

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59737; File No. SR-NYSEArca-2009-27]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Arca, Inc. Amending Rule 6.62 To Offer WAIT Modifier, PNP Plus Orders and Allow the Use of Attributable Orders

April 9, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 6, 2009, NYSE Arca, Inc. (“NYSE Arca” or the “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 Exchange. 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 6.62 to (i) offer the “WAIT” order modifier for use with orders entered into the NYSE Arca System; (ii) allow the use of attributable orders; and (iii) offer PNP Plus orders. The WAIT modifier is designed to enhance compliance with the order exposure requirement of NYSE Arca Rule 6.47A. Attributable orders allow users to voluntarily display their firm IDs on the orders. PNP Plus orders allow Users greater control over the circumstances of order execution. 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 WAIT Orders

On January 5, 2009, the Securities and Exchange Commission approved NYSE Arca’s proposal to reduce the order exposure requirement of Rule 6.47A from three seconds to one second.³ Rule 6.47A prohibits Users from executing as principal orders they represent as agent unless (i) agency orders are first exposed on the Exchange for at least one (1) second or (ii) the User has been bidding or offering on the Exchange for at least one (1) second prior to receiving an agency order that is executable against such bid or offer. This Rule ensures that a User does not gain at the expense of customers by depriving them of the opportunity to interact with orders in the NYSE Arca System.

Users that enter agency orders into the NYSE Arca System have noted the proposal by the NASDAQ Options Market (“NOM”) for a WAIT order modifier,⁴ and have asked the Exchange to develop an automated mechanism that permits them to enter orders into the NYSE Arca System as soon as the orders are received but that also prevents them from interacting with their own agency orders in violation of the order exposure requirement. NYSE Arca believes this is an efficient use of resources because it will allow NYSE Arca to program its System once rather than have multiple Users re-program their systems.

In order to accomplish that request, NYSE Arca has developed the “WAIT” modifier which can be appended to an order prior to entry into the NYSE Arca System. The WAIT modifier will instruct the System to wait precisely one second from the time of order entry before processing the order in accordance with the other instructions attached to that order. Upon expiration of the one-second WAIT period, the System will time stamp, route, display, or execute the order in accordance with the entering party’s other order entry instructions. Thus, the WAIT modifier does not affect the existing display, routing, or execution priorities of the NYSE Arca System or any other

obligations of Users as set forth in the NYSE Arca rules.

Orders designated with the WAIT modifier are independent of all other orders, including an agency order that is being exposed pursuant to Rule 6.47A. WAIT orders are not associated or in any way linked to another order entered into the System, as is the case with certain facilitation orders at other options exchanges. The System will process the WAIT order even if a customer order entered into the System simultaneously with the WAIT order has been executed or cancelled during the WAIT second, unless the WAIT order itself is modified or cancelled pursuant to System rules. As a result, there is no guarantee that an order designated as WAIT will execute against another specific order. Use of the WAIT modifier is completely voluntary.

Attributable Orders

The Exchange proposes to modify Rule 6.62 (Certain Types of Orders Defined) to allow for the submission of attributable orders. These orders allow users to voluntarily display their firm IDs on the orders.⁵ The NASDAQ Options Market, LLC (“NOM”) currently allows its participants to submit attributable orders (See NOM Chapter VI, Section (1)(d)(1)).⁶ As proposed, the Exchange may limit the processes for which attributable orders will be available. This proposal is responsive to requests by Exchange Users who believe that enhanced executions may be obtained if firm ID is allowed on orders (on a voluntary basis).

PNP Plus

As part of its continuing efforts to enhance participation on the Exchange, and provide additional tools to control the circumstances in which orders are executed, NYSE Arca proposes to adopt an order type known as “PNP Plus”. PNP Plus Orders are currently offered on the NYSE Arca Equities market.⁷

A PNP Order is an order entered into the NYSE Arca System for execution on the Exchange, but not for routing to away markets. Because of the condition to not route PNP orders, they are cancelled if they would otherwise lock or cross the NBBO.

Customers have requested that the exchange develop a PNP Order type that

⁵ A Firm ID is a 5 character identification code (letters and/or numbers). Each OTP Holder is assigned its own unique Firm ID.

⁶ The Chicago Board Options Exchange (“CBOE”) also allows attributable orders. See Exchange Act Release No. 34-58394, Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Adopting A New Order Type, File No. SR-CBOE-2008-85.

⁷ See NYSE Arca Equities Rule 7.31(w)(1).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Exchange Act Release No. 34-59194 Order Granting Accelerated Approval of SR-NYSEArca-2008-135.

⁴ See SR-NASDAQ-2009-017.

would, if marketable against the NBBO but not executable on the Exchange, be represented in the Exchange's disseminated market by re-pricing the order. Specifically, if posting a PNP Plus order or a portion thereof would otherwise result in locking or crossing the NBBO, the PNP order would automatically be re-priced to be one MPV greater than the NBBO bid (for sell orders) or one MPV less than the NBBO offer (for buy orders), thus avoiding locking or crossing the NBBO. The re-priced bid or offer is included in the Exchange's disseminated quote.

If the NBBO changes, and the order is marketable against the new NBBO, but still not executable on the Exchange, the PNP Plus order would again be re-priced to be one MPV away from the NBBO. When re-priced, the PNP Plus order is re-ranked at the new price. The order would continue to be re-priced and re-ranked with each change in the NBBO, until such time that the NBBO moves such that the original price of the PNP Plus Order would no longer lock or cross the NBBO. The PNP Plus Order would then automatically be re-priced back to its original limit price and re-ranked in the Consolidated Book. The PNP Plus Order will not be re-priced if the order becomes locked or crossed by another market.

The Exchange believes that the implementation of the aforementioned rule change modifying NYSE Arca order entry options will enhance compliance with NYSE Arca rules, preserve order execution opportunities on the NYSE Arca market, provide greater control over the circumstances of executions, and provide an opportunity for enhanced executions.

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, 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 additional order types that allow greater flexibility in maintaining compliance with the rules, or providing an opportunity for enhanced executions, or 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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act⁸ and Rule 19b-4(f)(6) thereunder.⁹ 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 Act¹⁰ and Rule 19b-4(f)(6)(iii) thereunder.¹¹

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. Please include File

⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

⁹ 17 CFR 240.19b-4(f)(6).

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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.

Number SR-NYSEArca-2009-27 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-NYSEArca2009-27. 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 self-regulatory organization. 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-2009-27 and should be submitted on or before May 11, 2009.

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

Florence E. Harmon,

Deputy Secretary.

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¹² 17 CFR 200.30-3(a)(12).