

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

**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")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> 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.<sup>3</sup> 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 Maker<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup>

The PNPLO Quotation may only be submitted for options in penny pilot issues.<sup>9</sup> 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.<sup>10</sup> 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.<sup>11</sup>

<sup>6</sup> See new NYSE Arca Options Rule 6.62(cc).

<sup>7</sup> See *supra* note 3, at 27821.

<sup>8</sup> See *id.*

<sup>9</sup> 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).

<sup>10</sup> See *supra* note 3, at 27821.

<sup>11</sup> 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.<sup>12</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>13</sup> 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.<sup>14</sup> 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

<sup>12</sup> 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).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

<sup>14</sup> See *supra* note 3, at 27821.

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

<sup>2</sup> 17 CFR 240.19b-4.

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

<sup>4</sup> See NYSE Arca Options Rule 6.32 (defining "Market Maker").

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

and a national market system, and in general to protect investors and the public interest.

The Commission also believes that the proposed rule change is not unfairly discriminatory. Currently, market participants including Market Makers can achieve functionality similar to the PNPLO Quotation through use of the PNP-Light Order, which is a non-routable order type that is only eligible to execute against displayed liquidity.<sup>15</sup> The Exchange is proposing a similar functionality for use by Market Makers when quoting. The PNPLO Quotation would be available for use by all Market Makers quoting in the penny pilot classes on the Exchange.<sup>16</sup>

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>17</sup> that the proposed rule change (SR-NYSEArca-2012-05) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**Kevin M. O'Neill**,  
Deputy Secretary.

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## SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA 2012-0002]

### Privacy Act of 1974, as Amended; Computer Matching Program (SSA/ Railroad Retirement Board (SSA/ RRB))—Match Number 1308

**AGENCY:** Social Security Administration (SSA).

**ACTION:** Notice of a renewal of an existing computer matching program that will expire on September 30, 2012.

**SUMMARY:** In accordance with the provisions of the Privacy Act, as amended, this notice announces a renewal of an existing computer matching program that we are currently conducting with RRB.

**DATES:** We will file a report of the subject matching program with the Committee on Homeland Security and Governmental Affairs of the Senate; the Committee on Oversight and Government Reform of the House of Representatives; and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective as indicated below.

**ADDRESSES:** Interested parties may comment on this notice by either telefaxing to (410) 966-0869 or writing to the Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, 617 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235-6401. All comments received will be available for public inspection at this address.

**FOR FURTHER INFORMATION CONTACT:** The Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, as shown above.

#### SUPPLEMENTARY INFORMATION:

##### A. General

The Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100-503), amended the Privacy Act (5 U.S.C. 552a) by describing the conditions under which computer matching involving the Federal government could be performed and adding certain protections for persons applying for, and receiving, Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508) further amended the Privacy Act regarding protections for such persons.

The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. It requires Federal agencies involved in computer matching programs to:

- (1) Negotiate written agreements with the other agency or agencies participating in the matching programs;
- (2) Obtain approval of the matching agreement by the Data Integrity Boards of the participating Federal agencies;
- (3) Publish notice of the computer matching program in the **Federal Register**;
- (4) Furnish detailed reports about matching programs to Congress and OMB;
- (5) Notify applicants and beneficiaries that their records are subject to matching; and
- (6) Verify match findings before reducing, suspending, terminating, or denying a person's benefits or payments.

##### B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of our computer matching programs

comply with the requirements of the Privacy Act, as amended.

**Mary A. Zimmerman**,

*Acting Executive Director, Office of Privacy and Disclosure, Office of the General Counsel.*

### Notice of Computer Matching Program, SSA With the Railroad Retirement Board (RRB)

#### A. Participating Agencies

SSA and RRB.

#### B. Purpose of the Matching Program

This computer matching agreement sets forth the terms, conditions, and safeguards under which RRB will disclose to us information necessary to verify an individual's self-certification of eligibility for Extra Help with Medicare Prescription Drug Plan Costs program (Extra Help). It will also enable us to identify individuals who may qualify for Extra Help as part of our Medicare outreach efforts.

#### C. Authority for Conducting the Matching Program

The legal authority for us to conduct this matching activity is contained in section 1860D-14 (42 U.S.C. 1395w-114) and section 1144 (42 U.S.C. 1320b-14) of the Act.

#### D. Categories of Records and Persons Covered by the Matching Program

##### 1. Systems of Records

RRB will provide us with data from its RRB-22 and RRB-20 systems of records.

We will match RRB's data with our Medicare Database (MDB) File, system of records No. 60-0321

##### 2. Number of Records and Frequency of Matching

RRB will transmit its annuity payment data monthly. The file will consist of approximately 560,000 electronic records.

RRB will transmit its Post Entitlement System file daily. The number of records will differ each day, but consist of approximately 3,000 to 4,000 records each month.

RRB will transmit files on all Medicare eligible Qualified Railroad Retirement Beneficiaries from its RRB-20 and RRB-22 systems of records to report address changes and subsidy changing event information monthly. The file will consist of approximately 520,000 electronic records. The number of people who apply for Extra Help determines in part the number of records matched.

Our comparison file will consist of approximately 47.5 million records obtained from MDB.

<sup>15</sup> See NYSE Arca Options Rule 6.62(v).

<sup>16</sup> See *supra* note 3, at 27821.

<sup>17</sup> 15 U.S.C. 78s(b)(2).

<sup>18</sup> 17 CFR 200.30-3(a)(12).