

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-56258; File No. SR-NYSEArca-2007-59)

August 15, 2007

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Accelerated Approval of Proposed Rule Change and Amendment No.1 Thereto Relating to Amendments to Rule 12 to Provide Guidance Regarding New and Pending Arbitration Claims in Light of the Consolidation of NYSE Regulation into NASD DR

I. Introduction

On June 26, 2007, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), 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> a proposed rule change amending NYSE Arca Rule 12. On July 13, 2007, NYSE Arca filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On July 23, 2007, the Commission published for comment the proposed rule change, as amended, in the Federal Register.<sup>4</sup> The Commission received no comments on the proposal. This order approves the proposed rule change, as amended, on an accelerated basis.

II. Description of the Proposal

The purpose of the rule change is to provide guidance regarding both new and pending NYSE Arca Rule 12 arbitration claims in light of the consolidation of the member firm regulation function of NYSE Regulation, Inc. (“NYSE Regulation”) with

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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> In Amendment No. 1, which supplemented the original filing, the Exchange clarified the applicability of Rule 12 as it was in effect on or prior to January 31, 2007.

<sup>4</sup> See Securities Exchange Act Release No. 556071 (July 13, 2007), 72 FR 40184 (July 23, 2007).

the National Association of Securities Dealers, Inc. (“NASD”).<sup>5</sup> On July 30, 2007,<sup>6</sup> NYSE Regulation ceased to provide an arbitration program, and its arbitration department (“NYSE Arbitration”) was consolidated with that of NASD Dispute Resolution, Inc. (“NASD DR”). Furthermore, NYSE Arbitration Rules 600 through 639, and Rule 347, only apply to NYSE arbitration cases pending prior to August 6, 2007, and, thereafter, the NASD DR Codes of Arbitration Procedure apply to any new cases previously subject to NYSE rules.<sup>7</sup>

Because the consolidation has already occurred, the effective date of this rule change will be when the Commission approves this proposed rule change (SR-NYSEArca-2007-59) (“Effective Date”). As a result, on and after July 30, 2007, all arbitration claims filed prior to the Effective Date, and previously subject to Rule 12 or NYSE Regulation rules, will be administered by NASD DR<sup>8</sup> pursuant to a Regulatory Services Agreement with the New York Stock Exchange LLC (“NYSE”).

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<sup>5</sup> On July 26, 2007, the Commission approved a proposed rule change filed by NASD to amend NASD’s Certificate of Incorporation to reflect its name change to Financial Industry Regulatory Authority Inc., or FINRA, in connection with the consolidation of the member firm regulatory functions of NASD and NYSE Regulation. See Securities Exchange Act Release No. 56146 (July 26, 2007), 72 FR 42190 (Aug. 1, 2007) (SR-NASD-2007-053).

<sup>6</sup> The consolidation of the member firm regulatory functions did not occur until July 30, 2007, when definitive agreements were signed by the NYSE and NASD. Id.

<sup>7</sup> See Securities Exchange Act Release No. 56208 (Aug. 6, 2007), 72 FR 45077 (Aug. 10, 2007) (SR-NYSE-2007-48) (approval order).

<sup>8</sup> NASD DR now administers NYSE Arbitration, which is governed by NYSE Regulation Rules 600 through 639. NASD DR also administers NYSE Arca arbitration, which is governed by Rule 12 and Arca Equities Rule 12. NASD DR is in the process of changing its name to FINRA DR; however, this change has not been finalized. Once this name change is completed, NYSE and NYSE Arca anticipate amending references to NASD in its rules from NASD to FINRA. In

The amendments to Rule 12 provide that: (i) all arbitrations filed with NYSE Arca after January 31, 2007 and prior to the Effective Date, shall continue to be governed by the Code of Arbitration contained in the 600 series of the NYSE Rules; (ii) arbitrations filed on or prior to January 31, 2007 shall continue to be governed by NYSE Arca Rule 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 Option Trading Permit (“OTP”) holders and NYSE Arca OTP firms, associated persons, and/or their customers will be arbitrated under the NASD DR Codes of Arbitration Procedure.

Rule 12(a) will provide detailed guidance concerning claims involving OTP Holders and/or OTP Firms and/or associated persons that are asserted on and after the Effective Date. First, any dispute, claim or controversy between or among OTP Holders and/or OTP Firms 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 OTP Holder and/or OTP Firm, and/or associated person arising in connection with the business of such OTP Holder and/or OTP Firm 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.

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the meantime, this rule reflects the current name. Telephone conversation among James F. Duffy, General Counsel, NYSE Regulation; Lourdes Gonzalez, Assistant Chief Counsel – Sales Practices, Commission; and Michael Hershaft, Special Counsel, Commission (Aug. 14, 2007).

Rule 12(b) will explicitly retain NYSE Arca's enforcement authority related to arbitration. Rule 12(c) also will provide that any OTP Holder and/or OTP Firm, and/or associated person of any OTP Holder and/or OTP Firm, 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 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 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

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

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 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.

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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).

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-2007-59), 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>11</sup> 15 U.S.C. 78s(b)(2).

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