

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Florence E. Harmon,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60321; File No. SR-NYSEArca-2009-65]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Equities Rule 7.31(mm)

July 16, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on June 8, 2009, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") 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 amend NYSE Arca Equities Rule 7.31(mm) governing the PNP (Post No Preference) Blind orders. The text of the proposed rule change is attached as Exhibit 5 to the 19b-4 form. A copy of this filing is available on the Exchange's Web site at <http://www.nyse.com>, at the Exchange's principal office and at the Commission's Public Reference Room.

#### 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 purpose of this rule filing is to amend the definition and operation of PNP Blind orders under NYSE Arca Equities Rule 7.31(mm). A PNP Blind order is a PNP Order<sup>3</sup> priced at or through the Best Protected Bid or Best Protected Offer ("PBBO") that is displayed on the NYSE Arca Book<sup>4</sup> at the price of the contra quote. The priority and execution of PNP Blind orders are governed by the Exchange's Display Order Process set forth in Rule 7.36. Presently, pursuant to 7.31(mm)(4), marketable contra orders execute first against PNP Blind orders, then the rest of the book. Pursuant to this proposal, the Exchange seeks to clarify that where a PNP Blind order is un-displayed, any displayed order priced at or through the PBBO will take priority over the un-displayed PNP Blind order at the same prices. Of course, once a PNP Blind order is displayed, it will be ranked in price/time priority with all other orders.

##### Example

10:03:00 PBBO: \$15.00 to \$15.05  
10:03:30 B1 PNPB Buy 1000 at 15.10  
(order is booked at \$15.05, un-displayed)  
10:03:45 B2 PNP ISO Buy 1000 at \$15.05 (order is immediately posted)  
10:04:00 S1 Sell 1000 at \$15.05  
*Results Currently:* S1 interacts with un-displayed order B1  
*Revised Results:* S1 trades with displayed order B2.

The Exchange believes that amending this functionality is consistent with its Display Order Process which favors executing displayed liquidity before un-displayed liquidity.

##### 2. Statutory Basis

The proposed rule change is consistent with Section 6(b)<sup>5</sup> of the Securities Exchange Act of 1934 (the "Exchange Act"), in general, and furthers the objectives of Section 6(b)(5)<sup>6</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. The proposed rule change clarifies PNP Blind order functionality consistent with its Display Order Process.

#### 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

Because the foregoing proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) 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, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>7</sup> and Rule 19b-4(f)(6) thereunder.<sup>8</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.<sup>9</sup> However, Rule 19b-4(f)(6)(iii)<sup>10</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(6).

<sup>9</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file 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 complied with this requirement.

<sup>10</sup> *Id.*

<sup>11</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> NYSE Arca Equities Rule 7.31(w).

<sup>4</sup> NYSE Arca Equities Rule 1.1(a). The term "NYSE Arca Book" shall refer to the NYSE Arca Marketplace's electronic file of orders, which contains all the User's orders in each of the Directed Order, Display Order, Working Order and Tracking Order Processes.

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

Commission believes such waiver is consistent with the protection of investors and the public interest.<sup>11</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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-2009-65 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-2009-65. 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 Web site (<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 inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such 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-2009-65 and should be submitted on or before August 14, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60318; File No. SR-NYSE-2009-63]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by New York Stock Exchange LLC Amending NYSE Rule 2 To Redefine the Term "Member Organization"

July 16, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup>, and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on June 30, 2009, New York Stock Exchange LLC ("NYSE" or "Exchange") 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 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 amend NYSE Rule 2 to redefine the term "member organization." The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <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.

#### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange is proposing to amend its rules to broaden the definition of a "member organization" to include a registered broker or dealer that is not a member of the Financial Industry Regulatory Authority ("FINRA") so long as the broker or dealer is a member of another registered securities exchange. However, member organizations that transact business with public customers or conduct business on the Floor of the Exchange must at all times be members of FINRA. The revised definition as proposed is consistent with the rules of other national securities exchanges that have been approved by the Commission.

Under current NYSE Rule 2(b)(i), a registered broker or dealer must be a member of FINRA in order to qualify as a "member organization" of the Exchange and to be eligible for an NYSE trading license. Under this arrangement, FINRA is the DEA for all NYSE member organizations. Similarly, NYSE Rule 2(b)(ii) provides that a registered broker or dealer can become a member organization, even though it does not own an NYSE trading license, if it agrees to be regulated as such by the Exchange, but only if it is a member of FINRA. The Exchange proposes to make membership more broadly available to other registered brokers or dealers who are not FINRA members but who are members of another registered securities exchange and do not transact business with public customers or conduct business on the Floor of the Exchange. The Exchange believes that this change can be made without any sacrifice of regulatory rigor.

Under the proposed rule change, those NYSE member organizations that are also members of FINRA will continue to be regulated pursuant to the terms of the existing allocation plan pursuant to Rule 17d-2 of the Act among FINRA, NYSE, and NYSE Regulation, Inc. ("NYSE Regulation"), and FINRA will continue to be the DEA for these member organizations. For those NYSE member organizations that are not members of FINRA, but are

<sup>11</sup> For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.