

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-65048; File No. SR-NYSEArca-2011-52)

August 5, 2011

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Options Rule 6.90 to Permit Qualified Contingent Cross Orders to be Electronically Submitted to the NYSE Arca System from the Floor of the Exchange for Potential Execution

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that on August 1, 2011, 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 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 Options Rule 6.90 to permit Qualified Contingent Cross Orders (“QCCs”) to be electronically submitted to the NYSE Arca System from the Floor of the Exchange for potential execution.

The text of the proposed rule change is available at the Exchange’s website at www.nyse.com, on the Commission’s website at <http://www.sec.gov>, 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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 purpose of this filing is to amend Rule 6.90 to permit QCCs to be electronically submitted to the NYSE Arca System from the Floor of the Exchange for potential execution.⁴

This filing is modeled after a recently approved rule change by NASDAQ OMX PHLX (“PHLX”).⁵

Background

The Exchange recently adopted rules that permit OTP Holders to submit QCCs electronically from off the Floor through the NYSE Arca System.⁶ The QCC permits an NYSE Arca OTP Holder to effect a qualified contingent trade (“QCT”) in a Regulation NMS stock and cross the options leg of the trade on the Exchange immediately upon entry and without order exposure if the order is for at least 1,000 contracts, is part of a QCT, is executed at a price at least

⁴ The NYSE Arca System is configured to automatically reject a QCC entered when the order is for less than 1,000 contracts, is entered at a price worse than the national best bid or offer (“NBBO”) or is entered at the same price as Customer orders in the Exchange’s Consolidated Book.

⁵ See Securities Exchange Act Release No. 64688 (June 16, 2011), 76 FR 36606 (June 22, 2011) (SR-Phlx-2011-56).

⁶ See Securities Exchange Act Release No. 64086 (March 17, 2011), 76 FR 16021 (March 22, 2011) (SR-NYSEArca-2011-09) (“NYSE Arca Electronic QCC Filing”).

equal to the NBBO and if there are no Customer Orders in the Exchange's Consolidated Book at the same price.⁷

The NYSE Arca Electronic QCC Filing was based on an International Securities Exchange ("ISE") rule approved by the Commission.⁸ The ISE QCC Proposal was controversial, attracting opposition from multiple exchanges including NYSE Arca.⁹ The Commission, however, ultimately approved the ISE QCC Proposal, finding it to be consistent with the Securities Exchange Act of 1934 (the "Act"). NYSE Arca implemented the NYSE Arca Electronic QCC Filing, and is proposing this rule change, as a competitive response to the approval of the PHLX floor-based QCC filing.

⁷ A QCT is a transaction consisting of two or more component orders, executed as agent or principal, where: (a) at least one component is an NMS stock, as defined in Rule 600 of Regulation NMS under the Exchange Act; (b) all components are effected with a product or price contingency that either has been agreed to by all the respective counterparties or arranged for by a broker-dealer as principal or agent; (c) the execution of one component is contingent upon the execution of all other components at or near the same time; (d) the specific relationship between the component orders (e.g., the spread between the prices of the component orders) is determined by the time the contingent order is placed; (e) the component orders bear a derivative relationship to one another, represent different classes of shares of the same issuer, or involve the securities of participants in mergers or with intentions to merge that have been announced or cancelled; and (f) the transaction is fully hedged (without regard to any prior existing position) as a result of other components of the contingent trade. See Securities Exchange Act Release No. 57620 (April 4, 2008), 73 FR 19271 (April 9, 2008) (the "QCT Release"). That release superseded a release initially granting the QCT exemption. See Securities Exchange Act Release No. 54389 (August 31, 2006), 71 FR 52829 (September 7, 2006) ("Original QCT Exemption").

⁸ See Securities Exchange Act Release No. 63955 (February 24, 2011), 76 FR 11533 (March 2, 2011) (SR-ISE-2010-73) ("ISE Approval"). See also Securities Exchange Act Release No. 62523 (July 16, 2010), 75 FR 43211 (July 23, 2010) (SR-ISE-2010-73) ("ISE QCC Proposal").

⁹ The Exchange notes that letters commenting on the ISE Proposal were submitted on its behalf by the Exchange's parent company, NYSE Euronext. See e.g., letters dated August 9, 2010 and October 21, 2010 from Janet L. McGinness, Senior Vice President – Legal & Corporate Secretary, Legal & Government Affairs, NYSE Euronext.

Under the NYSE Arca Electronic QCC Filing, QCCs currently may only be submitted electronically from off the Floor through the NYSE Arca System. In this regard, OTP Holders on the Floor of the Exchange are not allowed to enter QCCs into the NYSE Arca System, or otherwise effect them in open outcry. To provide a mechanism for the Exchange to surveil for whether QCCs were entered from off of the Floor, the Exchange adopted Commentary .01 to Rule 6.90, which requires OTP Holders to maintain books and records demonstrating that each QCC was routed to the NYSE Arca System from off of the Floor. Presently, any QCC that does not have a corresponding record required by this provision would be deemed to have been entered from on the Floor in violation of Rule 6.90. In addition, the Exchange has adopted policies and procedures to ensure that OTP Holders use the QCC properly.¹⁰

Discussion

QCCs permit OTP Holders to provide their customers a net price for the entire trade, and then allow the OTP Holder to execute the options leg of the trade on the Exchange at a price at least equal to the NBBO while using the QCT exemption to effect the trade in the equities leg at a price necessary to achieve the net price.

The Exchange hereby proposes to permit QCCs to be electronically entered from the Floor of the Exchange by Floor Brokers and executed immediately upon entry without exposure into the NYSE Arca System provided that no Customer Orders exist on the Exchange's Consolidated Book at the execution price, that the order is for at least 1,000 contracts,¹¹ and that

¹⁰ First, the Exchange requires OTP Holders to properly mark all QCCs as such. In addition, the Financial Industry Regulatory Authority ("FINRA"), on behalf of the Exchange, has implemented an examination and surveillance program to assess OTP Holder compliance with the requirements applicable to QCCs, including the requirement that the stock leg of the transaction be executed at or near the same time as the options leg.

¹¹ In order to satisfy the 1,000-contract requirement, a QCC must be for 1,000 contracts and

the execution price is at or between the NBBO.¹² QCCs entered from the Floor of the Exchange would be electronically entered into the NYSE Arca System by a Floor Broker.¹³ The impact of this proposal, coupled with the NYSE Arca Electronic QCC Filing, would be that OTP Holders would be able to enter QCCs both on and off of the Floor. The Exchange therefore proposes to eliminate the requirements from NYSE Arca Rule 6.90 that QCCs only be submitted electronically from off the Floor to the NYSE Arca System and from Commentary .01 to NYSE Arca Rule 6.90 that OTP Holders maintain books and records demonstrating that each QCC was routed to the NYSE Arca System from off of the Floor, as both will no longer be necessary if QCCs are available for entry from the Floor.

The Commission in the ISE Approval carefully considered the comparison between floor-based and electronic trading, including commissioning a study by the Division of Risk, Strategy and Financial Innovation (“RiskFin Study”). The RiskFin Study and the ISE Approval compare electronic trading and floor trading, the similarities between the two forms of trading, and the ability of one to replicate the other. Additionally, the Commission received comment letters from multiple floor-based exchanges that challenged the comparison that ISE drew

could not be, for example, two 500-contract orders or two 500-contract legs.

¹² The Exchange does not propose to change the definition of “Qualified Contingent Cross Order” in NYSE Arca Rule 6.62. Thus, like QCCs effected pursuant to the NYSE Arca Electronic QCC Filing, QCCs entered from the Floor would need to meet the requirements of NYSE Arca Rule 6.62 and Commentary .02 of that rule. Additionally, QCCs entered from the Floor by a Floor Broker would be entered electronically into the NYSE Arca System where a systemic check would be performed to determine whether a Customer Order is resting on the Exchange’s Consolidated Book at the same price as the QCC, whether the order was for less than 1,000 contracts or whether the execution price would be outside the NBBO, each of which would cause the QCC to be rejected. If, however, the QCC is not rejected, then the NYSE Arca System would execute the QCC and simultaneously assign it an execution time.

¹³ As proposed, only Floor Brokers would be permitted to enter QCCs from on the Floor and QCCs would not be permitted in open outcry.

between floor-based and electronic trading.

Despite facing direct comparisons between floor-based trading and electronic trading by multiple commenters, as well as by its own Division of RiskFin, the ISE Approval focuses on similarities between the two. The Exchange believes that the ISE Approval, on its face, draws no distinctions and identifies no material differences between floor-based and electronic trading that would confound the comparison between cross orders entered electronically and those entered on an exchange floor. The Exchange believes that its proposal to permit the entry of QCCs from the Floor is consistent with the requirements stated in the ISE Approval and consistent with the Act. The Exchange also believes that the Commission, in issuing the ISE Approval, assumed that QCC orders entered on the floor of an exchange that meet the requirements stated in the ISE Approval are equally consistent with the Act.

The Exchange has analyzed the application of Section 11(a) of the Act, and the rules thereunder, to QCCs entered from the Floor. Section 11(a) and the rules thereunder generally prohibit members of an exchange from effecting transactions on the exchange for their own account, the account of an associated person, or an account with respect to which it or an associated person thereof exercises investment discretion unless an exemption applies.¹⁴ Section 11(a) contains multiple exemptions, including exemptions for dealers acting in the capacity of market makers, odd-lot dealers, and firms engaged in stabilizing conduct; there are also rule-based exemptions such as the “effect vs. execute” exception under SEC Rule 11a2-2(T) under the Act.¹⁵

¹⁴ See 15 U.S.C. 78k(a).

¹⁵ See 17 CFR 240.11a2-2(T).

The Exchange has in the past analyzed the application of Section 11(a) to various Exchange systems and order types.¹⁶ The Exchange believes that the entry and execution of QCCs from the Floor raises no novel issues under Section 11(a) and the rules thereunder from a compliance, surveillance or enforcement perspective. In other words, OTP Holders on the Floor are currently required to comply and are subject to review for compliance with Section 11(a), and the rules thereunder, when using Exchange systems to effect transactions using existing order types, and they will be required to comply with Section 11(a) and the rules thereunder when entering QCCs from the Floor.

Nonetheless, out of an abundance of caution, the Exchange proposes to amend Commentary .01 to NYSE Arca Rule 6.90 to prohibit Floor Brokers from entering QCCs from the Floor for their own accounts, the account of an associated person, or an account with respect to which it or an associated person thereof exercises investment discretion (each a “prohibited account”).¹⁷

These restrictions set forth in Commentary .01 to NYSE Arca Rule 6.90 would not limit in any way the obligation of OTP Holders, on the Floor or otherwise, to comply with Section 11(a) or the rules thereunder. For example, Floor Brokers cannot avoid or circumvent their obligations under Section 11(a) with respect to a QCC entered from the Floor by transmitting that order to another OTP Holder on the Floor or to an OTP Holder off the Floor of the Exchange. Likewise, OTP Holders off the Floor must ensure that their QCCs comply with Section 11(a) and the rules thereunder. In both cases, OTP Holders must ensure compliance with

¹⁶ See, e.g. Securities Exchange Act Release No. 54238 (July 28, 2006), 71 FR 44758 (August 7, 2006) (SR-NYSEArca-2006-13).

¹⁷ This restriction is the same as the one found in PHLX Rule 1064(e)(2).

Section 11(a) and the rules thereunder, including by relying upon an exemption such as those listed above.

Additionally, to provide a mechanism for the Exchange to review whether QCCs have been entered properly by Floor Brokers, the Exchange proposes to further amend Commentary .01 to NYSE Arca Rule 6.90 to require OTP Holders on the Floor to maintain books and records demonstrating that no QCC was entered from the Floor by the OTP Holder in a prohibited account. Any QCC entered from the Floor that does not have a corresponding record required by this provision would be deemed to have been entered in violation of Commentary .01 to NYSE Arca Rule 6.90.

The Exchange also proposes to amend Commentary .01 to NYSE Arca Rule 6.90 to clarify that NYSE Arca Rule 6.47 does not apply when Floor Brokers are executing QCCs. The Exchange is making this clarification to eliminate any confusion about whether the various crossing provisions in Rule 6.47 may apply to QCCs when they are executed by Floor Brokers.¹⁸ In addition, the Exchange is moving a recordkeeping obligation from current Commentary .01 to Commentary 02 and modifying it to require that with respect to QCCs routed to the NYSE Arca System from off of the Floor, OTP Holders must maintain books and records demonstrating that each such order was routed to the system from off of the Floor.¹⁹ Finally, the Exchange is adding Commentary .03 to NYSE Arca Rule 6.90 to clarify that the order exposure requirements found in NYSE Arca Rule 6.47A do not apply to QCCs. That rule generally provides that with respect to orders routed to the NYSE Arca System, OTP Holders may not execute as principal

¹⁸ This change is modeled after the changes to PHLX Rule 1064(a), (b) and (c).

¹⁹ The Exchange also is clarifying that Commentary .02 would not apply to a Qualified Contingent Cross Order covered by Commentary .01 to NYSE Arca Rule 6.90 (i.e., a Qualified Contingent Cross Order routed to a Floor Broker for entry into the NYSE Arca System).

orders they represent as agent unless such orders are first exposed on the Exchange for at least one second.

The Exchange's proposal addresses the mechanics of executing the stock and options components of a net-price transaction. The Exchange believes that it is necessary that it provide OTP Holders and their customers with the same trading capabilities available on other exchanges with respect to QCCs, including the change proposed herein, which would permit OTP Holders to execute the options legs of their customers' large complex orders on the Exchange.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,²⁰ in general, and furthers the objectives of Section 6(b)(5)²¹ and 6(b)(8) of the Act,²² in particular, because 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 and does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is consistent with the protection of investors in that it is designed to prevent Trade-Throughs. In addition, the proposed rule change would promote a free and open market by permitting the Exchange to compete with other exchanges for these types of orders. In this regard, competition would result in benefits to the investing public, whereas a lack of competition would serve to limit the choices that the public has for execution of their options business.

²⁰ 15 U.S.C. 78f(b).

²¹ 15 U.S.C. 78f(b)(5).

²² 15 U.S.C. 78f(b)(8).

In addition, the proposed rule change is consistent with Section 11A(a)(1)(C) of the Act,²³ in which Congress found that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure, among other things, the economically efficient execution of securities transactions. As described in detail above, the proposed rule change is also consistent with Section 11(a) of the Act and the rules thereunder.

The Exchange believes, similar to the Commission’s basis for finding that ISE’s QCC proposal was consistent with the Act, that permitting the entry of QCCs from the Floor “would facilitate the execution of qualified contingent trades, for which the Commission found in the Original QCT Exemption to be of benefit to the market as a whole, contributing to the efficient functioning of the securities markets and the price discovery process.”²⁴ Further, permitting the entry of QCCs from the Floor “would provide assurance to parties to stock-option [QCTs] that their hedge would be maintained by allowing the options component to be executed as a clean cross.”²⁵ In addition, like the ISE QCC Proposal, the Exchange’s proposal to permit the entry of QCCs from the Floor “is narrowly drawn and establishes a limited exception to the general principle of exposure, and retains the general principle of customer priority in the options markets.”²⁶

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

²³ 15 U.S.C. 78k-1(a)(1)(C).

²⁴ See ISE Approval at 11540.

²⁵ Id.

²⁶ See ISE Approval at 11541.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act²⁷ and Rule 19b-4(f)(6) thereunder.²⁸ 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 and Rule 19b-4(f)(6)(iii) thereunder.

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

²⁷ 15 U.S.C. 78s(b)(3)(A)(iii).

²⁸ 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 complied with this requirement.

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2011-52 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-2011-52. 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 website viewing and printing 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 p.m. Copies of the filing will also 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-2011-52 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.²⁹

Elizabeth M. Murphy
Secretary

²⁹ 17 CFR 200.30-3(a)(12).