

acquisition.<sup>4</sup> Similarly, the proposal to transfer a 5% interest in BSECC to EMCF does not require modification to BSECC's By-Laws, other than to include EMCF as an authorized shareholder and to make other minor changes discussed above, and should not alter the effectiveness of the By-Laws to assure fair representation of BSECC's shareholders and participants. Furthermore, we note that the proposed rule change does not alter the provisions of NASDAQ OMX's Certificate and NASDAQ OMX's By-Laws that are designed to maintain the independence of each of its SRO subsidiaries' self-regulatory functions, enable each SRO subsidiary to operate in a manner that complies with the federal securities laws, and facilitate the ability of each SRO subsidiary and the Commission to fulfill their regulatory and oversight obligations under the Act. For these reasons, we find that the proposed rule change is designed to allow BSECC to continue to meet the requirement under Section 17A(b)(3)(C) that it assure the fair representation of its shareholders and participants in the selection of its directors and administration of its affairs.<sup>5</sup> In addition, the amendments to the BSECC's Articles and By-Laws to change the name of BSECC, consolidate prior amendments, and correct certain errors are non-substantive amendments which should not affect BSECC's obligations under Section 17A.

#### IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.<sup>6</sup>

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-BSECC-2009-02) be and hereby is approved.

<sup>4</sup> Securities Exchange Act Release No. 58324 (August 7, 2008), 73 FR 46936 (August 12, 2008) (SR-BSE-2008-02; SR-BSE-2008-23; SR-BSE-2008-25; SR-BSECC-2008-01).

<sup>5</sup> This order grants approval to the current transfer of ownership from BSECC to EMCF only. It does not as requested by BSECC in its filing approve potential unwinds of the transfer of ownership that may occur in the future.

<sup>6</sup> In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>7</sup> 17 CFR 200.30-3(a)(12).

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

**Elizabeth M. Murphy,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59846; File No. SR-NYSEArca-2009-34]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Arca, Inc. Amending Rule 6.76A Order Execution-OX

April 29, 2009.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on April 21, 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, II, and III 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 amend Rule 6.76A to allow marketable orders to be exposed to market participants for a brief period of time before routing to an away market center for execution at the National Best Bid/Offer ("NBBO"). 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

<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.

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 the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The purpose of this proposed rule change is to provide marketable orders an opportunity for execution on NYSE Arca before being routed to an away market center at the NBBO.

Currently, if an order that is marketable against the NBBO is received, it is matched against any possible contra side interest in the Display Order process and in the Working Order Process, including any available Tracking Orders. If the order is still unexecuted, or if only partially unexecuted, the order is then routed away to the market or markets at the NBBO.

The proposed rule change will provide for the NYSE Arca System to expose the order, at the NBBO price, to any OTP Holders who wish to subscribe to such notices, for a brief period of time (the "exposure period") not to exceed one second.

During the exposure period, orders and quotes that are equal to the NBBO and on the opposite side of the market will be matched against the exposed order and immediately executed as they are received. Orders and quotes that are better than the NBBO and on the opposite side of the market will also be matched against the exposed order, and immediately executed as they are received at the exposed price. At the end of the exposure period, the System will again attempt to match the balance of the order, if any, against any available Tracking Orders. If the order is still unexecuted, or if only partially unexecuted, it will be routed to the market(s) at the NBBO for execution.

Marketable orders that are on the same side of the market as the exposed order will join the exposure period through a size update to the exposure message, but will not extend the exposure period.

Any update to the NBBO during the exposure period that unlocks the exposed order will cause the exposure period to terminate, and any unexecuted portion of the order will either be (i) Matched against contra interest in the Display Process and the Working Order Process, and, if still not completely executed, (ii) immediately routed to the new NBBO market(s); or, (iii) if no

longer marketable the order will be placed in the Consolidated Book.

Conversely, an update to the NBBO that crosses the exposed price will also bring the exposure period to an immediate end, and the order will be routed away.

Example 1:

NYSE Arca market—3.00–3.30

CBOE market (NBBO)—3.00–3.20

NYSE Arca receives an order to Buy paying 3.30. The order is exposed for one second prior to routing to CBOE.

200 milliseconds after the start of the exposure, CBOE offer moves to 3.30. The exposure period terminates, and the order is executed against the NYSE Arca 3.30 offer.

Example 2:

NYSE Arca market—3.00–3.30

CBOE market (NBBO)—3.00–3.20

NYSE Arca receives an order to Buy paying 3.30. The order is exposed for one second prior to routing to CBOE.

200 milliseconds after the start of the exposure period, ISE posts an offer at 3.10. Again, the exposure period terminates, and the order is immediately routed to the ISE to trade against the 3.10 offer.

NYSE Arca Users who do not wish to have an order exposed prior to routing may use the NOW order type to trade with markets at the NBBO. Users who wish to avoid both exposure and routing may use other order types available on NYSE Arca, including but not limited to, IOC orders and PNP orders.

## 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, as it will provide greater opportunities for investors to receive executions on the NYSE Arca System, rather than being routed away, so as to enhance the efficiency of order handling, and also provides Users the opportunity to match prices at other markets.

### *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>4</sup> and Rule 19b-4(f)(6) thereunder.<sup>5</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>6</sup> and Rule 19b-4(f)(6)(iii) thereunder.<sup>7</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-2009-34 on the subject line.

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

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

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 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 the pre-filing requirement.

### *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-2009-34. 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 Section, 100 F Street, NE., Washington, DC 20549-1090, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at NYSE Arca's principal office and on its Internet Web site at <http://www.nyse.com>. 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-2009-34 and should be submitted on or before May 27, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Elizabeth M. Murphy,**  
*Secretary.*

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<sup>8</sup> 17 CFR 200.30-3(a)(12).