

period.¹⁶ Consequently, the Exchange believes that the exception from NYSE Rule 2B described above will continue to be consistent with the Act.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

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 Number SR-NYSE-2009-116 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-NYSE-2009-116. 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 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-NYSE-2009-116 and should be submitted on or before December 21, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Elizabeth M. Murphy,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61033; File No. SR-NYSEArca-2009-100]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Arca, Inc. Amending Rules 5.17 and 6.8

November 19, 2009.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Act")² and Rule 19b-4 thereunder,³ notice is hereby given that, on November 5, 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. 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 Exchange Rules 5.17 and 6.8 pertaining to Exemptions from Position 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend NYSE Arca Rules 5.17 and 6.8 to enable OTP Holders and OTP Firms to rely on position limit exemptions granted by other options exchanges under specified circumstances. This proposed rule change is based on Chapter III, Section 8 and Chapter XIV Section 8, of Options Rules of the NASDAQ Stock Market, LLC ("NOM").

NYSE Arca rules governing position limit exemptions for stock index options are generally found in Rule 5.17. NYSE Arca rules governing position limit exemptions for non-index options are generally located in Rule 6.8, Commentary .07-.09. These rules include a number of position limit exemptions available to OTP Holders and OTP Firms. Rules 5.17 and 6.8,

¹⁶ The Exchange has previously stated that it and its affiliates do not have any voting or other control arrangement with any of the other limited partners or general partner of BIDS, and this statement will continue to be valid. See Approval Order, 74 FR at 5018, n. 69.

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

however, do not have a provision that recognizes position limit exemptions that are granted to OTP Holders and OTP Firms by other options exchanges, as provided for in NOM Rules in Chapter III, Section 8 for non-index options and Chapter XIV, Section 8 for index options. In light of the desirability to have similar position limit standards, the Exchange proposes to add a similar an [sic] exemption to both Rule 5.17 and Rule 6.8.

Specifically, the Exchange proposes to add new Rule 5.17(c) and new Rule 6.8 Commentary .07(iv) to address position limit exemptions granted by other options exchanges. This proposed rule [sic] will provide that an OTP Holder or OTP Firm may rely upon any valid exemption from applicable position limits that has been granted by another options exchange for any options contract traded on NYSE Arca, provided that such OTP Holder or OTP Firm provides the Exchange either with a copy of any written exemption issued by another options exchange or with a written description of any exemption issued by another options exchange that is not in writing, where such description contains sufficient detail for Exchange [sic] to verify the validity of that exemption with the issuing options exchange. In addition, such OTP Holder or OTP Firm must fulfill all conditions precedent for such exemption and comply at all times with the requirements of such exemption with respect to trading on the Exchange.

The Exchange notes that position limits tend to be similar across options exchanges, which is desirable in light of cross option exchange membership(s) and multiple listing and trading of similar product(s) on different exchanges. Because OTP Holders and OTP Firms frequently have membership and/or trading privileges on other options exchanges, it is important that ad hoc position limit exemptions granted by other options exchanges ("exemption grants") are available to OTP Holders and OTP Firms to the extent that such exemption grants are reduced to writing and verifiable by the Exchange.

These new proposed rules do not give the Exchange the ability to alter the scope of these exemptions but only to recognize the exemption so that the position limit process would be the same across the exchanges.

For example, an OTP Firm may go to another options exchange of which it is a member, such as the International Securities Exchange ("ISE"), or NOM to request a position limit exemption (exemption grant) for option contracts in the SPDRs (SPY). The other exchange

provides the exemption grant until expiration in the same month to this particular firm for this particular issue (SPY). Should the same OTP Firm want to trade SPY on the NYSE Arca to the extent of the exemption grant, the Exchange's proposed rule change would allow it to do so, but only to the extent that the firm provides the Exchange with a copy of the written exemption grant provided by the issuing exchange or, if the exemption is not in writing, to the extent that said OTP Firm provides the Exchange with sufficient detail for Exchange regulatory staff to be able to verify the validity of the exemption grant with the issuing options exchange.⁴

The Exchange believes that by adding uniformity and predictability to the position limit process, the proposed rule change should be beneficial to the Exchange, OTP Holders and OTP Firms, and their customers. Moreover, the proposed rule change should promote competition by allowing trades across options exchanges that are similar in respect of position limits.⁵

The Exchange is also proposing to revise the rule numbering convention contained in the Commentary to Rule 6.8. This change is being made for technical purposes only in order to provide clarity to rules governing position limit exemptions on NYSE Arca. The renumbering of the rules has no material effect on the actual meaning of the rules.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act⁶ in general, and furthers the objectives of Section 6(b)(5) of the Act⁷ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, and to promote just and equitable principles of trade, to 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, by allowing the Exchange to have uniform position limit procedures.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose

⁴ Additionally, the OTP Firm would have to fulfill all conditions precedent for such exemption grant and comply with the requirements of such exemption with respect to trading on the Exchange.

⁵ The Exchange notes that all reporting requirements, such as Rule 6.6 (Reporting of Options Positions) remains in force.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

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

A proposed rule change filed under Rule 19b-4(f)(6)¹² normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹³ the Commission may 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 so that the proposal may become operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will bring uniformity and predictability to the position limit process. Accordingly, the Commission hereby grants the Exchange's request and designates the proposal operative upon filing.¹⁴

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 the pre-filing requirement.

¹² 17 CFR 240.19b-4(f)(6).

¹³ 17 CFR 240.19b-4(f)(6)(iii).

¹⁴ For the purposes only of waiving the 30-day operative delay, the Commission has considered the

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. Please include File Number SR-NYSEArca-2009-100 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-2009-100. 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,¹⁵ 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 www.nyse.com. All

proposed rules impact on efficiency, competition and capital formation. See 15 U.S.C. 78c(f).

¹⁵ The text of the proposed rule change is available on the Commission's Web site at <http://www.sec.gov/>.

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-2009-100 and should be submitted on or before December 21, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Elizabeth M. Murphy,
Secretary.

[FR Doc. E9-28535 Filed 11-27-09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61042; File No. SR-FINRA-2009-057]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Granting Approval of a Proposed Rule Change Relating to Section 1(c) of Schedule A to the FINRA By-Laws To Amend the Personnel Assessment and Gross Income Assessment

November 20, 2009.

I. Introduction

On August 20, 2009, Financial Industry Regulatory Authority, Inc. ("FINRA") (formerly known as the National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder² to amend Section 1(c) of Schedule A to the FINRA By-Laws ("Schedule A") to increase the Personnel Assessment and to revise the formulation of the Gross Income Assessment calculation to be paid by each FINRA member. The proposed rule change was published for comment in the **Federal Register** on September 11, 2009.³ The Commission received 745 comment letters on the proposal.⁴ FINRA submitted a response

¹⁶ 17 CFR 200.30-3(a)(12).

¹⁵ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 60624 (September 3, 2009), 74 FR 46828 (September 11, 2009) ("Notice").

⁴ 676 of the letters were form comment letters. Of these, four utilized "Letter Type A" and 672 utilized "Letter Type B." An example of Letter Type A and Letter B as well as all of the non-form comment letters are posted on the Commission's Internet Web site (<http://www.sec.gov/comments/sr->

to the comment letters on November 18, 2009.⁵ This order approves the proposal.

II. Description of FINRA's Proposal

Currently, FINRA's primary fee structure to support its regulatory programs consists of the following fees: the Personnel Assessment ("PA"); the Gross Income Assessment ("GIA"); the Trading Activity Fee; and the Branch Office Assessment. These fees are used to fund FINRA's regulatory activities, including rulemaking and FINRA's examination and enforcement programs. According to FINRA, the economic and industry downturns experienced in 2008 and 2009 have strained FINRA's resources, yet its regulatory responsibilities remain constant and its programs robust. To stabilize its revenues and provide protection against future industry downturns, FINRA proposes to increase the PA and revise the calculation of the GIA. This will enable FINRA to achieve a more consistent and predictable funding stream to carry out FINRA's regulatory mandate.

To those ends, the proposed rule change will increase the PA for all members. The PA currently is assessed on a three-tiered rate structure based on the number of the firm's registered representatives and principals ("registered persons") as follows: members with one to five registered persons are assessed \$75 for each such registered person; 6-25 registered persons, \$70 for each such registered person; and 26 or more registered persons, \$65 for each such registered person. The proposed rule change will increase those rates, for the first time in five years, to \$150, \$140, and \$130, respectively, based on the same tiered structure. FINRA notes that there is a correlation between the cost of FINRA's regulatory programs and the number of registered persons within a firm and that the population of registered persons has remained fairly stable, even throughout the recent economic downturn.⁶ Accordingly, FINRA believes that an increase of the PA is

[finra-2009-057/finra2009057.shtml](http://www.finra-2009-057/finra2009057.shtml)). See Exhibit 1 for a list of comment letters noted on the Commission's Internet Web site. All 745 comment letters are available for inspection and copying at the Commission's Public Reference Room.

⁵ See letter from Phillip Shaikun, Associate Vice President and Associate General Counsel, FINRA, to Elizabeth M. Murphy, Secretary, Commission, dated November 18, 2009. ("Response Letter").

⁶ For example, FINRA records show that since 2000, the average number of registered persons per year has been approximately 667,680 and that for each of the past three years the population has been 669,626 (2009), 676,927 (2008) and 662,742 (2007) (based on numbers at the end of the preceding calendar year).