

*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-NSX-2013-09. 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 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 publicly available. All submissions should refer to File Number SR-NSX-2013-09 and should be submitted on or before April 4, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>35</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69080; File No. SR-NYSEArca-2013-21]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rules Governing Order Format and System Entry Requirements

March 8, 2013.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on March 5, 2013, 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, II, and III 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend rules governing Order Format and System Entry Requirements. The text of the proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://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 Exchange Rule 6.67(c) by revising the

requirements for entering an order into the Electronic Order Capture System ("EOC"). In addition, the Exchange proposes to delete all references pertaining to the Electronic Tablet, a decommissioned Exchange order entry mechanism.

###### Order Format and System Entry Requirements

EOC is the Exchange's floor-based electronic audit trail and order tracking system that provides an accurate time-sequenced record of all orders and transactions entered and executed on the floor of the Exchange. EOC records the receipt of an order and documents the life of the order through the process of execution, partial execution, or cancellation. This system includes the electronic communications interface between booth terminals and the Floor Broker work stations and hand held applications. The EOC was developed by the Exchange to fulfill one of the undertakings contained in the Commission's Order Instituting Public Administrative Proceedings Pursuant to Sections 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions ("Order").<sup>4</sup> Specifically, the EOC is intended to respond to Section IV.B.e.(v) of the Order, which requires, among other things, that the Exchange incorporate into its audit trail all non-electronic orders such that the audit trail provides an accurate, time-sequenced record of electronic and other orders, quotations and transactions, beginning with the receipt of the order and documenting the life of the order through the process of execution, partial execution, or cancellation.

In order to comply with the terms of Rule 6.67(c)(1), and thus be in compliance with the Order, Floor Brokers and employees of floor brokerage firms (collectively "Floor Brokers") upon receiving an order for execution on the Exchange must immediately, prior to representation in the trading crowd, record the details of the order into EOC. This process, commonly referred to the "systemization" of an order, creates an accurate time-sequenced record of orders on the Exchange.

The Exchange has prescribed certain data elements that must be entered into the EOC before an order may be represented in the Trading Crowd. These data elements, as contained in Rule 6.68—Record of Orders, include:

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> See Securities Exchange Act Release No. 43268 (September 11, 2000) and Administrative Proceeding File No. 3-10282.

<sup>35</sup> 17 CFR 200.30-3(a)(12).

(1) CMTA Information and the name of the clearing OTP Holder or Firm;<sup>5</sup> (2) options symbol, expiration month, exercise price and type of options; (3) side of the market and order type;<sup>6</sup> (4) quantity of options; (5) limit or stop price or special conditions; (6) opening or closing transaction; (7) time in force; (8) account origin code;<sup>7</sup> and (9) whether the order was solicited or unsolicited. The Exchange may, from time to time, also require additional information if needed. The remaining data elements prescribed in Rule 6.68 are to be recorded as the events occur and/or during trade reporting procedures.

The Exchange now proposes to incorporate into the text of Rule 6.67(c) specific data elements required for the proper systemization of an order. The Exchange proposes that in order to meet the requirements for the proper systemization of an order Floor Brokers will be required to enter into the EOC: (i) The option symbol; (ii) the expiration date of the option;<sup>8</sup> (iii) the exercise price; (iv) buy or sell with applicable limit or stop price or special instructions; (v) call or put; (vi) the quantity of contracts; (vii) the name of the clearing OTP Holder or OTP Firm; and (viii) such other information as may be required by the Exchange from time to time. Any additional information with respect to the order including those data elements that [sic] found in Rule 6.68 that pursuant to this proposal will no longer be required at the time of systemization, shall be recorded contemporaneously upon receipt which may occur after the representation and execution of the order. The proposed order entry requirements for the EOC are consistent with the order format requirements of Rule 6.67(b). Thus, adopting the order format requirements of Rule 6.67(b) for the EOC and incorporating them into Rule 6.67(c) will serve to align Exchange Rules on order entry requirements. In addition, the Exchange notes that the proposed order entry requirements necessary for the systemization of an order for the EOC are substantially similar to those prescribed by the Chicago Board

Options Exchange ("CBOE") pursuant to CBOE Rule 6.24(a)(2).<sup>9</sup>

Pursuant to the proposed rule change, Floor Brokers will be required to enter much of the same information when systematizing an order as is presently required, with the exception of the Clearing Member Trade Agreement ("CMTA")<sup>10</sup> information, opening/closing designation, the order type or account origin code, the time in force, and whether the order was solicited or unsolicited. Floor Brokers have told the Exchange that generally these are the last bits of information given to them when receiving an order and that waiting to receive this information and enter it into EOC can delay the representation and execution of an order. In today's trading environment of rapidly moving markets and the need to execute an order and hedge a trade in real or near real time, even a slight delay can prove to be detrimental to the handling of an order. Because the CMTA information, the opening/closing designation, the account origin code, the time if force and whether an order was solicited or unsolicited are not contractual terms of a trade itself nor are they required data elements pursuant to the Exchange's order format requirements, the Exchange does not believe this information needs to be entered into the EOC prior to an order being represented in the Trading Crowd, but may be entered contemporaneously upon the receipt of such information, even if that occurs after the order had been represented and executed in the Trading Crowd.

The Exchange notes that proposed rule changes contained in this filing relate only to the system entry requirements for floor based orders and do not amend or revise rules governing the record of orders (Rule 6.68). Floor Brokers must continue to maintain proper order records, including any order information that is presently required for the proper systemization of an order that will no longer be required for that purpose pursuant to this proposal. In addition, the Exchange notes that this proposal does not amend or revise rules governing trade reporting duties (Rule 6.69).

#### The Electronic Tablet

The Electronic Tablet was an order entry system which would record orders in a hand written format that in turn

could be transmitted to a Floor Broker's EOC workstation for representation in the Trading Crowd. The Electronic Tablet provided an alternative to the order entry functionality of the EOC while providing for an accurate time-sequenced record of orders on the Exchange. Floor Brokers could hand write order information into the Electronic Tablet upon receipt of an order, route the order to EOC and then manually key into EOC additional order and transaction information for reporting and clearing purposes.

The Electronic Tablet was designed to expedite the entry of orders into EOC. Due to ongoing enhancements to the functionality of the EOC system since its introduction, the Electronic Tablet was used increasingly less often and eventually became obsolete. The Electronic Tablet was fully decommissioned by the Exchange in 2009. Because Floor Brokers may satisfy all order entry requirements by entering an order directly into EOC, the Exchange has no plans to utilize the Electronic Tablet functionality going forward. Accordingly, the Exchange proposes to delete references to the Electronic Tablet found in its Rules.

#### 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),<sup>11</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>12</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 proposed changes to order entry requirements for the EOC is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities by ensuring that the terms of an order continue to be properly systematized prior to the order being represented in the Trading Crowd. The Exchange notes that changes are consistent with the order systemization requirements in the Order which requires, among other things, that the Exchange incorporate into its audit trail all non-electronic orders such that the audit trail provides an accurate, time-sequenced record of electronic and other orders, quotations

<sup>5</sup> The CMTA process allows an OTP Holder to enter trade that is subsequently settled into the account of a different Broker Dealer at the Options Clearing Corporation.

<sup>6</sup> Order type is also referred to as the origin code (i.e. Customer, Firm or Market Maker).

<sup>7</sup> *Supra* see note 6.

<sup>8</sup> In order to accommodate Quarterly Options Series and Short Term Option Series, the Exchange proposes to require the actual expiration date of an option, and not just the expiration month, as presently required.

<sup>9</sup> See CBOE Rule 6.24(a)(2). See also Securities Exchange Act Release No. 50996 (January 7, 2005), 70 FR 2436 (Jan 13, 2005) (SR-CBOE-2004-77).

<sup>10</sup> The CMTA process allows an OTP Holder or OTP Firm to execute a trade that is subsequently settled into the account of a different broker dealer by the Options Clearing Corporation.

<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

and transactions, beginning with the receipt of the order and documenting the life of the order through the process of execution, partial execution, or cancellation. The Exchange believes that aligning the order entry requirements for the EOC with the Exchange's order format requirements will further promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities on the Exchange. Reducing the burden on Floor Brokers to enter order information prior to representation will promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market by reducing the delay in representation and execution of an order on the Exchange. The proposal is also designed to prevent fraudulent and manipulative acts and practices, by ensuring that the Exchange is able to meet its obligation to create and maintain a time-sequenced record of orders, quotations and transactions on the Exchange. In addition, the deletion of rule references pertaining to a decommissioned order entry system will help protect investors and the public interest by reducing potential confusion that may result from having obsolete or out-dated rules in the Exchange's rulebook. Furthermore, the proposal removes impediments to and perfects the mechanism of a free and open market and a national market system by allowing for more timely executions of open-outcry orders.

#### *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. The proposed rule change is designed to enable NYSE Arca to align the order format requirements of the Exchange with those of a competing options exchange. The proposal would allow Floor Brokers on the Exchange to be afforded the ability to transact business under the similar requirements as brokers on a competing exchange. The Exchange believes that the proposal will reduce the burden on Floor Brokers by coordinating different order entry requirements on different exchanges. By reducing Floor Brokers burden on order entry compliance, the Exchange believes the proposal will improve the competitiveness of Exchange Floor Brokers and also promote competition for orderflow among market participants and the options exchanges.

#### *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>13</sup> and Rule 19b-4(f)(6) thereunder.<sup>14</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) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>15</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>16</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

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 under Section 19(b)(2)(B)<sup>17</sup> of the Act to determine whether the proposed rule change 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:

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

<sup>16</sup> 17 CFR 240.19b-4(f)(6)(iii).

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

#### *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-2013-21 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.

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