

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60922; File No. SR-NYSE-2009-105)

November 3, 2009

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Adopting NYSE Rule 49 to Provide the Exchange with the Authority to Declare an Emergency Condition with Respect to Trading on or Through the Systems and Facilities of the Exchange and to Transfer Trading of Exchange-Listed Securities to Its Corporate Affiliate, NYSE Arca, Inc.

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 October 13, 2009, New York Stock Exchange LLC (“NYSE” 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 adopt NYSE Rule 49 to provide the Exchange with the authority to declare an Emergency Condition (defined below) with respect to trading on or through the systems and facilities of the Exchange and to transfer trading of Exchange-listed securities to its corporate affiliate, NYSE Arca, Inc. (“NYSE Arca”) as necessary in the public interest and for the protection of investors. The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and www.nyse.com.

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to adopt NYSE Rule 49 to provide the Exchange with the authority to declare an Emergency Condition with respect to trading on or through the systems and facilities of the Exchange (for the purposes of this filing, an "Emergency Condition") and to act as necessary in the public interest and for the protection of investors.⁴

This rule filing responds to an initiative of the Commission to ensure that regulatory agencies and self-regulatory organizations have rules and procedures in place to effectively address an Emergency Condition. The Exchange has been participating as a member of the inter-regulatory "Pandemic Planning and Regulatory Coordination Working Group," which is working on developing effective strategies and coordination among regulators to prepare for an Emergency Condition.

As described more fully below, the authority contemplated in the proposed rule could be exercised when, due to an Emergency Condition, the NYSE Euronext facilities located at 11 Wall Street, New York, New York, including the NYSE Trading Floor, are inoperable. In this

⁴ NYSE Arca has submitted a companion filing to provide for the same emergency authority proposed herein. See SR-NYSEArca-2009-90.

situation, the Exchange has made arrangements for trading to be conducted using the systems and facilities of corporate affiliate NYSE Arca.

Proposed NYSE Rule 49 is intended to be invoked only in the event of emergencies as defined in Section 12(k)(7) of the Act.⁵ As proposed, the rule would provide the Exchange with regulatory flexibility to mitigate the effects of an Emergency Condition so that the securities markets in general, and, as a primary market, the Exchange's systems and facilities in particular, may continue to perform in a manner consistent with the protection of investors and in pursuit of the public interest.

Proposed NYSE Rule 49

Under current Exchange rules, in the event of an Emergency Condition that would impact the Exchange's ability to operate normally, the Exchange does not currently have authority to transfer trading to the systems and facilities of NYSE Arca. The Exchange proposes to add NYSE Rule 49 to provide such authority to the Exchange, working in conjunction with NYSE Arca. As defined in the proposed rule, such authority would be available only in the rare event of exigent circumstances that would prevent the Exchange from operating normally, such as a pandemic or similar occurrence that affects its facilities in New York City.

The proposed rule would provide the Exchange with emergency powers so that in the event of an Emergency Condition, the Exchange can act as necessary in the public interest and for the protection of investors. As noted above, to ensure consistency among the Commission and other exchanges, the Exchange proposes adopting the definition of "emergency" set forth in Section 12(k)(7) of the Act. Such definition is broad enough to ensure that the Exchange will have the authority to invoke its emergency powers as necessary to respond to both regional and

⁵ 15 U.S.C. § 78l(k)(7). [sic]

national emergencies, such as a pandemic crisis, or other situations where trading on the Exchange's Trading Floor is substantially impaired, such as by government action or environmental causes.

Under the proposed rule, when an Emergency Condition exists that would prevent the Exchange from operating normally, a "qualified Exchange officer" would have the authority to declare an Emergency Condition with respect to trading on or through the systems and facilities of the Exchange and as necessary in the public interest and for the protection of investors. A "qualified Exchange officer" is defined as the NYSE Euronext Chief Executive Officer or his or her designee, or the NYSE Regulation Inc. ("NYSER") Chief Executive Officer or his or her designee. In the event that none of these individuals is able to assume this responsibility due to incapacitation, the next most senior officer of NYSE Euronext or NYSE R would be a "qualified Exchange officer" for purposes of the proposed rule.

Emergencies during which the Trading Floor is inoperable

To address emergencies that are so disruptive as to render the Trading Floor effectively inoperable, the Exchange has developed a contingency plan that would allow for the receipt, processing and execution of Exchange orders on or through the systems and facilities of NYSE Arca.⁶ This designation of NYSE Arca as a back-up facility of the NYSE requires several accommodations that are addressed either in this rule filing or in the companion rule filing by NYSE Arca regarding its own business continuity planning.⁷

⁶ NYSE Arca trades equity securities on the systems and facilities of its wholly owned subsidiary, NYSE Arca Equities, Inc., referred to as the "NYSE Arca Marketplace". For the purposes of this filing and in the text of proposed NYSE Rule 49, these shall be referred to collectively as the systems and facilities of NYSE Arca.

⁷ See SR-NYSEArca-2009-90.

1. Use of NYSE Arca trading systems and facilities

Under the proposed arrangement between the two exchanges, the systems and facilities of NYSE Arca would effectively become the systems and facilities of the NYSE, such that NYSE members, member organizations and Sponsored Participants⁸ would be able to submit bids and offers and execute trades in NYSE-listed securities on or through the systems and facilities of NYSE Arca, regardless of whether such members, member organizations or Sponsored Participants are members or sponsored participants of NYSE Arca at the time the Emergency Condition is declared (see part 2 below). During these times, quotes or orders of NYSE-listed securities entered or executed on or through the systems and facilities of NYSE Arca would be published as quotes and executions of the NYSE (see part 3 below).⁹

Under such circumstances, the Exchange would broadcast to the market using any and all methods available that it has declared an Emergency Condition and would then halt all trading conducted on the Exchange's Trading Floor. All unexecuted orders would remain on the Exchange's systems unless cancelled by the entering member or member organization. The Exchange would open trading on the systems and facilities of NYSE Arca as soon thereafter as possible, but not earlier than at least the next trading day. As soon as practicable following the

⁸ A "Sponsored Participant" is a person (as defined in NYSE Rule 2(e)) who has entered into a sponsorship arrangement with a Sponsoring Member Organization to obtain authorized access to the Exchange pursuant to this rule. See NYSE Rule 123B.30(a)(ii)(B). A "Sponsoring Member Organization" is a NYSE member or member organization that enters into a written sponsorship agreement to provide a Sponsored Participant with authorized access to the Exchange. See NYSE Rule 123B.30(a)(ii)(A).

⁹ Currently, NYSE Arca trades NYSE-listed securities on a UTP basis. However, in the event of the declaration of an Emergency Condition under proposed NYSE Rule 49 such that the Exchange's Trading Floor is inoperable and trading is conducted on or through the systems and facilities of NYSE Arca, NYSE-listed securities traded on NYSE Arca's trading platform would be NYSE trades rather than NYSE Arca trades. Under such circumstances, the Exchange would use NYSE Arca as the execution engine for NYSE trades and would ensure that these trades are executed in compliance with Regulation NMS.

commencement of trading on the systems and facilities of NYSE Arca, any unexecuted orders shall be purged from the Exchange's own systems and facilities.

It is important to note that, in the event that the Exchange's Trading Floor is rendered inoperable, it is not technically feasible for the Exchange to route unexecuted orders from the Trading Floor to the systems and facilities of NYSE Arca. As a result, NYSE members and member organizations are required to have corresponding contingency plans for changing the routing instructions for their order entry systems such that orders for NYSE-listed securities are sent to the systems and facilities of NYSE Arca. Those members and member organizations that have open orders on the Exchange's Trading Floor at the time an Emergency Condition is declared should cancel those orders and re-enter them on the systems and facilities of NYSE Arca as soon as possible thereafter.¹⁰

NYSE members, member organizations and Sponsored Participants that are not members or sponsored participants of NYSE Arca at the time of an Emergency Condition would be provided temporary membership and/or access to NYSE Arca so that they could execute trades on that exchange (see part 2 below). It is important to note in this regard that the Exchange would not provide any connectivity to NYSE Arca on behalf of its members, member organizations or Sponsored Participants; in order to continue trading in NYSE-listed securities, NYSE members, member organizations and Sponsored Participants would need separately to establish connectivity to NYSE Arca.

¹⁰ Upon the invocation of the proposed Rule, orders in NYSE-listed securities entered on the NYSE Arca systems and facilities on a UTP basis that are unexecuted prior to the declaration of an Emergency Condition would remain available for execution on the NYSE Arca systems (that is they will not be cancelled). Once trading on the Exchange resumes on the NYSE Arca systems executions of such orders would be printed with an "N" modifier on the Consolidated Tape (see part 3 below). See also SR-NYSEArca-2009-90.

2. Member and member organization obligations during an Emergency Condition

In the event of an Emergency Condition, NYSE Arca would provide temporary membership and/or access to those NYSE members, member organizations and Sponsored Participants that are not already members or sponsored participants of NYSE Arca.

NYSE Arca will establish inactive equity trading permits and connectivity for such members, and member organizations that would become active in the event that NYSE Arca is designated as an alternative facility of the NYSE. These trading permits would have the same trading rights and obligations as current ETP Holders on NYSE Arca. Sponsored Participants of the Exchange that are not set up with sponsored access to NYSE Arca at the time of an Emergency Condition would be permitted to obtain such access through either an existing NYSE Arca member or through an NYSE member or member organization that is granted temporary access in accordance with proposed NYSE Arca Equities Rule 2.100, provided the Sponsored Participants could establish connectivity and complete the required documentation incident to such sponsored access. Such temporary membership or access would be valid only for the duration of the Emergency Condition until regular trading resumes on the Trading Floor.¹¹

NYSE members, member organizations and Sponsored Participants that quote or trade NYSE-listed securities on or through the systems and facilities of NYSE Arca following an Emergency Condition declaration by the NYSE would be bound by the rules and procedures of NYSE Arca and would be required to comply with the NYSE Arca Equities Rules governing

¹¹ See SR-NYSEArca-2009-90.

trading. Such rules would be considered the rules of the Exchange for the duration of the Emergency Condition.¹²

Because of differences between the systems of the NYSE and NYSE Arca, NYSE Arca is not able to support the NYSE's Designated Market Makers ("DMMs") operating in the same manner that they operate on the NYSE. In particular, DMMs would not have access to orders on the NYSE Arca system any different than other market participants. Thus, NYSE DMMs would not be able to fulfill their DMM obligations, including the affirmative obligation to make a market in a reasonable depth and with reasonable price continuity, and would be severely hampered in their ability to stabilize the market. As a result, in the event that the NYSE is unable to operate its Trading Floor and instead designates NYSE Arca to receive and process quotes and trades, NYSE DMMs would not be considered DMMs under the NYSE Rules for the duration of the designation. In order to ensure that there continues to be a market for NYSE-listed securities, DMM member firms would be designated as "Market Makers" in accordance with NYSE Arca Equities Rules and would be required to meet the requirements of those Rules for the duration of an Emergency Condition.¹³ Once trading resumed on the Exchange's Trading Floor, DMM member firms would resume their roles as DMMs and would be subject to their obligations under the Exchange's rules.

Similarly, in the event of an Emergency Condition, the Exchange would provide temporary membership and/or authorized access to those NYSE Arca members or sponsored

¹² Even though the Exchange would apply the applicable NYSE Arca Equities Rules governing trading for the duration of an emergency, the Exchange's rules governing member firm conduct would continue to apply to its members, member organizations and Sponsored Participants, including membership requirements and net capital requirements. In addition, the Exchange's listing requirements for its listed securities would continue to apply.

¹³ DMMs will be required to meet the same margin requirements as NYSE Arca Market Makers.

participants that are not already members, member organizations or Sponsored Participants of the Exchange. The temporary designation of NYSE Arca-only members as members of the Exchange is necessary because, in the event of an Emergency Condition when Exchange-listed securities are trading on NYSE Arca systems and facilities and are being printed as NYSE trades, the system would not be able to prevent NYSE Arca-only members from trading Exchange-listed securities. By granting NYSE Arca-only members temporary NYSE membership, the Exchange seeks to avoid any issue as to the legitimacy of such trades.

NYSE Arca-only members that are granted a temporary membership will not be required to meet any of the Exchange's membership requirements, including the requirement that all Exchange member organizations also be members of the Financial Industry Regulatory Authority. NYSE Arca sponsored participants that are not set up with sponsored access to the Exchange would be authorized to obtain such access through either an existing Exchange member or member organization or an NYSE Arca member that is granted temporary membership in accordance with proposed NYSE Rule 49. Such temporary membership or authorized access would be valid only for the duration of the Emergency Condition until regular trading resumes.

3. Processing NYSE trades executed on or through NYSE Arca systems and facilities

As noted above, for the duration of the Emergency Condition, trades in NYSE-listed securities would print as "N" trades on the Consolidated Tape and quotes would be designated as NYSE quotes in the Consolidated Quote Stream, notwithstanding the fact that they were processed on or through the NYSE Arca systems and facilities. Because the NYSE would, as a practical and legal matter, continue to operate – albeit using a different system for processing

trades and quotes – the Exchange submits that no modifications would be necessary to either the Consolidated Quote Plan or the Consolidated Tape Association Plan.¹⁴

The surveillance of the trading of NYSE-listed securities on or through the systems and facilities of NYSE Arca would be conducted by NYSE Arca on behalf of the Exchange.¹⁵ In the event that an NYSE member or member organization failed to comply with NYSE Arca’s rules while trading NYSE-listed securities, they would – for jurisdictional reasons – be referred to the Exchange and be investigated by, and if warranted, prosecuted by, NYSE Regulation, Inc. on behalf of the Exchange rather than on behalf of NYSE Arca.

The Exchange recognizes that, by cross-designating NYSE-only and NYSE Arca-only members and member organizations and requiring that all trades of NYSE-listed securities executed on the systems of NYSE Arca be printed as NYSE trades, its business continuity plan effectively combines the two markets for those securities. The Exchange believes, however, that its business continuity plan is appropriate and consistent with the provisions of the Act. To begin with, such consolidation would only be on a temporary basis. In addition, the Exchange notes that this arrangement would not harm customers or unfairly advantage the Exchange by distorting the allocation of market data revenue or quoting revenue to the various exchanges; because NYSE and NYSE Arca share a common corporate parent, NYSE Euronext, and

¹⁴ The Exchange notes that there is precedent for this type of arrangement: after the collapse of the World Trade Centers on September 11, 2001, the American Stock Exchange (“Amex”) was unable to open its trading floor because of its proximity to the collapse site. To ensure that the Amex could continue to operate, the Amex utilized the systems and facilities of the Exchange (and a portion of the Exchange’s Trading Floor) to process and trade Amex-listed securities. Indeed, for the duration of that emergency, Amex quotes and trades were considered to have originated from the Amex, notwithstanding that they were processed on the systems and facilities of the Exchange.

¹⁵ The Exchange’s mnemonic identification system for its members and member organizations is different than that used by NYSE Arca for its ETP holders. Thus, trades executed by Exchange-only members or member organizations can be readily identified if necessary.

revenues are reported on a consolidated basis, there is no net economic benefit to NYSE Euronext.

The Exchange believes that any confusion caused by designating all prints of NYSE-listed securities executed on NYSE Arca as NYSE trades is far outweighed by the benefits of maintaining the ability for the Exchange to provide primary market prints to market participants during an Emergency Condition. Among other things, the Exchange notes that certain indices, funds and derivative products require primary market prints for pricing and valuation, and that, similarly, private corporate transactional contracts involving stock purchase or valuation frequently make reference to the primary market print rather than to the Consolidated Tape print. The Exchange believes that without a primary market print, there could be unnecessary disruption to other areas of an already fragile marketplace that is likely facing significant challenges in dealing with other consequences of the Emergency Condition.

Limitations on invocation of authority under proposed NYSE Rule 49

Before invoking the proposed emergency powers, the Exchange will make concerted efforts to alert and consult with the Commission via electronic, telephonic and in-person communications, and to continue to maintain an open dialogue with the Commission regarding the responses being taken. In the event that Exchange staff is unable to communicate with Commission staff, the proposed rule permits the Exchange to take appropriate action and to subsequently advise the Commission of such action at the earliest available time.

The Exchange's authority under this rule would be available for up to 10 calendar days from the date that the Exchange invoked such authority. At any time after invoking such emergency powers, the Exchange, with Commission approval, may cease or alter such emergency powers. If conditions are warranted, and subject to Commission approval of a rule

filing pursuant to Section 19(b)(2) of the Act, the Exchange could extend this emergency authority for a specific amount of time longer than the initial 10 calendar day period.

Before seeking Commission approval for such an extension, the Exchange will re-evaluate the specific regulatory actions taken and determine whether to extend such actions. The Commission may also unilaterally direct that the Exchange cease or alter such emergency powers. Once such authority has been invoked, the Exchange will use its available communications resources, including its website and other public channels, as well as regulatory channels such as Information Memos or the Exchange's Electronic Filing Platform ("EFP"),¹⁶ to provide members and member organizations with advance notice of when such actions will expire. The Exchange shall provide adequate prior notice to members, member organizations, Sponsored Participants and investors regarding its intention to terminate the actions taken.

Conclusion

Because the purpose of the proposed rule is to grant authority to the Exchange to act in the event of an Emergency Condition, the terms of the rule are necessarily inclusive and flexible. At all times, the Exchange will continue to act in a manner consistent with the public interest and for the protection of investors, and it intends to be bound by and guided by these underlying precepts should there be a need to invoke proposed NYSE Rule 49 and exercise such proposed emergency powers.

¹⁶ EFP is an extranet built by the Exchange to support authenticated, encrypted, two-way communications between the Exchange and its membership. It is used to communicate information to certain key personnel of member organizations.

2. Statutory Basis

The basis for this proposed rule change is the requirement under Section 6(b)(5)¹⁷ of the Act that an exchange have rules that are designed 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. Proposed NYSE Rule 49 would provide the Exchange with the regulatory flexibility to take action, as necessary, in the event of an Emergency Condition, as defined.

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

Within 35 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 Exchange consents, the Commission will:

- (A) by order approve such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

¹⁷ 15 U.S.C. 78f(b)(5).

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-NYSE-2009-105 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-NYSE-2009-105. 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 Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. 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-NYSE-2009-105 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Florence E. Harmon
Deputy Secretary

¹⁸ 17 CFR 200.30-3(a)(12).