

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60262; File No. SR-NYSEArca-2009-63)

July 8, 2009

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Equities Rules 7.31(x) and 7.31(kk)

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 ("Act")² and Rule 19b-4 thereunder,³ notice is hereby given that on July 2, 2009, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") 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 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 Equities Rule 7.31(x) and 7.31(kk) in order to amend the functionality of Primary Only Orders and Primary Sweep Orders (collectively "PO and PSO orders") routed to the New York Stock Exchange LLC ("NYSE") [sic] The text of the proposed rule change is attached as Exhibit 5 to the 19b-4 form. A copy of this filing is available on the Exchange's Web site at 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

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 proposes to amend NYSE Arca Equities Rule 7.31(x) and 7.31(kk) to offer Users⁴ additional execution opportunities for their PO and PSO orders routed to the NYSE. Currently, if PO or PSO orders routed to the NYSE are not marked immediate-or-cancel (“IOC”), the orders are not returned to the entering party but remain at the NYSE, until executed or cancelled. For PO and PSO orders routed to the NYSE, this executed or cancelled functionality is accomplished by marking the order as Do-Not-Ship (“DNS”), a designation specific to the NYSE, which according to NYSE rules, prevents the NYSE from routing the order to away market centers.⁵ The Exchange proposes to offer Users the opportunity to override this DNS designation on PO and PSO orders routed to the NYSE. Where Users choose to override the DNS designation, PO and PSO orders routed to the NYSE will remain at the NYSE until executed, routed away, or cancelled.

Whereas the current functionality satisfies both the User's and the Exchange's obligations pursuant to Regulation NMS, offering this additional functionality for PO and PSO

⁴ NYSE Arca Equities Rule 1.1(yy). The term "User" shall mean any ETP Holder or Sponsored Participant who is authorized to obtain access to the NYSE Arca Marketplace pursuant to Rule 7.29.

⁵ See NYSE Rule 13, stating that an order marked DNS “will be immediately and automatically cancelled if compliance with Exchange rules or federal securities laws requires that all or part of such order be routed to another market center for execution.”

orders routed to the NYSE will enhance execution opportunities by expanding access to available liquidity.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)⁶ of the Securities Exchange Act of 1934 (the “Exchange Act”), in general, and furthers the objectives of Section 6(b)(5) of the Act,⁷ 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 the proposed functionality for PO and PSO orders routed to the NYSE will enhance execution opportunities for Exchange Users by expanding their access to available liquidity.

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

Because the foregoing proposed rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)⁸ of the Act and subparagraph (f)(6) of Rule 19b-4 thereunder.⁹

A proposed rule change filed under Rule 19b-4(f)(6)¹⁰ normally does not become operative for 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)¹¹ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that the proposed rule change does not introduce new or novel functionality, but that the Exchange is merely offering its Users certain order type functionality for PO and PSO orders consistent with other current order types eligible for routing to or entry on the NYSE.¹²

The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow implementation of execution opportunities for Exchange Users without delay.¹³ Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of 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 satisfied this requirement.

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 17 CFR 240.19b-4(f)(6)(iii).

¹² See SR-NYSEArca-2009-63, Item 7.

¹³ For the 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. 78(c)(f).

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. Please include File Number SR-NYSEArca-2009-63 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-2009-63. 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 10:00 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 No. SR-NYSEArca-2009-63 and should be submitted on or before [insert date 21 days from date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Elizabeth M. Murphy
Secretary

¹⁴ 17 CFR 200.30-3(a)(12).