

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-64086; File No. SR-NYSEArca-2011-09)

March 17, 2011

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Adopting Rules Related to Qualified Contingent Cross Orders

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 March 14, 2011, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) 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 the Substance of the Proposed Rule Change

The Exchange proposes to adopt rules related to Qualified Contingent Cross Orders (“QCCs”). The text of the proposed rule change is available at the Exchange, the Exchange’s website at www.nyse.com, on the Commission’s Web site at <http://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, 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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 purpose of this filing is to adopt rules related to QCCs. The proposed rule change is based on an International Securities Exchange (“ISE”) proposal recently approved by the Securities and Exchange Commission (“Commission”).⁴

Background

The Exchange is currently a party to the Options Order Protection and Locked/Crossed Market Plan (“Distributive Linkage Plan”),⁵ and has implemented Exchange rules in conjunction with that plan (the “Distributive Linkage Rules”).⁶ Similar to Regulation NMS under the Securities Exchange Act of 1934 (“Exchange Act or “Act”), the Distributive Linkage Plan requires, among other things, that the Exchange establish, maintain and enforce written policies and procedures that are reasonably designed to prevent “Trade-Throughs.”⁷ A Trade-Through is

⁴ See Securities Exchange Act Release No. 62523 (July 16, 2010), 75 FR 43211 (July 23, 2010) (SR-ISE-2010-73) (“ISE Proposal”). See also Securities Exchange Act Release No. 63955 (February 24, 2011), 76 FR 11533 (March 2, 2011) (SR-ISE-2010-73) (“ISE Approval”). The Exchange notes that letters commenting on the ISE Proposal were submitted on its behalf by the Exchange’s parent company, NYSE Euronext. See e.g., letters dated August 9, 2010 and October 21, 2010 from Janet L. McGinness, Senior Vice President – Legal & Corporate Secretary, Legal & Government Affairs, NYSE Euronext (“NYSE Euronext Comment Letters”).

⁵ See Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009) (File No. 4-546).

⁶ See Securities Exchange Act Release No. 60527 (August 18, 2009), 74 FR 43178 (August 26, 2009) (SR-NYSEArca-2009-45).

⁷ Section 5(a) of the Distributive Linkage Plan.

a transaction in an options series at a price that is inferior to the best price available in the market.⁸

The Distributive Linkage Plan replaced the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (“Old Linkage Plan”), and the Distributive Linkage Rules replaced the then-existing NYSE Arca rules implementing the Old Linkage Plan (the “Old Linkage Rules”). The Old Linkage Plan and the Old Linkage Rules provided a limited Trade-Through exemption for “Block Trades,” defined to be trades of 500 or more contracts with a premium value of at least \$150,000.⁹ However, as with Regulation NMS, the Distributive Linkage Plan does not provide a Block Trade exemption.

The ISE Proposal stated that the loss of the Block Trade exemption, among other things, adversely affects the ability of its members to effect large trades that are tied to stock,¹⁰ and therefore proposed the QCC as a limited substitute for the Block Trade exemption. While our views with respect to the potential impact that the ISE Proposal may have on market structure remain unchanged,¹¹ we nonetheless are proposing to adopt rules related to QCCs based on those approved for ISE. In particular, we believe that such a rule change would permit the Exchange to remain competitive with ISE, and the other options exchanges that may also adopt rules for QCCs, by making QCCs available to OTP Holders and their customers through the Exchange.

Discussion

While Regulation NMS does not provide a block trade exemption from trade-through liability for stocks, the Commission, by order, has provided trade-through relief for “Qualified

⁸ Section 2(21) of the Distributive Linkage Plan.

⁹ Old Linkage Plan Sections 2(3) and 8(c)(i)(C); and former NYSE Arca Options Rule 6.94(d)(2).

¹⁰ See ISE Proposal at 43212.

¹¹ See NYSE Euronext Comment Letters, supra note 1 [sic].

Contingent Trades” (“QCTs”).¹² The QCT Release provides an exemption from trade-through liability in the equity market for multi-component, fully-hedged trades where one order is contingent on the execution of one or more additional orders. Building on this concept, and as approved for ISE, the Exchange proposes that when an NYSE Arca OTP Holder effects a QCT trade in a Regulation NMS Stock, that OTP Holder be permitted to cross the options leg of the trade on the Exchange immediately upon entry if the order is for at least 1,000 contracts, is part of a QCT, is executed at a price at least equal to the national best bid or offer (“NBBO”), and there are no Customer Orders on the Exchange’s Consolidated Book at the same price.¹³

The QCC would permit OTP Holders to provide their customers a net price for the entire trade, and then allow the OTP Holder to execute the options leg of the trade on NYSE Arca at a price at least equal to the NBBO while using the QCT exemption to effect the trade in the

¹² See Securities Exchange Act Release No. 57620 (April 4, 2008), 73 FR 19271 (April 9, 2008) (the “QCT Release”). That release superseded a release initially granting the Qualified Contingent Trade exemption. See Securities Exchange Act Release No. 54389 (August 31, 2006), 71 FR 52829 (September 7, 2006).

¹³ We propose to define a QCC trade substantively identical to the Commission’s definition in the QCT release as well as that in the ISE Proposal. A QCC trade must meet the following conditions: (i) at least one component must be an NMS Stock; (ii) all the components must be effected with a product price contingency that either has been agreed to by all the respective counterparties or arranged for by a broker-dealer as principal or agent; (iii) the execution of one component must be contingent upon the execution of all other components at or near the same time; (iv) the specific relationship between the component orders (e.g., the spread between the prices of the component orders) must be determined by the time the contingent order is placed; (v) the component orders must bear a derivative relationship to one another, represent different classes of shares of the same issuer, or involve the securities of participants in mergers or with intentions to merge that have been announced or cancelled; and (vi) the transaction must be fully hedged (without regard to any prior existing position) as a result of other components of the contingent trade. Consistent with the QCT Release and the ISE Proposal, OTP Holders must demonstrate that the transaction is fully hedged using reasonable risk-valuation methodologies. See QCT Release, supra note 9 [sic], at footnote 9.

equities leg at a price necessary to achieve the net price.¹⁴ Under the proposal, the Exchange would not permit the options component of a stock-option order to trade through the NBBO.¹⁵ However, there are times when the quotation spread for the option on the Exchange would not permit an execution of the options component between the Exchange BBO, particularly in options that trade in increments greater than \$0.01. In those cases, the Exchange proposes to permit an execution of the options component at a price that matches the Exchange BBO. Moreover, under the proposal, the Exchange would not permit the execution of a QCC at the same price as a Customer Order on the Consolidated Book. In such a case, the QCC will be rejected.¹⁶

Furthermore, under this proposal, the Exchange would only permit QCCs to be submitted electronically from off the Floor through the NYSE Arca System. In this regard, an OTP Holder located on the Floor of the Exchange would not be allowed to enter QCCs into the NYSE Arca System, or otherwise effect them in open outcry. In this way, our proposal provides for the same means to effect QCCs on the Exchange as that of the ISE. We plan to file a separate proposed rule change to address effecting QCCs in open outcry on the Floor of the Exchange.

¹⁴ NYSE Arca will adopt policies and procedures to ensure that OTP Holders use the Qualified Contingent Cross Order properly. First, we will require OTP Holders to properly mark all Qualified Contingent Cross Orders as such. In addition, FINRA, on behalf of NYSE Arca, will implement an examination and surveillance program to assess OTP Holder compliance with the requirements applicable to Qualified Contingent Cross Orders, including the requirement that the stock leg of the transaction be executed at or near the same time as the options leg.

¹⁵ While the QCC would not provide exposure for price improvement for the options leg of a stock-option order, the options leg must be executed at the NBBO or better. The Commission has previously approved crossing transactions with no opportunity for price improvement. See e.g., ISE Rule 721(a) and Chicago Board Options Exchange (“CBOE”) Rule 6.74A, Interpretations and Policies .08.

¹⁶ The Commission has previously approved the rejection of crossing transactions when there is a priority customer order on the book at the same price. See e.g., ISE Rule 721(a); and CBOE Rule 6.74A, Interpretations and Policies .08.

To provide a mechanism for the Exchange to surveil for whether QCCs were entered from off of the Floor, the Exchange proposes to adopt Commentary .01 to Rule 6.90. This provision would require OTP Holders to maintain books and records demonstrating that each Qualified Contingent Cross Order was routed to the NYSE Arca System from off of the Floor. Any Qualified Contingent Cross Order that does not have a corresponding record required by this provision would be deemed to have been entered from on the Floor in violation of Rule 6.90.

The Exchange's proposal addresses the mechanics of executing the stock and options components of a net-price transaction. The Exchange believes that it is necessary that it provide OTP Holders and their customers with the same trading capabilities available on other exchanges with respect to QCCs, including the change proposed herein, which would permit OTP Holders to execute the options legs of their customers' large complex orders on the Exchange.

The Exchange also proposes a minor non-substantive correction to the numbering convention within NYSE Arca Options Rule 6.62.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act¹⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁸ in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rules are consistent with the protection of investors in that they are designed to prevent Trade-Throughs. In addition, the proposed rule change would promote a free and open market by permitting the Exchange to compete with ISE for these types of orders. In this regard, competition would result in benefits to the investing

¹⁷ 15 U.S.C. 78f(b).

¹⁸ 15 U.S.C. 78f(b)(5).

public, whereas a lack of competition would serve to limit the choices that the public has for execution of their options business.

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. Instead, the proposed rule change would prevent the otherwise significant burden on competition that would arise if ISE were permitted to implement QCCs without a similar functionality being made available to market participants across all U.S. markets for listed options, including OTP Holders on the Exchange.

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 Act¹⁹ and Rule 19b-4(f)(6) thereunder.²⁰ 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 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 Act and Rule 19b-4(f)(6) (iii) thereunder.

¹⁹ 15 U.S.C. 78s(b)(3)(A)(iii).

²⁰ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) 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 Commission has waived this requirement.

At any time within 60 days of the filing of such 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:

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-2011-09 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-2011-09. 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 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-2011-09 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.²¹

Cathy H. Ahn
Deputy Secretary

²¹ 17 CFR 200.30-3(a)(12).