

simultaneously routing the remaining 4,000 shares to other venues for execution. In the event that the amount of shares on other markets is insufficient to completely fill the order, or the order fails to completely execute, NASDAQ would then post the remaining shares on the NASDAQ book or cancel the remaining shares per the routed order's instructions. NASDAQ believes that this simultaneous execution against NASDAQ available shares and routing to other venues' shares will avoid the deleterious effect of market impact discussed above and result in overall faster and better executions of its members' routable orders.

NASDAQ notes that it is not changing the execution and routing sequence of all routable orders. The TFTY, SAVE, SOLV, and CART orders are designed to execute serially as part of their strategies, which is generally to reduce the blended fees associated with transacting on multiple markets. As such, simultaneous routing of such orders would not result in a better execution in terms of the goals of these routable order types.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Securities Exchange Act of 1934 (the "Act"),⁵ which requires the rules of an exchange 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. The Exchange believes that the proposed rule meets these requirements in that it promotes efficiency in the market, and increases the speed of execution and likelihood that a routable order will be filled at the best price possible. In this regard, NASDAQ notes that simultaneous execution minimizes the market impact a routable order has on the markets under the current multi-step execution and routing process, thus improving fill rates. Accordingly, the proposed rule change will serve to improve execution quality for investors sending their routable orders to NASDAQ.

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

⁵ 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

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

Within 45 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 Exchange consents, the Commission shall: (a) By order approve or disapprove such 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 email to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2012-071 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-NASDAQ-2012-071. 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 10:00 a.m. and 3:00 p.m. The text of the proposed rule change is available on the Commission's Web site at <http://www.sec.gov>. 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 Number SR-NASDAQ-2012-071, and should be submitted on or before July 20, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶

Kevin M. O'Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67248; File No. SR-NYSEArca-2012-19]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Amend Commentary .01 to NYSE Arca Rule 6.35

June 25, 2012.

I. Introduction

On March 9, 2012, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to allow certain cross trades effected on the trading floor to count toward a market maker's in-appointment trading requirement and to make certain non-substantive changes to its rules. The proposed rule change was published for comment in the **Federal Register** on March 28, 2012.³ The Commission received no comment letters on the proposed rule change. On

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 66642 (March 22, 2012), 77 FR 18875 ("Notice").

May 8, 2012, the Commission extended the time period for Commission action to June 26, 2012.⁴ On June 13, 2012, the Exchange filed Amendment No. 1 to the proposed rule change.⁵ This order approves the proposed rule change, as modified by Amendment No. 1 thereto.

II. Description of the Proposal

Under NYSE Arca Rule 6.35, a market maker is required to effect at least 75% of its trading activity (measured in terms of contract volume per quarter) in classes within its appointment. Commentary .01 to NYSE Arca Rule 6.35 clarifies that a market maker's trades effected on the trading floor to accommodate cross trades executed pursuant to NYSE Arca Rule 6.47 do not count for or against the market maker's 75% requirement, regardless of whether the trades are in issues within or without the market maker's appointment. The Exchange proposes to amend Commentary .01 to NYSE Arca Rule 6.35 to allow a market maker's trades effected on the trading floor to accommodate cross trades executed pursuant to NYSE Arca Rule 6.47 to count toward the market maker's 75% requirement, regardless of whether the trades are in issues within or without the market maker's appointment.

Specifically, the Exchange asserts that the proposed rule change would not diminish a market maker's obligation when trading in open outcry or when trading electronically. The Exchange states that whenever market makers trade in classes of options outside of their appointment, they must fulfill the same obligations as they do in their appointed classes. The Exchange also states that, when trading in open outcry in option classes outside of their appointment, market makers may not engage in transactions that are disproportionate in relation to or in derogation of the performance of their obligations in their appointed classes. In addition, while all option classes listed on the Exchange have appointed market makers, not all of those appointed market makers are located on the trading floor, and therefore market makers may be called upon to provide liquidity via open outcry in issues outside of their appointment. According to the Exchange, the proposed rule change will thus help to encourage

market maker participation in open outcry, which will promote liquidity and price improvement on the Exchange. The Exchange also notes that the proposed rule change is only applicable to trades where a market maker is trading with a floor broker representing agency orders, and not when a market maker is trading with another market maker. Finally, the Exchange states its belief that the proposed rule change could lead to a decrease in internalization of orders because of the potential for greater participation by competing market makers on open outcry trades.

In addition, the Exchange proposes to make non-substantive changes to NYSE Arca Rules 6.35, 6.37, 6.84, and 10.12. Specifically, the Exchange proposes to replace the term "Primary Appointment," which is not a defined term, with the word "appointment" as it is used elsewhere in NYSE Arca Rule 6.35.

III. Discussion and Commission Findings

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁶ Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,⁷ which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, 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.

The Exchange proposes to allow a market maker's trades effected on the trading floor to accommodate cross trades executed pursuant to NYSE Arca Rule 6.47 to count toward the 75% in-appointment requirement, regardless of whether the trades are in issues within or without the market maker's appointment. The Commission believes that the proposal is consistent with the Act. According to the Exchange, while all option classes listed on the Exchange have appointed market makers, not all of those market makers are located on the trading floor. Thus, at times the Exchange may need to call upon a market maker to provide liquidity via

open outcry in issues outside of the market maker's appointment. The Commission notes that the proposed rule change may provide an incentive for market makers to provide liquidity to the trading floor. Market makers may be encouraged to increase participation in open outcry trading, because the trades effected on the trading floor to accommodate cross trades executed pursuant to NYSE Arca Rule 6.47 will be counted towards a market maker's 75% in-appointment requirement. Greater market maker participation in cross trades executed pursuant to NYSE Arca Rule 6.47 may also present opportunities for price improvement on the trading floor.⁸

The Commission notes that whenever market makers enter the trading crowd for a class of options in which they do not hold an appointment in other than a floor brokerage capacity, they must fulfill the market maker obligations established by Exchange rules.⁹ In addition, when present anywhere on the options trading floor, with regard to all securities traded on the trading floor and not just those to which they are appointed, market makers are expected to undertake the obligations of a market maker in response to a demand from a trading official.¹⁰ Also, with respect to classes of option contracts outside of their appointment, market makers should not engage in transactions for an account in which they have an interest that are disproportionate in relation to, or in derogation of, the performance of their obligations with respect to those classes within their appointment.¹¹

Further, the Commission believes that the proposal to replace the undefined term "Primary Appointment" with the term "appointment" is consistent with the Act because using consistent terminology should provide clarity and reduce confusion with respect to the application of Exchange rules regarding market makers.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change (SR-NYSEArca-2012-19), as modified by Amendment No. 1 thereto, be, and hereby is, approved.

⁸ In this regard, the Exchange notes that the proposal is applicable to trades where a market maker is trading with a floor broker representing agency orders, and not when a market maker is trading with another market maker.

⁹ See NYSE Arca Rules 6.37(c) and 6.37A(d).

¹⁰ See *id.*

¹¹ See *id.*

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 CFR 200.30-3(a)(12).

⁴ See Securities Exchange Act Release No. 66945 (May 8, 2012), 77 FR 28413 (May 14, 2012).

⁵ In Amendment No. 1, the Exchange made a technical change to Exhibit 5 and provided additional justifications for the proposed rule change. Because Amendment No. 1 does not materially alter the substance of the proposed rule change, Amendment No. 1 is not subject to notice and comment.

⁶ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Kevin M. O'Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67252; File No. SR-NYSEArca-2012-05]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change Adding New Paragraph (cc) to NYSE Arca Options Rule 6.62 To Provide for a Post No Preference Light Only Quotation

June 25, 2012.

I. Introduction

On May 3, 2012, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to add new paragraph (cc) to NYSE Arca Options Rule 6.62 to provide for a Post No Preference Light Only Quotation ("PNPLO Quotation"). The proposed rule change was published for comment in the **Federal Register** on May 11, 2012.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange has proposed to provide a new quotation type—the PNPLO Quotation. The PNPLO Quotation would be an electronic Market Maker⁴ quotation that, upon initial entry into the Exchange's trading system, would only be eligible to execute against displayed liquidity on Arca's Consolidated Book.⁵ If a PNPLO Quotation, upon entry, would: (1) Execute exclusively against non-displayed liquidity on the Consolidated Book, it would be rejected; (2) execute against both displayed and non-displayed liquidity on the Consolidated Book, it would immediately execute against such displayed liquidity, but not

against the non-displayed liquidity, and any remaining size would be rejected; (3) execute exclusively against displayed liquidity on the Consolidated Book, it would immediately execute and any remaining size would be placed on the Consolidated Book and treated as a standard Market Maker quotation; and (4) not execute against either displayed or non-displayed liquidity, it would be placed on the Consolidated Book and treated as a standard Market Maker quotation.⁶ The entry of a PNPLO Quotation would cause the automatic removal of the pre-existing quotation(s) of a Market Maker, regardless of whether the PNPLO Quotation is accepted or rejected by the NYSE Arca System.⁷ Accordingly, in instances where the PNPLO Quotation is rejected by the system because of the presence of otherwise marketable non-displayed interest, the Market Maker would be required to re-enter a quotation for purposes of satisfying any applicable quoting obligations under NYSE Arca Options Rule 6.37B.⁸

The PNPLO Quotation may only be submitted for options in penny pilot issues.⁹ On the Exchange, penny pilot issues are subject to a make/take fee structure, under which Market Makers receive credits for posting liquidity and incur fees for taking liquidity.¹⁰ By preventing interactions with resting, non-displayed liquidity through use of the PNPLO Quotation, Market Makers in penny pilot issues would be able to avoid incurring unexpectedly the fees associated with such interactions. The Exchange notes that this is desirable for Market Makers because it is difficult for them to account for this risk of interacting with non-displayed liquidity in their quoting models.¹¹

⁶ See new NYSE Arca Options Rule 6.62(cc).

⁷ See *supra* note 3, at 27821.

⁸ See *id.*

⁹ See new NYSE Arca Options Rule 6.62(cc); see also Securities Exchange Act Release Nos. 55156 (January 23, 2007), 72 FR 4759 (February 21, 2007) (order approving penny pilot program); 56568 (September 27, 2007), 72 FR 56422 (October 3, 2007) (order approving expansion and extension of penny pilot); 59628 (March 26, 2009), 74 FR 15025 (April 2, 2009) (notice of extension of penny pilot); 60224 (July 1, 2009), 74 FR 32991 (July 9, 2009) (notice of extension of penny pilot); 60711 (September 23, 2009), 74 FR 49419 (September 28, 2009) (order partially approving expansion of penny pilot); 61061 (November 24, 2009), 74 FR 62857 (December 1, 2009) (order partially approving expansion of penny pilot); 63376 (November 24, 2010), 75 FR 75527 (December 3, 2010) (notice of extension of penny pilot); 65977 (December 15, 2011), 76 FR 79234 (December 21, 2011) (notice of extension of penny pilot).

¹⁰ See *supra* note 3, at 27821.

¹¹ See *id.*

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹² In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹³ which requires, among other things, that the rules of a national securities exchange be 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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; and not be designed to permit unfair discrimination between customers, issuers, brokers or dealers.

The Exchange noted that the quoting algorithms of Market Makers may not be able to account accurately for the risk of interacting with resting, non-displayed liquidity in penny pilot issues and the related take fees. The Exchange represents that this challenge may result in Market Makers widening their quotes in penny pilot classes.¹⁴ The Exchange further represents that use of the PNPLO Quotation should allow Market Makers to better control their execution costs by avoiding unexpected take fees related to executions with resting, non-displayed liquidity in penny pilot issues. This cost certainty, according to the Exchange, could lead to narrower quote widths in penny pilot issues, thereby improving the Exchange's market and benefiting investors. Additionally, if the PNPLO Quotation is rejected by the NYSE Arca system because of the presence of otherwise marketable non-displayed interest, the Market Maker would be required to re-enter a quotation for purposes of satisfying any applicable quoting obligations under NYSE Arca Options Rule 6.37B. For these reasons, the Commission believes that the proposed PNPLO Quotation is consistent with Section 6(b)(5) of the Exchange Act as it is designed to remove impediments to and perfect the mechanisms of a free and open market

¹² In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ See *supra* note 3, at 27821.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 66937 (May 7, 2012), 77 FR 27820 (May 11, 2012) ("Notice").

⁴ See NYSE Arca Options Rule 6.32 (defining "Market Maker").

⁵ See new NYSE Arca Options Rule 6.62(cc); see also NYSE Arca Options Rule 6.1(b)(37) (defining "Consolidated Book").