

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-66937; File No. SR-NYSEArca-2012-05)

May 7, 2012

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Adding New Paragraph (cc) to NYSE Arca Options Rule 6.62 to Provide for a Post No Preference Light Only Quotation

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on May 3, 2012, 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 and II below, which Items have been prepared by the Exchange. 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 add new paragraph (cc) to NYSE Arca Options Rule 6.62 to provide for a Post No Preference Light Only Quotation (“PNPLO Quotation”). 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 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

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

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

C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to add new paragraph (cc) to NYSE Arca Options Rule 6.62 to provide for a PNPLO Quotation.

As described in proposed new paragraph (cc), a PNPLO Quotation would be an electronic Market Maker quotation that, upon initial entry into the NYSE Arca System, would only be eligible to execute against displayed liquidity on the Consolidated Book. In this regard, a PNPLO Quotation would be similar to the Post No Preference Light Order (“PNP-Light Order”) under NYSE Arca Options Rule 6.62(v), which is a non-routable order type that is only eligible to execute against displayed liquidity. Under the proposed rule, a PNPLO Quotation that, upon entry, would execute exclusively against non-displayed liquidity on the Consolidated Book will be immediately rejected by the NYSE Arca System. Additionally, a PNPLO Quotation that, upon entry, would execute against both displayed and non-displayed liquidity on the Consolidated Book will immediately execute only against the displayed liquidity, but not against the non-displayed liquidity, and any remaining size of the PNPLO Quotation will be immediately rejected by the NYSE Arca System. Furthermore, a PNPLO Quotation that, upon entry, would execute exclusively against displayed liquidity on the Consolidated Book will immediately execute against the displayed liquidity and any remaining size of the PNPLO Quotation will be placed on the Consolidated Book and treated like a standard Market Maker quotation.<sup>3</sup> Lastly, a PNPLO Quotation that would not execute against either displayed or non-

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<sup>3</sup> This would include being eligible to interact with non-displayed liquidity on the Consolidated Book.

displayed liquidity will be placed in the Consolidated Book and treated as a standard Market Maker quotation.

The Exchange notes that the NYSE Arca System would automatically remove the pre-existing quotation(s) of a Market Maker upon entry of a PNPLO Quotation, as it does upon the entry of any other quotation, regardless of the acceptance or rejection of the PNPLO Quotation by the NYSE Arca System. Accordingly, in the event that a PNPLO Quotation is rejected by the NYSE Arca System, the Market Maker would be required to re-enter a quotation for purposes of satisfying any applicable quoting obligations under NYSE Arca Options Rule 6.37B.

The Exchange is proposing to offer this new quote type to provide Market Makers with greater control over the circumstances in which their quotations interact with contra-side trading interest on the Exchange by preventing interaction with non-displayed liquidity. This increase in control is desirable from the perspective of Market Makers because it is difficult for them to account for non-displayed liquidity in their quoting models. In addition, Market Makers on NYSE Arca in penny pilot issues receive post liquidity credits for electronic executions against their quotes that are resting in the Consolidated Book, and are charged take liquidity fees when their quotes execute against resting liquidity in the Consolidated Book. Market Makers consider these fees when calculating their quotes, and they may provide a wider quote than they otherwise would if they believe there is a chance that they would be charged a take liquidity fee for submitting a quote that executes against non-displayed liquidity (instead of receiving a post liquidity credit for executions against a resting quote). By eliminating the risk of incurring additional fees, the PNPLO Quotation may lead Markets Makers to provide narrower quotes on the Exchange, which in turn would benefit investors.

The Exchange further notes that the PNPLO Quotation would not be the only non-standard quote type at the Exchange. In this respect, the Exchange already offers a Price Improving Quote type, which allows a Market Maker to enter a quote that is better than the minimum price variation in an option and that is rounded for display purposes (up for offers and down for bids) so that it is displayed at the minimum price variation in the option.<sup>4</sup>

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),<sup>5</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>6</sup> in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

Like the existing Price Improving Quote, the proposed PNPLO Quotation would provide a Market Maker with the ability to control its interactions with contra-side liquidity.<sup>7</sup> Specifically, upon initial entry, a PNPLO Quotation would not be eligible to interact with non-displayed liquidity. In this regard, the Exchange understands that a Market Maker’s quoting algorithm can take into account existing liquidity in the marketplace, but may not be able to accurately account for the risk of interacting with non-displayed liquidity. As noted, Market Makers on NYSE Arca in penny pilot issues receive post liquidity credits for electronic

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<sup>4</sup> See NYSE Arca Options Rule 6.62(s), which provides, in part, that a Price Improving Quote is a quote “to buy or sell an option at a specified price at an increment smaller than the minimum price variation in the security,” which “may be entered in increments as small as one cent.”

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> See supra note 5.

executions against their quotes that are resting in the Consolidated Book,, [sic] and are charged take liquidity fees when their quotes execute against resting liquidity in the Consolidated Book. Market Makers consider these fees when calculating their quotes, and they may provide a wider quote than they otherwise would if they believe there is a chance that they would be charged a take liquidity fee for submitting a quote that executes against non-displayed liquidity (instead of receiving a post liquidity credit for executions against a resting quote). Accordingly, the PNPLO Quotation would permit Market Makers to eliminate from their quoting decisions the risk of incurring certain fees, and therefore may result in narrower quote widths, which would increase the quality of the Exchange's market and thereby benefit investors.

The Exchange believes that the PNPLO Quotation is just, equitable and not unfairly discriminatory. For example, the PNPLO Quotation treats all similarly situated market participants the same in that it would be available for use by all Market Makers on the Exchange. Moreover, the Exchange notes that all market participants, including Market Makers, already have the ability to avoid trading with non-displayed liquidity by entering PNP-Light Orders, which have existed on the Exchange since 2009.<sup>8</sup> The Exchange also notes that market participants that enter non-displayed liquidity (i.e., orders with reserve size) are choosing not to have the full size of their trading interest displayed, which is in contrast to the Commission's encouragement of a market structure in which trading interest is displayed,<sup>9</sup> and accordingly do

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<sup>8</sup> The Exchange notes that it adopted the PNP-Light Order type pursuant to Section 19(b)(3)(A) of the Exchange Act, and that the rule filing adopting that order type was not abrogated. See Securities Exchange Act Release 59603 (March 19, 2009), 74 FR 13279 (March 26, 2009) (SR-NYSEArca-2009-21) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Arca, Inc. Amending Rule 6.62 to Provide Additional Order Types).

<sup>9</sup> See, e.g., Securities Exchange Act Release No. 60684 (September 18, 2009), 74 FR 48632, 48636 (September 23, 2011) (File No. S7-21-09) (Proposed Elimination of Flash Order Exception from Rule 602 of Regulation NMS) ("The Commission long has

not receive all of the benefits with respect to that non-displayed liquidity that are afforded to displayed liquidity.<sup>10</sup> For the forgoing reasons, the Exchange believes that the proposal is not unfairly discriminatory. Overall, the Exchange believes that the proposal protects investors and the public interest because it may contribute to more aggressive quoting by Market Makers and may lead to more displayed liquidity on the Exchange, which, in turn, should increase the quality of the Exchange's market and benefit investors.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

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emphasized the need to encourage displayed liquidity in the form of publicly displayed limit orders.”).

<sup>10</sup> In this regard, the Exchange notes that non-displayed liquidity is not afforded trade-through protection under Section 5 of the Options Order Protection and Locked/Crossed Market Plan. See, e.g., Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009) (File No. 4-546).

#### 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 Number SR-NYSEArca-2012-05 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.

All submissions should refer to File Number SR-NYSEArca-2012-05. 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 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 website 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 the 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-2012-05 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

Kevin M. O'Neill  
Deputy Secretary

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