

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61313; File No. SR-NYSEArca-2009-116]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 2.3

January 7, 2010.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on December 22, 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. NYSE Arca filed the proposed rule change as a “non-controversial” proposal pursuant to Section 19(b)(3)(A) of the Act<sup>4</sup> and Rule 19b-4(f)(6) thereunder,<sup>5</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 2.3 governing ETP Application Procedures. The text of the proposed rule change is available on the Exchange’s Web site at <http://www.nyse.com>, on the Commission’s Web site at <http://www.sec.gov>, at the Exchange, and at the Commission’s Public Reference Room. 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 Exchange proposes to amend NYSE Arca Equities Rule 2.3 to permit the Exchange to offer an expedited application process for Equity Trading Permit (“ETP”)<sup>6</sup> applicants that are current NYSE Arca Options Trading Permit (“OTP”) Holders.

Currently, the NYSE Arca ETP application process does not take into consideration an applicant’s OTP status. This creates a duplicative application review because the requirements to become a NYSE Arca OTP Holder are substantially similar to the NYSE Arca ETP requirements and satisfy the criteria reviewed in the NYSE Arca ETP application process. Additionally, the rules related to registration are substantially similar for both ETP and OTP applicants. This proposed rule would eliminate inefficiencies and unnecessary burdens by creating an expedited application process for applicants who are NYSE Arca OTP Holders.

This proposal is substantially similar to previously approved Nasdaq Rule 1013(a)(5)(C) and Nasdaq OMX BX Rule 1013(a)(5)(C). Accordingly, the Exchange proposes to revise NYSE Arca Equities Rule 2.3 by adding the following as new subsection (b):

An applicant that is an approved NYSE Arca OTP Holder may apply to become an ETP Holder through an expedited process, by submitting a Short Form ETP Holder Application and an NYSE Arca Equities User Agreement. The Short Form ETP Holder Application shall contain information sufficient to establish the identity of the applicant as an approved NYSE Arca OTP Holder, its proposed activity on the Exchange, and certain contact personnel, in addition to any other information that may be required by the Exchange.

In doing so, the Exchange will offer NYSE Arca OTP Holders an expedited and efficient ETP application process consistent with procedures established on other exchanges.

##### 2. Statutory Basis

The proposed rule change is consistent with Section 6(b)<sup>7</sup> of the Securities Exchange Act of 1934 (the

“Exchange Act”), in general, and furthers the objectives of Section 6(b)(5)<sup>8</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 exchange seeks to revise its membership rules so that ETP applicants are not unnecessarily burdened by duplicative review procedures.

#### 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 Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup> 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<sup>11</sup> and Rule 19b-4(f)(6)(iii) thereunder.<sup>12</sup>

At any time within 60 days of the filing of the proposed rule change, the

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with 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 fulfilled this requirement.

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

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

<sup>5</sup> 17 CFR 240.19b-4(f)(6).

<sup>6</sup> See NYSE Arca Equities Rule 1.1(m) (definition of ETP); see also NYSE Arca Equities Rule 1.1(n) (definition of ETP Holder).

<sup>7</sup> 15 U.S.C. 78f(b).

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-2009-116 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-2009-116. 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, 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-2009-116 and

should be submitted on or before February 4, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

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

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61311; File No. SR-FINRA-2009-072]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change To Amend the Deficient Claims Rules of the Codes of Arbitration Procedure for Customer and Industry Disputes

January 7, 2010.

#### I. Introduction

On October 28, 2009, Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission (the "Commission"), 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> a proposed rule change to amend Rule 12307 of the Code of Arbitration for Customer Disputes (the "Customer Code") and Rule 13307 of the Code of Arbitration for Industry Disputes (the "Industry Code") (collectively, the "Codes") to clarify the date of filing of an arbitration claim once a deficiency is corrected. The proposed Rule change was published for comment in the **Federal Register** on December 2, 2009.<sup>3</sup> The Commission received two comment letters, both of which supported the proposed rule change.<sup>4</sup> This order approves the proposed rule change.

#### II. Description of the Proposal

When parties initiate arbitration claims in FINRA's arbitration forum, they must file a signed and dated submission agreement, pay all required filing fees, and provide a statement of claim explaining the facts and outlining

the remedies requested.<sup>5</sup> If a party's claims do not comply with the Customer Code or Industry Code, as applicable, those claims are considered deficient.<sup>6</sup> FINRA received inquiries from constituents on how the arbitration forum determines the date of filing of a claim that was deficient when filed, but is later corrected.

To address these constituents' concerns, FINRA proposed to amend Rules 12307(b) of the Customer Code and 13307(b) of the Industry Code to clarify the date of filing of a deficient claim when the deficiency is corrected within 30 days from the time the party receives notice of the deficiency (the "Deficiency Period"). As amended, these rules would provide that if the deficiency is corrected within the Deficiency Period, the claim will be considered filed on the date the initial statement of claim was filed.

Two commenters addressed the proposed rule change and both urged the Commission to approve it.

#### III. Discussion and Commission Findings

The Commission finds the proposed rule change to be consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.<sup>7</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act in that it is designed, among other things, to promote just and equitable principles of trade and to protect investors and the public interest.

The Commission believes it is important to provide persons using FINRA's arbitration forum clear guidance on how to determine the date of filing of a deficient claim. The proposed rule change should eliminate confusion, provide transparency concerning forum practice, and enhance the efficiency of case administration.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (SR-FINRA-2009-072) be, and hereby is, approved.

<sup>5</sup> Rule 12302(a)(1) of the Customer Code and Rule 13302(a)(1) of the Industry Code.

<sup>6</sup> A claim may be deficient because, for example, the party failed to file a properly signed and dated submission agreement, failed to pay all required filing fees, or failed to file the correct number of copies of the submission agreement, statement of claim or other supporting documents.

<sup>7</sup> In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>13</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> 74 FR 63167 (Dec. 2, 2009).

<sup>4</sup> See letters from William A. Jacobson, Esq., Associate Clinical Professor of Law, Director, Cornell Securities Law Clinic and Sang Joon Kim, student, dated December 9, 2009, and Scott R. Shewan, President, Public Investors Arbitration Bar Association, dated December 17, 2009.