

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60200; File No. SR-NYSEArca-2009-57]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Arca, Inc. Amending Rule 6.9—Exercise Limits

June 30, 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 June 24, 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 amend Rule 6.9—Exercise Limits. 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

The purpose of this filing to revise Rule 6.9—Exercise [sic] Limits, to clarify that exercise limits applicable to a particular class of options shall be

determined in accordance with the position limits established pursuant to Rule 6.8.

Rule 6.9(a) states that except with the prior approval of the Exchange, no OTP Holder or OTP Firm shall exercise a long position in any option contract if as a result thereof such OTP Holder or OTP Firm has or will have exercised within any five (5) consecutive business days aggregate long positions in that particular class of options in excess of such number of option contracts as shall be fixed from time to time by the Exchange as the exercise limit for that particular class of options.

Commentary .01 to Rule 6.9 goes on to list certain tiers for exercise limits, starting at 25,000 contracts and going up to 250,000 contracts. These exercise limits are equivalent to applicable position limits for a particular options class as prescribed by Rule 6.8.06(a)–(e). Commentary .01 goes on to say that whether an exercise limit is 25,000 or 50,000 or 75,000 or 200,000 or 250,000 shall be determined in the manner described in Rule 6.8.06. Rule 6.8.06, specifically subsections (f)–(g), also contains position limits, for certain specific products, that differ from the tiers cited in Rule 6.9.01. In addition, Rule 6.8.07–.09 contains provisions that exempt certain positions from standard position limits.

Because Rule 6.8.06 prescribes additional position limits that are not cited in Rule 6.9.01, plus the fact that Rule 6.8 contains Commentary other than .06, which includes additional criteria for determining position limits other than what is already cited in Rule 6.9.01, the Exchange now proposes to adopt new rule text to Rule 6.9.01 that explicitly states the exercise limits pursuant to Rule 6.9(a) shall be equivalent to the corresponding position limit, for the same particular class of options, as determined by Rule 6.8. and Commentary thereto.

The purpose of this rule change is to offer clarity to the existing rules governing exercise limits. It does not in any way attempt to alter the method in which the Exchange calculates position or exercise limits. NYSE Arca notes that over the years, it has at times, revised Rule 6.8 to increase position limits, as well as the sizes and scopes of available hedge exemptions to the applicable position limits.<sup>4</sup> While it has always

<sup>4</sup> See Securities Exchange Act Release No. 57358 (February 20, 2008), 73 FR 11173 (February 29, 2008) (notice of filing and immediate effectiveness of NYSEArca-2008-17); See Securities Exchange Act Release No. 55347 (February 26, 2007), 72 FR 9823 (March 5, 2007) (notice of filing and immediate effectiveness of NYSEArca-2007-19); See Securities Exchange Act Release No. 54385

been the intent to determine exercise limits based on the applicable position limits, Rule 6.9.01 has not necessarily been revised to reflect the various changes made to Rule 6.8. The rule simply serves to make it perfectly clear that the exercise limits for a particular class of options shall be equivalent to the corresponding position limit for the same particular class of options as determined by Rule 6.8 and any Commentary thereto.

In addition, rule changes contained in this proposal are consistent with similar rules of NYSE Amex LLC (“NYSE Amex”),<sup>5</sup> and NASDAQ OMX PHLX (“PHLX”),<sup>6</sup> governing the exercise of options contracts.

###### 2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of section 6(b)(5) of the Act,<sup>8</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove 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. This rule change simply serves to offer clarity to an already existing rule. In addition, adopting similar rules to those that are in place at other options exchanges will help to alleviate any confusion on the part of market participants, when exercising option contracts.

##### 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.

(August 30, 2006), 71 FR 53150 (September 8, 2006), (notice of filing and immediate effectiveness of NYSEArca-2006-49); See Securities Exchange Act Release No. 51286 (March 1, 2005), 70 FR 11297 (approval notice for PCX-2003-55); See Securities Exchange Act No. 45737 (April 11, 2005), [sic] 67 FR 18975 (approval order for PCX-2000-45).

<sup>5</sup> See NYSE Amex Rule 905(a)—Exercise Limits.

<sup>6</sup> See PHLX Rule 1002.—Exercise Limits.

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

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

<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.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, 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>

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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2009-57 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-2009-57. 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 NYSE Arca. 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-2009-57 and should be submitted on or before July 30, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60204; File No. SR-BATS-2009-020]

### Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend BATS Rule 11.9, Entitled "Orders and Modifiers," and BATS Rule 11.12, Entitled "Priority of Orders"

July 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 June 29, 2009, BATS Exchange, Inc. ("BATS" 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 Exchange has designated this proposal as a "non-controversial" proposed rule change

pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6)(iii) thereunder,<sup>4</sup> which renders it 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 is proposing to amend BATS Rule 11.9, entitled "Orders and Modifiers," and BATS Rule 11.12, entitled "Priority of Orders," to permit Users to use a "Replace Message" to modify certain types of information originally submitted with an order without modifying the priority of such order.

The text of the proposed rule change is available at the Exchange's Web site at <http://www.batstrading.com>, at the principal office of the Exchange, 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 Exchange 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. 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 the proposed rule change is to permit Users of the Exchange to change additional terms of an order through the use of a Replace Message. Currently, Rule 11.9(e)(3) states that the only terms of an order that may be changed through use of a Replace Message are the price and quantity terms of an order, including changing a limit order to a market order. Also, current Rule 11.12(a)(3) states that a decrease to the size of an order is the only change that a User can make that will not result in a loss of priority for an order compared to other orders in the BATS Book. The Exchange believes that Users should also be permitted to

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

<sup>10</sup> 17 CFR 240.19b-4(f)(6). Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its 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 five-day pre-filing notice requirement.

<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).