

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-64730; File No. SR-NYSEArca-2011-38)

June 23, 2011

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Adopting New NYSE Arca Equities Rule 7.41 to Codify Outbound and Inbound Routing Functions Performed by Its Affiliate Broker-dealer, Archipelago Securities LLC

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that, on June 16, 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 NYSE Arca. 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 new NYSE Arca Equities Rule 7.41 to codify outbound and inbound routing functions performed by its affiliate broker-dealer, Archipelago Securities LLC (“Arca Securities”). The text of the proposed rule change is available at the Exchange’s principal office, at www.nyse.com, at the Commission’s Public Reference Room, and at the Commission’s website at www.sec.gov.

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 places

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 Exchange proposes new NYSE Arca Equities Rule 7.41 to codify outbound and inbound routing functions performed by its affiliate broker-dealer, Arca Securities, which have previously been approved by the Commission.³

Background – Arca Securities Functions as Routing Broker

Arca Securities currently is the primary outbound and inbound routing broker for NYSE Arca. The terms of the outbound routing function for NYSE Arca are generally set forth in the Commission’s approval orders,⁴ rather than rule text,⁵ and permit NYSE Arca to utilize Arca Securities to route orders to an away market center for execution whenever such routing is required by Exchange Rules and federal securities laws. The terms of the outbound routing function of Arca Securities generally are as follows:

Arca Securities operates and is regulated as a facility of the Exchange, subject to and consistent with Section 6 of the Securities Exchange Act of 1934 (“Act”).

A self-regulatory organization (“SRO”) unaffiliated with the Exchange or

³ The Exchange’s affiliates, New York Stock Exchange, LLC (“NYSE”) and NYSE Amex LLC (“NYSE Amex”), are proposing substantially similar rule changes. See SR-NYSE-2011-24 and SR-NYSEAmex-2011-39.

⁴ See Securities Exchange Act Release No. 52497 (September 22, 2005), 70 FR 56949, 56952-56953 (September 29, 2005) (SR-PCX-2005-90).

⁵ NYSE Arca Equities Rule 7.31 sets forth order types available for trading on the Exchange, including those that may route to another market center, and NYSE Arca Equities Rule 1.1(qq) defines the term “Routing Agreement.”

any of its affiliates (currently the Financial Industry Regulatory Authority or “FINRA”), carries out oversight and enforcement responsibilities as the Designated Examining Authority (“DEA”) designated by the Commission pursuant to Rule 17d-1 of the Act with the responsibility for examining Arca Securities for compliance with the applicable financial responsibility rules.

The agreement between the Exchange and FINRA pursuant to Rule 17d-2 under the Act allocates to FINRA the responsibility to receive regulatory reports from Arca Securities, to examine Arca Securities for compliance and to enforce compliance by Arca Securities with the Act, the rules and regulations thereunder and FINRA rules, and to carry out other specified regulatory functions with respect to Arca Securities.

ETP Holders’ use of Arca Securities to route orders to another market center from the Exchange is optional.⁶

Arca Securities will not engage in any business other than its outbound routing function (including, in that function, the self-clearing functions that it currently performs for trades with respect to orders routed to other market centers) and other activities approved by the Commission.

The operation of Arca Securities as a facility of the Exchange providing outbound routing services is subject to Exchange and Commission oversight and the Exchange must file with the Commission rule changes and fees relating to Arca Securities.

⁶ An ETP Holder that does not want to use Arca Securities may use other routers to route orders to other market centers or choose to send an order to the Exchange that, if not executable on the Exchange, will be cancelled and returned to the ETP Holder, at which time the ETP Holder could choose to route the order to another market itself.

The inbound routing function of Arca Securities currently is governed by a pilot program established to permit Arca Securities to route orders from NYSE and NYSE Amex to NYSE Arca.⁷ The pilot was extended and is currently scheduled to expire on September 30, 2011.⁸ The terms of the inbound routing pilot are generally set forth in the Commission's approval orders, rather than rule text (except as noted below).⁹ The terms of the pilot are as follows:

The Exchange and the Financial Industry Regulatory Authority ("FINRA") have entered into a Rule 17d-2 agreement pursuant to which FINRA is allocated regulatory responsibilities to review Arca Securities' compliance with certain Exchange rules. The Exchange, however, retains ultimate responsibility for enforcing its rules with respect to Arca Securities.

NYSE Regulation monitors Arca Securities for compliance with the Exchange's trading rules and collects and maintains certain related information. Specifically, NYSE Regulation collects and maintains the following information of which NYSE Regulation staff becomes aware – namely, all alerts, complaints, investigations and enforcement actions where Arca Securities is identified as a

⁷ See Securities Exchange Act Release No. 58681 (September 29, 2008), 73 FR 58285 (October 6, 2008) (SR-NYSEArca-2008-90). See also Securities Exchange Act Release No. 59010 (November 24, 2008), 73 FR 73373 (December 2, 2008) (SR-NYSEArca-2008-130).

⁸ See Securities Exchange Act Release Nos. 60750 (September 30, 2009), 74 FR 51635 (October 7, 2009) (SR-NYSEArca-2009-87) (extending pilot from September 29, 2009 to December 31, 2009); 61247 (December 31, 2009), 75 FR 1096 (January 8, 2010) (SR-NYSEArca-2009-115) (extending pilot from December 31, 2009 to March 31, 2010); 61813 (March 31, 2010), 75 FR 17459 (April 7, 2010) (SR-NYSEArca-2010-19) (extending pilot from March 31, 2010 to September 30, 2010); 62883 (September 2, 2010), 75 FR 55382 (September 10, 2010) (SR-NYSEArca-2010-82) (extending pilot from September 30, 2010 to March 31, 2011); and 64042 (March 2, 2011), 76 FR 13440 (March 8, 2011) (SR-NYSEArca-2011-06) (extending pilot from March 31, 2011 to September 30, 2011).

⁹ See supra note 9.

participant that has potentially violated Exchange or applicable SEC rules – in an easily accessible manner so as to facilitate any review conducted by the SEC’s Office of Compliance Inspections and Examination.

NYSE Regulation has agreed with the Exchange that it will provide a report to the Exchange’s Chief Regulatory Officer, on a quarterly basis, that (i) quantifies all alerts (of which NYSE Regulation is aware) that identify Arca Securities as a participant that has potentially violated Exchange or SEC rules, and (ii) quantifies the number of all investigations that identify Arca Securities as a participant that has potentially violated Exchange or Commission rules.

NYSE Euronext, as parent of the Exchange, was obligated to adopt a rule requiring it to establish and maintain procedures and internal controls reasonably designed to ensure that Arca Securities does not develop or implement changes to its system, based on non-public information obtained regarding planned changes to the Exchange’s systems as a result of its affiliation with the Exchange, until such information is available generally to similarly situated ETP Holders of the Exchange.¹⁰

Since the initiation of the inbound routing pilot in 2008, the Exchange in 2010 entered into a comprehensive Regulatory Services Agreement (“RSA”) with FINRA that, among other things, allocated to FINRA responsibility for the functions noted above that NYSE Regulation previously performed with respect to Arca Securities (e.g., monitoring Arca Securities’ compliance with the Exchange’s trading rules).¹¹ As a result of this RSA and the Rule 17d-2

¹⁰ See supra note 9. See also NYSE Arca Equities Rule 14.3(e).

¹¹ The Exchange notes that FINRA reviews both inbound and outbound routing via Arca Securities pursuant to the 17d-2 agreement and the RSA. The Exchange will review the

agreement, the only regulatory functions related to Arca Securities that remain with NYSE Regulation are the provision to FINRA of the exceptions noted above of which NYSE Regulation becomes aware (e.g., alerts involving Arca Securities) and the receipt of the quarterly report noted above, which is now produced by FINRA.

Proposed Rule Change

In order to provide more clarity and transparency to all of the functions that Arca Securities performs on behalf of the Exchange, NYSE Arca proposes to add NYSE Arca Equities Rule 7.41 to define the term “Routing Broker” and describe the outbound and inbound routing functions. By doing so, the Exchange would establish a single, central location in its Rules describing all routing broker functions, including both outbound and inbound routing. The proposed rule text in Rule 7.41 would be substantially the same as the language set forth in the Commission notices applicable to the Exchange and virtually identical to rule text already implemented for other exchanges.

In this regard, the rule text covering outbound routing would be virtually identical to the NYSE’s rule text covering outbound routing by NYSE,¹² and would track the terms of the outbound routing language noted above. In addition, the rule text covering inbound routing would be virtually identical to the BATS’ rule text covering inbound routing by BATS, and would track the terms of the inbound routing pilot noted above (and as set forth in the rule filings), with the following exceptions.¹³ First, the rule text would reflect that certain regulatory functions are now carried out by FINRA on behalf of NYSE Regulation, rather than by NYSE

terms of the RSA in connection with this proposed rule change, and will amend it to reflect the specific terms of this filing.

¹² See NYSE Rule 17(c).

¹³ See BATS Rule 2.12. See also Securities Exchange Act Release No. 62901 (September 13, 2010), 75 FR 57097 (September 17, 2010) (SR-BATS-2010-024).

Regulation directly. Second, the rule text would require procedures and controls that are reasonably designed to prevent Arca Securities from receiving any benefit, taking any action or engaging in any activity, based on non-public information regarding planned changes to Exchange systems obtained as a result of its affiliation with the Exchange, until such information is available generally to similarly situated Exchange ETP Holders, in connection with the provision of inbound order routing to the Exchange.¹⁴ In comparison, the current language from the inbound routing pilot requires procedures and controls that are reasonably designed to ensure that Arca Securities does not develop or implement changes to its system, based on non-public information obtained regarding planned changes to the Exchange's systems as a result of its affiliation with the Exchange, until such information is available generally to similarly situated Exchange ETP Holders. The Exchange also proposes to include specific rule text to codify the current date upon which the inbound routing pilots are set to expire – September 30, 2011.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)¹⁵ of the Act, in general, and furthers the objectives of Section 6(b)(5),¹⁶ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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 that the proposed rule change, which would add specific rule text for routing

¹⁴ The Exchange notes that the text proposed in Rule 7.41(c)(2) would make clear that the Exchange may furnish to Arca Securities the same information on the same terms that the Exchange makes available in the normal course of business to any other ETP Holder.

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(5).

functionality that has already been approved in substance by the Commission for the Exchange, would enhance the clarity and transparency surrounding such functionality, including the responsibilities and obligations attendant therewith, while also reflecting the Exchange's ongoing efforts to effectively address the concerns previously identified by the Commission regarding the potential for informational advantages favoring Arca Securities vis-à-vis other non-affiliated NYSE Arca ETP Holders. The Exchange also believes that the proposed rule change would support the principles of Section 11A(a)(1) of the Act¹⁷ in that it seeks to assure economically efficient execution of securities transactions.

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 proposed rule change: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, 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 Act¹⁸ and Rule 19b-4(f)(6) thereunder.¹⁹

¹⁷ 15 U.S.C. 78k-1(a)(1).

¹⁸ 15 U.S.C. 78s(b)(3)(A).

¹⁹ 17 CFR 240.19b-4(f)(6).

A proposed rule change filed under 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.²⁰ However, Rule 19b-4(f)(6)(iii)²¹ 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. The Exchange believes that waiver of the 30-day operative delay would provide more clarity and transparency in its rule text concerning all of the functions that Arca Securities performs on behalf of the Exchange without undue delay. In addition, the Exchange notes that the proposal is consistent with the rules of another national securities exchange. For these reason, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and designates the proposed rule change to be operative upon filing with the Commission.²²

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

²⁰ 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to 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 Exchange has satisfied this requirement.

²¹ Id.

²² For 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. 78c(f).

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-2011-38 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-2011-38. 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-2011-38 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.²³

Cathy H. Ahn
Deputy Secretary

²³ 17 CFR 200.30-3(a)(12).