

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-63440; File No. SR-NYSEArca-2010-112)

December 6, 2010

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Equities Rules 7.31(k) and 7.23(a)(1) to Modify Certain Characteristics of the Q Order and Clarify the Interest Eligible for Satisfaction of a Market Maker's Two-Sided Obligation

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup>, and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on December 3, 2010, NYSE Arca, Inc. ("NYSE Arca" or "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 Exchange. 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 Rules 7.31(k) and 7.23(a)(1) to modify certain characteristics of the Q Order and clarify the interest eligible for satisfaction of a Market Maker's Two-Sided Obligation, respectively. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and [www.nyse.com](http://www.nyse.com).

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

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

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

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 Rules 7.31(k) and 7.23(a)(1) to modify certain characteristics of the Q Order and clarify the interest eligible for satisfaction of a Market Maker's Two-Sided Obligation, respectively.

A Market Maker is currently able to satisfy its Two-Sided Obligation<sup>3</sup> by instructing the NYSE Arca Marketplace to enter a Q Order on its behalf either (1) at the last price and size entered by the Market Maker during the previous trading day, including or excluding reserve size, or (2) at a specified percentage from the best bid or offer.<sup>4</sup> Currently, upon execution, a Q Order entered with reserve size pursuant to NYSE Arca Equities Rule 7.31(k)(1)(A)(1) will automatically repost with the original display size and \$10 below (above) the original bid (offer).<sup>5</sup> This particular automatic reposting could result in a Q Order with a price that is significantly worse than the published National Best Bid or Offer ("NBBO"). Moreover, depending on the price of the security at issue, the automatic reposting could result in a Market Maker posting a Q Order at a price that is not in compliance with the new Market Maker pricing obligations set forth in

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<sup>3</sup> See NYSE Arca Equities Rule 7.23(a)(1).

<sup>4</sup> See NYSE Arca Equities 7.31(k)(1)(A)(1)-(2).

<sup>5</sup> See NYSE Arca Equities Rule 7.31(k)(1)(B)(1). If the Market Maker specifies a reserve size for the Q Order, it will not automatically repost once the reserve size is exhausted.

amended NYSE Arca Equities Rule 7.23(a)(1)(B), which are to be implemented on December 6, 2010.

Accordingly, the Exchange proposes to delete the text of NYSE Arca Equities Rule 7.31(k)(1)(B)(1) in its entirety<sup>6</sup> and delete the text “entered without reserve size” from NYSE Arca Equities Rule 7.31(k)(1)(B)(2) to provide that a Market Maker, upon execution of its Q Order entered with reserve size, would be responsible for immediately posting a new Q order, rather than the Q order automatically reposting \$10 below (above) the original bid (offer). The Exchange notes that Market Makers are currently required to post a new Q order upon execution of Q orders entered without reserve size. Requiring the same of Q orders originally entered with reserve size would encourage Q order prices that bear a closer relationship to the NBBO than the current \$10 above/below reposting price, thus promoting fair and orderly markets and the protection of investors and reducing the risk of executions at illogical prices.

The Exchange previously represented to the Commission, in filing SR-NYSEArca-2010-83, that it would submit a filing with the changes proposed herein, including a proposed implementation date of Monday, December 6, 2010, consistent with the implementation date for the new Market Maker pricing obligations.<sup>7</sup>

The Exchange further proposes clarifying revisions to recently amended Rule 7.23(a)(1). In filing SR-NYSEArca-2010-83, the Exchange noted that Market Makers would use Q orders to meet the new Two-Sided Obligation under Rule 7.23(a)(1).<sup>8</sup> The

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<sup>6</sup> The Exchange proposes to place NYSE Arca Equities Rule 7.31(k)(1)(B)(1) in ‘Reserve’ for possible use at a later date.

<sup>7</sup> See Securities Exchange Act Release No. 63255 (November 5, 2010), 75 FR 69484 (November 12, 2010) (SR-NYSEArca-2010-83).

<sup>8</sup> Id.

Exchange proposes to amend Rule 7.23(a)(1) to delete the requirement that Market Makers exclusively use Q orders to meet their Two-Sided Obligation. Rule 7.23(a)(1) would continue to require that Market Makers identify to the Exchange the interest that is being used to satisfy the Two-Sided Obligation. While Market Makers may continue to use Q orders to satisfy the Two-Sided Obligation, the Exchange believes that Market Makers should be permitted to use other types of interest to satisfy this obligation, provided that the interest is displayed and identified to the Exchange. The proposed revision to Rule 7.23(a)(1) is consistent with the rules adopted by other exchanges.<sup>9</sup>

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),<sup>10</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>11</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. Specifically, the Exchange believes that the change proposed herein would encourage Market Maker Q order prices that bear a closer relationship to the NBBO, thus promoting fair and orderly markets and the protection of investors and reducing the risk of executions at illogical prices. The Exchange also believes that the change propose herein would provide Market Makers with a more appropriate level of flexibility with which to

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<sup>9</sup> See, e.g., Nasdaq Rule 4613.

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

<sup>11</sup> 15 U.S.C. 78f(b)(5).

satisfy their Two-Sided Obligation by permitting interest other than Q order interest to be identified to the Exchange as meeting such obligation.

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 does not: (1) significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) 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>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</sup>

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<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6). When filing a proposed rule change pursuant to Rule 19b-4(f)(6) under the Act, an exchange is required to give the Commission 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 Commission notes that the Exchange has satisfied this requirement.

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>14</sup> However, Rule 19b-4(f)(6)<sup>15</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. NYSE Arca has requested that the Commission waive the 30-day operative delay.

The Commission has considered NYSE Arca's request to waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will enable the Exchange to implement the proposed change consistent with the implementation date for the new market maker pricing obligations.<sup>16</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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:

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<sup>14</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>15</sup> Id.

<sup>16</sup> For the purposes only of waiving the operative date 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).

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-2010-112 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-2010-112. 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 website (<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 website 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 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-2010-112 and should be submitted on or before [insert date 21 days after publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

Florence E. Harmon  
Deputy Secretary

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