

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-62247; File No. SR-NYSEArca-2010-43)

June 9, 2010

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Arca, Inc. Amending Rule 5.2(b)(1)

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 May 21, 2010, 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, II, and III below, which Items have substantially been prepared by NYSE Arca. The Exchange has designated the proposed rule change as constituting a “non-controversial” rule change under Section 19(b)(3)(A) of the Act,⁴ and Rule 19b-4(f)(6) thereunder,⁵ which renders the proposal effective upon filing with the Commission. 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 Rule 5.2(b)(1) – Notification Requirements for Offering of Securities to clarify its applicability. A copy of this filing is available on the Exchange’s Web site at www.nyse.com, at the Exchange’s principal office, on the

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ 15 U.S.C. 78s(b)(3)(A).

⁵ 17 CFR 240.19b-4(f)(6).

Commission's website at www.sec.gov, 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, NYSE Arca 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to clarify the applicability of Rule 5.2(b)(1) – Notification Requirements for Offering of Securities. Specifically, the Exchange proposes to amend Rule 5.2(b)(1) in order to make clear that an Equity Trading Permit (“ETP”) Holder, acting as the lead underwriter for any offering in a security listed on any national securities exchange, is obligated to notify the Exchange of the offering, regardless of where the offering is listed. In its current form, Rule 5.2(b)(1) requires ETP Holders to notify the Exchange of “any” offering when acting as the lead underwriter. Therefore, the current rule language can be construed to require that ETP Holders notify the Exchange of all offerings in such circumstances, including offerings of securities listed on national securities exchanges other than NYSE Arca. However, the purpose section of the November 2004 19b-4 rule filing that created Rule 5.2(b)(1) states that “Rule 5.2(b)(1) would require an [ETP Holder] that participates in any offering of securities listed on the Exchange to submit certain information to PCXE regarding the

offering (emphasis added).”⁶ For the following reasons, the Exchange proposes to add language to Rule 5.2(b)(1) in order to make clear that ETP Holders who act as lead underwriters in offerings of securities listed on NYSE Arca or any other national securities exchange must notify the Exchange of such offerings. First, the language in the November 2004 19b-4 unnecessarily limits the scope of Rule 5.2(b)(1) to offerings of securities listed on NYSE Arca. Second, the Exchange regularly receives notices from ETP Holders of offerings of securities listed on national securities exchanges other than NYSE Arca and regularly investigates potential Regulation M violations in connection with such offerings. Finally, the Exchange depends on ETP Holders to notify it of offerings of securities listed on NYSE Arca and other national securities exchanges in order to effectively surveil for and investigate potential violations of Regulation M in connection with such offerings.⁷

The proposed amendment to Rule 5.2(b)(1) codifies the Exchange’s previously published interpretation of Rule 5.2(b)(1),⁸ and the Exchange’s practice of requiring that ETP Holders who act as lead underwriters in any offering in a security listed on any national securities exchange notify the Exchange of such offering. The Exchange is not otherwise altering the rights or obligations of ETP Holders.

⁶ Exchange Act Release No. 34-50662 (November 15, 2004), 69 FR 67770 (November 19, 2004) (File No. SR-PCX-2004-102).

⁷ The Exchange cannot investigate offerings of securities that are not listed on a national securities exchange because the Exchange’s jurisdictional purview does not cover trading activity in such securities.

⁸ See Exchange Regulatory Information Bulletin RBE 07-04 (May 31, 2007).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁰ 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.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act,¹¹ and Rule 19b-4(f)(6) thereunder.¹² Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest, (ii) impose any significant burden on competition, and (iii) become operative

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹² 17 CFR 240.19b-4(f)(6).

prior to 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹³ and Rule 19b-4(f)(6)(iii) thereunder.¹⁴

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-2010-43 on the subject line.

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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 the pre-filing requirement.

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-2010-43. 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 Web site viewing and printing 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 the filing will also be available for inspection and copying at NYSE Arca's principal office and on its Internet Web site at www.nyse.com. 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-2010-43 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.¹⁵

Florence E. Harmon
Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).