

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-60256; File No. SR-NYSEArca-2009-56)

July 7, 2009

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Add Two New Order Types to NYSE Arca Equities Rule 7.31

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on June 23, 2009, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) 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 add two new order types to NYSE Arca Equities Rule 7.31. A copy of this filing is available on the Exchange’s Web site at [www.nyse.com](http://www.nyse.com), 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 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.

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

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

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

1. Purpose

The Exchange proposes to add two new order types to NYSE Arca Equities Rule 7.31. The new order types will allow NYSE Arca Users<sup>3</sup> to participate at the primary listing exchange during the first 15 minutes and last 15 minutes of the trading day. For the remainder of the trading session the orders will remain in the NYSE Arca Book (“Arca Book”). The two new order types behave like a combination of currently existing order types and are discussed more thoroughly below.

Primary Until 9:45 Order

The Exchange proposes to add a new order type called the Primary Until 9:45 Order. The Primary Until 9:45 Order will permit NYSE Arca Users to submit an order that will be routed directly to the primary listing market until 9:45 am (Eastern Time).<sup>4</sup> If the order is not executed on the primary market by 9:45 am (Eastern Time), the order will be cancelled from the primary market and a new order will be entered on the Arca Book for execution during the remainder of the Exchange’s Core Trading Session.<sup>5</sup> The Primary Until 9:45 Order may be marked with a Time in Force of Day, Good Till Cancelled (“GTC”), or Good Till Date (“GTD”). Orders that return to NYSE Arca after routing to the primary market will retain their original order attributes. Orders that return to the Arca Book at 9:45 will be treated as a new order and receive a new time priority.

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<sup>3</sup> See NYSE Arca Rule 1.1(yy) for the definition of “User.”

<sup>4</sup> The PO+ order was recently approved as Rule 7.31(x)(3). See Securities and Exchange Act Release No. 58681 (September 29, 2008); 73 FR 58285 (October 6, 2008) (order approving SR-NYSEArca-2008-90).

<sup>5</sup> See NYSE Arca Rule 7.34(a)(2) for the definition of “Core Trading Session.”

Currently, NYSE Arca Users can only accomplish this proposed functionality through the submission of two separate order types. First, the User would direct an order to the primary market without first sweeping the NYSE Arca Book by submitting a Primary Only (PO) or Primary Only Plus (PO+) Order.<sup>6,7</sup> Then at 9:45 the User would cancel the PO or PO+ Order and submit an order to the Exchange. The Primary Until 9:45 Order will operate in a manner similar to a combination of a PO+ Order and an order that is executable on the Exchange. The Primary Until 9:45 Order simplifies this functionality into one new order type.

#### Primary After 3:45 Order

Similarly, the Exchange proposes to add a new order type called the Primary After 3:45 Order. The Primary After 3:45 Order will permit Exchange Users to submit an order that will remain on the Arca Book until 3:45 pm (Eastern Time). If the order is not executed by 3:45 pm (Eastern Time) the order will be cancelled from the Arca Book and entered for execution on the primary market for the remainder of the trading session. The Primary After 3:45 Order may only be marked with a Time in Force of Day, and may not be marked as GTC or GTD. Orders that route to the primary market at 3:45 will retain their original order attributes.

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<sup>6</sup> A PO Order will only participate in the primary market opening or re-opening. A PO+ Order will participate at any time other than the primary market opening or re-opening.

<sup>7</sup> PO+ Orders are routed to the primary market via the Exchange's outbound routing facility, Archipelago Securities, LLC ("Arca Securities"), a registered broker dealer. Arca Securities is an affiliated member of the NYSE, NYSE Arca, and NYSE Amex, LLC. As a result, each of these three exchanges have established certain mechanisms designed to address potential conflicts of interest regarding affiliated members generally, and Arca Securities in particular. See Securities and Exchange Act Release No. 58680 (September 29, 2008), 73 FR 58283 (October 6, 2008) (order approving SR-NYSE-2008-76); see also, Securities Exchange Act Release No. 58681 (September 29, 2008), 73 FR 58285 (October 6, 2008) (order approving NYSEArca-2008-90); see also, Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (order approving SR-AMEX-2008-62).

Currently, NYSE Arca Users can only accomplish this proposed functionality through the submission of two separate order types. First a User would submit an order for execution on the Exchange. Then, at 3:45 the User would cancel the order resting in the Arca Book and submit a PO or PO+ Order for execution on the primary market. The Primary After 3:45 Order type will operate in a manner similar to a combination of two existing order types, but simplifies this compound functionality into one new order type.

The proposed order types provide Users the ability to participate on the primary listing market during the two most active periods of the trading day, the fifteen minutes following the open and prior to the close. For the remainder of the trading day, the two new order types offer Users access to the Exchange's liquidity.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b)<sup>8</sup> of the Securities Exchange Act of 1934 (the "Exchange Act"), in general, and furthers the objectives of Section 6(b)(5)<sup>9</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 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 changes are designed to accomplish these ends by providing Users the ability to participate on the primary listing market during the most active periods of the trading day.

### 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.

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<sup>8</sup> 15 U.S.C. 78f(b).

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

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

Because the foregoing proposed rule change: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 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, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.<sup>12</sup> However, Rule 19b-4(f)(6)(iii)<sup>13</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay to allow market participants on NYSE Arca increased flexibility to participate on the primary listing exchange during the 15 minutes following the open and prior to the close. In addition, the waiver of the operative delay would allow the proposal to become operative on the date of approval of SR-NYSE-2009-58. The Commission believes such waiver

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) 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.

<sup>13</sup> Id.

is consistent with the protection of investors and the public interest.<sup>14</sup> Accordingly, the Commission designates the proposed rule change operative on July 7, 2009.<sup>15</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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-2009-56 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-2009-56. This file number should be included on the subject line if e-mail is used. To help the Commission process and review

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<sup>14</sup> For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>15</sup> Securities Exchange Act Release No. 60255 (July 7, 2009) (SR-NYSE-2009-58).

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 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 available publicly. All submissions should refer to File Number SR-NYSEArca-2009-56 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>

Elizabeth M. Murphy  
Secretary

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