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. 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–NYSEMKT–2012–65 and should be submitted on or before December 28, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–29567 Filed 12–6–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68339; File No. SR–NYSEArca–2012–130]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Rule 6.62(cc) Making Available the Post No Preference Light Only Quotation to Options Classes Not Participating in the Penny Pilot

December 3, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that, on November 20, 2012, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") 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 self-regulatory organization. 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 amend NYSE Arca Rule 6.62(cc) to make available the Post No Preference Light Only Quotation ("PNPLO Quotation") to options classes not participating in the penny pilot ("non-Penny Pilot Issues"). The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 6.62(cc) to make available the Post No Preference Light Only Quotation ("PNPLO Quotation") to non-Penny Pilot Issues.

A PNPLO Quotation is an electronic Market Maker quotation that, upon initial entry into the NYSE Arca System, is only eligible to execute against displayed liquidity on the Consolidated Book.[3] A PNPLO Quotation is similar to the Post No Preference Light Order ("PNP-Light Order") under NYSE Arca Options Rule 6.62(v), which is a non-routable order type that is only eligible to execute against displayed liquidity. The PNPLO Quotation was recently approved by the Commission in June of 2012[4] and provides a useful tool for Market Markers to provide quotations in the market. Upon entry of a PNPLO Quotation, the NYSE Arca System automatically removes the pre-existing quotation(s) of a Market Maker, as it does upon the entry of any other quotation, regardless of the acceptance or rejection of the PNPLO Quotation by the NYSE Arca System.[5] The PNPLO Quotation also provides Market Makers with greater control over the circumstances in which their quotations interact with contra-side trading interest on the Exchange by preventing interaction with non-displayed liquidity. The increase in control afforded by the PNPLO Quotation is desirable from the perspective of Market Makers because it is difficult for them to account for non-displayed liquidity in their quoting models.

Currently, the PNPLO Quotation is only available for options classes participating in the Penny Pilot Program. Market Makers may only submit PNPLO Quotation orders for options classes in the Penny Pilot Program. The Exchange now proposes to allow the use of the PNPLO Quotation by Market Makers for quoting in non-Penny classes as well.

In the initial Notice, the Exchange stated that Market Makers on NYSE Arca in penny pilot issues receive post liquidity credits for electronic

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[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] *See* Exchange Rule 6.62(cc). In this regard, a PNPLO Quotation is similar to the Post No Preference Light Order ("PNP-Light Order") under NYSE Arca Options Rule 6.62(v), which is a non-routable order type that is only eligible to execute against displayed liquidity. A PNPLO Quotation that, upon entry, would execute exclusively against non-displayed liquidity on the Consolidated Book is immediately rejected by the NYSE Arca System. Additionally, a PNPLO Quotation that, upon entry, would execute against both displayed and non-displayed liquidity on the Consolidated Book immediately executes only against the displayed liquidity, but not against the non-displayed liquidity, and any remaining size of the PNPLO Quotation will be immediately rejected by the NYSE Arca System. Furthermore, a PNPLO Quotation that, upon entry, would execute exclusively against displayed liquidity on the Consolidated Book immediately executes against the displayed liquidity and any remaining size of the PNPLO Quotation is placed on the Consolidated Book and treated like a standard Market Maker quotation. Lastly, a PNPLO Quotation that would not execute against either displayed or non-displayed liquidity is placed in the Consolidated Book and treated as a standard Market Maker quotation.

[4] *See* Securities Exchange Act Release No. 67252 (June 25, 2012), 77 FR 38879 (June 29, 2012) (Order approving PNPLO Quotation) ("Order"). *See also* Securities Exchange Act Release No. 66937 (May 7, 2012), 77 FR 27820 (May 11, 2012) ("Notice").

[5] Accordingly, in the event that a PNPLO Quotation is rejected by the NYSE Arca System, the Market Maker is required to re-enter a quotation for purposes of satisfying any applicable quoting obligations under NYSE Arca Options Rule 6.37B. *See* Notice, 77 FR at 27821.

executions against their quotes that are resting in the Consolidated Book, and are charged take liquidity fees when their quotes execute against resting liquidity in the Consolidated Book.[6] The Exchange also stated that Market Makers consider these fees when calculating their quotes, and they may provide a wider quote than they otherwise would if they believe there is a chance that they would be charged a take liquidity fee for submitting a quote that executes against non-displayed liquidity (instead of receiving a post liquidity credit for executions against a resting quote).[7] The Exchange further stated that by eliminating the risk of incurring additional fees, the PNPLO Quotation may lead Markets Makers to provide narrower quotes on the Exchange, which in turn would benefit investors.[8]

On October 25, 2012, the Exchange filed for immediate effectiveness a proposed rule change to provide Post-Take pricing for electronic transactions in all non-Penny issues.[9] The Exchange believes that the same reasons in support of the PNPLO Quotation for Penny classes are now valid for non-Penny classes. The Exchange believes that with the new Post-Take pricing for electronic transactions in non-Penny classes, Market Makers in non-Penny classes would also benefit from the PNPLO Quotation functionality. Market Makers on the Exchange, whether they quote in Penny classes or non-Penny classes, will benefit from the functionality that the PNPLO Quotation provides. Market Markers in non-Penny classes would benefit from the ability upon entry of a PNPLO Quotation, the NYSE Arca System automatically removing the pre-existing quotation(s) of a Market Maker, as it does upon the entry of any other quotation, regardless of the acceptance or rejection of the PNPLO Quotation by the NYSE Arca System. Market Markers in non-Penny classes would also benefit from the greater control that the PNPLO Quotation provides over the circumstances in which their quotations interact with contra-side trading interest on the Exchange by preventing interaction with non-displayed liquidity. Market Markers in non-Penny classes would also benefit from the greater control afforded by the PNPLO Quotation because it is difficult for them to account for non-displayed liquidity in their quoting models.

[6] *See* Notice, 77 FR at 27821.

[7] *See id.*

[8] *See id.*

[9] *See* Securities Exchange Act Release No. 68179 (November 8, 2012), 77 FR 68163 (November 15, 2012) (SR–NYSEArca–2012–121).

The Exchange sees no reason to continue to treat equally positioned Market Makers differently by making the PNPLO Quotation functionality available based on whether they are quoting in Penny classes versus non-Penny classes. The Exchange notes that all market participants, including Market Makers, already have the ability to avoid trading with non-displayed liquidity by entering PNP-Light Orders, which have existed on the Exchange since 2009.[10] PNP-Light Order is available equally to all participants whether they chose to trade in Penny or non-Penny classes. The Exchange also notes that market participants that enter non-displayed liquidity (*i.e.,* orders with reserve size) are choosing not to have the full size of their trading interest displayed, which is in contrast to the Commission's encouragement of a market structure in which trading interest is displayed,[11] and accordingly do not receive all of the benefits with respect to that non-displayed liquidity that are afforded to displayed liquidity.[12]

The Exchange notes that the Commission also has found that the current Rule was not unfairly discriminatory.[13] The Exchange believes that the proposal only makes the functionality even less discriminatory by allowing equally positioned Market Makers to be offered the same functionality.

[10] The Exchange notes that it adopted the PNP-Light Order type pursuant to Section 19(b)(3)(A) of the Exchange Act, and that the rule filing adopting that order type was not abrogated. *See* Securities Exchange Act Release 59603 (March 19, 2009), 74 FR 13279 (March 26, 2009) (SR–NYSEArca–2009–21) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Arca, Inc.) Amending Rule 6.62 to Provide Additional Order Types).

[11] *See, e.g.,* Securities Exchange Act Release No. 60684 (September 18, 2009), 74 FR 48632, 48636 (September 23, 2011) [sic] (File No. S7–21–09) (Proposed Elimination of Flash Order Exception from Rule 602 of Regulation NMS) (''The Commission long has emphasized the need to encourage displayed liquidity in the form of publicly displayed limit orders.'').

[12] In this regard, the Exchange notes that non-displayed liquidity is not afforded trade-through protection under Section 5 of the Options Order Protection and Locked/Crossed Market Plan. *See, e.g.,* Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009) (File No. 4–546).

[13] *See* Order, 77 FR at 38880. Specifically, the Commission stated that 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. 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.''

The Exchange will announce the implementation date of the proposed rule change in a Trader Update to be published no later than 90 days following the date of filing. The implementation date will be no later than 90 days following publication of the Trader Update announcing the date of filing.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) [14] of the Act, in general, and furthers the objectives of Section 6(b)(5),[15] 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, 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.

Like the existing Price Improving Quote and the existing PNPLO Quotation for Penny classes, the proposed PNPLO Quotation would provide a Market Maker with the ability to control its interactions with contra-side liquidity.[16] Specifically, upon initial entry, a PNPLO Quotation would not be eligible to interact with non-displayed liquidity. In this regard, the Exchange understands that a Market Maker's quoting algorithm can take into account existing liquidity in the marketplace, but may not be able to accurately account for the risk of interacting with non-displayed liquidity. As noted, Market Makers on NYSE Arca in Penny Pilot issues receive post liquidity credits for electronic executions against their quotes that are resting in the Consolidated Book, and are charged take liquidity fees when their quotes execute against resting liquidity in the Consolidated Book. Market Makers consider these fees when calculating their quotes, and they may provide a wider quote than they otherwise would if they believe there is a chance that they would be charged a take liquidity fee for submitting a quote that executes against non-displayed liquidity (instead of receiving a post liquidity credit for executions against a resting quote). As noted, the PNP-Light Order is available equally to all participants whether they chose to trade

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] *See supra* note 4.

in Penny or non-Penny classes. Accordingly, the proposal would permit Market Makers to eliminate from their quoting decisions the risk of incurring interaction with non-displayed liquidity, and therefore may result in narrower quote widths, which would increase the quality of the Exchange's market and thereby benefit investors.

The Exchange believes that allowing Market Makers to use the PNPLO Quotation for non-Penny classes is just, equitable and not unfairly discriminatory. For example, the PNPLO Quotation treats all similarly situated market participants the same in that it would be available for use by all Market Makers on the Exchange. Moreover, the Exchange notes that all market participants, including Market Makers, already have the ability to avoid trading with non-displayed liquidity by entering PNP-Light Orders, which have existed on the Exchange since 2009.[17] The Exchange also notes that market participants that enter non-displayed liquidity (*i.e.,* orders with reserve size) are choosing not to have the full size of their trading interest displayed, which is in contrast to the Commission's encouragement of a market structure in which trading interest is displayed,[18] and accordingly do not receive all of the benefits with respect to that non-displayed liquidity that are afforded to displayed liquidity.[19] The Exchange notes that the Commission also has found that the current Rule was not unfairly discriminatory.[20] The Exchange believes that the proposal only makes the functionality even less discriminatory by allowing equally positioned Market Makers to be offered the same functionality. For the forgoing reasons, the Exchange believes that the proposal is not unfairly discriminatory.

Overall, the Exchange believes that the proposal protects investors and the public interest because it may contribute to more aggressive quoting by Market Makers and may lead to more displayed liquidity on the Exchange, which, in turn, should increase the quality of the Exchange's market and benefit investors.

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 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) of the Act[21] and Rule 19b–4(f)(6)(iii) thereunder.[22] 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.

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–NYSEArca–2012–130 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–2012–130. 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. 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–2012–130 and should be submitted on or before December 28, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–29566 Filed 12–6–12; 8:45 am]

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[17] The Exchange notes that it adopted the PNP-Light Order type pursuant to Section 19(b)(3)(A) of the Exchange Act, and that the rule filing adopting that order type was not abrogated. *See* Securities Exchange Act Release 59603 (March 19, 2009), 74 FR 13279 (March 26, 2009) (SR–NYSEArca–2009–21) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Arca, Inc. Amending Rule 6.62 to Provide Additional Order Types).

[18] *See, e.g.,* Securities Exchange Act Release No. 60684 (September 18, 2009), 74 FR 48632, 48636 (September 23, 2011) [sic] (File No. S7–21–09) (Proposed Elimination of Flash Order Exception from Rule 602 of Regulation NMS) (''The Commission long has emphasized the need to encourage displayed liquidity in the form of publicly displayed limit orders.'').

[19] In this regard, the Exchange notes that non-displayed liquidity is not afforded trade-through protection under Section 5 of the Options Order Protection and Locked/Crossed Market Plan. *See, e.g.,* Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009) (File No. 4–546).

[20] *See* Order, 77 FR at 38880.

[21] 15 U.S.C. 78s(b)(3)(A).

[22] 17 CFR 240.19b–4(f)(6)(iii). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the 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.

[23] 17 CFR 200.30–3(a)(12).