

While this situation was adequately addressed under the current rule structure, the Exchange is concerned that there may be situations in which the CRO may be unavailable to issue the suspension order if NSCC signals its intention to cease to act for a CHX Participant. This concern is particularly true if the Qualified Clearing Agency were to cease to act on an intraday basis.<sup>5</sup> The Exchange therefore proposes that any Officer of the Exchange designated by the CRO may suspend the trading privileges on the Exchange of a Participant in the limited circumstance in which a Qualified Clearing Agency refuses to act to clear and settle the trades of that Participant. The proposal requires that the CRO approve this action within two (2) days. Any such suspensions of trading privileges would be otherwise governed by the provisions of Rule 2.

The Exchange also proposes to eliminate a reference to the Chief Executive Officer in Section (c) of Rule 2 and replace it with a reference to the CRO regarding appeals of suspensions under Rule 2. Before it was amended in 2006, emergency suspensions were authorized by the Chief Executive Officer.<sup>6</sup> The Exchange believes that the continued reference to the Chief Executive Officer in Rule 2(c) represents a simple oversight in the 2006 amendments and seeks to correct it as part of this proposal.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general,<sup>7</sup> and furthers the objectives of Section 6(b)(5) in particular,<sup>8</sup> in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transaction in securities, to remove impediments and perfect the mechanisms of a free and open market, and, in general, to protect investors and the public interest by allowing CHX to amend its rules to permit any Officer of the Exchange designated by the Chief Regulatory Officer to suspend the trading privileges of a Participant on the Exchange's facilities if a Qualified Clearing Agency refuses to act to clear and settle the trades of that Participant.

The Exchange believes that this measure serves the public interest by giving the CHX more flexibility to prevent the execution of trades on our facilities which could not ultimately be cleared and settled if the Qualified Clearing Agency refuses to act.

### *B. Self-Regulatory Organization's Statement of 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 Regarding the Proposed Rule Changes Received From Members, Participants, or Others*

No written comments were either solicited or received.

## III. Date of Effectiveness of the Proposed Rule Changes 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 self-regulatory organization consents, the Commission will:

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](mailto:rule-comments@sec.gov). Please include File Number SR-CHX-2011-34 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-CHX-2011-34. 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 the 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-CHX-2011-34 and should be submitted on or before January 25, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Elizabeth M Murphy,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66062; File No. SR-NYSEArca-2011-98]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Deleting NYSE Arca Equities Rule 7.31(w)(1) to Remove the PNP Plus Order Type

December 28, 2011.

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> notice is hereby given that, on December 21, 2011, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with

<sup>9</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>5</sup> Historically, NSCC has normally ceased to act for one of its Participants only after the close of trading. The Exchange understands, however, that NSCC reserves the right to act on an intraday basis if necessary and appropriate.

<sup>6</sup> See Securities Exchange Act Release No. 54437 (Sept. 13, 2006), 71 FR 55037 (Sept. 20, 2006) (SR-CHX-2005-06).

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

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

the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III 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.

### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to delete NYSE Arca Equities Rule 7.31(w)(1) to remove the PNP Plus Order type. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and [www.nyse.com](http://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 the Statutory Basis for, the Proposed Rule Change**

##### **1. Purpose**

The Exchange proposes to delete NYSE Arca Equities Rule 7.31(w)(1) to remove the PNP (Post No Preference) Plus order type.

By its terms, a PNP Order is a limit order to buy or sell that is to be executed in whole or in part on the Exchange, and the portion that is not executed is ranked on the Exchange's order book without routing any portion of the order to another market center.<sup>3</sup> Pursuant to NYSE Arca Equities Rule 7.31(w)(1), for any portion of a PNP Order designated as a PNP Plus Order that remains unexecuted and would otherwise lock or cross the best protected bid or offer ("PBBO"), Exchange systems would automatically re-price the PNP Plus Order to a penny better than the Best Protected Bid (for sell orders) or a penny lower than the Best Protected Offer (for buy orders). Exchange systems would continue to re-price a PNP Plus Order with each

change of the PBBO until such time that the PBBO has moved to a price where the original price of the PNP Plus Order would no longer result in a locked or crossed market, at which time the PNP Plus Order would revert to the original price of the order.

The Exchange proposes to delete Rule 7.31(w)(1) and all references to the PNP Plus Order type. The rule was adopted, in part, to provide ETP Holders with an additional processing capability for PNP Orders.<sup>4</sup> However, since it was adopted, the PNP Plus Order type has not been used by ETP Holders. In addition, the functionality associated with PNP Plus Orders causes system instability, and as a result, the system functionality has not been operable.

In reviewing this system functionality, the Exchange has also identified that the operation of the PNP Plus Order may conflict with the proposed Plan pursuant to Rule 608 of Regulation NMS to Address Extraordinary Market Volatility (the "Limit Up-Limit Down Plan" or "Plan"), which the equities exchanges and the Financial Industry Regulatory Authority, Inc., filed with the Securities and Exchange Commission in April 2011.<sup>5</sup> The Limit Up-Limit Down Plan is designed to prevent trades from occurring outside of specified price bands. The Exchange believes that if the best protected bid (offer) is below (above) the Lower (Upper) Price Band, as defined in the Plan, the automatic repricing of PNP Plus Orders may result in an offer (bid) being repriced either at the Lower (Upper) Price Band, potentially causing the market to enter a Limit State, as defined in the Plan, or below (above) the Lower (Upper) Price Band, in violation of the Plan. Accordingly, as part of the Exchange's system development efforts for the Limit Up-Limit Down Plan, the Exchange has determined to remove the PNP Plus Order functionality.

##### **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"),<sup>6</sup> 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 proposed rule change also is designed to support the principles of Section 11A(a)(1)<sup>7</sup> of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule change will perfect the mechanism of a free and open market because it removes an order type that is not used by ETP Holders and that causes system function instability. In addition, the Exchange believes it is appropriate and desirable to remove the PNP Plus Order type because it would further the Exchange's system development effort in support of the proposed Limit Up-Limit Down Plan. By eliminating this order type and the system functionality that supports it, the Exchange will be better positioned to meet the target implementation date for the Plan, and assure that the Exchange's systems will operate in a manner that effectively and efficiently implements the Limit Up-Limit-Down Rule. As such, this proposed rule change furthers the goal of a free and open market and national market system.

#### **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**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</sup> 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)

<sup>4</sup> See Securities Exchange Act Release No. 49942 (June 29, 2004), 69 FR 41005 (July 7, 2004) (SR-PCX-2004-12).

<sup>5</sup> See Securities Exchange Act Release No. 64547 (May 25, 2011), 76 FR 31647 (June 1, 2011) (File No. 4-631).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> 15 U.S.C. 78k-1(a)(1).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>3</sup> See NYSE Arca Equities Rule 7.31(w).

of the Act<sup>10</sup> and Rule 19b-4(f)(6)<sup>11</sup> thereunder.

At any time within 60 days of the filing of such 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2011-98 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-2011-98. 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 the 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-NYSEArca-2011-98 and should be submitted on or before January 25, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Elizabeth M. Murphy,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66063; File No. SR-DTC-2011-13]

### Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Revise Fees for Equity and Debt Derivatives

December 28, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on December 15, 2011, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II, which Items have been prepared primarily by DTC. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act and Rule 19b-4(f)(2) thereunder so that the proposed rule change was effective upon filing with the Commission.<sup>3</sup> 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 proposed rule change would revise fees for equity and debt derivatives.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.<sup>4</sup>

##### *(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

There are certain types of equity and debt derivatives, as they are classified at DTC, that represent debt of an issuer whose coupon and yield are derived from the performance of an underlying stock, basket of stock, commodity or other index. Due to the unique nature of equity and debt derivatives, as opposed to the typical common stock or corporate bond (which are considered "Basic" at DTC), DTC currently assesses Participants a "Complex Eligibility Fee" as part of the DTC eligibility process.<sup>5</sup> As more fully described below, the purpose of this rule change is to provide a reduction in the complex eligibility processing fee on equity and debt derivatives based on volume.

Recent demand has changed the dynamics of the market for equity and debt derivatives. The asset servicing set-up is becoming more standardized as issuers are limiting the corporate action variations in order to realize operational efficiencies through economies of scale. For example, some issuers are choosing two or three basic payment structures with similar call features for all the equity or debt derivatives they issue. The ability to issue these products under a "program-like" structure has created a variation of a debt and equity derivative that requires an eligibility review more similar to that of products currently considered "Basic" at DTC.

<sup>4</sup> The Commission has modified the text of the summaries prepared by DTC.

<sup>5</sup> DTC's eligibility process typically involves a legal review of registration exemptions and evaluation of asset servicing requirements that are not standardized.

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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.

<sup>12</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)(ii) and 17 CFR 240.19b-4(f)(2).