

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-62946; File No. SR-NYSEArca-2010-83)

September 20, 2010

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of a Proposed Rule Change Amending NYSE Arca Equities Rule 7.23 to Adopt Pricing Obligations for ETP Holders Who Are Registered as Market Makers

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 September 17, 2010, NYSE Arca, Inc. (“NYSE Arca” or the “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 prepared by the Exchange. 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 NYSE Arca Equities Rule 7.23 to adopt pricing obligations for ETP Holders who are registered as Market Makers. The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and 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

¹ 15 U.S.C. 78s(b)(1).

² 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Arca Equities Rule 7.23 to adopt pricing obligations for Market Makers. Under the proposal, the Exchange will require Market Makers to continuously maintain two-sided Q Order trading interest within a Designated Percentage³ from the National Best Bid and National Best Offer (“NBBO”) for each security in which they are registered. These pricing obligations are intended to eliminate trade executions against Market Maker placeholder Q Orders traditionally priced far away from the inside market, commonly known as “stub quotes.” They are also intended to augment and work in conjunction with Trading Pauses in individual securities due to extraordinary market volatility, which are already in place on a pilot basis for stocks in the S&P 500® Index and the Russell 1000® Index, under Exchange Rule 7.11.⁴

Under the proposal, the Exchange will require Market Makers to enter and maintain Q Orders priced no more than the Designated Percentage away from the NBBO. Permissible Q Orders are determined by the individual character of the security, the time of day in which the Q Order is entered, and other factors which are summarized below.

For purposes of the proposed rule, Designated Percentage shall mean the Threshold Move as defined under Rule 7.11 less two (2) percentage points. Because the Threshold Move across all exchanges is currently 10%, a Market Maker's Q Order in a security may not be more

³ The term Designated Percentage is defined in proposed Rule 7.23(a)(1)(B)(iii).

⁴ See Securities Exchange Act Release No. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) (SR-NYSEArca-2010-41). See also Securities Exchange Act Release No. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) (SR-NYSEArca-2010-61). See also Rule 7.11.

than 8% away from NBBO. Once a permissible Q Order is entered, it may rest without adjustment until such time as it is more than the Defined Limit away from the NBBO. For purposes of the proposed rule, the Designated Limit shall mean the Threshold Move as defined under Rule 7.11 less one-half percentage point (i.e. 9.5%). If the Market Maker's resting interest exceeds the Defined Limit the Market Maker must enter new interest at a price not more than the Designated Percentage of 8% away from the NBBO (or identify to the Corporation current resting interest that satisfies the Market Maker's obligation). For times during the trading day when a Trading Pause is not in effect under Rule 7.11 (e.g., before 6:45 a.m. and after 12:35 p.m. Pacific Time), the Designated Percentage calculation will assume a trigger percentage of 22%. Therefore, a Market Maker must maintain a Q Order no further than 20% away from the NBBO and the Q Order may rest without adjustment until it is more than 21.5% from the NBBO. In the absence of an NBBO, the above calculations will remain the same, but will use the last reported sale from the single plan processor responsible for consolidation of information for the security pursuant to Rule 603 of Regulation NMS.⁵

For securities that are not subject to Trading Pauses, the Designated Percentage will assume a trigger percentage of 32% and apply the same 2% reduction. Thus, Market Makers registered in those securities shall be required to maintain Q Order interest no more than 30% away from NBBO. As with securities subject to Trading Pauses, once a permissible Q Order is entered it may rest without adjustment until such time as it becomes more than the Defined Limit away from the NBBO (31.5%), whereupon the Market Maker must enter new interest at a price not more than the Designated Percentage of 30% away from the NBBO (or identify to the Corporation current resting interest that satisfies the Market Maker's obligation). The Exchange

⁵ 17 CFR 240.603.

proposes that these requirements shall apply to NMS stocks (as defined in Rule 600 under Regulation NMS)⁶ during the trading day.

Nothing in the proposal shall preclude a Market Maker from entering Q Order interest at price levels that are closer to the NBBO than the levels required under the proposal.

The Exchange also proposes to amend Rule 7.31 (Orders and Modifiers) with regards to Q Orders. A Q Order is a limit order submitted to the NYSE Arca Marketplace by a Market Maker, and designated by a Market Maker as a “Q Order” through such means as the Corporation shall specify.⁷ Market Makers utilize Q Orders to satisfy their obligation to maintain continuous, two-sided interest in securities in which they are registered to trade. The proposed amendment to Rule 7.23 requires that the “standard Q,” which is currently defined as having a price of \$0.01 bid and 2 times the previous day’s close for the offer, be eliminated as an available order type.⁸ The Exchange proposes to reserve this subsection for possible future use.⁹

The Exchange also proposes to include language at the end of Rule 7.31(k) stating that “nothing in [the] Rule shall be construed to relieve a Market Maker of any of its obligations pursuant to Rule 7.23.” The Exchange believes that the addition of this rule text will make clear that, while certain Q Orders may be submitted and/or repost with prices that are beyond the

⁶ 17 CFR 240.600.

⁷ See Rule 7.31(k)(1).

⁸ See Rule 7.31(k)(1)(A)(3).

⁹ The Exchange represents that within 90 days from the date of this filing it will submit a proposed rule change with the Commission to either remove the text of Rule 7.31(k)(1)(A)(4), which states that a “Q Order entered with reserve size ... will automatically repost with the original display size and \$10 below the original bid or \$10 above the original offer, but never below \$0.01,” or amend such text so that a Q Order entered with reserve size will repost with a price consistent with the Designated Percentage proposed herein.

Designated Percentages and Defined Limits, respectively, proposed in Rule 7.23, Market Makers shall remain obligated to satisfy their Two-Sided Obligation, as proposed in Rule 7.23(a)(1).

The Exchange also proposes to make certain non-substantive stylistic changes to Rule 7.23(a)(2)-(a)(5). These proposed changes do not alter the substance or form of the existing rule text.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),¹⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹¹ in particular, in that it is designed 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 the proposed rule change also is consistent with the principles of Section 11A(a)(1)¹² of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes the proposed rule change meets these requirements in that it promotes transparency and uniformity concerning pricing obligations across markets for certain market 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.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

¹² 15 U.S.C. 78k-1(a)(1).

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

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. Please include File Number SR-NYSEArca-2010-83 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2010-83. 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 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 inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, 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 publicly available. All submissions should refer to File

Number SR-NYSEArca-2010-83 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.¹³

Florence E. Harmon
Deputy Secretary

¹³ 17 CFR 200.30-3(a)(12).