

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-67213; File No. SR-NYSEARCA-2012-61)

June 19, 2012

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend NYSE Arca Rule 2.23 to Prescribe The Registered Proprietary Traders Examination (Series 56) As The Qualifying Examination for Registered Market Makers, Market Maker Authorized Traders, and Floor Brokers

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 June 13, 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)<sup>4</sup> of the Act and Rule 19b-4(f)(6) thereunder,<sup>5</sup> which renders the proposal effective upon receipt of this filing by 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

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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).

The Exchange proposes to amend NYSE Arca Rule 2.23 to prescribe the Registered Proprietary Traders Examination (Series 56) (the “Series 56 Examination”) as the qualifying examination for registered Market Makers, Market Maker Authorized Traders (“MMAT's”), and Floor Brokers. The text of the proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, 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.

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 NYSE Arca Rule 2.23 to prescribe the Series 56 Examination as the qualifying examination for registered Market Makers, MMATs, and Floor Brokers.

NYSE Arca Rule 2.23 currently specifies that the successful completion of the Series 44 examination and an orientation program for such examination is required in order to register as a Market Maker or a MMAT. The Exchange proposes to change the prescribed examination for Market Makers and MMATs to the Series 56 Examination. In addition, NYSE Arca Rule 2.23 currently specifies that Floor Brokers must successfully

complete the Series 45 within five years of the application date for an OTP and have been an OTP Holder within six months of the application date for an OTP. The Exchange proposes to change the prescribed examination for Floor Brokers to the Series 56 Examination and replace the other requirements of the rule with the successful completion of an orientation program. The requirement to participate in an orientation program is consistent with registration requirements for Market Makers on NYSE Arca.

The Series 56 Examination was developed by a committee comprised of industry representatives, Exchange staff and staff from other SROs. The Series 56 examination tests a candidate's knowledge of proprietary trading generally and the industry rules applicable to trading of equity securities and listed options contracts. The Series 56 examination covers, among other things, recordkeeping and recording requirements; types and characteristics of securities and investments; trading practices; and display, execution, and trading systems.<sup>6</sup> As such the Exchange believes that an applicant who has passed the Series 56 is proven to be qualified to act in the capacity of a Market Maker, Floor Broker and/or MMAT on NYSE Arca.

While NYSE Arca will no longer be offering the Series 44 or Series 45 as qualifying exams to new applicants, the Exchange will continue to recognize any individual who has passed one of those exams as having successfully completed a qualifying exam. An individual presently registered as a Market Maker, MMAT or Floor Broker on NYSE Arca, who has previously passed a qualifying exam as prescribed by the

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<sup>6</sup> The Exchange previously submitted detailed content outline for the Series 56 to the Commission. *See* Securities Exchange Act Release No. 66483 (February 28, 2012), 77 FR 13168 (March 5, 2012) (SR-NYSEArca-2012-16).

Exchange, will not be required to take the Series 56 as a condition of their continued registration.

Following effectiveness of the proposed rule change, the Exchange will issue a Regulatory Bulletin announcing the implementation 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)<sup>7</sup> of the Securities Exchange Act of 1934 (“Act”) in general, and furthers the objectives of (1) Section 6(c)(3)(B)<sup>8</sup> of the Act, 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>9</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 prescribing the Series 56 Examination for Market Makers, MMATs, and Floor Brokers is appropriate because the Series 56 Examination addresses industry topics that establish the foundation for the regulatory and procedural knowledge necessary for individuals required to register as Market Makers, MMATs, and Floor Brokers. In addition, the Series 56 Examination is shared by other exchanges and has become the industry standard.<sup>10</sup> Accordingly,

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

<sup>8</sup> 15 U.S.C. 78f(c)(3)(B).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> *See* Securities Exchange Act Release No. 64699 (June 17, 2011), 76 FR 36945

adopting the Series 56 Examination will help to promote consistency in examination requirements and uniformity across markets

The Exchange also believes it is appropriate to adopt an orientation program for Floor Brokers so that Floor Broker requirements will be more closely aligned with those of Market Makers and MMATs. The Exchange will continue to educate its OTP Holders regarding the requirements that are unique to the Exchange through its orientation programs to ensure that all OTP Holders will continue to be properly registered, trained, and qualified to perform their functions, which will protect investors and the public interest.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup> Because the proposed

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(June 23, 2011) (SR-CBOE-2011-056). *See* Securities Exchange Act Release No. 65054 (August 8, 2011), 76 FR 50277 (August 12, 2011) (SR-ISE-2011-36).

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

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.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>13</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>14</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative upon filing.

The Commission believes it is consistent with the protection of investors and the public interest to waive the 30-day operative delay.<sup>15</sup> Waiver of the 30-day operative delay will enable an associated person of an OTP Firm to qualify as a Market Maker, MMAT or Floor Broker on NYSE Arca by passing the Series 56 exam, which is shared by the other options exchanges. In addition, requiring Floor Brokers to participate in an orientation program will make the requirements for Floor Brokers more similar to the requirements for Market Makers and MMATs. The Commission hereby waives the operative delay making the filing effective and operative upon filing.

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<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> 17 CFR 240.19b-4(f)(6)(iii).

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

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-2012-61 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-2012-61. 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 Room. 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-2012-61 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>16</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).