

the options markets and compete with market makers. However, the contribution of these participants to the market does not mean that their orders are entitled to priority treatment, even if—as the commenters argue—they would not be able to supply this liquidity without being granted such advantage. Market makers and broker-dealers also provide valuable liquidity to the marketplace and do not have priority.

With respect to the contention that broker-dealers have substantial marketplace advantages over public customers, it should be noted that broker-dealers, unlike public customers, pay significant sums for registration and membership in self-regulatory organizations (“SROs”), and incur significant costs to comply, and to ensure that their associated persons comply, with the Act, the rules thereunder, and SRO rules. Moreover, persons who place options orders on the scale contemplated by the proposal could choose to become registered broker-dealers and receive the same advantages.

Regarding the contention of one commenter that the numerical threshold is arbitrary, the Commission believes that it is reasonable to establish the placement of one order every minute on average as a threshold to establish the level of activity, at a minimum, at which the Exchange believes that the incentive of priority is not warranted. For the same reason, the Commission does not believe that such a threshold is capricious.

Finally, the Commission believes that the proposed rule change is clear in not distinguishing between orders placed on the CBOE and those placed on any other exchange, and CBOE stated that “basing the standard on the number of orders that are entered in listed options for a beneficial account(s) assures that Professional account holders cannot inappropriately avoid the purpose of the rule by spreading their trading activity over multiple exchanges.”<sup>29</sup>

#### IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>30</sup> that the proposed rule change (SR-CBOE-2009-078), as modified by Amendment No. 1, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>31</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61206; File No. SR-NYSEArca-2009-111]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 7.31 To Establish the “Market To Limit” Order Type

December 18, 2009.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”) and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on December 4, 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 Rule 7.31 to establish the “Market to Limit” order type. The text of the proposed rule change is attached as Exhibit 5 to the 19b-4 form and is available on the Commission’s Web site at <http://www.sec.gov>. 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 proposed rule change is to establish a new order type, the Market to Limit Order (“MTL”). The MTL Order aims to provide market participants with greater control over the execution price of an order.

An MTL Order is an un-priced order that, upon receipt by the NYSE Arca matching engine, is immediately assigned a limit price equal to the contra National Best Bid Offer (“NBBO”) price. Buy MTL Orders are converted to buy orders with a limit price equal to the National Best Offer. Sell MTL Orders are converted to sell orders with a limit price equal to the National Best Bid. If there is no contra NBBO at the time of entry, the order will be rejected. The order will also be rejected if the market is closed, the symbol is closed or halted, or the MTL Order is received outside of the Core Trading Session.

After the MTL Order is received by the NYSE Arca matching engine and assigned a limit price it will behave exactly like a Limit Order as defined by NYSE Arca Equities Rule 7.31(b). The MTL Order will also follow the same standard execution, routing, ranking and display logic that a Limit Order follows pursuant to NYSE Arca Equities Rules 7.36 and 7.37.

The MTL Order combines two existing order types, the Market Order and the Limit Order into one new order type that aims to provide market participants with benefits from both existing order types. The Exchange plans to introduce the MTL Order in conjunction with the completion of the Universal Trading Platform (“UTP”) rollout, currently scheduled to be completed in mid-December.

##### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act,<sup>3</sup> 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, by providing investors with an additional order type that allows greater control in

<sup>29</sup> See Notice, *supra* note 4.

<sup>30</sup> 15 U.S.C. 78s(b)(2).

<sup>31</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> 15 U.S.C. 78f(b)(5).

managing the circumstances in which their orders are executed.

#### *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 rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>4</sup> and Rule 19b-4(f)(6) thereunder.<sup>5</sup>

At any time within 60 days of the filing of such 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-2009-111 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-2009-111. 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-2009-111 and should be submitted on or before January 19, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>6</sup>

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

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### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-61214; File No. SR-FICC-2009-10]

#### **Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Regarding Fixed Income Clearing Corporation's Board of Directors Election Process and Delegation Authority**

December 22, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on December 16, 2009, Fixed Income Clearing Corporation ("FICC") 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 primarily by FICC. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant approval on an accelerated basis.

#### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

FICC's parent company, The Depository Trust & Clearing Corporation ("DTCC") intends in the future to consider nominating for election to its Board of Directors candidates that are not participants of its clearing agency subsidiaries ("non-participant candidates").<sup>2</sup> Because certain of DTCC's organizational documents mandate that the directors of DTCC shall be the same as the directors of FICC, in the future FICC's Board of Directors may include directors who are not employees of its participants ("non-participant directors").

In addition, the rules of FICC's Government Securities Division ("GSD") and FICC's Mortgage-Backed Securities Division ("MBSD") are being revised to allow the Board to delegate certain responsibilities.

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

In its filing with the Commission, FICC included statements concerning the purpose of and basis for the proposed rule change and discussed any

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

<sup>2</sup> DTCC's clearing corporation subsidiary participants include The Depository Trust Company, National Securities Clearing Corporation, and Fixed Income Clearing Corporation.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its 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.

<sup>6</sup> 17 CFR 200.30-3(a)(12).