



8011-01p
SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-65894; File No. SR-NYSEArca-2011-89)

December 5, 2011

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Specifying in Its Rules an Existing Policy Related to the Application of NYSE Arca Options Rule 6.47A

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that, on November 23, 2011, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) 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 Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ 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 specify in its rules an existing policy related to the application of NYSE Arca Options Rule 6.47A. The text of the proposed rule change is available at the Exchange, at www.nyse.com, at the Commission’s Public Reference Room, and at www.sec.gov.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

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, the Proposed Rule Change

1. Purpose

The Exchange proposes to specify in its rules an existing policy related to the application of NYSE Arca Options Rule 6.47A.

NYSE Arca Options Rule 6.47A provides, in part, that Users⁵ may not execute as principal orders they represent as agent unless agency orders are first exposed on the Exchange for at least one second. This requirement gives other market participants an opportunity to participate in the execution of orders before the entering User executes them. The Exchange recognizes, however, that because the Exchange does not identify the User that entered an order to the NYSE Arca system, orders from the same OTP Holder or OTP Firm may inadvertently execute against each other as a result of being entered by different persons and/or systems at the same OTP Holder or OTP Firm. Therefore, when enforcing NYSE Arca Options Rule 6.47A, the Exchange does not consider the inadvertent interaction of orders from the same OTP Holder or OTP Firm within one second to be a violation of the exposure requirement.

⁵ The term "User" means any OTP Holder, OTP Firm or Sponsored Participant that is authorized to obtain access to the NYSE Arca system pursuant to NYSE Arca Options Rule 6.2A. See NYSE Arca Options 6.1A(a)(19).

When investigating potential violations of NYSE Arca Options Rule 6.47A, the Exchange takes into consideration whether orders that executed against each other within one second in the NYSE Arca system were entered by persons, business units and/or systems at the same OTP Holder or OTP Firm that did not have knowledge of the order in the NYSE Arca system.⁶ Commonly, OTP Holders and OTP Firms are able to demonstrate that orders were entered by individuals or systems that did not have the ability to know of the preexisting order in the NYSE Arca system due to information barriers in place at the time the orders were entered.

The Exchange proposes to codify this policy in Commentary .05 to NYSE Arca Options Rule 6.47A. Proposed Commentary .05 would specify that OTP Holders and OTP Firms may demonstrate that orders were entered without knowledge of a preexisting order in the NYSE Arca system represented by the same OTP Holder or OTP Firm by providing evidence that effective information barriers between the persons, business units and/or systems entering the orders on the Exchange were in existence at the time the orders were entered. Commentary .05 would require that such information barriers be fully documented and provided to the Exchange upon request.⁷

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),⁸ in general, and furthers the objectives of

⁶ The Financial Industry Regulatory Authority, Inc. (“FINRA”), on behalf of the Exchange and pursuant to a Regulatory Services Agreement (“RSA”), conducts routine surveillance to identify instances when an order in the NYSE Arca system is executed against an order entered by the same OTP Holder or OTP Firm within one second.

⁷ Information barrier documentation is reviewed by FINRA on the Exchange’s behalf to evaluate whether an OTP Holder or OTP Firm has implemented processes that are reasonably designed to prevent the flow of pre-trade order information given the particular structure of the OTP Holder or OTP Firm. Additionally, information barriers are reviewed as part of the Exchange’s examination program, which is also administered by FINRA pursuant to the RSA.

⁸ 15 U.S.C. 78f(b).

Section 6(b)(5) of the Act,⁹ in particular, because it is 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. In particular, the Exchange believes that codifying the Exchange's policy that appropriate information barriers may be used to demonstrate that the execution of two orders within one second was inadvertent because the orders were entered without knowledge of each other, would clarify the intent and application of NYSE Arca Options Rule 6.47A for OTP Holders and OTP Firms.

The Exchange also believes that the proposed rule change is consistent with Section 6(b)(7) of the Act,¹⁰ which requires the rules of an exchange to provide a fair procedure for the disciplining of members and persons associated with members. In particular, by specifying that the information barriers must be fully documented for the purpose of demonstrating that orders were entered without knowledge that there was a pre-existing unexecuted agency or proprietary order on the Exchange, OTP Holders and OTP Firms would be better prepared to properly respond to requests for information by the Exchange in the course of a regulatory investigation. Moreover, while OTP Holders and OTP Firms are generally required to provide information to the Exchange as requested, specifying that OTP Holders and OTP Firms must provide written documentation regarding information barriers within the context of NYSE Arca Options Rule 6.47A would require that all OTP Holders and OTP Firms adhere to the same standard for demonstrating compliance with NYSE Arca Options Rule 6.47A.

B. Self-Regulatory Organization's Statement on Burden on Competition

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 15 U.S.C. 78f(b)(7).

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

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6) thereunder.¹²

At any time within 60 days of the filing of the 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:

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 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.

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-2011-89 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-2011-89. 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-2011-89 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.¹³

Kevin M. O'Neill
Deputy Secretary

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¹³ 17 CFR 200.30-3(a)(12).