

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-55846; File No. SR-NYSEArca-2007-48; SR-NYSEArca-2007-49)

June 1, 2007

Self-Regulatory Organizations; NYSE Arca, Inc. and NYSE Arca Equities, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Changes Relating to an Increase in the Frequency of the Short Interest Reporting Requirements for Equity Trading Permit Holders and Options Trading Permit Holders

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 May 24, 2007, NYSE Arca, Inc. (“Exchange” or “NYSE Arca”), by itself and through its wholly owned subsidiary NYSE Arca Equities, Inc. (“NYSE Arca Equities”), filed with the Securities and Exchange Commission (“Commission”) the proposed rule changes as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Exchange filed the proposals as “non-controversial” rule changes under Rule 19b-4(f)(6) under the Act,<sup>3</sup> which rendered the proposals effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Changes

A. NYSE Arca Equities Rule 4.5(e)

The Exchange proposes to amend NYSE Arca Equities Rule 4.5(e) to reflect the Commission’s adoption of Regulation SHO.<sup>4</sup> By this filing, the Exchange also shall clarify the

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

<sup>4</sup> See Securities Exchange Act Release No. 34-50103 (July 28, 2004), 69 FR 48008 (August 6, 2004). See also 17 CFR 240.200 et seq.

short interest reporting requirements of Equity Trading Permit (“ETP”) Holders<sup>5</sup> as prescribed by Rule 4.5(e). While the changes to the reporting requirements of ETP Holders pursuant to this proposal will be effective upon filing, the changes will become operative in September 2007, consistent with the requirements of other representative organizations of the Intermarket Surveillance Group (“ISG”).<sup>6</sup> The text of the proposed rule change is available at the Exchange, at the Commission’s Public Reference Room, and at [www.nyse.com](http://www.nyse.com).

B. NYSE Arca Rule 4.5(f)

The Exchange also proposes to amend NYSE Arca Rule 4.5(f) to reflect the Commission’s adoption of Regulation SHO.<sup>7</sup> By this filing, the Exchange also shall clarify the short interest reporting requirements of Options Trading Permit (“OTP”) Holders<sup>8</sup> and OTP Firms.<sup>9</sup> While the changes to the reporting requirements of OTP Holders and OTP Firms pursuant to this proposal will be effective upon filing, the changes will become operative in September 2007, consistent with the requirements of other representative organizations of the ISG.<sup>10</sup> The text of the proposed rule change is available at the Exchange, at the Commission’s Public Reference Room, and at [www.nyse.com](http://www.nyse.com).

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<sup>5</sup> See NYSE Arca Equities Rule 1.1(n).

<sup>6</sup> See ISG Notice to Members 2007-01 (March 15, 2007), and American Stock Exchange Notice REG 2007-19 (March 16, 2007).

<sup>7</sup> See Securities Exchange Act Release No. 34-50103 (July 28, 2004), 69 FR 48008 (August 6, 2004). See also 17 CFR 240.200 et seq.

<sup>8</sup> See NYSE Arca Rule 1.1(q).

<sup>9</sup> See NYSE Arca Rule 1.1(r).

<sup>10</sup> See ISG Notice to Members 2007-01 (March 15, 2007), and American Stock Exchange Notice REG 2007-19 (March 16, 2007).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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 Changes

1. Purpose

a. NYSE Arca Equities Rule 4.5(e)

The Exchange proposes to make certain minor technical amendments to NYSE Arca Equities Rule 4.5(e), Periodic Reports, as such rule makes references to rules under the Act that are no longer in effect. Specifically, Rule 4.5(e) makes reference to “short” sales, as defined by Rule 3b-3 under the Act.<sup>11</sup> In light of the adoption of Regulation SHO, the Exchange shall make the appropriate change to its rule text to remove references to Rule 3b-3 under the Act and correctly identify Rule 200(a) under the Act<sup>12</sup> where such definition of short sales may be found. Further, Rule 4.5(e) exempts ETP Holders from reporting short positions if such a position resulted from a sale specified in clause (9) of paragraph (e) of Rule 10a-1 under the Act. Since clause (9) has been removed from Rule 10a-1(e) under the Act, the exemption to ETP Holders is no longer applicable, and shall be removed as a reference with NYSE Arca Equities Rule 4.5(e).

Additionally, the Exchange proposes to increase the frequency of periodic reports that ETP Holders must submit to the Exchange concerning short positions in securities, as prescribed

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<sup>11</sup> See 17 CFR 240.3b-3.

<sup>12</sup> See 17 CFR 240.200(a).

by NYSE Arca Equities Rule 4.5(e), from monthly to twice per month. This increase in the frequency of such reports is consistent with similar changes recently approved by the Commission for the National Association of Securities Dealers, Inc. (“NASD”), the New York Stock Exchange LLC (“NYSE”), and the American Stock Exchange LLC (“Amex”).<sup>13</sup>

The Exchange shall implement the new periodic reporting requirements for short positions of ETP Holders in September 2007 to be consistent with the increased reporting requirements of other self-regulatory organizations.<sup>14</sup>

b. NYSE Arca Rule 4.5(f)

The Exchange proposes to make certain minor technical amendments to NYSE Arca Rule 4.5(f), Periodic Reports, as such rule makes references to rules under the Act that are no longer in effect. Specifically, Rule 4.5(f) makes reference to “short” sales, as defined by Rule 3b-3 under the Act.<sup>15</sup> In light of the adoption of Regulation SHO by the Commission, the Exchange shall make the appropriate change to its rule text to remove references to Rule 3b-3 under the Act and correctly identify Rule 200(a) under the Act<sup>16</sup> where such definition of short sales may be found. Further, Rule 4.5(f) exempts OTP Holders and OTP Firms from reporting short positions if such a position resulted from a sale specified in clause (9) of paragraph (e) of Rule 10a-1 under the Act. Since clause (9) has been removed from Rule 10a-1(e) under the Act, the exemption to OTP Holders and OTP Firms is no longer applicable, and shall be removed as a reference with NYSE Arca Rule 4.5(f).

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<sup>13</sup> See Securities Exchange Act Release No. 34-55406 (March 6, 2007), 72 FR 11071 (March 12, 2007) (SR-NASD-2006-131; SR-NYSE-2006-111; SR-Amex-2007-05).

<sup>14</sup> See supra note 6.

<sup>15</sup> See 17 CFR 240.3b-3.

<sup>16</sup> See 17 CFR 240.200(a).

Additionally, the Exchange proposes to increase the frequency of periodic reports that OTP Holders and OTP Firms must submit to the Exchange concerning short positions in securities, as prescribed by NYSE Arca Rule 4.5(f), from monthly to twice per month. This increase in the frequency of such reports is consistent with similar changes recently approved by the Commission for the NASD, NYSE, and the Amex.<sup>17</sup>

The Exchange shall implement the new periodic reporting requirements for short positions of OTP Holders and OTP Firms in September 2007 to be consistent with the increased reporting requirements of other self-regulatory organizations.<sup>18</sup>

## 2. Statutory Basis

The Exchange believes the proposed rule changes are consistent with Section 6(b) of the Act<sup>19</sup> in general and further the objectives of Section 6(b)(5)<sup>20</sup> in particular in that they are 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.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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<sup>17</sup> See Securities Exchange Act Release No. 34-55406 (March 6, 2007), 72 FR 11071 (March 12, 2007) (SR-NASD-2006-131; SR-NYSE-2006-111; SR-Amex-2007-05).

<sup>18</sup> See supra note 10.

<sup>19</sup> 15 U.S.C. 78f(b).

<sup>20</sup> 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received from Members, Participants or Others

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

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Because the foregoing proposed rule changes do not (i) significantly affect the protection of investors or the public interest, (ii) impose any significant burden on competition, or (iii) become operative within 30 days after the date of the filing, they have become effective upon filing pursuant to Section 19(b)(3)(A) of the Act<sup>21</sup> and Rule 19b-4(f)(6)<sup>22</sup> thereunder.

At any time within 60 days of the filing of the proposed rule changes, the Commission may summarily abrogate such rule changes 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.<sup>23</sup>

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule changes are 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 No. SR-NYSEArca-2007-48 or SR-NYSEArca-2007-49 on the subject line.

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<sup>21</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>22</sup> 17 CFR 19b-4(f)(6).

<sup>23</sup> See 15 U.S.C. 78s(b)(3)(C).

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-2007-48 or SR-NYSEArca-2007-49.

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 website

(<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all

written statements with respect to the proposed rule changes that are filed with the Commission,

and all written communications relating to the proposed rule changes 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. Copies of such filing also will be available for inspection and copying

at the principal offices 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 No. SR-NYSEArca-2007-48 or SR-NYSEArca-2007-49 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>24</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>24</sup> 17 CFR 200.30-3(a)(12).