

Rule 3010(a)(1), (b)(1), and (c)(1) provide additional clarification that the supervisory systems and internal inspections of ETP Holders must be reasonably designed to achieve compliance with applicable securities laws and regulations and with applicable NYSE Arca rules, including those relating to the misuse of material non-public information.

Pursuant to this proposal rule change, ETP Holders may utilize the flexible, principles-based approach to modify their policies and procedures as appropriate to reflect changes to their business model, business activities, or to the securities market itself. An ETP Holder should be proactive in assuring that its policies and procedures reflect the current state of its business and continue to be reasonably designed to achieve compliance with applicable federal securities law and regulations, and with applicable Exchange rules. In addition, the Commission notes that, while information barriers are not specifically required under the proposal, an ETP Holder's business model or business activities may dictate that an information barrier or a functional separation be part of the appropriate set of policies and procedures that would be reasonably designed to achieve compliance with applicable securities law and regulations, and with applicable Exchange rules.

The Commission believes that the regulatory approach in this proposed rule change is substantially similar to the regulatory approach of Nasdaq. In particular, the NYSE Arca approach, like the Nasdaq approach, (i) enumerates the conduct that is prohibited by its members, including the potential misuse of material non-public information and (ii) provides for the policies and procedures that must be reasonably designed to ensure compliance with the same. In addition, the Commission notes that the Exchange has represented that its current examination procedure for the review of appropriate supervisory systems and procedures will remain in place.

The Commission also finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>19</sup> for approving the proposed rule change prior to the 30th day after the date of publication of notice in the **Federal Register**. Although this proposed rule change does not require that members maintain specifically-prescribed information barriers, it will continue to mandate that members establish and maintain a set of policies and procedures reasonably designed to

achieve compliance with applicable securities law and regulations, and with applicable Exchange rules. As such, the Exchange is adopting an approach that is substantially similar to the approach currently employed by Nasdaq.<sup>20</sup>

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>21</sup> that the proposed rule change (SR-NYSEArca-2009-78) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>22</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60607; File No. SR-NYSEArca-2009-80]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish the Risk Management Gateway ("RMG") Service

September 1, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on August 28, 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 establish its Risk Management Gateway ("RMG") service. 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.

<sup>20</sup> See Securities Exchange Act Release No. 53128 (Jan. 13, 2006), 71 FR 3550 (January 23, 2006) (adopting Nasdaq IM-2110-2; IM-2110-3; IM-2110-4, and Rule 3010).

<sup>21</sup> 15 U.S.C. 78s(b)(2).

<sup>22</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.

## 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 offer, through its wholly-owned subsidiary NYSE Euronext Advanced Trading Solutions, Inc., the Risk Management Gateway ("RMG") service as a facility<sup>3</sup> of the Exchange, to NYSE Arca Users.<sup>4</sup> NYSE Transact Tools, Inc, a division of the NYSE Euronext Advanced Trading Solutions Group ("NYXATS"), owns RMG.

Traditionally, the customers of an ETP Holder gave orders to the ETP Holder who then submitted those orders to the Exchange on behalf of the customer. By means of sponsored access, an ETP Holder may allow its customers to enter orders directly into the trading systems of the Exchange as Sponsored Participants, without the Sponsoring ETP Holder acting as an intermediary.<sup>5</sup>

To facilitate the ability of Sponsoring ETP Holders to monitor and oversee the sponsored access activity of their Sponsored Participants, NYXATS will offer an order-verification service to Sponsoring ETP Holders. This service will act as a risk filter by causing the orders of Sponsored Participants to pass through RMG prior to entering the Exchange's trading systems for execution. When a Sponsored Participant's order passes through RMG,

<sup>3</sup> The term "facility" as defined in Section 3(a)(2) of the Act, as amended, provides, when used with respect to an exchange includes its premises, tangible or intangible property whether on the premises or not, any rights to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange), and any right of the exchange to the use of any property or service. See 15 U.S.C. 78c(a)(2).

<sup>4</sup> See NYSE Arca Equities Rule 1.1(yy).

<sup>5</sup> See NYSE Arca Equities Rule 7.29(b).

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

RMG software determines whether the order complies with order criteria that the ETP Holder has established for that Sponsored Participant. The order criteria pertain to such matters as the size of the order (per order or daily quantity limits) or the credit limit (per order or daily value) that the Sponsoring ETP Holder has established for the Sponsored Participant. Additional risk filters may also be selected by the Sponsoring ETP Holder's relating to specific symbols or end users.

If the order is consistent with the parameters set by the ETP Holder, then RMG allows the order to continue along its path to the Exchange's trading systems. If the order falls outside of those parameters, then RMG returns the order to the Sponsored Participant. RMG will only return an order to the Sponsored Participant when the order fails to comply with the criteria set by the Sponsoring ETP Holder.

RMG software interacts with orders only prior to the orders' entry into the Exchange's trading system for execution. RMG does not have order execution or trade reporting capabilities (though it will allow a Sponsoring ETP Holder to monitor the orders of its Sponsored Participants). RMG maintains a record of all messages relating to Sponsored Participants' transactions and supplies a copy of such messages to the applicable Sponsoring ETP Holder.

The Sponsoring ETP Holder, and not RMG, will have full responsibility for ensuring that Sponsored Participants' sponsored access to the Exchange complies with the Exchange's sponsored access rules. The use of RMG by an ETP Holder does not automatically constitute compliance with Exchange rules.

NYXATS will host RMG software on NYXATS' infrastructure. After passing through RMG software, each order will enter the NYSE Arca's Gateway.

The Exchange does not require Sponsoring ETP Holders to use RMG. Sponsoring ETP Holders are free to use a competing risk-management service or to use none at all. The Exchange will not provide preferential treatment to Sponsoring ETP Holders using RMG.

The Exchange proposes to make RMG available to its Users, as a facility of the Exchange, pursuant to contractual arrangements.<sup>6</sup> The Exchange believes that RMG will offer its Users another option in the efficient risk management of its Sponsored Participant's access to NYSE Arca.

## 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. This service will allow firms to better monitor the order flow of their Sponsored Participants.

### *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 proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not 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, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.<sup>11</sup> However, Rule 19b-

4(f)(6)(iii)<sup>12</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay and designate the proposed rule change operative upon filing so that the expected benefits to Exchange Users from use of the risk-management service would not be delayed. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that other self-regulatory organizations have similar functionality<sup>13</sup> and that this filing raises no new regulatory issues. Therefore, the Commission designates the proposal operative upon filing.<sup>14</sup>

At any time within 60 days of the filing of the 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-2009-80 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-2009-80. 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

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

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

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

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

<sup>11</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give 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 Exchange has complied with this requirement.

<sup>12</sup> *Id.*

<sup>13</sup> See Securities Exchange Act Release Nos. 59354 (February 3, 2009), 74 FR 6683 (February 10, 2009) (SR-NYSE-2008-101); 60236 (July 2, 2009), 74 FR 34068 (July 14, 2009) (SR-BATS-2009-019).

<sup>14</sup> For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>6</sup> The Exchange will file with the Commission all fees associated with the RMG Service.

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-2009-80 and should be submitted on or before September 29, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60605; File No. SR-CHX-2009-13]

### Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Adding Additional Trading Sessions

September 1, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on August 28, 2009, Chicago Stock Exchange, Inc. ("CHX" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CHX. 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

CHX proposes to amend its rules to create an early trading session beginning at 6 a.m. CT on days the Exchange is open for trading and to create a second Late Trading Session from 3 p.m. to 3:15 p.m. CT. The text of this proposed rule change is available on the Exchange's Web site at (<http://www.chx.com>) and in 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 CHX 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 CHX 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 is proposing to create an early trading session beginning at 6 a.m. CT on days the Exchange is open for trading and to create a second Late Trading Session from 3 p.m. to 3:15 p.m. CT. We believe that CHX Participants may be interested in posting bids and offers on the CHX in an early trading session, as well as in a late session immediately after the close of the Regular Session. In order to facilitate additional trading activity, the Exchange proposes to create an early trading session and a second late trading session, both of which would operate under the same basic operational and regulatory framework as the Regular Trading Session. CHX Participants could enter orders to buy and sell eligible securities and those orders would either be executed or displayed (or entered without being displayed in the case of a reserve or undisplayed order) depending on the status of our book and the national market system. The rules applicable to the Regular Trading Session would govern the Early and Late Trading Sessions, with the exception that the Regulation NMS

prohibitions regarding intermarket trade-throughs and locked and crossed markets would not be in force. The current Late Trading Session (which would be renamed the "Late Crossing Session") would be available from 3:15 p.m. to 4 p.m. CT and would be available only to Participants seeking to execute cross orders.

In furtherance of this initiative, the Exchange proposes to add or amend the a [sic] number of applicable CHX rules. Definitions setting the times of the respective trading sessions would be added to Article 1. Due to the risk of illiquidity, the Exchange does not believe that it is appropriate to execute IOC Market Orders during any of the Extended Hours trading sessions and we propose to restrict use of that order type to the Regular Trading Session. We propose to add a new rule to the Article 8 business conduct rules mandating that Participants which allow customers to trade in extended hours trading sessions to make certain specific risk disclosures relating to such activity. These risk disclosures are modeled on the rules of the BATS Exchange, Inc. regarding extended hours trading.<sup>3</sup> The provisions of Article 20, Rule 1 setting the time of the various trading sessions would be amended to make reference to the Early, Late Trading and Late Crossing sessions and define how trading operates during those sessions. The language in Rule 1 referring to the hours of trading for specified exchange-traded funds would be deleted since those securities would be eligible for trading during the Early and Late Trading session, rendering the current text unnecessary. Finally, we would amend Article 20, Rule 8 to reflect the manner in which the various sessions are opened and closed.

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general,<sup>4</sup> and furthers the objectives of Section 6(b)(5) in particular,<sup>5</sup> in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transaction in securities, to remove impediments and perfect the mechanisms of a free and open market, and, in general, to protect investors and the public interest. In this case, the expansion of trading hours through the creation of an Early Trading Session and an additional Late Trading Session would provide participants with

<sup>15</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> BATS Exchange Rule 3.21, *Customer Disclosures*.

<sup>4</sup> 15 U.S.C. 78f(b).

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