

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-64906; File No. SR-NYSEArca-2011-49)

July 18, 2011

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Equities Rule 7.45 to Make Changes Necessary to Allow Its Routing Broker to Operate Consistent with the Requirements of Rule 15c3-5 Under the Securities Exchange Act of 1934

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that July 13, 2011, 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 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 NYSE Arca Equities Rule 7.45 to make changes necessary to allow its Routing Broker to operate consistent with the requirements of Rule 15c3-5 under the Securities Exchange Act of 1934 (“Act”).<sup>4</sup> 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

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> 17 CFR 240.15c3-5.

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 Exchange proposes to amend NYSE Arca Equities Rule 7.45 to permit its Routing Broker to operate consistent with the requirements of SEC Rule 15c3-5.<sup>5</sup> Specifically, the proposed rule change would allow the Routing Broker, in its sole discretion, to reject orders pursuant to risk management controls and supervisory procedures maintained by the Routing Broker pursuant to SEC Rule 15c3-5. The Exchange is proposing substantially similar rule changes for its options market, and the Exchange’s affiliates, New York Stock Exchange LLC (“NYSE”) and NYSE Amex LLC (“NYSE Amex”), also are proposing substantially similar rule changes.<sup>6</sup>

Archipelago Securities LLC (“Arca Securities”) currently is the primary outbound Routing Broker for the Exchange. The outbound routing function for the Exchange is governed by NYSE Arca Equities Rule 7.45. NYSE Arca Equities Rule 7.45(b)(1) currently provides that the Routing Broker cannot change the terms of an order or the routing instructions, nor can it exercise any discretion about where to route an order.

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<sup>5</sup> NYSE Arca Equities Rule 7.45(a) defines “Routing Broker” as “the broker-dealer affiliate of NYSE Arca, LLC and/or any other non-affiliate third-party broker-dealer that acts as a facility of NYSE Arca, LLC for routing orders entered into Exchange systems to other market centers for execution whenever such routing is required by the Rules of the Corporation and federal securities laws. The Routing Brokers will operate as described in this Rule 7.45.”

<sup>6</sup> See SR-NYSEArca-2011-50 (options), SR-NYSE-2011-34, SR-NYSEAmex-2011-52 (equities), and SR-NYSEAmex-2011-53 (options).

On November 3, 2010, the Commission adopted SEC Rule 15c3-5,<sup>7</sup> pursuant to which, among other things, broker-dealers providing market access are required to implement certain pre-order entry checks in order to manage the financial, regulatory, and other risks associated with providing their customers with market access. In anticipation of the upcoming July 14, 2011 compliance date for SEC Rule 15c3-5, the Exchange is proposing to amend NYSE Arca Equities Rule 7.45 to describe the manner in which the Routing Broker will handle routable orders consistent with SEC Rule 15c3-5.<sup>8</sup>

Specifically, the Exchange proposes to adopt NYSE Arca Equities Rule 7.45(b)(1)(B) to provide that, in the Routing Broker's sole discretion, pursuant to risk management controls and supervisory procedures maintained by the Routing Broker pursuant to SEC Rule 15c3-5, the Routing Broker may reject any order or series of orders as necessary to manage the financial, regulatory, and other risks of the Routing Brokers(s) providing "market access," as that term is defined in SEC Rule 15c3-5(a)(1).<sup>9</sup> The Routing Broker's policies and procedures for compliance with SEC Rule 15c3-5 will address two circumstances: (1) when the Routing Broker routes orders on behalf of the Exchange for the purpose of accessing other trading centers with protected quotations in compliance with Rule 611 of Regulation NMS under the Act<sup>10</sup> for "NMS stocks" (as that term is defined in Rule 600 of Regulation NMS),<sup>11</sup> or in compliance with a

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<sup>7</sup> See Securities Exchange Act Release No. 63241 (November 3, 2010), 75 FR 69792 (November 15, 2010) (File No. S7-03-10).

<sup>8</sup> The Commission extended the compliance date to November 30, 2011 for all of the requirements for fixed income securities and the requirements of SEC Rule 15c3-5(c)(1)(i) for all securities. See Securities Exchange Act Release No. 64748 (June 27, 2011), 76 FR 38293 (June 30, 2011) (File No. S7-03-10).

<sup>9</sup> The existing text of NYSE Arca Equities Rule 7.45(b)(1) would be renumbered as NYSE Arca Equities Rule 7.45(b)(1)(A).

<sup>10</sup> 17 CFR 242.611.

<sup>11</sup> 17 CFR 242.600(47).

national market system plan for listed options (“exempt orders”); and (2) when the Routing Broker routes orders on behalf of the Exchange for any other purpose, including pursuant to the terms of an order type adopted by the Exchange or pursuant to a routing strategy through which the Routing Broker routes orders to market centers that are not posting “protected quotations” (as that term is defined in Rule 600 of Regulation NMS)<sup>12</sup> (“non-exempt orders”).

With respect to exempt orders, SEC Rule 15c3-5(b) provides that a broker-dealer that routes orders on behalf of an exchange for the purpose of accessing other trading centers with protected quotations in compliance with Rule 611 of Regulation NMS for NMS stocks, or in compliance with a national market system plan for listed options, is subject only to the requirements of paragraph (c)(1)(ii) of the Rule. SEC Rule 15c3-5(c)(1)(ii) provides that the risk management controls and supervisory procedures required by the Rule must include elements reasonably designed to prevent the entry of erroneous orders, by rejecting orders that exceed appropriate price or size parameters, on an order-by-order basis or over a short period of time, or that indicate duplicative orders. Accordingly, for exempt orders, the Routing Broker will reject any order or series of orders that it determines, in its sole discretion, to be erroneous or duplicative.

With respect to non-exempt orders, all of the requirements of SEC Rule 15c3-5 would apply to orders that the Routing Broker routes on behalf of the Exchange, and the proposed rule change is intended to provide the Routing Broker with authority to reject such orders as necessary to comply with SEC Rule 15c3-5. In this regard, the risk management controls and supervisory procedures of the Routing Broker would include, as applicable, controls to prevent the entry of orders that exceed appropriate pre-set credit or capital thresholds in the aggregate for

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<sup>12</sup> 17 CFR 242.600(58).

each customer and the broker-dealer and, where appropriate, more finely-tuned by sector, security, or otherwise by rejecting orders if such orders would exceed the applicable credit or capital thresholds.<sup>13</sup> In addition, the risk management controls and supervisory procedures of the Routing Broker would be reasonably designed to ensure compliance with applicable regulatory requirements.<sup>14</sup>

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.<sup>15</sup> In particular, the proposed change is consistent with Section 6(b)(5) of the Act,<sup>16</sup> because it would promote just and equitable principles of trade, and, in general, protect investors and the public interest. The proposed rule is consistent with the requirements of the Act because the change is necessary for the Exchange's Routing Broker to comply with SEC Rule 15c3-5. The Exchange also believes that the proposed changes will benefit ETP Holders of the Exchange because it provides clarity on the procedures employed by the Routing Broker consistent with SEC Rule 15c3-5.

### 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.

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<sup>13</sup> See 17 CFR 240.15c3-5(c)(1)(i).

<sup>14</sup> See 17 CFR 240.15c3-5(c)(2).

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

<sup>16</sup> 15 U.S.C. 78f(b)(5).

### 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 from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>17</sup> and Rule 19b-4(f)(6) thereunder.<sup>18</sup>

A proposed rule change filed under 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.<sup>19</sup> However, Rule 19b-4(f)(6)(iii)<sup>20</sup> permits the Commission to 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. The Exchange notes that waiving the 30-day operative delay will allow Arca Securities to comply with Rule 15c3-5 under the Act by July 14, 2011;<sup>21</sup> the compliance date for Rule 15c3-5. For this reason, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and

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<sup>17</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>18</sup> 17 CFR 240.19b-4(f)(6).

<sup>19</sup> 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.

<sup>20</sup> Id.

<sup>21</sup> 17 CFR 240.15c3-5.

the public interest, and designates the proposed rule change to be operative upon filing with the Commission.<sup>22</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:

##### 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-2011-49 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-2011-49. 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>).

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<sup>22</sup> 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).

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 Section, 100 F Street, NE, Washington, DC 20549-1090. Copies of the filing will also be available for inspection and copying at the NYSE Arca's principal office and on its Internet website at [www.nyse.com](http://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-2011-49 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.<sup>23</sup>

Elizabeth M. Murphy  
Secretary

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<sup>23</sup> 17 CFR 200.30-3(a)(12).