

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-66452; File No. SR-NYSEARCA-2012-15)

February 23, 2012

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Registration Requirements for Traders and Removing Obsolete References to Paper Registration Submissions

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 February 9, 2012, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) 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 Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>4</sup> and Rule 19b-4(f)(6) thereunder,<sup>5</sup> which renders the proposal effective upon filing with 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

The Exchange proposes to amend its registration requirements for traders and remove references to paper registration submissions that are no longer used. 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).

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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.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>5</sup> 17 CFR 240.19b-4(f)(6).

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.

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 its registration requirements for traders and remove references to paper registration submissions that are no longer used.<sup>6</sup> Specifically, NYSE Arca proposes to amend its rules in order to (1) relocate and revise the registration requirements for traders currently found in NYSE Arca Options Rule 2.5(b)(10)(A), (2) remove a provision that limits those registration requirements to traders of member organizations for which the Exchange is the Designated Examining Authority (“DEA”), (3) adopt an alternative Proprietary Trader registration category for those individuals who are associated with OTP Holders and OTP Firms<sup>7</sup> and who solely conduct a business in proprietary trading, (4) remove references in NYSE Arca Options Rule 2.23 to paper registration submissions that are no longer used, and (5) make certain technical and conforming changes.

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<sup>6</sup> The Exchange’s affiliate, NYSE Amex LLC (“NYSE Amex”), has submitted a substantially similar rule filing concerning trader registration requirements. See SR-NYSEAmex-2012-11.

<sup>7</sup> Pursuant to NYSE Arca Options Rule 1.1(q)-(r), OTP Holders and OTP Firms have status as “members” of the Exchange as that term is defined in Section 3 of the Securities Exchange Act of 1934, as amended (the “Act”).

### Registration of Traders

NYSE Arca Options Rule 2.5 generally concerns the denial of or conditions to trading privileges under an Options Trading Permit. NYSE Arca Options Rule 2.5(b)(10)(A) requires that all traders of member organizations for which the Exchange is the DEA must successfully complete the General Securities Registered Representative Examination (“Series 7”) unless an exemption applies. The Exchange proposes to move the text of NYSE Arca Options Rule 2.5(b)(10)(A) to NYSE Arca Options Rule 2.23, which concerns the registration of employees of OTP Firms, and which the Exchange believes is a more logical location for the rule text.

NYSE Arca also proposes to amend that rule text by removing the provision that limits examination requirements to traders of member organizations for which the Exchange is the DEA and to make a conforming change by deleting current NYSE Arca Options Rule 2.23(b)(i) and (ii). Under proposed NYSE Arca Options Rule 2.23(b), all traders associated with OTP Holders and OTP Firms, registered with the Exchange will now be required to pass an applicable examination. This expanded examination requirement should help ensure that all registered traders on NYSE Arca, will continue to be, properly registered, trained and qualified to perform their functions.

A requirement that all traders of member organizations register and be subject to an applicable examination, not just those for which an exchange is the DEA, would be consistent with the registration requirements of other self-regulatory organizations (“SROs”), including The Chicago Board Options Exchange (“CBOE”) and NYSE Amex.<sup>8</sup>

### Proprietary Trader Registration

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<sup>8</sup> See CBOE Rule 3.6A Commentary .06 and NYSE Amex Rule 341(a).

NYSE Arca Options Rule 2.5(b)(10)(A) currently provides that certain traders are exempted from the requirement to successfully complete the Series 7, namely (i) an individual registered as a Market Maker or Market Maker Authorized Trader, (ii) an individual registered as a Floor Broker, and (iii) an individual registered with the Exchange as a Floor Clerk. The Exchange proposes to move the first two exemptions to proposed NYSE Arca Options Rule 2.23(b)(2) and add an exemption for Proprietary Traders.<sup>9</sup>

NYSE Arca has been working with other SROs, some of which have recently enhanced their registration requirements for associated persons,<sup>10</sup> to develop the content outline and the qualification examination, the Series 56, which would be applicable to Proprietary Traders. Certain exchanges have submitted filings to the Commission to utilize the Series 56.<sup>11</sup> NYSE Arca expects to describe the Series 56 in detail and submit the content outline for it to the Commission in a separate filing, as well as make the examination and alternative registration category available in Web CRD.<sup>12</sup> Accordingly, NYSE Arca is amending its rules to recognize the Proprietary Trader registration category and the Series 56.

Under proposed NYSE Arca Options Rule 2.23(b)(2), the Exchange would recognize a Proprietary Trader registration category for an individual engaged in the purchase or sale of securities or other similar instruments for the account of a member or member organization with

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<sup>9</sup> The Exchange is not moving the reference to Floor Clerks [sic] because they are not traders. Floor Clerks are subject to registration on Web CRD but not subject to an examination requirement.

<sup>10</sup> See Securities Exchange Act Release Nos. 63843 (Feb. 4, 2011), 76 FR 7884 (Feb. 11, 2011) (SR-ISE-2010-115), and 63314 (Nov. 12, 2010), 75 FR 70957 (Nov. 19, 2010) (SR-CBOE-2010-084).

<sup>11</sup> See e.g., Securities Exchange Act Release Nos. 64699 (June 17, 2011), 76 FR 36945 (June 23, 2011) (SR-CBOE-2011-056), and 65054 (August 8, 2011), 76 FR 50277 (August 12, 2011) (SR-ISE-2011-36).

<sup>12</sup> Web CRD is the central licensing and registration system for the U.S. securities industry and its regulators.

which he or she is associated, as an employee or otherwise, and who does not transact any business with the public.<sup>13</sup> A Proprietary Trader would be required to be registered as such on Web CRD and pass the Series 56 examination described above, but would not be permitted to function in an agency capacity or otherwise conduct a public business in securities.

NYSE Arca believes that the alternative limited registration category and the qualification examination are appropriate because they are tailored to proprietary trading functions. Presently, persons engaged in proprietary trading on NYSE Arca at a firm for which the Exchange is the DEA are required to pass the Series 7, unless an exception applies. The Exchange believes that the Series 7 covers a great deal of material that is not relevant to proprietary trading functions. Instead, the Series 56 covers both equities and options trading rules, but not all of the rules that are applicable to firms and persons conducting a public business.

Many persons associated with OTP Holders and OTP Firms have previously passed the Series 7. The proposed rule change would not require those individuals currently engaged in proprietary trading who have already passed the Series 7 to register under the new category as Proprietary Traders or to pass the Series 56 because the Exchange believes this would be redundant. Persons who have passed the Series 7 may, of course, engage in proprietary trading because the new Proprietary Trader registration category is a limited registration category. Thus, the proposal would not preclude associated persons from registering as General Securities Representatives and passing the Series 7 examination and then engaging in proprietary trading.

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<sup>13</sup> This is the same definition that NYSE Amex currently uses for securities traders, and would not cover individuals who are required to register as Market Makers or Market Maker Authorized Traders. See Commentary .01 to NYSE Amex Options Rule 341. NYSE Amex is proposing to redefine this category as “Proprietary Trader” and recognize the Series 56 along with other exchanges. See supra note 6.

NYSE Arca expects that individuals might consider the category when applying as an OTP Holder or OTP Firm once the category and examination become available for use by NYSE Arca on Web CRD. Accordingly, the Exchange believes that the category should be helpful to registering those individuals conducting a business in proprietary trading, while at the same time preserving the important goals of appropriate registration and qualification for persons in the securities business. Additionally, OTP Holders and OTP Firms who hire new associated persons might choose to register them in the category.

The proposed rule change is not intended to replace the Series 7 requirement for all traders, but simply to offer an alternative to that requirement for those qualified individuals who solely conduct a business in proprietary trading and have shown their proficiency by successfully passing the Series 56.

#### Paper Registration Submissions

NYSE Arca Options Rule 2.23(a) states that for registration categories (e.g. Floor Clerk) not available electronically on CRD, individuals must file directly with the Exchange a Form U4, any required amendments, or registration documentation prescribed by the Exchange. Because all NYSE Arca registration categories are now available electronically on CRD, the Exchange proposes to delete this text.

#### Technical and Conforming Changes

The Exchange proposes non-substantive technical changes, for example, to delete the word “Test” as it is redundant and to reformat some of the rule text simply for stylistic purposes. The Exchange also proposes a conforming change to Commentary .01 of NYSE Arca Options Rule 2.23 to correct a cross-reference to rule text that is being moved from NYSE Arca Options

Rule 2.5(b)(10)(A).<sup>14</sup>

### Compliance Date

Following effectiveness of the proposed rule change, the Exchange will issue a Regulatory Bulletin announcing the compliance date within 30 days from the operative date of the rule change.

### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>15</sup> in general, and furthers the objectives of (1) Section 6(c)(3)(B) of the Act,<sup>16</sup> pursuant to which a national securities exchange prescribes standards of training, experience and competence for members and their associated persons, and (2) Section 6(b)(5) of the Act,<sup>17</sup> in that it is designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that removing provisions that limit the registration requirements to traders of member organizations for which the Exchange is the DEA and instead requiring all traders associated with OTP Holders and OTP Firms to be registered with the Exchange would allow the Exchange to better monitor and regulate the activities of OTP Holders

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<sup>14</sup> Commentary .01 currently provides that Market Makers, Market Maker Authorized Traders, Floor Brokers, and Floor Clerks are not subject to continuing education requirements; the Exchange is not proposing any substantive change to this provision at this time. However, Proprietary Traders will be subject to continuing education requirements. The Exchange intends to add continuing education requirements for Market Makers, Market Maker Authorized Traders, Floor Brokers, and Floor Clerks in a separate filing in the future.

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

<sup>16</sup> 15 U.S.C. 78f(c)(3)(B).

<sup>17</sup> 15 U.S.C. 78f(b)(5).

and OTP Firms. The Exchange also believes that offering an alternative limited registration category for Proprietary Traders should help ensure that all associated persons engaged in a securities business are, and will continue to be, properly registered, trained and qualified to perform their functions, and will make NYSE Arca rules consistent with other exchanges. The Exchange also notes that relocating rule text to a more logical place in its rules and removing outdated references to paper submissions that are no longer used will add clarity to the Exchange's rules.

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 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 if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given 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 proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>18</sup> and Rule 19b-4(f)(6) thereunder.<sup>19</sup>

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<sup>18</sup> 15 U.S.C. 78s(b)(3)(A).

The Commission believes it is consistent with the protection of investors and the public interest to waive the 30-day operative delay. Waiver of the 30-day operative delay will enable associated persons of Exchange firms to avail themselves of the limited Proprietary Trader registration category, and qualify by taking the Series 56, as soon as it becomes available. For these reasons, the Commission hereby waives the operative delay.<sup>20</sup>

At any time within 60 days of the filing of such 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEARCA-2012-15 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-2012-15. This file number should

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<sup>19</sup> 17 CFR 240.19b-4(f)(6).

<sup>20</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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 website (<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 website viewing and printing in the Commission's Public Reference Section, 100 F Street, NE, Washington, DC 20549 on official business days between 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet website 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-2012-15 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>21</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>21</sup> 17 CFR 200.30-3(a)(12).