

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-66642; File No. SR-NYSEArca-2012-19)

March 22, 2012

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change to Amend Commentary .01 to NYSE Arca Rule 6.35

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, on March 9, 2012, 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 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 proposes to [sic] amend Commentary .01 to NYSE Arca Rule 6.35. 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 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.

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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.

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 Commentary .01 to NYSE Arca Rule 6.35 to allow certain cross trades effected on the Trading Floor to count toward the Market Maker's appointment trading requirement and to make non-substantive changes to NYSE Arca Rules 6.35, 6.37, 6.84, and 10.12.

Under NYSE Arca Rule 6.35, a Market maker is required to effect at least 75% of its trading activity (measured in terms of contract volume per quarter) in classes within the Market Maker's appointment. Commentary .01 to NYSE Arca Rule 6.35 clarifies that a Market Maker's trades effected on the Trading Floor to accommodate cross trades executed pursuant to NYSE Arca Rule 6.47 do not count for or against the Market Maker's 75% requirement, regardless of whether the trades are in issues within or without the Market Maker's appointment.

The Exchange is proposing to amend Commentary .01 to NYSE Arca Rule 6.35 to allow a Market Maker's trades effected on the Trading Floor to accommodate cross trades executed pursuant to NYSE Arca Rule 6.47 to count toward the Market Maker's 75% requirement, regardless of whether the trades are in issues within or without the Market Maker's appointment.

Transactions of a Market Maker should constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market.<sup>4</sup> Market Makers located on the Trading Floor, when trading in option classes other than those to which they are appointed, must continue to fulfill Market Maker obligations for that class as if they were appointed to such class. In addition, when present anywhere on the Options Trading Floor, with regard to all securities traded on the Trading Floor, not just those to which they are appointed,

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<sup>4</sup> See e.g., NYSE Arca Rule 6.37(a)

Market Makers may be required to undertake the general obligations of a Market Maker at any time in response to a demand from a Trading Official.<sup>5</sup> The Exchange believes that a Market Maker engaging in such trading is fulfilling Market Maker obligations in addition to providing liquidity to the market and the opportunity for price improvement, and it is appropriate to encourage such activity by counting it toward the 75% requirement.

In addition, the Exchange notes that the proposed rule change is similar to NYSE Amex LLC Options Rule 923NY(i), which permits all floor trades executed by Floor Market Makers [sic] a designated Trading Zone, not just those to which they hold an appointment, to count toward the Market Maker's 75% requirement. While NYSE Arca Market Makers are not appointed to a designated Trading Zone, they are subject to certain Market Maker obligations in all classes of options while located on the Trading Floor. As such, NYSE Arca believes that counting all floor trades, executed to accommodate cross transactions, is consistent with the application of NYSE Amex Rule 923NY(i) when calculating compliance with the 75% "in appointment" requirement.

NYSE Arca is also proposing non-substantive changes to NYSE Arca Rules 6.35, 6.37, 6.84, and 10.12. The Exchange proposes to replace the term "Primary Appointment" which is not a defined term with the word "appointment" as it is used elsewhere in NYSE Arca Rule 6.35.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b)<sup>6</sup> of the Act, in general, and furthers the objectives of Section 6(b)(5),<sup>7</sup> in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles

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<sup>5</sup> See e.g., NYSE Arca Rule 6.37(c)

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and 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. Specifically, the proposed rule change will remove impediments to and perfect the mechanism of a free and open market by providing an appropriate incentive for Market Makers to provide greater liquidity and the opportunity for price improvement on the Trading Floor, thereby benefiting all market participants.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove such proposed rule change, or
- (B) Institute proceedings to determine whether the proposed rule change should be 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:

##### 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-2012-19 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-2012-19. 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-2012-19 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>8</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>8</sup> 17 CFR 200.30-3(a)(12).