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 \(^{12}\) and Rule 19b–4(f)(6)(iii) thereunder.\(^{13}\)

A proposed rule change filed under Rule 19b–4(f)(6) \(^{14}\) normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii) \(^{15}\) the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the pilot program to continue uninterrupted, thereby avoiding the investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.\(^{16}\)

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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 email to rule-comments@sec.gov. Please include File No. SR–BYX–2012–001 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 No. SR–BYX–2012–001. This file number should be included on the subject line if email 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 Web site viewing and printing 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 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 No. SR–BYX–2012–001 and should be submitted on or before February 15, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.\(^{17}\)

Kevin M. O’Neill.

Deputy Secretary.

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\(^{13}\) 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 this requirement.


\(^{16}\) For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Amendments to NYSE Arca Rule 9.4 and NYSE Equities Inc. Rules 5.3(d) and 9.4 Relating to Discretionary Proxy Voting on Executive Compensation Matters and Election of Directors To Comply With the Dodd-Frank Act


Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) and Rule 19b–4 thereunder, notice is hereby given that, on January 5, 2012, NYSE Arca, Inc. (“Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in sections I and II below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization’s Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Rule 9.4 and to adopt Commentary .01 to NYSE Arca Rule 9.4 and, through its wholly-owned corporation, NYSE Arca Equities, Inc. (“NYSE Arca Equities”), proposes to amend NYSE Arca Equities Rule 5.3(d) and NYSE Arca Equities Rule 9.4 and to adopt Commentary .01 to NYSE Arca Equities Rule 9.4. These amendments are being made to comply with the requirements of the Dodd-Frank Act with respect to the broker voting rules of national securities exchanges. The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and www.nyse.com.

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

Section 957 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”) adopted new Section 6(b)(10) of the Securities Exchange Act (the “Exchange Act”). This new provision requires all national securities exchanges to adopt rules that prohibit their members from voting on the election of a member of the board of directors of an issuer (except for a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940), executive compensation, or any other significant matter, as determined by the Commission, by rule, unless the member receives voting instructions from the beneficial owner of the shares.

NYSE Arca Rule 9.4 governs when OTP Holders and OTP Firms may vote shares held for customers and NYSE Arca Equities Rule 9.4 governs when ETP Holders may vote[sic] shares held for customers. NYSE Arca Rule 9.4 prohibits OTP Holders and OTP Firms, and NYSE Arca Equities Rule 9.4 prohibits ETP Holders, from voting any un instructed shares, but also permits the OTP Holder or OTP Firm (in the case of NYSE Arca Rule 9.4) or ETP Holder (in the case of NYSE Arca Equities Rule 9.4) to follow the rules of another national securities exchange instead. In addition to its general requirements with respect to voting of uninstructed shares by ETP Holders, NYSE Arca Equities Rule 9.4 specifically prohibits ETP Holders from voting uninstructed shares on any proposal with respect to the implementation of any equity compensation plan, or any material revision to the terms of any existing equity compensation plan (whether or not stockholder approval of such plan is required by NYSE Arca Equities Rule 5.3(d)(1)–(7)), unless the beneficial owner of the shares has given voting instructions.

In order to assure compliance, in all cases, with newly adopted Section

6 The Commission notes that the options markets must continue to ensure that the ODD is in compliance with the requirements of Rule 9b–1(b)(2)(i) under the Act, 17 CFR 240.9b–1(b)(2)(i), including when changes regarding relative performance options are made in the future. Any future changes to the rules of the options markets concerning relative performance options would need to be submitted to the Commission under Section 19(b) of the Act. 15 U.S.C. 78s(b).

7 17 CFR 240.9b–1(b)(2)(i).

8 17 CFR 240.9b–1.


