

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-55142; File No. SR-NYSEArca-2006-54)

January 19, 2007

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change as Modified by Amendments 1 and 2 Thereto Relating to Arbitration

Pursuant to Section 19(b)(4) 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 September 5, 2006, the NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“Commission” or “SEC”) the proposed rule as described in Items I, II and III below, which Items have been prepared by NYSE Arca. On December 21, 2006, NYSE Arca amended the proposed rule change (“Amendment 1”).<sup>3</sup> NYSE Arca further amended the proposed rule change on January 5, 2007 (“Amendment 2”).<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to approve the proposal on an accelerated basis.

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

The Exchange proposes, through its subsidiary, NYSE Arca Equities, Inc. (“NYSE Arca Equities” or “Corporation”), to amend NYSE Arca Equities Rule 12 to permit the arbitration rules of New York Stock Exchange, L.L.C. (NYSE Arbitration Rules) to govern

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Amendment 1 provided that the NYSE Arbitration Rules would apply to all arbitrations filed with NYSE Arca Equities, Inc. after December 31, 2006, as well as made minor stylistic changes to the proposed rule change.

<sup>4</sup> Amendment 2 provided that the NYSE Arbitration Rules would apply to all arbitrations filed with NYSE Arca Equities, Inc. after January 31, 2007.

arbitrations filed with the Corporation. The text of the proposed rule change and all subsequent amendments are available on the Exchange's Web site ([www.nysearca.com](http://www.nysearca.com)), at the Exchange's principal office, 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, NYSE Arca included statements concerning the purpose of and basis for the proposed rule and discussed any comments it received on the proposed rule. The text of these statements may be examined at the places specified in Item IV below. NYSE Arca 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

The purpose of this proposed rule change is to amend NYSE Arca Equities Rule 12 to permit all arbitrations filed with NYSE Arca Equities after January 31, 2007, other than those arbitrations proposed to be specifically excepted in the rule, to be governed by the NYSE Arbitration Rules. In general, Rule 12, as proposed to be amended, would provide that any dispute, claim or controversy arising out of or in connection with the business of any Equity Permit Holder ("ETP Holder") or arising out of the employment or termination of employment of associated person(s) with any ETP Holder may be arbitrated under Rule 12 as proposed to be amended. The rule, however, would except: (1) a dispute, claim, or controversy alleging employment discrimination (including a sexual harassment claim) in violation of a statute unless the parties have agreed to arbitrate it after the dispute arose;

and (2) any type of dispute, claim, or controversy that is not permitted to be arbitrated under the NYSE Arbitration Rules, such as class action claims.

In addition, the requirements of the NYSE Arbitration Rules referenced in proposed Rule 12 would apply to predispute arbitration agreements between NYSE Arca Equities ETP Holders and/or associated persons and their customers. Proposed Rule 12 would also provide that if any matter comes to the attention of an arbitrator during and in connection with the arbitrator's participation in a proceeding, either from the record of the proceeding or from material or communications related to the proceeding, that the arbitrator has reason to believe may constitute a violation of the Corporation's rules or the federal securities law, the arbitrator may refer the matter to NYSE Regulation, Inc. for disciplinary investigation. Proposed Rule 12 would also provide that any ETP Holder or associated person who fails to honor an award of arbitrators appointed in accordance with proposed Rule 12 will be subject to disciplinary proceedings in accordance with NYSE Arca Equities Rule 10.

Finally, proposed Rule 12 would provide that the submission of any matter to arbitration would in no way limit or preclude any right, action or determination by the Corporation that it would otherwise be authorized to adopt, administer or enforce.

## 2. Statutory Basis

The Exchange states that the proposed change is consistent with Section 6(b)(5) of the Act<sup>5</sup> in that it promotes just and equitable principles of trade by ensuring that members

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

and member organizations and the public have a fair and impartial forum for the resolution of their disputes.

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

Written comments on the proposed rule change were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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 No. SR-NYSEArca-2006-54 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File No. SR-NYSEArca-2006-54. 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 inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549-1090. Copies of such filing also will be available for inspection and copying at the principal offices of NYSE Arca. 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 No. SR-NYSEArca-2006-54 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

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 exchange.<sup>6</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>7</sup> in that it promotes just and equitable principles of trade by ensuring that members and member organizations and the public have a fair and impartial forum for the resolution of their disputes.

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<sup>6</sup> In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

The Commission also believes that the proposed rule change raises no issues that have not been previously considered by the Commission. The proposed rule change will merely amend NYSE Arca Equities Rule 12 to permit the NYSE Arbitration Rules to govern the NYSE Arca Equities' arbitrations, except as specified in amended Rule 12. The NYSE Arbitration Rules have previously been approved by the Commission.<sup>8</sup>

After careful consideration, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> for approving the proposed rule change prior to the thirtieth day after the date of publication of notice in the Federal Register. Granting accelerated approval will help to expedite the integration of NYSE and NYSE Arca and remove uncertainty that could arise through the application of multiple sets of rules governing arbitrations with the NYSE forum. Accordingly, the Commission believes that there is good cause, consistent with Section 6(b)(5) of the Act,<sup>10</sup> to approve the proposal on an accelerated basis.

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<sup>8</sup> See 600 Series of the NYSE Rules.

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (SR-NYSEArca-2006-54), as amended by Amendments 1 and 2, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>11</sup> 15 U.S.C. 78s(b)(2).

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