

between the hours of 10 a.m. and 3 p.m. Copies of the filing will also 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-Phlx-2009-47 and should be submitted on or before July 10, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60099; File No. SR-NYSEArca-2009-51]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Amending Rule 7.36 Governing Order Ranking and Display

June 11, 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 June 4, 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 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>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</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 7.36 governing order ranking and display. 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 purpose of this rule filing is to amend NYSE Arca Equities Rule 7.36 governing order ranking and display. The Exchange proposes to add language that allows a limit order that has been modified to retain priority if the modification to the order involves a decrease in the size of the order. In the event that the size of the order has been increased and/or the price has been changed, the order will be treated as a new order and will receive a new time priority. Currently, any modification to the size of an order, including a decrease in the size, is treated as a new order with a new time priority. Allowing Users<sup>5</sup> to decrease the size of an order and retain priority follows precedent established by other market centers and will not impact the Exchange’s disseminated best priced bid-offer market. This change allows Users to more effectively account for portfolio position changes while retaining priority in the NYSE Arca book.<sup>6</sup>

###### 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 proposed rule change allows Users to decrement the size of an order while still retaining priority in the NYSE Arca Book.

##### 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 Commission may summarily abrogate

<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). 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.

<sup>14</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> NYSE Arca Equities Rule 1.1(yy). The term “User” shall mean any ETP Holder or Sponsored Participant who is authorized to obtain access to the NYSE Arca Marketplace pursuant to Rule 7.29.

<sup>6</sup> NYSE Arca Equities rule 1.1(a). The term “NYSE Arca Book” shall refer to the NYSE Arca Marketplace’s electronic file of orders, which contains all the User’s orders in each of the Directed Order, Display Order, Working Order and Tracking Order Processes.

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

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-2009-51 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-2009-51. 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-2009-51 and

should be submitted on or before July 10, 2009.

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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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60113; File No. SR-FINRA-2007-009]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Modernize and Simplify NASD Rule 2720

June 15, 2009.

#### I. Introduction

The Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("Commission" or "SEC") on September 6, 2007, and amended on May 1, 2009,<sup>1</sup> pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> a proposal to modernize and simplify NASD Rule 2720 (Distributions of Securities of Members and Affiliates—Conflicts of Interest) ("Rule 2720" or "Rule"), which governs public offerings of securities in which a member with a conflict of interest participates, and make corresponding changes to FINRA Rule 5110 (Corporate Financing Rule) ("Rule 5110"). This proposal was published for comment in the **Federal Register** on May 13, 2009.<sup>4</sup> The Commission received no comments on the proposal. This order approves the proposed rule change, as modified by Amendment No. 1.

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> This Amendment No. 1 to SR-FINRA-2007-009 replaces and supersedes the original filing submitted on September 6, 2007, except with regard to Exhibit 2 (NASD *Notice to Members* 06-52 and comments received in response to NASD *Notice to Members* 06-52).

<sup>2</sup> 15 U.S.C. 78s(b)(1).

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

<sup>4</sup> Exchange Act Release No. 59880 (May 7, 2009), 74 FR 22600 (May 13, 2009) (SR-FINRA-2007-009).

#### II. Description of the Proposed Rule Change

Rule 2720 governs public offerings of securities issued by participating members or their affiliates, public offerings in which a member or any of its associated persons or affiliates has a conflict of interest, and public offerings that result in a member becoming a public company. The Rule regulates the potential conflicts of interest that exist with respect to the pricing of such offerings and the conduct of due diligence when a member participates in such offerings.

In September 2006, FINRA published NASD *Notice to Members* 06-52 requesting comment on proposed amendments to Rule 2720 (the "original proposal"). FINRA received two comment letters that generally supported the proposal and recognized the need to modernize the Rule.<sup>5</sup> However, in response to the comments received, FINRA staff made certain revisions to the original proposal in its September 6, 2007 filing with the Commission. In order to address Commission staff's comments, FINRA filed Amendment No. 1 to SR-FINRA-2007-009 on May 1, 2009.

The proposed rule change would replace the current Rule in its entirety with proposed Rule 2720 entitled "Public Offerings of Securities With Conflicts of Interest." The proposal would, among other things: (1) Exempt from the filing and qualified independent underwriter ("QIU") requirements public offerings of investment grade rated securities, public offerings of securities that have a bona fide public market, and public offerings in which the member primarily responsible for managing the offering does not have a conflict of interest and can meet the disciplinary history requirements for a QIU; (2) Amend the definition of "conflict of interest" to include public offerings in which at least five percent of the offering proceeds are directed to a participating member or its affiliates; (3) Modify the Rule's disclosure requirements to provide more prominent disclosure of conflicts of interest in the offering documents; and (4) Amend the Rule's provisions regarding the use of a QIU to eliminate the requirement that the QIU render a pricing opinion. In addition, the proposed rule change would amend the QIU qualification requirements to focus on the experience of the firm

<sup>5</sup> Letter from the Securities Industry and Financial Markets Association, dated November 1, 2006 (the "SIFMA Letter"); and Letter from the American Bar Association, dated December 4, 2006 (the "ABA Letter").