

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-67248; File No. SR-NYSEArca-2012-19)

June 25, 2012

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to Amend Commentary .01 to NYSE Arca Rule 6.35

I. Introduction

On March 9, 2012, NYSE Arca, Inc. (“Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to allow certain cross trades effected on the trading floor to count toward a market maker’s in-appointment trading requirement and to make certain non-substantive changes to its rules. The proposed rule change was published for comment in the Federal Register on March 28, 2012.³ The Commission received no comment letters on the proposed rule change. On May 8, 2012, the Commission extended the time period for Commission action to June 26, 2012.⁴ On June 13, 2012, the Exchange filed Amendment No. 1 to the proposed rule change.⁵ This order approves the proposed rule change, as modified by Amendment No. 1 thereto.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 66642 (March 22, 2012), 77 FR 18875 (“Notice”).

⁴ See Securities Exchange Act Release No. 66945 (May 8, 2012), 77 FR 28413 (May 14, 2012).

⁵ In Amendment No. 1, the Exchange made a technical change to Exhibit 5 and provided additional justifications for the proposed rule change. Because Amendment No. 1 does not materially alter the substance of the proposed rule change, Amendment No. 1 is not subject to notice and comment.

II. Description of the Proposal

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 its 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 proposes 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.

Specifically, the Exchange asserts that the proposed rule change would not diminish a market maker's obligation when trading in open outcry or when trading electronically. The Exchange states that whenever market makers trade in classes of options outside of their appointment, they must fulfill the same obligations as they do in their appointed classes. The Exchange also states that, when trading in open outcry in option classes outside of their appointment, market makers may not engage in transactions that are disproportionate in relation to or in derogation of the performance of their obligations in their appointed classes. In addition, while all option classes listed on the Exchange have appointed market makers, not all of those appointed market makers are located on the trading floor, and therefore market makers may be called upon to provide liquidity via open outcry in issues outside of their appointment. According to the Exchange, the proposed rule change will thus help to encourage market maker participation in open outcry, which will promote liquidity and price improvement on the

Exchange. The Exchange also notes that the proposed rule change is only applicable to trades where a market maker is trading with a floor broker representing agency orders, and not when a market maker is trading with another market maker. Finally, the Exchange states its belief that the proposed rule change could lead to a decrease in internalization of orders because of the potential for greater participation by competing market makers on open outcry trades.

In addition, the Exchange proposes to make non-substantive changes to NYSE Arca Rules 6.35, 6.37, 6.84, and 10.12. Specifically, 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.

III. Discussion and Commission Findings

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁶ Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,⁷ which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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.

The Exchange proposes 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 75% in-appointment requirement, regardless of whether the trades are in issues within or without the market maker’s appointment. The Commission believes that the proposal is consistent with the

⁶ In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78f(b)(5).

Act. According to the Exchange, while all option classes listed on the Exchange have appointed market makers, not all of those market makers are located on the trading floor. Thus, at times the Exchange may need to call upon a market maker to provide liquidity via open outcry in issues outside of the market maker's appointment. The Commission notes that the proposed rule change may provide an incentive for market makers to provide liquidity to the trading floor. Market makers may be encouraged to increase participation in open outcry trading, because the trades effected on the trading floor to accommodate cross trades executed pursuant to NYSE Arca Rule 6.47 will be counted towards a market maker's 75% in-appointment requirement. Greater market maker participation in cross trades executed pursuant to NYSE Arca Rule 6.47 may also present opportunities for price improvement on the trading floor.⁸

The Commission notes that whenever market makers enter the trading crowd for a class of options in which they do not hold an appointment in other than a floor brokerage capacity, they must fulfill the market maker obligations established by Exchange rules.⁹ In addition, when present anywhere on the options trading floor, with regard to all securities traded on the trading floor and not just those to which they are appointed, market makers are expected to undertake the obligations of a market maker in response to a demand from a trading official.¹⁰ Also, with respect to classes of option contracts outside of their appointment, market makers should not engage in transactions for an account in which they have an interest that are disproportionate in

⁸ In this regard, the Exchange notes that the proposal is applicable to trades where a market maker is trading with a floor broker representing agency orders, and not when a market maker is trading with another market maker.

⁹ See NYSE Arca Rules 6.37(c) and 6.37A(d).

¹⁰ See id.

relation to, or in derogation of, the performance of their obligations with respect to those classes within their appointment.¹¹

Further, the Commission believes that the proposal to replace the undefined term “Primary Appointment” with the term “appointment” is consistent with the Act because using consistent terminology should provide clarity and reduce confusion with respect to the application of Exchange rules regarding market makers.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change (SR-NYSEArca-2012-19), as modified by Amendment No. 1 thereto, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Kevin M. O’Neill
Deputy Secretary

¹¹ See id.

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 CFR 200.30-3(a)(12).