

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-61025; File No. SR-NYSEArca-2009-102)

November 18, 2009

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Arca, Inc. Amending Rule 7.25

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on November 6, 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, II, and III 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 amend Rule 7.25 to remove the requirement that for each security in which a Market Maker is registered as a Lead Market Maker, the Lead Market Maker also register as an Odd Lot Dealer in that security. The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and [www.nyse.com](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 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

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

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 Exchange proposes to amend Rule 7.25 to remove the requirement that for each security in which a Market Maker is registered as a Lead Market Maker (“LMM”), the LMM also register as an Odd Lot Dealer (“OLD”) in that security (the “LMM-OLD requirement”). Going forward, LMMs may choose to register as an OLD, but will not be required to do so.

The LMM-OLD requirement was originally established in order to ensure that a mechanism existed whereby the Exchange could facilitate odd lot executions for its primary listings that could not otherwise be routed away to another market center for execution.<sup>4</sup> This historical concern no longer exists. All orders in primary listings, whether odd lot or round lot, are eligible for routing to away market centers. Any eligible unexecuted balance of odd lot orders, like round lot orders, shall be routed to away market centers for execution pursuant to NYSE Arca Equities Rule 7.37(d). Also, for purposes of ranking and execution, round lot, mixed lot and odd lot orders are treated in the same manner on the NYSE Arca Marketplace.<sup>5</sup> As a result, it is no longer necessary to require LMMs to register as OLDs. Instead, as with all market makers, LMMs may choose to register as an OLD, but will not be required to do so.

In addition, until recently, the Exchange paid a \$0.02 per share credit to market makers that executed against an odd lot order. This rebate represented a higher than standard rebate, and

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<sup>4</sup> See Securities Exchange Act Release No. 52827 (November 23, 2005), 70 FR 72139 (December 1, 2005) (order approving SR-PCX-2005-56).

<sup>5</sup> If there is an Odd Lot Dealer registered in the security, the order shall be matched in the Odd Lot Tracking Order Process pursuant to Rule 7.37(c). If there is no Odd Lot Dealer registered in that security, the odd lot will be routed away pursuant to NYSE Arca Equities Rule 7.37(d).

acted as an incentive for market makers to register as OLDs. However, the Exchange notes that as of August 3, 2009, the Exchange eliminated all distinct odd lot pricing and now makes no distinction with respect to the rates applied to odd lot and round lot executions.<sup>6</sup>

The Exchange is not otherwise altering any other rights or obligations of LMMs.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act,<sup>7</sup> in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange is simply eliminating the requirement that LMMs register as an OLD in the security in which they are also registered as an LMM. The Exchange is not otherwise altering the rights and obligations of LMMs.

### 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.

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<sup>6</sup> See Securities Exchange Act Release No. 60495 (August 13, 2009), 74 FR 41957 (August 19, 2009) (notice of filing and immediate effectiveness of SR-NYSEArca-2009-72).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

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

Because the 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 prior to 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</sup>

A proposed rule change filed under Rule 19b-4(f)(6) of the Act<sup>10</sup> normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b-4(f)(6)<sup>11</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.

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

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) 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 satisfied this requirement.

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

<sup>11</sup> Id.

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-2009-102 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-2009-102. 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 Section, 100 F Street, NE, Washington, DC 20549-1090 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at NYSE Arca's principal office and on its Internet Web site at [www.nyse.com](http://www.nyse.com). 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-2009-102 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>12</sup>

Florence E. Harmon  
Deputy Secretary

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