

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-NYSEAmex-2009-09 and should be submitted on or before May 5, 2009.

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. 34-59716; File No. SR-NYSEArca-2009-11]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change To Amend Rule 6.69—Reporting Duties

April 6, 2009.

#### I. Introduction

On February 13, 2009, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange"), filed with the Securities and Exchange Commission ("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 6.69 to revise the procedures for reporting open outcry trades that occur on the options trading floor. The proposed rule change was published for comment in the **Federal Register** on March 3, 2009.<sup>3</sup> The Commission received no comment letters on the proposal. This order approves the proposed rule change.

#### II. Description

NYSE Arca's proposal revises the procedures for reporting open outcry trades that occur on the options trading floor. Under existing NYSE Arca rules, all option transactions that occur on the options trading floor must immediately be reported to the Exchange, in a form and manner prescribed by the Exchange, for dissemination to the Options Price Reporting Authority ("OPRA").<sup>4</sup> This requirement applies to all OTP Holders who are required to report trades either directly to OPRA or to another party who is responsible for reporting trades to OPRA. Currently, pursuant to existing Rule 6.69(b), the responsible party for reporting a transaction is the party that participates on the transaction as the seller.

The proposed rule change makes several clarifying changes to these reporting obligations. First, the revised rule provides that whenever a Floor Broker is participating on one side of a transaction, the Floor Broker becomes the responsible party for reporting the trade, regardless of whether the Floor Broker is the buyer or seller. Second, in the event that there is a Floor Broker participating on both sides of a transaction, the Floor Broker participating as the seller must report the transaction to the Exchange. Third, for transactions occurring on the Exchange between two Market Makers, the Market Maker participating as the seller must report the transaction to the Exchange.

Finally, in order to further clarify the rules regarding reporting duties, the Exchange proposes a new provision regarding Complex Orders. Since each party to a Complex Order transaction (which involves the simultaneous purchase and/or sale of two or more option series in the same underlying security) could be both buying and selling different series that make up an order, there may be no clearly defined seller, as is required by the existing rule. Consequently, pursuant to the proposed rule change, for Complex Order transactions between two Floor Brokers or two Market Makers, the party responsible for reporting the transaction will be the OTP Holder that first initiated the transaction. This provision does not affect the obligation that a Floor Broker has to report transactions pursuant to proposed Rule 6.69(b)(i), but will have bearing when a Complex

Order is executed between two Floor Brokers or between two Market Makers.<sup>5</sup>

Presently, almost all orders on the Exchange are required to be in electronic format prior to representation on the trading floor.<sup>6</sup> The Exchange represents that, typically, Floor Brokers enter the terms of orders they receive into the Electronic Order Capture System ("EOC")<sup>7</sup>, and upon consummating a trade, the Floor Broker is able to electronically report the transaction to the Exchange for processing and dissemination to OPRA. In contrast, the Exchange notes that Market Makers trading for their own proprietary account are not required to electronically systematize their orders prior to responding to a call from a Floor Broker. Consequently, a Market Maker acting as a "seller" (who would be the responsible reporting party under the current rules) would be required to re-enter all the order information already contained in the Floor Broker's EOC system and then send the information to the Exchange for processing. The Exchange believes that it will be more efficient for the Floor Broker to be the responsible party for reporting a transaction. The Exchange further does not believe that requiring a Floor Broker to report every transaction to which they are a party will create any undue hardship or unnecessary burden on the Floor Broker, given the existing requirement that orders be put in electronic format prior to representation on the floor.

#### III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>8</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>9</sup> which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove

<sup>5</sup> The proposal also eliminates Rule 6.69 Commentary .04, which relates to an obsolete and outdated practice. "Hard cards," which refer to the cardboard backing of a paper trade ticket, are no longer in use on the trading floor.

<sup>6</sup> See Rule 6.67(c).

<sup>7</sup> The EOC system is the Exchange's electronic audit trail and order tracking system that provides an accurate time-sequenced record of all orders and transactions on the Exchange.

<sup>8</sup> In approving 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>9</sup> 15 U.S.C. 78f(b)(5).

<sup>6</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> See Securities Exchange Act Release No. 59440 (February 24, 2009), 74 FR 9325 ("Notice").

<sup>4</sup> For transactions executed on the Exchange's electronic trading platform, NYSE Arca will report the trade directly to OPRA.

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, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Commission believes that the proposed rule change will increase efficiency in trade reporting and remove potential confusion about which party to a transaction is responsible for reporting such information.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR-NYSEArca-2009-11) be, and hereby is, approved.

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. 34-59713; File No. SR-FINRA-2009-024]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Trade Reporting Transfers of Proprietary Securities Positions in Connection With Certain Corporate Control Transactions

April 6, 2009.

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, 2009, Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a "non-controversial" rule change under Section 19(b)(3)(A) of the Act<sup>3</sup> and paragraph (f)(6) thereunder,<sup>4</sup> which renders the proposal effective

upon receipt of this filing by 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

FINRA is proposing to amend FINRA trade reporting rules to codify the reporting requirements applicable to over-the-counter ("OTC") transfers of proprietary positions in debt and equity securities between a member and another member or non-member broker-dealer effected in connection with certain corporate control transactions.

The text of the proposed rule change is available on FINRA's Web site at <http://www.finra.org>, at the principal office of FINRA 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, FINRA 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 these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

##### 1. Purpose

FINRA trade reporting rules require that OTC transactions in debt and equity securities be reported to FINRA unless they qualify for an express exception under the rules.<sup>5</sup> For purposes of the trade reporting rules, a "trade" or "transaction" entails a beneficial change of ownership of securities between parties (e.g., a purchase or sale of securities) in which a FINRA member participates.<sup>6</sup> As a general matter, when members report trades to a FINRA trade reporting facility, FINRA facilitates the public dissemination of the trade information and/or assesses regulatory transaction fees.<sup>7</sup>

Occasionally, broker-dealers may transfer proprietary securities positions, along with other assets, in connection with corporate control transactions such as mergers and acquisitions. Such transfers are "trades" or "transactions" because they result in a change of beneficial ownership, but unlike the typical securities transaction, they are not driven by a trading or investment strategy (e.g., a desire to exit a position or lock in a profit) relating to a particular security position. Rather, the transfers are in furtherance of the consolidation of the broker-dealers' separate sales and proprietary trading businesses. Additionally, the securities that are transferred typically are assigned a value, such as the closing price of the security on a date certain, solely for purposes of effectuating the transfer.

As such, FINRA believes that public dissemination of such transfers would not provide meaningful price discovery information to the market. To the contrary, dissemination could confuse investors and other market participants, particularly where the positions being transferred are substantial. Public dissemination of significant and perhaps unusual trading activity could give the false impression of investor interest, market participant transactions and significant price discovery activities, and the volume reports could skew a variety of trading activity indicators.<sup>8</sup>

Accordingly, FINRA is proposing to amend its trade reporting rules to clarify

members to submit non-tape reports for transactions that are effected upon the exercise of an OTC option or for "away from the market sales" (e.g., a gift between two parties). The non-tape reports are used for audit trail and regulatory fee assessment purposes only and are not reported to the appropriate exclusive Securities Information Processor ("SIP") for public dissemination. See Rules 6282(i)(2) and 7130(c) (relating to the Alternative Display Facility); 6380A(e)(2) and 7230A(g) (relating to the FINRA/Nasdaq Trade Reporting Facility); 6380B(e)(2) and 7230B(f) (relating to the FINRA/NYSE Trade Reporting Facility); and 6622(e)(2) and 7330(g) (relating to the OTC Reporting Facility).

<sup>8</sup> Similarly, FINRA amended its trade reporting rules to clarify that in the limited circumstance where securities are transferred pursuant to an asset purchase agreement ("APA"), such transfer does not have to be reported if (1) the APA is subject to the jurisdiction and approval of a court of competent jurisdiction in insolvency matters; and (2) the purchase price under the APA is not based on, and cannot be adjusted to reflect, the current market prices of the securities on or following the effective date of the APA. FINRA believes that transfers effected pursuant to an APA under these circumstances are not trade reportable events and that reporting and dissemination of these transfers would not provide meaningful price discovery information to the market. See Securities Exchange Act Release No. 59126 (December 19, 2008), 73 FR 79948 (December 30, 2008) (notice of filing and immediate effectiveness of SR-FINRA-2008-060).

<sup>10</sup> 15 U.S.C. 78s(b)(2).

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

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

<sup>5</sup> See Rules 6282, 6380A, 6380B, 6622 and 6730.

<sup>6</sup> See Trade Reporting Frequently Asked Questions, FAQ 100.4, available at <http://www.finra.org/Industry/Regulation/Guidance/P038942>.

<sup>7</sup> Certain trades are reported to FINRA, but not for publication purposes (referred to as "non-tape reports"). For example, FINRA rules require