

Sections 6(b)(1) and 6(b)(6) of the Act,<sup>13</sup> which require that an exchange enforce compliance with, and have rules that provide appropriate discipline for violations of, the Act, the rules and regulations thereunder, and Exchange rules. As an initial matter, the proposed rule change will further these objectives through its clarification of the list of Exchange rule violations that are subject to NYSE Amex Rule 476A by updating rule titles and rule references, deleting references to rules that have been deleted, updating descriptions of rules that have been amended, and fixing a typographical error.

Further, the Commission recognizes that the proposed rule change will render violations of DMM obligations under Rule 104 that were not previously on the Rule 476A List,<sup>14</sup> as well as violations of DMM obligations under Rule 123D, as eligible for treatment as minor violations.<sup>15</sup> However, the Commission notes that designating a rule as subject to the Minor Rule Violation Plan does not signify that violation of the rule will always be deemed a minor violation. As noted by the Exchange, Rule 476A preserves the Exchange's discretion to seek formal discipline, as warranted, when transgressions of rules designated as eligible for the Minor Rule Violation Plan are found to be more serious. Thus, the Exchange will remain able to require, on a case-by-case basis, formal disciplinary action for any particular violation. Therefore, the Commission believes that the proposed rule change will not compromise the Exchange's ability to seek more stringent sanctions for the more serious violations of Rules 104 and 123D.

In addition, because NYSE Amex Rule 476A provides procedural rights to a person fined under the rule, entitling the person to contest the fine and receive a full disciplinary proceeding,<sup>16</sup> the Commission believes that NYSE Amex Rule 476A, as amended by this proposed rule change, will provide a fair procedure for the disciplining of Exchange members and persons associated with members, consistent with Sections 6(b)(7) and 6(d)(1) of the Act.<sup>17</sup>

Finally, the Commission finds that the proposed rule change is consistent with the public interest, the protection of investors, or is otherwise in furtherance of the purposes of the Act, as required by Rule 19d-1(c)(2) under the Act,<sup>18</sup> which governs minor rule violation plans. The Commission believes that the proposed changes to NYSE Amex Rule 476A will strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities as a self-regulatory organization, in cases where full disciplinary proceedings are unsuitable in view of the nature of a particular violation.

In approving this proposed rule change, the Commission emphasizes that in no way should the amendment of the rule be seen as minimizing the importance of compliance with Exchange rules and all other rules subject to the imposition of fines under NYSE Amex Rule 476A. The Commission believes that the violation of any self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, NYSE Amex Rule 476A provides a reasonable means of addressing rule violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Commission expects that the Exchange will continue to conduct surveillance with due diligence and make a determination based on its findings, on a case-by-case basis, of whether a violation requires formal disciplinary action under NYSE Amex Rule 476.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>19</sup> that the proposed rule change (SR-NYSEAmex-2012-10) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66810; File No. SR-NYSEArca-2012-30]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Equities Rule 7.31(h)(4) To Make Passive Liquidity Orders in Exchange-Listed Securities Available to All Users, Regardless of Whether a Lead Market Maker Is Assigned to the Security

April 13, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 3, 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 and II below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a rule change under Rule 19b-4(f)(6) under the Act,<sup>3</sup> which renders the proposal effective upon filing with the Commission. 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(h)(4) to make Passive Liquidity Orders ("PL Orders") in Exchange-listed securities available to all Users, regardless of whether a Lead Market Maker ("LMM") is assigned to the security. The text of the proposed rule change is available at the Exchange, [www.nyse.com](http://www.nyse.com), and 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,

<sup>13</sup> 15 U.S.C. 78f(b)(1) and 15 U.S.C. 78f(b)(6).

<sup>14</sup> The Commission believes that it is appropriate to include in NYSE Amex Rule 476A references to rules that are currently operating on a pilot basis.

<sup>15</sup> The Commission also recognizes that the Exchange proposes to harmonize its Rule 476A List with the NYSE Minor Rule Violation Plan by adding violations not currently included in the Rule 476A List.

<sup>16</sup> See NYSE Amex Rule 476A(d).

<sup>17</sup> 15 U.S.C. 78f(b)(7) and 15 U.S.C. 78f(d)(1).

<sup>18</sup> 17 CFR 240.19d-1(c)(2).

<sup>19</sup> 15 U.S.C. 78s(b)(2).

<sup>20</sup> 17 CFR 200.30-3(a)(12); 17 CFR 200.30-3(a)(44).

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

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

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

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 amend NYSE Arca Equities Rule 7.31(h)(4) to make PL Orders in Exchange-listed securities available to all Users, regardless of whether an LMM is assigned to the security.

A PL Order is an order to buy or sell a stated amount of a security at a specified, undisplayed price.<sup>4</sup> In securities where the NYSE Arca Marketplace is the primary listings market and there is an LMM assigned to the security that complies with certain display requirements, a PL Order is currently available only to the LMM for such security. In all other securities traded on the Exchange, whether dually-listed securities or securities traded pursuant to unlisted trading privileges, a PL Order is available to all Users. The Exchange proposes to amend NYSE Arca Equities Rule 7.31(h)(4) to remove the text therein that limits the use of PL Orders in Exchange-listed securities to the assigned LMM, thereby making PL Orders available to all Users, regardless of whether an LMM is assigned to the security.<sup>5</sup>

The PL Order was initially designed to attract liquidity to the Exchange by permitting market participants to express their trading interest more accurately than was possible with other order types available at the time.<sup>6</sup> PL Orders were also designed to offer potential price improvement to incoming marketable orders submitted by any User.<sup>7</sup> The Exchange originally believed that restricting the use of the PL Order in Exchange-listed securities to LMMs was appropriate because LMMs would be subject to certain minimum display requirements in proximity to the Exchange's Best Bid and Offer ("BBO").<sup>8</sup> The Exchange believed that these requirements could enhance depth and liquidity at or near the Exchange's BBO.<sup>9</sup>

After significant experience with the use of PL Orders on the Exchange, both by LMMs and other Users, the Exchange believes that PL Orders in Exchange-listed securities should be available to all Users, regardless of whether an LMM is assigned to the security. In this regard, experience has shown that LMMs in Exchange-listed securities generally do not utilize PL Orders in their assigned securities. In contrast, the Exchange has recently received requests from ETP Holders to permit PL Orders in Exchange-listed securities to be entered by Users other than the LMM assigned to the security.

The proposed rule change would enhance the tools available to Users when entering their trading interest by making PL Orders in Exchange-listed securities available to all Users, including LMMs. The Exchange believes that the proposed rule change would not disadvantage LMMs, which generally do not utilize the PL Order type, but would remain able to do so going forward, albeit without the exclusivity that is currently available. Furthermore, the Exchange believes that the elimination of this exclusivity, and the display requirements related thereto, would not have a detrimental impact on the quality of the Exchange's market, because, as discussed above, LMMs generally do not utilize the PL Order. Instead, the proposed rule change could improve the quality of the Exchange's market by increasing the potential for price improvement on the Exchange in Exchange-listed securities.

Because of the related technology changes that this proposed rule change would require, the Exchange proposes to announce the initial implementation date via Trader Update.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),<sup>10</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>11</sup> in particular, because 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, 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 believes that the proposed rule change meets these requirements because it would

promote just and equitable principles of trade and remove impediments to the mechanism of a free and open market by expanding the universe of Users that could submit PL Orders in Exchange-listed securities. The Exchange further believes that by expanding access to PL Orders in Exchange-listed securities to all Users, the Exchange will further promote just and equitable principles of trade. Conversely, the Exchange believes that the proposed rule change would not disadvantage LMMs, which generally do not utilize the PL Order type, because they would remain able to use PL Orders in Exchange-listed securities. Furthermore, the Exchange believes that the elimination of this exclusivity would further the goals of a free and open market and national market system by increasing the potential for price improvement in Exchange-listed securities.

*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 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 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, provided that the self-regulatory organization has given 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 proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</sup> At any time within 60 days of the filing of such proposed rule change, the Commission

<sup>4</sup> See NYSE Arca Equities Rule 7.31(h)(4).

<sup>5</sup> The Exchange also proposes to remove certain text from NYSE Arca Equities Rule 7.37(a)(1) and (b)(1)(A) that would be rendered obsolete by the proposed amendment to NYSE Arca Equities Rule 7.31(h)(4).

<sup>6</sup> See Securities Exchange Act Release No. 54511 (September 26, 2006), 71 FR 58460, 58461 (October 3, 2006) (SR-PCX-2005-53).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 58462.

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2012-30 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-2012-30. This file number should be included on the subject line if email 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 Web site 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 a.m. and 3 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-2012-30 and should be submitted on or before May 10, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66811; File No. SR-NYSEArca-2012-29]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Equities Rule 7.31(t) To Provide for Limit-on-Open Orders and Market-on-Open Orders

April 13, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 3, 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 and II below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a rule change under Rule 19b-4(f)(6) under the Act,<sup>3</sup> which renders the proposal effective upon filing with the Commission. 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(t) to provide for Limit-on-Open Orders ("LOO Orders") and Market-on-Open Orders ("MOO Orders"). The text of the proposed rule change is available at the Exchange, [www.nyse.com](http://www.nyse.com), and the Commission's Public Reference Room.

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> 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 amend NYSE Arca Equities Rule 7.31(t) to provide for LOO and MOO Orders.

NYSE Arca Equities Rule 7.31(t) currently provides for Auction-Only Orders, which are limit or market orders that are only executed within an auction.<sup>4</sup> As proposed, LOO and MOO Orders would be defined under NYSE Arca Equities Rule 7.31(t)(1) and (2), respectively, as specific types of Auction-Only Orders. More specifically, a LOO Order would be defined as an Auction-Only Limit Order that is to be executed only during the Market Order Auction, which is the auction that opens the Core Trading Session on the Exchange for Exchange-listed securities.<sup>5</sup> Any portion of a LOO Order that remains unfilled after completion of the Market Order Auction would be cancelled. A MOO Order would be defined as an Auction-Only Market Order that is to be executed only during the Market Order Auction. As with LOO Orders, any portion of a MOO Order that remains unfilled after completion of the Market Order Auction would be cancelled. MOO and LOO orders would not participate in the Opening Auction, as defined in NYSE Arca Equities Rule 7.35(b), the Closing Auction, as defined in NYSE Arca Equities Rule 7.35(e), or

<sup>4</sup> An Auction-Only Order is executable during the next auction following entry of the order. If the order is not executed in the auction, the balance is cancelled. An Auction-Only Order is only available for auctions that take place on the Exchange. Auction-Only Orders are not routed to other exchanges and are cancelled where the next auction after entry of the order is cancelled or does not occur. An Auction-Only Order may not be designated as good until cancelled.

<sup>5</sup> The Market Order Auction is described in NYSE Arca Equities Rule 7.35(c).