoring ETP Holder.

The Sponsoring ETP Holder, and not RMG, will have full responsibility for ensuring that Sponsored Participants' sponsored access to the Exchange complies with the Exchange's sponsored access rules. The use of RMG by an ETP Holder does not automatically constitute compliance with Exchange rules.

NYXATS will host RMG software on NYXATS' infrastructure. After passing through RMG software, each order will enter the NYSE Arca's Gateway.

The Exchange does not require Sponsoring ETP Holders to use RMG. Sponsoring ETP Holders are free to use a competing risk-management service or to use none at all. The Exchange will not provide preferential treatment to Sponsoring ETP Holders using RMG.

The Exchange proposes to make RMG available to its Users, as a facility of the Exchange, pursuant to contractual arrangements.<sup>6</sup> The Exchange believes that RMG will offer its Users another option in the efficient risk management of its Sponsored Participant's access to NYSE Arca.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b)<sup>7</sup> of the Securities Exchange Act of 1934 (the "Exchange 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 facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. This service will allow firms to better monitor the order flow of their Sponsored Participants.

### 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

Because the foregoing proposed rule change: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on

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<sup>6</sup> The Exchange will file with the Commission all fees associated with the RMG Service.

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

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

competition; and (iii) by its terms, does not 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, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.<sup>11</sup> However, Rule 19b-4(f)(6)(iii)<sup>12</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay and designate the proposed rule change operative upon filing so that the expected benefits to Exchange Users from use of the risk-management service would not be delayed. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that other self-regulatory organizations have similar functionality<sup>13</sup> and that this filing raises no new regulatory issues. Therefore, the Commission designates the proposal operative upon filing.<sup>14</sup>

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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).

<sup>11</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give 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 Exchange has complied with this requirement.

<sup>12</sup> Id.

<sup>13</sup> See Securities Exchange Act Release Nos. 59354 (February 3, 2009), 74 FR 6683 (February 10, 2009) (SR-NYSE-2008-101); 60236 (July 2, 2009), 74 FR 34068 (July 14, 2009) (SR-BATS-2009-019).

<sup>14</sup> For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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.

#### 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-NYSEArca-2009-80 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-2009-80. 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 inspection and copying in the Commission's Public Reference Room 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 Number SR-NYSEArca-2009-80 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(12).