

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62006; File No. SR-NYSEArca-2010-36]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Arca, Inc. To Make a Technical Adjustment to Its Rules To Allow Sub-Penny Quoting of Certain Securities

April 29, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on April 23, 2010, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items 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.

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

The Exchange proposes to make a technical adjustment to its rules to allow sub-penny quoting of certain securities priced less than \$1.00. The text of the proposed rule change is available on the Exchange's Web site at <http://www.nyse.com>, at the Exchange's principal office, on the Commission's Web site at <http://www.sec.gov>, 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 Exchange proposes to make a technical adjustment its rules to allow sub-penny quoting of Investment Company Units, Portfolio Depositary Receipts, and Managed Fund Shares. Currently, NYSE Arca Equities Rule 5.2(j)(3) Commentaries .01(e) and .02(e), NYSE Arca Equities Rule 7.6 Commentary .03, Rule 8.100 Commentaries .01(e) and .02(e), and NYSE Arca Equities Rule 8.600 Commentary .03 restrict the minimum price variation for quoting and order entry to \$0.01. Consistent with Regulation NMS Rule 612, the Exchange proposes to remove these provisions to allow these securities to be quoted in a minimum pricing increment of \$0.0001 for securities priced less than \$1.00. The Exchange notes that it has not had any of the aforementioned securities quote below a dollar nor does it anticipate such an occurrence in the reasonably foreseeable future. The Exchange simply seeks to harmonize the minimum price variation in the aforementioned products with all other equity securities traded on the Exchange.

Moreover, the Exchange notes that this approach is substantially similar to BATS Rule 11.11 and Nasdaq Rule 4613(a)(1)(B).

##### 2. Statutory Basis

The proposed rule change is consistent with Section 6(b)<sup>3</sup> of the Securities Exchange Act of 1934 (the "Exchange Act"), in general, and furthers the objectives of Section 6(b)(5)<sup>4</sup> in particular in that it is 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 facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that the proposed amendment is consistent with the goal of removing impediments to a free and open market because the changes proposed herein will substantially harmonize NYSE Arca's sub-penny quoting policy with Rule 612 of Regulation NMS which allows a minimum pricing increment of \$0.0001 for securities priced less than \$1.00.

#### 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

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 for 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<sup>5</sup> and Rule 19b-4(f)(6) thereunder.<sup>6</sup>

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, because the proposal is consistent with Rule 612 of Regulation NMS and the rules of other self-regulatory organizations previously approved by the Commission.<sup>7</sup> For these reasons, the Commission designates the proposed rule change as operative upon filing.<sup>8</sup>

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

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>6</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) 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.

<sup>7</sup> See BATS Rule 11.11 and Nasdaq Rule 4613(a)(1)(B).

<sup>8</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<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. 78f(b).

<sup>4</sup> 15 U.S.C. 78f(b)(5).

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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2010-36 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-2010-36. 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 Web site viewing and printing in the Commission's Public Reference Room, 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-2010-36 and should be submitted on or before May 27, 2010.

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

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61997; File No. SR-FINRA-2010-017]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Allow FINRA Members To Use the OTC Reporting Facility To Transfer Transaction Fees Charged by One Member to Another Member

April 28, 2010.

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 April 12, 2010, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a "non-controversial" rule change under Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon receipt of this filing by the Commission. Additionally, FINRA has designated the proposed rule change as "establishing or changing a due, fee or other charge" under Section 19(b)(3)(A) of the Act<sup>5</sup> and Rule 19b-4(f)(2) thereunder,<sup>6</sup> which renders the proposal effective upon receipt of this filing by the Commission. 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

FINRA is proposing to (1) adopt FINRA Rule 7330(i) to permit FINRA members to use the OTC Reporting Facility (the "ORF") to transfer transaction fees charged by one member to another member on trades reported to

the ORF; and (2) amend FINRA Rule 7710 to establish the fee to be charged by the ORF for use of the transaction fee transfer service.

The text of the proposed rule change is available on FINRA's Web site at <http://www.finra.org>, on the Commission's Web site at <http://www.sec.gov>, at the principal office of FINRA 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, FINRA 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. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

###### 1. Purpose

###### *Background:*

Rule 7230A(h) permits FINRA members to agree in advance to transfer a transaction fee charged by one member to another member on a transaction in NMS stocks effected otherwise than on an exchange through the submission of a clearing report to the FINRA/Nasdaq Trade Reporting Facility ("FINRA/Nasdaq TRF"). Prior to the adoption of Rule 7230A(h) in 2007,<sup>7</sup> there was no mechanism for members to charge each other commissions or other explicit transaction fees through the FINRA trade reporting and clearance submission process. Generally, members wanting to charge other members an explicit transaction fee either billed and collected those fees directly from the other member outside the transaction reporting and clearing process or traded on a "net" basis.<sup>8</sup> Rule 7230A(h)

<sup>7</sup> See Securities Exchange Act Release No. 56007 (July 3, 2007), 72 FR 37807 (July 11, 2007) (Notice of Filing and Immediate Effectiveness of File No. SR-NASD-2007-046). SR-NASD-2007-046 proposed to adopt paragraph (h) of NASD Rule 6130. Pursuant to SR-FINRA-2008-021, NASD Rule 6130 was renumbered as FINRA Rule 7230A. See Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (Order Approving File No. SR-FINRA-2008-021).

<sup>8</sup> Trading on a "net basis" means that the broker-dealer's compensation is implicitly included in the execution price disseminated to the tape and reported for clearance and settlement to the

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

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

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>6</sup> 17 CFR 240.19b-4(f)(2).