

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61178; File No. SR-NYSEArca-2009-90)

December 16, 2009

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change Relating to the Designation of NYSE Arca, Inc., as the NYSE's Alternative Trading Facility in an Emergency

I. Introduction

On October 13, 2009, NYSE Arca, Inc. ("NYSE Arca" or the "Corporation") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² a proposal to amend NYSE Arca Equities, Inc. Rule ("NYSE Arca Rule") 2.100, "Emergency Powers; Contingency Trading Facility," to allow NYSE Arca to act, in an emergency, as the alternative trading facility for the New York Stock Exchange LLC ("NYSE") or a national securities exchange otherwise designated by NYSE Arca as an affiliated entity (an "Affiliated Exchange").³ The proposed rule change was published for comment in the Federal Register on November 12, 2009.⁴ The Commission received no comments regarding the proposal. This order approves the proposed rule change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Commission today is approving a companion proposal filed by the NYSE that allows the NYSE to designate NYSE Arca as its alternative trading facility in the event of an emergency condition. See Securities Exchange Act Release No. 61177 (order approving File No. SR-NYSE-2009-105). Any other Affiliated Exchange that seeks to designate NYSE Arca as its alternative trading facility would be required to file a proposed rule change with the Commission before NYSE Arca could act as that Affiliated Exchange's alternative trading facility. Because no other Affiliated Exchange has filed such a proposal, the NYSE currently is the only Affiliated Exchange that may designate NYSE Arca as its alternative trading facility.

⁴ See Securities Exchange Act Release No. 60921 (November 3, 2009), 74 FR 58345 ("Notice").

II. Description of the Proposal

As described in greater detail in the Notice,⁵ NYSE Arca proposes to amend NYSE Arca Rule 2.100 to: (1) delete obsolete rule text; and (2) authorize a qualified Corporation officer to declare an emergency condition with respect to trading on or through the systems and facilities of NYSE Arca.⁶ Under NYSE Arca Rule 2.100, no emergency condition will be declared unless: (i) there exists a regional or national emergency that would prevent the NYSE Arca from operating normally; and (ii) such declaration is necessary so that the securities markets in general, and NYSE Arca's systems and facilities, in particular, may continue to operate in a manner consistent with the protection of investors and in pursuit of the public interest.⁷ For purposes of NYSE Arca Rule 2.100, an "emergency" is an emergency as defined in Section 12(k)(7) of the Act,⁸ and NYSE Arca Rule 2.100 is intended to be invoked only in such emergencies.⁹ NYSE Arca contemplates that the authority provided in NYSE Arca 2.100 could be exercised when, due to an emergency condition, the facilities of NYSE Arca's corporate parent, NYSE Euronext, that are located at 11 Wall Street are rendered inoperable.¹⁰ A qualified

⁵ See note 4, supra.

⁶ For purposes of NYSE Arca Rule 2.100, a "qualified Corporation officer" is the NYSE Euronext Chief Executive Officer or his or her designee, or the NYSE Regulation, Inc. Chief Executive Officer or his or her designee. If these individuals are unable to act due to incapacitation, the most senior surviving officer of NYSE Euronext or NYSE Regulation, Inc. will be a "qualified Corporation officer" for purposes of NYSE Arca Rule 2.100. See NYSE Arca Rule 2.100(a)(3)(ii).

⁷ See NYSE Arca Rule 2.100(a)(2).

⁸ 15 U.S.C. 78l(k)(7). See NYSE Arca Rule 2.100(a)(3)(i).

⁹ See Notice, supra note 4, at note 5 and accompanying text.

¹⁰ Id.

Corporation officer will make reasonable efforts to contact the Commission prior to taking action under NYSE Arca Rule 2.100.¹¹

In the event that an emergency condition is declared under NYSE Arca Rule 2.100(a) with respect to trading on or through the systems and facilities of an Affiliated Exchange, a qualified Corporation officer may designate NYSE Arca to receive and process bids and offers and to execute orders in Affiliated Exchange-listed securities for members, member organizations, and sponsored participants of the Affiliated Exchange (“Affiliated Participants”) on behalf of such Affiliated Exchange.¹² Quotes or orders of Affiliated Exchange-listed securities entered or executed on or through the systems and facilities of NYSE Arca would be reported to the Consolidated Quotation System or the Consolidated Tape as bids, offers, or executions, respectively, made on or through the systems and facilities of the Affiliated Exchange.¹³

Affiliated Participants would be permitted to enter quotations and to execute orders on or through the systems and facilities of NYSE Arca regardless of whether they were ETP Holders or Sponsored Participants of NYSE Arca at the time the emergency condition was declared.¹⁴

¹¹ See NYSE Arca Rule 2.100(c)(1).

¹² See NYSE Arca Rule 2.100(a)(3)(iv) and (b)(1). As noted above, an Affiliated Exchange would need to file a proposed rule change with the Commission before NYSE Arca could serve as the alternative trading facility for such Affiliated Exchange. Currently, the NYSE is the only exchange that has filed such a proposal with the Commission. See note 3, supra.

¹³ See NYSE Arca Rule 2.100(b)(2)(ii).

¹⁴ See NYSE Arca Rule 2.100(b)(3). NYSE Arca would, as needed, designate any Affiliated Participants that are not NYSE Arca ETP Holders as temporary members of NYSE Arca and permit Affiliated Participants that do not have sponsored access to NYSE Arca to obtain temporary access through an existing ETP Holder or an Affiliated Participant that is granted temporary membership under NYSE Arca Rule 2.100. See NYSE Arca Rule 2.100(b)(3)(i)(A) and (B). The temporary memberships or access

Affiliated Participants registered as Designated Market Makers (“DMMs”) on their Affiliated Exchange would be considered “Market Makers” pursuant to NYSE Arca Rule 7.23 for the purpose of trading Affiliated Exchange-listed securities on and through the systems and facilities of NYSE Arca.¹⁵

All trades in Affiliated Exchange-listed securities entered or executed on or through the systems and facilities of NYSE Arca would be subject to NYSE Arca Rules governing trading, and such rules would be considered rules of the Affiliated Exchange for the purposes of such transactions, except that: (1) the rules of the Affiliated Exchange governing member firm conduct, including membership requirements and net capital requirements, would continue to apply to its Affiliated Participants; and (2) the Affiliated Exchange’s listing requirements for all listed securities would continue to apply.¹⁶

NYSE Arca would conduct surveillance of trading in Affiliated Exchange-listed securities on or through the systems and facilities of NYSE Arca on behalf of the Affiliated Exchange.¹⁷ Affiliated Participants would remain subject to the jurisdiction of their Affiliated Exchange for any disciplinary actions related to the trading of Affiliated Exchange-listed securities on or through the facilities of NYSE Arca.¹⁸

The authority granted pursuant to NYSE Arca Rule 2.100 would remain operative for up to 10 calendar days from the date that NYSE Arca invokes such authority, and NYSE Arca may

would be valid only until regular trading resumes on or through the Affiliated Exchange’s systems or facilities. See NYSE Arca Rule 2.100(b)(3)(ii).

¹⁵ See NYSE Arca Rule 2.100(b)(3)(i)(C).

¹⁶ See NYSE Arca Rule 2.100(b)(4).

¹⁷ See NYSE Arca Rule 2.100(b)(5)(i).

¹⁸ See NYSE Arca Rule 2.100(b)(5)(ii).

terminate actions taken pursuant to NYSE Arca Rule 2.100 at any time.¹⁹ NYSE Arca may request an extension of this initial 10-day period for a specified amount of time by filing a proposed rule change with the Commission pursuant to Section 19(b)(2) of the Act, and the Commission must approve the NYSE Arca's proposal before any such extension could take effect.²⁰

NYSE Arca notes that NYSE Arca, like other self-regulatory organizations ("SROs"), currently has the authority to halt trading in all stocks eligible for trading on NYSE Arca in the event of extraordinary market volatility.²¹ NYSE Arca believes that the NYSE currently is the only SRO that monitors for the thresholds (i.e., specified declines in the Dow Jones Industrial Average IndexSM ("DJIA") from the previous day's close) used in these SRO trading halt rules. Accordingly, NYSE Arca proposes to establish a mechanism to calculate the DJIA thresholds in the event that trading on the NYSE becomes inoperable and NYSE Arca acts as the NYSE's alternative trading facility, as contemplated by NYSE Arca Rule 2.100.

III. Discussion and Commission Findings

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.²² In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,²³ which requires, in part, that the rules of a national securities exchange be designed to

¹⁹ See NYSE Arca Rule 2.100(c)(2) and (3). NYSE Arca will provide adequate prior notice to ETP Holders, Sponsored Participants, and investors regarding its intention to terminate any action taken under the rule. See NYSE Arca Rule 2.100(c)(3).

²⁰ See NYSE Arca Rule 2.100(c)(2).

²¹ See NYSE Arca Rule 7.12.

²² In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

²³ 15 U.S.C. 78f(b)(5).

foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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 is reasonably designed to permit the NYSE to continue to operate in the event of an emergency, as defined in Section 12(k)(7) of the Act, by allowing the NYSE's corporate affiliate, NYSE Arca, to receive and process quotations in NYSE-listed securities and to execute orders in NYSE-listed securities on behalf of the NYSE in the event of an emergency condition.²⁴ A qualified Corporation officer would invoke the authority provided in NYSE Arca Rule 2.100 only in an emergency, as defined in Section 12(k)(7) of the Act.²⁵ NYSE Arca will make reasonable efforts to consult with the Commission prior to taking action under NYSE Arca Rule 2.100.²⁶ Any action taken under NYSE Arca Rule 2.100 would be operative for up to 10 calendar days from the date that NYSE Arca invokes its

²⁴ The Commission previously has approved proposals by other national securities exchanges to establish back-up trading arrangements. See, e.g., Securities Exchange Act Release Nos. 51717 (May 19, 2005), 70 FR 30160 (May 25, 2005) (File No. SR-CBOE-2004-59) (approving proposal by the Chicago Board Options Exchange, Incorporated to enter into back-up trading arrangements with other exchanges); 51926 (June 27, 2005), 70 FR 38232 (July 1, 2005) (File No. SR-Phlx-2004-65) (approving proposal by the Philadelphia Stock Exchange ("Phlx") to enter into back-up trading arrangements with other exchanges); 40088 (June 12, 1998), 63 FR 33426 (June 18, 1998) (File No. SR-Phlx-98-25) (approving the trading of Dell options listed on the Phlx at the American Stock Exchange on a temporary basis); and 27365 (October 19, 1989), 54 FR 43511 (October 25, 1989) (File Nos. SR-Amex-89-26; CBOE-89-21; PSE-89-28; and Phlx-89-52) (approving proposals to trade options listed on the Pacific Stock Exchange on other exchanges following an earthquake).

²⁵ See NYSE Arca Rule 2.100(a)(2) and (3)(i). See also note 10, supra, and accompanying text.

²⁶ See NYSE Arca Rule 2.100(c)(1).

authority under the rule, and NYSE Arca may terminate action taken under the rule at any time.²⁷ To extend an action taken pursuant to NYSE Arca Rule 2.100 beyond the initial 10-calendar day period, NYSE Arca must file a proposed rule change with the Commission pursuant to Section 19(b)(2) under the Act, and the Commission would need to approve such an extension before it could take effect.²⁸ In addition, the Commission could, at any time, exercise its authority under Section 12(k)(2) of the Act²⁹ to terminate an action taken by NYSE Arca under NYSE Arca Rule 2.100.

NYSE Arca Rule 2.100 also addresses surveillance and the disciplinary procedures that would apply in the event that NYSE Arca acts as the NYSE's alternative trading facility, as provided in the rule. In particular, NYSE Arca will conduct surveillance of trading in NYSE-listed securities on behalf of the NYSE.³⁰ NYSE members, member organizations, and sponsored participants will remain subject to the NYSE's jurisdiction for any disciplinary actions related to the trading of NYSE-listed securities on or through the systems and facilities of NYSE Arca, and violations of NYSE Arca's rules will be referred to the NYSE for prosecution according to the NYSE's disciplinary rules.³¹

The Commission believes that NYSE Arca's proposal to delete obsolete language from NYSE Arca Rule 2.100 is consistent with the Act because it is designed to clarify the operation of NYSE Arca Rule 2.100. Finally, the Commission believes that NYSE Arca's proposal to

²⁷ See NYSE Arca Rule 2.100(c)(2) and (3). NYSE Arca would provide adequate prior notice to ETP Holders, Sponsored Participants, and investors of its intention to terminate any action taken pursuant to NYSE Arca Rule 2.100. See NYSE Arca Rule 2.100(c)(3).

²⁸ See NYSE Arca Rule 2.100(c)(2).

²⁹ 15 U.S.C. 78l(k)(2).

³⁰ See NYSE Arca Rule 2.100(b)(5)(i).

³¹ See NYSE Arca Rule 2.100(b)(5)(ii).

establish a mechanism to calculate the DJIA thresholds in the event that trading on the NYSE becomes inoperable is consistent with the Act because it designed to help to maintain a fair and orderly market.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,³² that the proposed rule change (File No. SR-NYSE Arca-2009-90) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³³

Florence E. Harmon
Deputy Secretary

³² 15 U.S.C. 78s(b)(2).

³³ 17 CFR 200.30-3(a)(12).