

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-67737; File No. SR-NYSEArca-2012-93)

August 28, 2012

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Deleting NYSE Arca Equities Rule 4.3(c) and Adopting New Rules 2262 and 2269 to Harmonize with the Rules of New York Stock Exchange LLC, NYSE MKT LLC, and Financial Industry Regulatory Authority, Inc.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on August 16, 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, 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 delete NYSE Arca Equities Rule 4.3(c) and adopt new Rules 2262 and 2269 to harmonize with the rules of New York Stock Exchange LLC (“NYSE”), NYSE MKT LLC (“NYSE MKT”), and Financial Industry Regulatory Authority, Inc. (“FINRA”). The text of the proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 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 Statutory Basis for, Proposed Rule Change

1. Purpose

The Exchange proposes to delete NYSE Arca Equities Rule 4.3(c) and to adopt new Rules 2262 and 2269 to harmonize with the rules of New York Stock Exchange LLC (“NYSE”), NYSE MKT LLC (“NYSE MKT”), and Financial Industry Regulatory Authority, Inc. (“FINRA”).⁴ To harmonize the Exchange Rules with the rules of NYSE, NYSE MKT, and FINRA, the Exchange correspondingly proposes to delete NYSE Arca Equities Rule 4.3(c) and replace it with proposed NYSE Arca Equities Rules 2262 and 2269. As proposed, NYSE Arca Equities Rules 2262 and 2269 adopt the same language as FINRA Rules 2262 and 2269, except for substituting for or adding to, as needed, the term “ETP Holder” for the term “member”, and making corresponding technical changes.⁵

⁴ See NYSE Rules 2262, 2269; NYSE MKT Rules 2262 - Equities, 2269 - Equities; and FINRA Rules 2262, 2269. See also Securities Exchange Act Release Nos. 60659 (September 11, 2009), 74 FR 48117 (September 21, 2009) (order approving SR-FINRA-2009-44); 61176 (December 16, 2009), 74 FR 68442 (December 24, 2009) (SR-NYSE-2009-125); and 61179 (December 16, 2009), 74 FR 68440 (December 24, 2009) (SR-NYSEAmex-2009-89).

⁵ These changes to FINRA Rules 2262, 2269 are consistent with the changes done by NYSE and NYSE MKT. See *supra* note 4.

Current NYSE Arca Equities Rule 4.3(c) states that an ETP Holder shall not trade in (except on an unsolicited basis) or make recommendations with respect to its own securities or those of its parents or affiliates (other than registered investment companies) and any parents or affiliates of an ETP Holder shall not trade in (except on an unsolicited basis) or make recommendations with respect to its own securities or those of its affiliates, or those of the ETP Holder (other than registered investment companies). While the current NYSE Arca Equities Rule 4.3(c) restricts the trading and recommendation activities of the ETP Holder with respect to its own securities or those of its parents or affiliates, the rule does not cover transactions beyond those involving securities of parent or affiliate and does not contain a written disclosure requirement that is consistent with Rules 15c1-5 and 15c1-6 of the Act.⁶

In 2009, FINRA adopted NASD Rules 2240 (Disclosure of Control Relationship with Issuer) and 2250 (Disclosure of Participation or Interest in Primary or Secondary Distribution) as consolidated FINRA Rules 2262 and 2269, respectively.⁷ FINRA Rule 2262 requires that a FINRA member with a control relationship with the issuer of any security provide disclosure of such control before entering into any contract with or for a customer for the purchase or sale of a security of the issuer. FINRA Rule 2269 requires that a FINRA member that is participating in a primary or secondary distribution or otherwise is financially interested, provide notification to a customer for which it is acting as a broker or dealer with respect to such securities of the existence of such participation or interest. In its filing, FINRA noted that the requirements of FINRA Rules 2262 and 2269 are almost identical to Rules 15c1-5 and 15c1-6 under the Act,

⁶ See 17 CFR 240.15c1-5 and 17 CFR 240.15c1-6.

⁷ See Securities Exchange Act Release No. 60659 (September 11, 2009), 74 FR 48117 (September 21, 2009) (SR-FINRA-2009-044).

respectively. FINRA further noted that FINRA Rules 2262 and 2269 would operate to protect customers without regard as to whether or not a member makes a recommendation on a security to a customer. In addition, FINRA noted that FINRA Rules 2262 and 2269 require disclosure in transactions involving securities beyond those issued by a subsidiary of the member.

As proposed, because NYSE Arca Equities Rule 4.3(c) covers the same topic as FINRA Rules 2262 and 2269, the Exchange would delete NYSE Arca Equities Rule 4.3(c) and replace it with new Rules 2262 and 2269.⁸ As such, the Exchange would replace the existing restrictions with a written disclosure requirement applicable to a broader range of transactions that allows customers to make informed decisions on whether to trade the securities. By adopting new Rules 2262 and 2269, the proposal would also extend the written disclosure requirement to securities transactions currently not covered by NYSE Arca Equities Rule 4.3(c). In contrast to NYSE Arca Equities Rule 4.3(c), the proposed changes will impose disclosure requirements in situations where there is either a control relationship or where the ETP Holder has an interest or participation in a distribution.⁹ Thus, the new language will broaden the protection of the Exchange Rules through both additional written disclosure requirements and extension to securities transactions not currently covered by current Rule 4.3(c).

The Exchange believes that proposed NYSE Arca Equities Rules 2262 and 2269 would broaden protection of its Rules in a manner that will better protect customers through the additional disclosure requirements that the new proposed rules prescribe. In addition, by

⁸ Neither FINRA, NYSE, NYSE MKT or any other exchange has a rule based on the language of NYSE Arca Equities Rule 4.3(c).

⁹ The proposal has no impact on the other requirements in Exchange Rules that apply to ETP Holders, including NYSE Arca Equities Rule 6.3. See NYSE Arca Equities Rule 6.3.

harmonizing the rules with FINRA, ETP Holders that are also members of FINRA will be subject to a single standard with respect to disclosure of trading or recommending securities in which an ETP Holder has an interest.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act¹⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹¹ in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule changes also support the principles of Section 11A(a)(1)¹² of the Act in that they seek to ensure the economically efficient execution of securities transactions and fair competition among brokers and dealers and among exchange markets.

The proposed changes are designed to protect investors and the public interest by broadening the protection of its Rules in a manner that will better protect customers whether or not a member or member organization makes a recommendation on a security for a customer and providing additional disclosures of potential conflicts of interest in transactions on the Exchange. With the additional disclosures of potential conflicts of interest in transactions where an ETP Holder is involved, the Exchange believes that investors will be better protected by being able to make more informed investment decisions and thus promote just and equitable principles of trade on the Exchange.

¹⁰ 15 U.S.C. 78f (b).

¹¹ 15 U.S.C. 78f (b)(5).

¹² 15 U.S.C. 78k-1(a)(1).

In addition, the Exchange believes that the proposed rule change supports the objectives of the Act by providing greater harmonization among Exchange Rules and the rules of NYSE, NYSE MKT, and FINRA of similar purpose, resulting in less burdensome and more efficient regulatory compliance for Dual Members. 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 proposed NYSE Rules.

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 Act¹³ and Rule 19b-4(f)(6) thereunder.¹⁴ 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.

¹³ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁴ 17 CFR 240.19b-4(f)(6).

A proposed rule change filed under Rule 19b-4(f)(6)¹⁵ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),¹⁶ the Commission may 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.

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. Please include File Number SR-NYSEArca-2012-93 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.

¹⁵ 17 CFR 240.19b-4(f)(6).

¹⁶ 17 CFR 240.19b-4(f)(6)(iii).

All submissions should refer to File Number SR-NYSEArca-2012-93. 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 such filing also will be available for inspection and copying at the principal office of NYSE Arca. 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-2012-93 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.¹⁷

Kevin M. O'Neill
Deputy Secretary

¹⁷ 17 CFR 200.30-3(a)(12).