

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-64780; File No. SR-NYSEArca-2011-40)

June 30, 2011

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Certain Rules and Adding New Rules So That They Remain Substantially Similar to Corresponding Financial Industry Regulatory Authority Rules in Accordance with a Rule 17d-2 Agreement

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on June 20, 2011, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (“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 Substance of the Proposed Rule Change

The Exchange proposes to amend certain rules and add new rules so that they remain substantially similar to corresponding Financial Industry Regulatory Authority (“FINRA”) rules in accordance with a Rule 17d-2 agreement between the two self-regulatory organizations. The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and 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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C.78a.

³ 17 CFR 240.19b-4.

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend certain rules and add new rules so that they remain substantially similar to corresponding FINRA⁴ rules for purposes of a Rule 17d-2 agreement between the two SROs.⁵

Background

SEC Rule 17d-2⁶ permits SROs to propose joint plans for the allocation of regulatory responsibilities, other than financial responsibility rules, with respect to their common members. Under paragraph (c) of Rule 17d-2, the Commission may declare such a plan effective if, after providing for appropriate notice and comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among the SROs, to remove impediments to, and foster the development of, a national market system and a national clearance and settlement system, and is in conformity with the factors set forth in Section 17(d) of the Securities Exchange Act of 1934, as amended (the "Act"). Upon effectiveness of a plan filed pursuant to Rule 17d-2, an SRO is relieved of those regulatory responsibilities for common members that are allocated by the plan to another SRO.

⁴ FINRA was formerly known as the National Association of Securities Dealers, Inc. or "NASD" and is the successor entity with respect to the Rule 17d-2 agreement discussed herein.

⁵ See Securities Exchange Act Release No. 55505 (March 22, 2007), 72 FR 14628 (March 28, 2007).

⁶ See 17 CFR 240.17d-2.

The Commission has issued an order granting approval and declaring effective a plan filed by NYSE Arca and NASD (together the “Parties”) dated February 9, 2007 (“the Plan”) under which regulatory responsibility for Common Rules is allocated to NASD.⁷ “Common Rules” are defined as NYSE Arca Equities rules that are substantially similar to NASD rules in that NYSE Arca’s rule would not require NASD to develop one or more new examination standards, modules, procedures, or criteria in order to analyze the application of the rule, or a dual member’s activity, conduct or output in relation to such rule. The Plan includes an attachment, “NYSE Arca Rules Certification for 17d-2 Agreement with NASD,” that lists Common Rules.

Proposed Rule Change

In accordance with Paragraph 2 of the Plan, the Exchange has undertaken a review of the Common Rules. In order to maintain the current list of Common Rules under the Plan, the Exchange proposes to amend certain its rules or add new NYSE Arca Equities rules so that they remain substantially similar to corresponding FINRA rules as described below.⁸

NYSE Arca Equities Rule 2.21(a) and (i) would be amended to delete references to filing paper registration forms for registration categories not available electronically on CRD because such categories no longer exist and thus all NYSE Arca Equities registration forms are filed electronically, as is the case with FINRA registrations pursuant to FINRA Rule 1010(c). NYSE

⁷ See Securities Exchange Act Release No. 55505 (March 22, 2007), 72 FR 14628 (March 28, 2007). The Parties first entered into a Rule 17d-2 agreement in 1977, which thereafter was amended several times. See Securities Exchange Act Release No. 54394 (August 31, 2006), 71 FR 52827 n. 14 (September 7, 2006) (“2006 Release”).

⁸ Because the Parties will only be adding to, deleting from, or confirming changes to NYSE Arca rules in the Certification in conformance with the definition of Common Rules, the modifications to the Certification need not be filed with the Commission as an amendment to the Plan. See 2006 Release at 52829. If the Commission approves [sic] the proposed rule change, NYSE Arca will submit the updated list of Common Rules to FINRA for its confirmation in accordance with the Plan.

Arca Equities Rule 2.21(i) also would be amended to change the period for filing Form U5 from 10 to 30 days to conform it with FINRA's Form U5 filing period in Article VI, Section 3(a) of FINRA's Bylaws.

NYSE Arca Equities Rule 2.21(d)(1)(B) would be amended to delete references to any discretion for NYSE Arca with respect to compliance with continuing education requirements to be consistent with NASD Rule 1120.

NYSE Arca Equities Rule 2.21(e), which concerns outside business activities, would be deleted and the text of FINRA Rule 3270 would be adopted as new NYSE Arca Equities Rule 3270.⁹

NYSE Arca Equities Rules 2.21(g) and (h), which concerns gifts and gratuities, would be deleted and the text of FINRA Rule 3220 would be adopted as new NYSE Arca Equities Rule 3220.

NYSE Arca Equities Rule 2.21(j) would be amended to remove the requirement for approval of officers, for which FINRA does not have a corresponding requirement, and to remove an outdated reference to a change in continuing education requirements.

NYSE Arca Equities Rule 6.6, which addresses frontrunning block transactions, would be amended to change the number of shares that would trigger application of the Rule from 5,000 to 10,000 shares to make it consistent with FINRA's requirements under NASD IM-2110-3.

NYSE Arca Equities Rule 6.16, which addresses trading ahead of customer orders, would be deleted and the text of NASD IM-2110-2 would be inserted in that Rule. The Exchange

⁹ NYSE Arca Equities rule numbers that would no longer be used would be marked "Reserved."

would also add new NYSE Arca Equities Rule 6.16A, which would insert the text of NASD Rule 2111, which concerns trading ahead of customer market orders.¹⁰

NYSE Arca Equities Rule 9.1(a), which concerns an ETP Holder's registration, would be amended to conform it with Article IV, Section 1(c) of FINRA's By-Law, which requires that a member's registration to be kept current by supplementary amendments.

NYSE Arca Equities Rules 9.1(f) and 9.10, which concern sharing in customer accounts and assumption of customer losses, would be deleted and the text of FINRA Rule 2150 would be adopted as new NYSE Arca Equities Rule 2150.

NYSE Arca Equities Rule 9.15, which concerns customer account statements, would be deleted and the text of NASD Rule 2340(a) and (b) and the relevant definitions from paragraph (d) of that Rule would be adopted as new NYSE Arca Equities Rule 9.15.

NYSE Arca Equities Rules 9.21(a) through 9.25, which concern advertising and sales literature, would be deleted and the text of NASD Rule 2210 would be adopted as new NYSE Arca Equities Rule 9.21.

The Exchange would also adopt FINRA Rule 2010, which concerns standards of commercial honor and just and equitable principles of trade, and FINRA Rule 2020, which

¹⁰ The SEC has approved FINRA Rule 5320, which harmonizes NASD IM-2110-2 and NASD Rule 2111 with New York Stock Exchange LLC ("NYSE") Rule 92. See Securities Exchange Act Release No. 63895 (February 11, 2011), 76 FR 9386 (February 17, 2011) (SR-FINRA-2009-090). The anticipated implementation date of FINRA Rule 5320 is September 12, 2011. See FINRA Regulatory Notice 11-24 (May 12, 2011). The Exchange, along with its affiliates, NYSE and NYSE Amex LLC, will be submitting a rule filing to adopt the text of FINRA Rule 5320 as part of its rules and implement the change concurrently with FINRA. The proposed amendment to NYSE Arca Equities Rule 6.16 and the addition of Rule 6.16A will serve to harmonize NYSE Arca Equities' requirements with FINRA's requirements in the interim period until the September 12, 2011 implementation.

concerns the use of manipulative, deceptive, or other fraudulent devices, as NYSE Arca Equities Rules 2010 and 2020, respectively.

Finally, the Exchange proposes certain non-substantive technical changes. For consistency with Exchange rules, the Exchange proposes to change all references from “members” to “ETP Holders” and from “Pacific Exchange” to “NYSE Arca” and to cross-reference to its own rules where appropriate, rather than NASD or FINRA rules.¹¹ Finally, the Exchange has determined to include references to security futures, direct participation programs, and collateralized mortgage obligations in proposed NYSE Arca Equities Rule 9.21, which concerns advertising and sales literature; although the Exchange currently does not trade such products, it has determined to maintain such references for the sake of consistency with FINRA rules.

2. Statutory Basis

The proposed rule change is consistent with the Act,¹² in general, and furthers the objectives of Section 6(b)(5) of the Act,¹³ 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, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes that the proposed rule change supports the objectives of the Act

¹¹ For example, in proposed NYSE Arca Equities Rule 6.16(a), the Exchange proposes to cross-reference proposed NYSE Arca Equities Rule 2010, rather than FINRA Rule 2010, and in proposed NYSE Arca Equities Rule 6.16A(d), the Exchange proposes to cross-reference its definition of “institutional account” in NYSE Arca Equities Rule 9.2(a)(3), which is substantially the same as FINRA’s definition.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

by providing greater harmonization between NYSE Arca Equities Rules and FINRA Rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance for dual members of both SROs. To the extent the Exchange has proposed changes that differ from the FINRA version of the rules, such changes are technical in nature and do not change the substance of the proposed NYSE Arca Equities rules.

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: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) 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, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁴ and Rule 19b-4(f)(6) thereunder.¹⁵

¹⁴ 15 U.S.C. 78s(b)(3)(A).

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

A proposed rule change filed under Rule 19b-4(f)(6)¹⁶ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),¹⁷ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing in order to avoid regulatory gaps between the FINRA and NYSE Arca Equities rules.

The Commission believes that waiver of the operative delay would enable the Exchange to harmonize its rules with FINRA's rules without delay to support the objectives of the Rule 17d-2 Plan, which provides that the Common Rules of NYSE Arca Equities and FINRA are to be substantially similar. The Commission designates the proposal operative upon filing.¹⁸

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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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:

¹⁶ 17 CFR 240.19b-4(f)(6).

¹⁷ 17 CFR 240.19b-4(f)(6)(iii).

¹⁸ For purposes only of waiving the operative delay for 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. Please include File Number SR-NYSEArca-2011-40 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-2011-40. 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 Number SR-NYSEArca-2011-40 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.¹⁹

Cathy H. Ahn
Deputy Secretary

¹⁹ 17 CFR 200.30-3(a)(12).