

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-53878; File No. SR-NYSEArca-2006-02)

May 26, 2006

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto to Establish a Public Disclosure Program

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 6, 2006, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”), through its subsidiary, NYSE Arca Equities, Inc. (“NYSE Arca Equities”), 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. On May 9, 2006, NYSE Arca filed Amendment No. 1 to the proposed rule change. On May 17, 2006, NYSE Arca filed Amendment No. 2 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

NYSE Arca, through its subsidiary, NYSE Arca Equities, proposes to implement a new rule, NYSE Arca Equities Rule 10.15, that would institute and govern a program (“Public Disclosure Program”) in which certain disciplinary actions involving Equity Trading Permit Holders (“ETP Holders”) and associated persons thereof would be publicized. The text of the proposed rule change is below. Proposed new language is underlined.

**NYSE Arca Equities Rules**

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<sup>1</sup> 15 U.S.C 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

## **RULE 10 DISCIPLINARY PROCEEDINGS, OTHER HEARINGS, AND APPEALS**

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### **Release of Disciplinary Information** **Through the Public Disclosure Program**

Rule 10.15(a) The Corporation shall, in response to a request, release a copy of any identified disciplinary decision issued by the Corporation or any Committee thereof; provided, however, that each copy of:

(1) a decision that is released prior to the expiration of the time period provided under NYSE Arca Equities Rule 10.8 for appeal or while such an appeal is pending shall be accompanied by a statement that the findings and sanctions imposed in the decision may be increased, decreased, modified, or reversed by the Corporation;

(2) a final decision of the Corporation that is released prior to the time period provided under the Securities Exchange Act of 1934 for appeal to the Securities and Exchange Commission or while such an appeal is pending shall be accompanied by a statement that the findings and sanctions of the Corporation are subject to review and modification by the Securities and Exchange Commission; and

(3) a final decision of the Corporation that is released after the decision is appealed to the Securities and Exchange Commission shall be accompanied by a statement as to whether the effectiveness of the sanctions has been stayed pending the outcome of proceedings before the Securities and Exchange Commission.

(b)(1) The Corporation shall release to the public information with respect to any disciplinary decision issued pursuant to NYSE Arca Equities Rule 10 imposing: (i) a suspension, cancellation or expulsion upon an ETP Holder; or (ii) suspension or revocation of the registration

of an associated person of an ETP Holder; or (iii) suspension or barring of an ETP Holder or associated person from association with all ETP Holders; or (iv) imposition of monetary sanctions of \$10,000 or more upon an ETP Holder or associated person; or (v) containing an allegation of a violation of a Designated Rule; and may also release to the public such information with respect to any disciplinary decision or group of decisions that involve a significant policy or enforcement determination where the release of information is deemed by the President of the Corporation to be in the public interest. The Corporation may, in its discretion, determine to waive the requirement to release information with respect to a disciplinary decision under those extraordinary circumstances where the release of such information would violate fundamental notions of fairness or work as an injustice. The Corporation may release to the public information on any disciplinary or other decision issued pursuant to NYSE Arca Equities Rule 10 not specifically enumerated in this paragraph, regardless of sanctions imposed, so long as the names of the parties and other identifying information is redacted.

A “Designated Rule” means (i) SEC Rule 10b-5, (ii) NYSE Arca Equities Rule 6.5, or (iii) NYSE Arca Equities Rule 6.2.

(A) The Corporation shall release to the public, in unredacted form, information with respect to any disciplinary decision issued pursuant to NYSE Arca Equities Rule 10.8 that does not meet one or more of the criteria in section (b)(1) for the release of information to the public, provided that the underlying decision issued pursuant to NYSE Arca Equities Rule 10.7 meets one or more of the criteria in section (b)(1) for the release of information to the public, and information regarding such decision has been released to the public in unredacted form.

(B) In the event there is more than one respondent in a disciplinary decision issued pursuant to NYSE Arca Equities Rule 10 and sanctions imposed on one or more, but not all, of the respondents meets one or more of the criteria in section (b)(1) for the release of information to the public, the Corporation shall release to the public, in unredacted form, information with respect to the respondent(s) who meet such criteria, and may release to the public, in redacted form, information with respect to the respondent(s) who do not meet such criteria. Notwithstanding the foregoing, the Corporation shall release to the public, in unredacted form, information with respect to any respondent in a disciplinary decision issued pursuant to NYSE Arca Equities Rule 10.8 if the sanctions imposed on such respondent in the underlying decision issued pursuant to NYSE Arca Equities Rule 10.7 meet one or more of the criteria for release of information to the public, and information with respect to that respondent has been released in unredacted form.

(2) Information released to the public pursuant to subparagraph (b)(1) shall be accompanied by a statement to the extent required for that type of information under subparagraphs (a)(1) – (3).

(c) Information regarding any sanctions imposed pursuant to NYSE Arca Equities Rule 10.6 shall be released to the public pursuant to paragraph (b) immediately upon such approval.

(d) If a decision of the Corporation imposing monetary sanctions of \$10,000 or more or a penalty of expulsion, revocation, suspension and/or barring of an ETP Holder from being associated with all ETP Holders is appealed to the Securities and Exchange Commission, notice

thereof shall be given to all ETP Holders and to the press as soon as possible after receipt by the Corporation of notice from the Securities and Exchange Commission of such appeal and the Corporation's notice shall state whether the effectiveness of the Corporation's decision has been stayed pending the outcome of proceedings before the Securities and Exchange Commission.

(e) In the event an appeal to the federal courts is filed from a decision by the Securities and Exchange Commission in a case previously appealed to it from a decision of the Corporation, involving the imposition of monetary sanctions of \$10,000 or more or a penalty of expulsion, revocation, suspension and/or barring of an ETP Holder from being associated with all ETP Holders, notice thereof shall be given to the ETP Holders as soon as possible after receipt by the Corporation of a formal notice of appeal. Such notice shall include a statement whether the order of the Securities and Exchange Commission has been stayed.

(f) Any order issued by the Securities and Exchange Commission of (i) revocation or suspension of an ETP Holder's broker/dealer registration with the Securities and Exchange Commission; or (ii) the suspension or expulsion of an ETP Holder from the Corporation; or (iii) the suspension or barring of an ETP Holder or an associated person from association with all broker/dealers or ETP Holders; or (iv) the imposition of monetary sanctions of \$10,000 or more shall be released to the public through a notice containing the effective date thereof sent as soon as possible after receipt by the Corporation of the order of the Securities and Exchange Commission.

(g) Cancellations of Equity Trading Permits or registration pursuant to the Corporation's Rules and interpretative material shall be released to the public as soon after the effective date of the cancellation as possible.

(h) Releases to the public referred to in paragraph (b) above shall identify the Corporation's Rule(s) or the SEC Rule(s) violated, and shall describe the conduct constituting such violation. Releases may also identify the ETP Holder with which an individual was associated at the time the violations occurred if such identification is determined by the Corporation to be in the public interest.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NYSE Arca included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item III below, and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Under the proposed Public Disclosure Program, NYSE Arca Equities would release to the public certain information concerning the disciplinary history of ETP Holders and associated persons. NYSE Arca Equities is instituting such procedures in order to provide investors with information regarding final disciplinary decisions related to ETP Holders and associated persons. The primary purpose of the Public Disclosure Program is to help investors make informed choices about the individuals and firms with whom they may wish to do business. Currently, NYSE Arca Equities does not have rules related to the release of disciplinary decisions to members of the public. Proposed NYSE Arca Equities Rule 10.15 would allow NYSE Arca Equities to release

such information upon request and when certain other circumstances exist, as explained in greater detail below.

Disciplinary Decisions. If a member of the public requests a copy of an identified disciplinary decision issued by NYSE Arca Equities or any committee thereof, a copy of the decision will be provided to the requesting member of the public. NYSE Arca Equities' practice will be to provide such information on a per-ETP Holder or associated person basis. NYSE Arca Equities will not charge the public for this service.

NYSE Arca Equities will also release information to the public with respect to disciplinary decisions that: (i) impose a suspension, cancellation, or expulsion of an ETP Holder; (ii) impose the suspension or revocation of the registration of an associated person of an ETP Holder; (iii) impose the suspension or barring of an ETP Holder or associated person from association with all ETP Holders; (iv) impose monetary sanctions of \$10,000 or more upon an ETP Holder or associated person; or (v) contain an allegation of a violation of a Designated Rule.<sup>3</sup> NYSE Arca Equities will release unredacted information concerning decisions issued by the Board Appeals Committee that do not meet one or more of the criteria in proposed NYSE Arca Equities Rule 10.15(b)(1), provided that the underlying decision meets one or more of the criteria in proposed NYSE Arca Equities Rule 10.15(b)(1), and the information regarding the underlying decision was released to the public in unredacted form.

In the event that there is more than one respondent in a disciplinary decision and sanctions are imposed on one or more of the respondents, but not all of the respondents meet one or more of the criteria in proposed NYSE Arca Equities Rule 10.15(b)(1) for the release of information,

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<sup>3</sup> A "Designated Rule" means (i) Commission Rule 10b-5 under the Act, (ii) NYSE Arca Equities Rule 6.5 (Manipulation), or (iii) NYSE Arca Equities Rule 6.2 (Prohibited Acts). See proposed NYSE Arca Equities Rule 10.15(b)(1).

NYSE Arca Equities will release to the public unredacted information with respect to the respondents who meet such criteria. In addition, NYSE Arca Equities may release redacted information to the public with respect to the respondents who do not meet the criteria in proposed NYSE Arca Equities Rule 10.15(b)(1).

NYSE Arca Equities may release information to the public concerning disciplinary decisions that involve significant policy or enforcement determinations where the release of such information is deemed by the President of NYSE Arca Equities to be in the public interest. In addition, NYSE Arca Equities may exercise its discretion and waive the requirement to release information with respect to a disciplinary decision under extraordinary circumstances where the release of the information would violate fundamental notions of fairness or work as an injustice. Finally, NYSE Arca Equities may release public information concerning any disciplinary or other decision issued pursuant to NYSE Arca Equities Rule 10 that is not specifically enumerated in proposed NYSE Arca Equities Rule 10.15(b)(1), regardless of the sanctions imposed, so long as the names of the parties and other identifying information are redacted.

Notices. Decisions that are released to a member of the public must include certain notices. Decisions that are released prior to the period in which a respondent may request an appeal pursuant to NYSE Arca Equities Rule 10.8 (Review) or while an appeal is pending must include a statement that the findings and sanctions imposed in the decision may be increased, decreased, modified, or reversed by NYSE Arca Equities. In addition, a final decision by NYSE Arca Equities that is released prior to the period in which a respondent may appeal to the Commission or while such appeal is pending will include a statement that the findings and sanctions of NYSE Arca Equities are subject to review and modification by the Commission. Lastly, a final decision of NYSE Arca Equities that is released after the decision is appealed to the

Commission will include a statement as to whether the effectiveness of the sanctions has been stayed pending the outcome of proceedings before the Commission.

Appeals. In the instance that NYSE Arca Equities' decisions are appealed to the Commission or the federal courts, NYSE Arca Equities will notify all ETP Holders and the press. This includes all NYSE Arca Equities decisions imposing monetary sanctions of \$10,000 or more or a penalty of expulsion, revocation, suspension, and/or barring of an ETP Holder from being associated with all ETP Holders.

Commission Orders. NYSE Arca Equities will release through a notice to the public information with respect to any order issued by the Commission: (i) revoking or suspending an ETP Holder's broker-dealer registration; (ii) suspending or expelling an ETP Holder from NYSE Arca Equities; (iii) suspending or barring an ETP Holder or an associated person from associating with all broker-dealers or ETP Holders; or (iv) imposing monetary sanctions of \$10,000 or more.

Offers of Settlement. NYSE Arca Equities will release information regarding sanctions imposed pursuant to NYSE Arca Equities Rule 10.6 (Offers of Settlement) upon the approval of offers of settlement.

Cancellation of Equity Trading Permits. In cases where NYSE Arca Equities cancels an Equity Trading Permit or registration, NYSE Arca Equities will notify the public as soon after the effective date of the cancellation as possible.

While proposed NYSE Arca Equities Rule 10.15 is based substantially on NASD Rule 8310 (Sanctions for Violation of the Rules) and IM-8310-2 (Release of Disciplinary and Other Information Through the Public Disclosure Program), it does not incorporate all aspects of such NASD Rule. For example, proposed NYSE Arca Equities Rule 10.15 excludes public disclosure of disciplinary complaints and arbitrations. NYSE Arca Equities's intention is for public

disclosure not to apply to disciplinary complaints that involve undecided issues or arbitrations between parties. NYSE Arca Equities plans to notify ETP Holders and associated persons of the effectiveness of this proposed rule change through NYSE Arca Equities' Internet Web site and a regulatory bulletin.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>4</sup> in general, and furthers the objectives of Section 6(b)(5)<sup>5</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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.

### 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. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act.

Comments may be submitted by any of the following methods:

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

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

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-2006-02 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NYSEArca-2006-02. 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. 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 available publicly. All submissions should refer to File Number SR-

NYSEArca-2006-02 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>6</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>7</sup> which requires that an exchange have rules designed, among other things, 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 Commission believes that the proposal to institute the Public Disclosure Program, which is substantially based on NASD Rule 8310 and IM-8310-2,<sup>8</sup> serves the interest of investor protection because it allows NYSE Arca Equities members and the general public to promptly learn of final disciplinary decisions involving its broker-dealer members or associated persons of such members. By notifying the public of a final decision issued by the Exchange or any committee of the Exchange that results in the suspension, cancellation, expulsion, and/or barring of an ETP Holder or the imposition of monetary sanctions of \$10,000 or more, for example, the Commission believes that the Public Disclosure Program should provide important information to the public, create additional incentives for members of the Exchange to comply with its rules, and

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<sup>6</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> See Securities Exchange Act Release No. 35138 (December 22, 1994), 59 FR 67362 (December 29, 1994) (approving the NASD program to publish final disciplinary decisions involving its members).

help investors make informed choices and decisions about the individuals and firms with whom they may wish to conduct business. As such, the Commission finds that the proposed program promotes just and equitable principles of trade, encourages the prevention of fraudulent and manipulative acts and practices, and seeks to perfect the mechanism of a free and open market.

The Commission finds good cause for approving this proposed rule change, as amended, before the thirtieth day after the publication of notice thereof in the Federal Register. As noted earlier, prompt disclosure of final disciplinary decisions serves the interest of protecting investors and the general public.<sup>9</sup> Therefore, accelerating approval of the proposed rule change should benefit investors because they will have access to the NYSE Arca Equities disciplinary information sooner. The Public Disclosure Program should foster compliance with NYSE Arca Equities rules, heighten awareness of the public investor with respect to the conduct of business on the Exchange, and, in general, improve the overall integrity of the market center.

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<sup>9</sup> See id.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-NYSEArca-2006-02), as amended, is hereby approved on an accelerated basis.<sup>10</sup>

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

Nancy M. Morris  
Secretary

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<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> 17 CFR 200.30-3(a)(12).