

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-66094; File No. SR-NYSEARCA-2011-103)

January 4, 2012

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Implementation Date of the NYSE Arca Equities Rule 7400 Series, the Order Audit Trail System Rules, for Equity Trading Permit Holders that Are Not Financial Industry Regulatory Authority Members to March 31, 2012

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on December 30, 2011, NYSE Arca, Inc. (“Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III 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 extend the implementation date of the NYSE Arca Equities Rule 7400 Series, the Order Audit Trail System (“OATS”) Rules, for Equity Trading Permit (“ETP”) Holders that are not Financial Industry Regulatory Authority (“FINRA”) members from January 31, 2012 to March 31, 2012. 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).

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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.

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 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 extend the implementation date of the OATS Rules for ETP Holders that are not FINRA members from January 31, 2012 to March 31, 2012.

On October 12, 2011, NYSE Arca adopted the OATS Rules for ETP Holders that are dual members of NYSE Arca and FINRA ("Dual Members") and ETP Holders that are not FINRA members (*i.e.*, NYSE Arca proprietary firms) with implementation beginning on October 17, 2011 for Dual Members and on January 31, 2012 for non-FINRA members.<sup>4</sup> Since that time, the Exchange has been advised by certain NYSE Arca proprietary firms that meeting the OATS record-keeping obligations requires significant technology resources. In particular, although it is an NYSE Arca Equities rule, it governs record-keeping for all National Market System ("NMS") stocks that these firms trade, regardless of the venue. While these NYSE Arca proprietary firms have been working toward completing the technology changes required by the NYSE Arca OATS

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<sup>4</sup> See Securities Exchange Act Release No. 65544 (October 12, 2011), 76 FR 64406 (October 18, 2011) (SR-NYSEArca-2011-69).

Rules, these firms have had, and continue to have, several competing regulatory technology changes to make, including complying with the Commission’s large trader reporting requirements,<sup>5</sup> and until November 30, 2011, meeting the Commission’s market access rule technology requirements.<sup>6</sup>

Because these are NYSE Arca proprietary firms, the regulatory risk of extending the time to comply is low in that the extension should not impact any surveillances or reviews relating to customer trading. In addition, because the rules impose record-keeping requirements, extending the compliance date should not impact any ongoing FINRA surveillances. Finally, for these NYSE Arca proprietary firms, they already maintain records required by the rules in other formats, as required by Rules 17a-3 and 17a-4 under the Securities Exchange Act of 1934 (the “Exchange Act”).

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Exchange 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 extending the implementation date of the OATS Rules for NYSE Arca proprietary firms will ensure that these firms have sufficient time to make the

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<sup>5</sup> 17 CFR 240.13h-1.

<sup>6</sup> 17 CFR 240.15c3-5.

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

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

necessary changes to their systems to be able to comply with the new OATS recording and reporting requirements.

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

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.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>11</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).

19b4(f)(6)(iii),<sup>12</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

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-2011-103 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-2011-103. 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

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<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii).

(<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 Section, 100 F Street, NE, Washington, DC 20549-1090 on official business days between the hours of 10:00 a.m. and 3 p.m. Copies of such filing will also 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-2011-103 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>13</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).