

12 as it was in effect on or prior to January 31, 2007; and (iii) from and after the Effective Date, disputes between NYSE Arca Equity Trading Permit ("ETP") holders, associated persons, and/or their customers will be arbitrated under the NASD DR Codes of Arbitration Procedure.

Arca Equities Rule 12(a) will provide detailed guidance concerning claims involving ETP Holders and/or associated persons that are asserted on and after the Effective Date. First, any dispute, claim or controversy between or among ETP Holders and/or associated persons shall be arbitrated pursuant to the NASD DR Codes of Arbitration Procedure. Second, any dispute, claim or controversy between a customer or a non-member and an ETP Holder and/or associated person arising in connection with the business of such ETP Holder and/or in connection with the activities of an associated person, shall be arbitrated pursuant to NASD DR Codes of Arbitration Procedure as provided by any duly executed and enforceable written agreement, or upon the demand of the customer or non-member. This obligation to arbitrate shall extend only to those matters that are permitted to be arbitrated under NASD DR Codes of Arbitration Procedure.

Rule 12(b) will explicitly retain NYSE Arca Equities' enforcement authority related to arbitration. Rule 12(c) also will provide that any ETP Holder and/or associated person, that fails to honor an award of arbitrators rendered under the NASD DR Codes of Arbitration Procedure, or under the auspices of any other self-regulatory organization, shall be subject to disciplinary proceedings in accordance with NYSE Arca Equities Rule 10. Rule 12(d) also will specify that the submission of any matter to arbitration as provided for under the Rule shall in no way limit or preclude any right, action or determination by NYSE Arca Equities that it would otherwise be authorized to adopt, administer or enforce.

### III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of Section 6(b)(5)<sup>9</sup> of the Act, which requires, among other things, that the rules of an Exchange be designed to promote just and equitable principles of trade and to protect investors and the public interest. The Commission believes that the proposed rule change will streamline the arbitration process and, after a

transitional period, provide for a unified and more efficient arbitration forum with one set of arbitration rules and administrative procedures. This will allow resources to be devoted to maintaining and improving the NASD DR program, rather than splitting resources among duplicative programs. The Commission also believes the proposed rule change will provide for a clear and orderly transition. As a result, the proposed rule change will better protect investors and the public interest.<sup>10</sup>

The Commission finds good cause to approve the proposed rule change, as amended, prior to the thirtieth day after the proposal was published for comment in the **Federal Register**. This approval allows the proposed rule change to take effect without delay. Because the proposed rule change will provide for a clear and orderly transition from NYSE Arca Equities arbitration to NASD DR, accelerated approval is necessary to provide clarity to investors regarding the appropriate forums for pending and future arbitration claims. In light of the recent consolidation, accelerated approval of the proposed rule change also will allow NASD DR and NYSE Regulation to ensure that their arbitration programs are fully consolidated in a timely and efficient manner, without any further delay or uncertainty.

For these reasons, the Commission finds good cause, consistent with Section 19(b)(2) of the Act, to grant accelerated approval to the proposed rule change.

### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act<sup>11</sup> that the proposed rule change, as modified by Amendment No. 1 (SR-NYSEArca-2007-60), be, and hereby is, 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>10</sup>In approving the 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).

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

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

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56257; File No. SR-NYSEArca-2007-83]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delete Obsolete Rules Relating to the Trading of Gold and Silver Bullion

August 15, 2007

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 August 3, 2007, NYSE Arca, Inc. ("Exchange"), through its wholly owned subsidiary, NYSE Arca Equities, Inc. ("NYSE Arca Equities" or "Corporation"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. NYSE Arca has designated this proposal as non-controversial under Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposed rule change effective upon filing with the Commission. 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 Equities Rule 4.1 (Minimum Net Capital) by deleting Commentary .02 (Trading in Gold and Silver Bullion) thereto. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and [www.nyse.com](http://www.nyse.com).

#### 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 Exchange 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 these 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

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

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

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

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

<sup>9</sup> 15 U.S.C. 78f(b)(5).

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 Corporation has determined that Commentary .02 to NYSE Arca Equities Rule 4.1, which relates to trading in gold and silver bullion, is obsolete because the Corporation no longer trades gold and silver bullion. Therefore, the Corporation proposes to delete Commentary .02 from NYSE Arca Rule 4.1. In 2005, the Exchange filed a proposed rule change that sought to delete a similar rule related to trading options on gold and silver bullion, but failed to make the same filing for its equities rules.<sup>5</sup>

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,<sup>6</sup> in general, and Section 6(b)(5) of the Act,<sup>7</sup> in particular, in that it will promote just and equitable principles of trade, facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

*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**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>9</sup> Because the foregoing

proposed rule change (1) does not significantly affect the protection of investors or the public interest, (2) does not impose any significant burden on competition, and (3) does not become operative for 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. 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 at least five business days before doing so.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the operative delay in this case. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because Commentary .02 to NYSE Arca Equities Rule 4.1 no longer serves any purpose, and hereby grants the Exchange's request.<sup>10</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-NYSEArca-2007-83 on the subject line.

<sup>10</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

*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 Number SR-NYSEArca-2007-83. 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, on official business days between the hours of 10 a.m. and 3 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-NYSEArca-2007-83 and should be submitted on or before September 11, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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<sup>5</sup> See Securities Exchange Act Release No. 51281 (March 1, 2005), 70 FR 11296 (March 8, 2005) (SR-PCX-2005-21) (seeking to delete certain obsolete rules, including Commentary .02 to PCX Rule 4.1, which relates to trading in gold and silver bullion).

<sup>6</sup> 15 U.S.C. 78f(b).

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

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> 17 CFR 200.30-3(a)(12).