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For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-12983 Filed 6-3-09; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60002; File No. SR-NYSEArca-2009-32]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving the Proposed Rule Change Implementing NYSE Arca Realtime Reference Prices Service on a Permanent Basis

May 29, 2009.

I. Introduction

On April 15, 2009, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") 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 establish the NYSE Arca Realtime Reference Prices service on a permanent basis and to establish a flat monthly fee for that service. The proposed rule change was published for comment in the **Federal Register** on April 24, 2009.³ The Commission received no comment letters on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to establish the NYSE Arca Realtime Reference Prices service on a permanent basis and to establish a flat monthly fee for that service. The Exchange currently provides this service pursuant to a pilot program.⁴ The service allows a vendor

to redistribute, on a real-time basis last sale prices of transactions that take place on the Exchange ("NYSE Arca Realtime Reference Prices"). The Exchange has found that the pilot program provides a low-cost service that makes real-time prices widely available to casual investors, provides vendors with a useful real-time substitute for delayed prices, and relieves vendors of administrative burdens. The product is intended to be used for reference purposes, rather than as a basis for making trading decisions.

The Service

The NYSE Arca Realtime Reference Prices service allows internet service providers, traditional market data vendors, and others (collectively, "NYSE Arca-Only Vendors") to make available NYSE Arca Realtime Reference Prices on a real-time basis.⁵ The NYSE Arca Realtime Reference Price information includes last sale prices for all securities that trade on the Exchange. The product includes only prices, and does not include the size of each trade or bid/asked quotations.

As with the pilot program, under the permanent service the Exchange will not permit NYSE Arca-Only Vendors to provide NYSE Arca Realtime Reference Prices in a context in which a trading or order-routing decision can be implemented unless the NYSE Arca-Only Vendor also provides consolidated displays of Network A last sale prices available in an equivalent manner, as required by Rule 603(c)(1) of Regulation NMS.

Also, as with the pilot program, the permanent service is intended to eliminate certain administrative burdens associated with the distribution of real-time CTA prices. Specifically, the permanent service would feature the same flat, fixed monthly vendor fee, no user-based fees, no vendor reporting requirements, and no professional or non-professional subscriber agreements.

The Fee

The Exchange proposes to retain the current \$30,000 monthly flat access fee for the NYSE Arca Realtime Reference Prices service. For that fee, the NYSE Arca-Only Vendor may provide unlimited NYSE Arca Realtime Reference Prices to an unlimited number of the NYSE Arca-Only Vendor's subscribers and customers. The pilot program does not impose any

device or end-user fee for the NYSE Arca-Only Vendors' distribution of NYSE Arca Realtime Reference Prices and the Exchange is not proposing to add any new fees for the permanent service.

As with the pilot program, the Exchange proposes to require the NYSE Arca-Only Vendor to identify the NYSE Arca trade price by placing the text "NYSE Arca Data" in close proximity to the display of each NYSE Arca Realtime Reference Price or series of NYSE Arca Realtime Reference Prices, or by complying with such other identification requirement as to which NYSE Arca may agree. The NYSE Arca-Only Vendor may make NYSE Arca Realtime Reference Prices available without having to differentiate between professional subscribers and nonprofessional subscribers, without having to account for the extent of access to the data, and without having to report the number of users.

Contracts

As with the pilot program, NYSE Arca proposes to allow NYSE Arca-Only Vendors to provide NYSE Arca Realtime Reference Prices without requiring the end-users to enter into contracts for the benefit of the Exchange. Instead, the Exchange proposes to require NYSE Arca-Only Vendors to provide a readily visible hyperlink that will send the end-user to a warning notice about the end-user's receipt and use of market data. The notice would be similar to the notice that vendors provide today when providing CTA delayed data services.

The Exchange will require NYSE Arca-Only Vendors to enter into the form of "vendor" agreement into which the CTA and CQ Plans require recipients of the Network A datafeeds to enter (the "Network A Vendor Form"). The Network A Vendor Form will authorize the NYSE-Arca Only Vendor to provide the NYSE Arca Realtime Reference Prices service to its subscribers and customers. The Exchange will supplement the Network A Vendor Form with an Exhibit C that will provide terms and conditions that are unique to the NYSE Arca Realtime Reference Prices service.

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

¹⁰ 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. 59790 (April 20, 2009), 74 FR 18758.

⁴ See Securities Exchange Act Release No. 58444 (August 29, 2008), 73 FR 51872 (September 5, 2008) (SR-NYSEArca-2008-96). The Commission has approved three extensions of the end date for the pilot program, which expires on June 30, 2009. See Securities Exchange Act Release Nos. 58895 (October 31, 2008), 73 FR 66956 (November 12, 2008) (SR-NYSEArca-2008-122); 59184 (December 30, 2008), 74 FR 755 (January 7, 2009) (SR-NYSEArca-2008-143); and 59662 (March 31, 2009),

74 FR 15571 (April 6, 2009) (SR-NYSEArca-2009-25).

⁵ The Exchange notes that it will make the NYSE Arca Realtime Reference Prices available to vendors no earlier than it makes those prices available to the processor under the CTA Plan.

exchange.⁶ In particular, it is consistent with Section 6(b)(4) of the Act,⁷ which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other parties using its facilities, and Section 6(b)(5) of the Act,⁸ which requires, among other things, that the rules of a national securities exchange be designed 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, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission also finds that the proposed rule change is consistent with the provisions of Section 6(b)(8) of the Act,⁹ which requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Finally, the Commission finds that the proposed rule change is consistent with Rule 603(a) of Regulation NMS,¹⁰ adopted under Section 11A(c)(1) of the Act, which requires an exclusive processor that distributes information with respect to quotations for or transactions in an NMS stock to do so on terms that are fair and reasonable and that are not unreasonably discriminatory.¹¹

This proposal would make permanent the NYSE Arca Realtime Reference Prices service and make permanent the \$30,000 flat monthly fee for that service.¹² The Commission has reviewed the proposal using the approach set forth in the NYSE Arca Order for non-core market data fees.¹³ There are a variety of alternative sources

of information that impose significant competitive pressures on NYSE Arca in setting the terms for distributing the NYSE Arca Realtime Reference Prices service. The Commission believes that the availability of those alternatives, as well as NYSE Arca's compelling need to attract order flow, imposed significant competitive pressure on NYSE Arca to act equitably, fairly, and reasonably in setting the terms of its proposal.

Because NYSE Arca was subject to significant competitive forces in setting the terms of the proposal, the Commission will approve the proposal in the absence of a substantial countervailing basis to find that its terms nevertheless fail to meet an applicable requirement of the Act or the rules thereunder. An analysis of the proposal does not provide such a basis.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁴ that the proposed rule change (SR–NYSEArca–2009–32), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–13039 Filed 6–3–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59987; File No. SR–FINRA–2009–016]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change as Amended, Relating to the Adoption of FINRA Rule 2080 (Obtaining an Order of Expungement of Customer Dispute Information From the Central Registration Depository (CRD System)), FINRA Rule 2310 (Direct Participation Programs), FINRA Rule 4551 (Requirements for Alternative Trading Systems to Record and Transmit Order and Execution Information for Security Futures) and FINRA Rule 2266 (SIPC Information) in the Consolidated FINRA Rulebook

May 27, 2009.

I. Introduction

On March 25, 2009, Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a National Association of Securities Dealers, Inc. (“NASD”))

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 (1) adopt NASD Rules 2130 (Obtaining an Order of Expungement of Customer Dispute Information from the Central Registration Depository (CRD System)), 2810 (Direct Participation Programs) and 3115 (Requirements for Alternative Trading Systems to Record and Transmit Order and Execution Information for Security Futures) as FINRA rules in the consolidated FINRA rulebook without material change; and (2) adopt NASD Rule 2342 (SIPC Information) in the consolidated FINRA rulebook without material change and to delete NYSE Rule 409A (SIPC Disclosures). The proposed rule change would renumber NASD Rule 2130 as FINRA Rule 2080, NASD Rule 2810 as FINRA Rule 2310, NASD Rule 3115 as FINRA Rule 4551 and NASD Rule 2342 as FINRA Rule 2266 in the consolidated FINRA rulebook. On April 14, 2009, FINRA filed Amendment No. 1 to the proposed Rule Change.³ The proposed rule change was published for comment in the **Federal Register** on April 15, 2009.⁴ The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change as amended.

II. Description of the Proposed Rule Change

FINRA is proposing to adopt NASD Rule 2130 without material change in the Consolidated FINRA Rulebook as FINRA Rule 2080. NASD Rule 2130 addresses the expungement of customer dispute information from the Central Registration Depository system.

FINRA is proposing to adopt NASD Rule 2810 without material change in the Consolidated FINRA Rulebook as FINRA Rule 2310. NASD Rule 2810 addresses underwriting terms and arrangements in public offerings of direct participation programs and unlisted real estate investment trusts.

FINRA is proposing to adopt NASD Rule 3115 without material change in the Consolidated FINRA Rulebook as FINRA Rule 4551. NASD Rule 3115 (Requirements for Alternative Trading Systems to Record and Transmit Order and Execution Information for Security Futures) requires alternative trading

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)(4).

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 17 CFR 242.603(a).

¹¹ NYSE Arca is an exclusive processor of the NYSE Arca Realtime Reference Prices service under Section 3(a)(22)(B) of the Act, 15 U.S.C. 78c(a)(22)(B), which defines an exclusive processor as, among other things, an exchange that distributes information with respect to quotations or transactions on an exclusive basis on its own behalf.

¹² See *supra* note 4.

¹³ See Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR–NYSEArca–2006–21) (“NYSE Arca Order”). In the NYSE Arca Order, the Commission describes the competitive factors that apply to non-core market data products. The Commission hereby incorporates by reference the data and analysis from the NYSE Arca Order into this order.

¹⁴ 15 U.S.C. 78s(b)(2).

¹⁵ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ Amendment No. 1 replaced and superseded the original filing.

⁴ See Securities Exchange Act Release No. 59771 (April 15, 2009), 74 FR 18411.