

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-65955; File No. SR-NYSEARCA-2011-90)

December 14, 2011

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Adopting the Text of Financial Industry Regulatory Authority Rule 5210, Which Prohibits the Publication of Manipulative or Deceptive Quotations or Transactions, as NYSE Arca Equities Rule 5210

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 7, 2011, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) 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 adopt the text of Financial Industry Regulatory Authority (“FINRA”) Rule 5210, which prohibits the publication of manipulative or deceptive quotations or transactions, as NYSE Arca Equities Rule 5210. 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 these statements may be examined at the

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

<sup>2</sup> 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 aspects 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 adopt the text of FINRA Rule 5210, which prohibits the publication of manipulative or deceptive quotations or transactions, as NYSE Arca Equities Rule 5210.<sup>3</sup>

Background

On July 30, 2007, the National Association of Securities Dealers, Inc. (“NASD”), and NYSE Regulation, Inc. (“NYSER”) consolidated their member firm regulation operations into a combined organization, FINRA, and entered into a Regulatory Services Agreement under which FINRA agreed to perform certain regulatory functions of the Exchange on behalf of the Exchange. On June 14, 2010, FINRA also assumed responsibility for performing the market surveillance and enforcement functions performed by NYSE. To facilitate FINRA’s performance of these enforcement functions and further harmonize the rules of FINRA and NYSE Arca Equities, the Exchange is proposing to adopt the text of FINRA Rule 5210.<sup>4</sup> FINRA Rule 5210 prohibits members from publishing or circulating, or causing to be published or circulated, any communication that purports to report any transaction as a purchase or sale of any security, unless such member believes that such transaction was a bona fide purchase or sale of such security. The Rule also prohibits members from publishing or circulating, or causing to be

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<sup>3</sup> See Securities Exchange Act Release No. 60835 (Oct. 16, 2009), 74 FR 54616 (Oct. 22, 2009) (SR-FINRA-2009-055). The Exchange’s affiliates, New York Stock Exchange LLC and NYSE Amex LLC, are proposing to adopt a substantially similar rule.

<sup>4</sup> For consistency with Exchange rules, the Exchange proposes to change all references from “member” to “ETP Holder.”

published or circulated, any communication that purports to quote the bid price or asked price for any security, unless the member believes that such quotation represents a bona fide bid for, or offer of, such security.

The Exchange believes that the proposed rule change will strengthen FINRA's ability to bring sanctions on behalf of the Exchange against an ETP Holder for engaging in manipulative forms of quoting behavior, for example, quote stuffing and layering. FINRA Rule 5210 (formerly NASD Rule 3310 and IM 3310)<sup>5</sup> was successfully used in the Acceptance, Waiver and Consent announced in September 2010 by FINRA against Trillium Brokerage Services and other individual Respondents.<sup>6</sup> The Exchange believes that the proposed rule change would augment FINRA's ability on behalf of the Exchange to take action against manipulative quoting behavior on the Exchange.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),<sup>7</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>8</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 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. Specifically, the Exchange believes that the proposed rule change would provide an additional basis for bringing enforcement actions

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<sup>5</sup> See *supra* n. 4.

<sup>6</sup> See <http://www.finra.org/web/groups/industry/@ip/@enf/@ad/documents/industry/p122044.pdf>.

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

against ETP Holders that engage in deceptive and manipulative quoting activity. 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 FINRA Rule.

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 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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup> 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.<sup>11</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>12</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule

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<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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>12</sup> 17 CFR 240.19b-4(f)(6).

19b4(f)(6)(iii),<sup>13</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because such waiver will allow FINRA to more effectively carry out its enforcement activities on behalf of the Exchange. Therefore, the Commission designates the proposal operative upon filing.<sup>14</sup>

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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEARCA-2011-90 on the subject line.

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<sup>13</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>14</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).

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-2011-90. 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-2011-90 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>15</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(12).