

maintains a market for the listing or trading of Plan Securities<sup>5</sup> in accordance with rules approved by the Commission, which securities are identified by one, two, or three character symbols, on the one hand, or four or five character symbols, on the other hand, in each case prior to any suffix or special conditional identifier; (ii) it signs a current copy of the Plan; and (iii) it pays to the other parties a proportionate share of the aggregate development costs, based upon the number of symbols reserved by the new party during the first twelve (12) months of such party's membership.<sup>6</sup>

EDGA and EDGX have submitted a signed copy of the Symbology Plan to the Commission in accordance with the requirement set forth in the Symbology Plan regarding new parties to the plan.

## II. Effectiveness of the Proposed Symbology Plan Amendment

The foregoing proposed Symbology Plan amendment has become effective pursuant to Rule 608(b)(3)(iii)<sup>7</sup> because it involves solely technical or ministerial matters. At any time within sixty days of the filing of the amendment, the Commission may summarily abrogate the amendment and require that it be refiled pursuant to paragraph (b)(1) of Rule 608,<sup>8</sup> if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act.

## III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the amendment 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 4-533 on the subject line.

<sup>5</sup> "Plan Securities" are defined in the Symbology Plan as securities that: (i) Are NMS securities as currently defined in Rule 600(a)(46) under the Act; and (ii) any other equity securities quoted, traded and/or trade reported through an SRO facility.

<sup>6</sup> Sections I(c) and V(a) of the Plan.

<sup>7</sup> 17 CFR 242.608(b)(3)(iii).

<sup>8</sup> 17 CFR 242.608(b)(1).

### Paper Comments

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

All submissions should refer to File Number 4-533. 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 Web site viewing and printing in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of EDGA and EDGX. 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 4-533 and should be submitted on or before August 24, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62580; File No. SR-NYSEArca-2010-69]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Amending Rule 6.47

July 28, 2010.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup>

<sup>1</sup> 17 CFR 200.30-3(a)(12).

<sup>2</sup> 15 U.S.C. 78s(b)(1).

<sup>3</sup> 15 U.S.C. 78a.

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

notice is hereby given that, on July 20, 2010, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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 Rule 6.47 to describe new procedures for executing a cross transaction. The text of the proposed rule change is attached as Exhibit 5 to the 19b-4 form. A copy of this filing is available on the Exchange's Web site at <http://www.nyse.com>, at the Exchange's principal office, on the Commission's Web site at <http://www.sec.gov>, 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, 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 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

NYSE Arca proposes to modify Rule 6.47(a) to describe new procedures for Floor Brokers wishing to execute a Non-Facilitation cross transaction.<sup>4</sup> Currently, after requesting a market, Floor Brokers are required to disclose the terms of a cross, after which Market Makers are allowed to revise their bids and offers to block the cross.

NYSE Arca proposes that Market Makers, after being informed of a potential cross, should provide their best bid and best offer, but not be allowed to step ahead of subsequently disclosed trading interest. The Exchange

<sup>4</sup> Facilitation Crosses are governed by Rule 6.47(b), and are not affected by this proposal.

intends for Market Makers to make markets and not prevent better priced trading interests from interacting with each other.

The proposed rule change would allow a Floor Broker to request, without revealing the size of the orders, a final quote for a cross from the Trading Crowd, and then to cross above the highest bid, or below the lowest offer, and, if not on a price provided by the Crowd, to execute the cross in its entirety. If the cross were to take place on the price provided by the Crowd, the Floor Broker would be obligated to trade with that interest prior to crossing the orders. The cross would be required to be within the National Best Bid/Offer, and would also be obligated to satisfy any bids or offers in the Consolidated Book equal to or better than the crossing price.

For example, if the prices of the orders to be crossed allowed for a range of possible crossing prices, and the Trading Crowd provided a final quote that was two or more Minimum Price Variations ("MPV") wide, the Floor Broker could bid above the Trading Crowd's bid and consummate the cross without trading on a final quote price.

If, alternatively, the final quote was only one MPV wide, (*i.e.*, 3.10 bid for 20 contracts at 3.20 offer for 50 contracts) the Floor Broker could not meet the obligation to the orders without trading on a final quote price. In this case, the Floor Broker would bid above the final quote bid (*i.e.*, bid 3.20) or offer below the final quote offer (*i.e.*, offer at 3.10), each instance of which is equal to a final quote price. The Floor Broker would then be obligated to trade with the final quote interest at that price (*i.e.*, buy 50 at 3.20 or sell 20 at 3.10) before crossing the balance of the orders.

Additionally, if, because of movement in the markets while the order was being brought to the crowd, the limit on one of the orders only allowed for a cross to be effected at a final quote price, regardless of the width of the final quote, the Floor Broker would be required to bid above the final quote bid or offer below the final quote offer yet still be at a final quote price. Again, the Floor Broker would be obligated to trade with the final quote interest at that price before crossing the balance of the orders. For instance, the electronic market in the series is 3.00 bid offered at 3.30, and the Floor Broker receives orders to cross at 3.10 or 3.20. When the Floor Broker requests a Final Quote, the crowd responds with a market of 3.20 bid at 3.30. In order to meet the obligation to execute the order, the Floor Broker would have to offer at 3.20,

fill the bids in the crowd at 3.20, and then cross the balance of the orders.

Additionally, the Exchange proposes to add two commentaries to Rule 6.47. Commentary .01 would allow an OTP Holder to submit an order that has been solicited prior to transmittal to the Floor, but would not allow the new procedures to be used to circumvent limitations on principal transactions as described in Rule 6.47A, nor allow the OTP Holder to solicit a contra order from an NYSE Arca Market Maker assigned to the class of options to trade against an agency order.

Commentary .02 would state it is a violation of a Floor Broker's duty for best execution to cancel an agency order to avoid execution at a better price.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act, in that it is designed to promote just and equitable principles of trade, 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. The proposed rule change will provide encouragement for Market Makers to provide their best prices earlier, upon the initial presentation of trading interest to the crowd, and the broker will be required to better the crowd's price in order to execute the cross transaction. The proposed new process should thus increase the possibility of price improvement for Customer orders.

### 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 35 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 the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

## 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-2010-69 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-2010-69. 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 Web site 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 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 publicly available. All submissions should refer to File Number SR-

NYSEArca–2010–69 and should be submitted on or before August 24, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>5</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62584; File No. SR–FINRA–2010–035]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Amendments to the Discovery Guide and Rules 12506 and 12508 of the Code of Arbitration Procedure for Customer Disputes

July 28, 2010.

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 July 12, 2010, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. 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

FINRA is proposing to amend the Discovery Guide, which includes Document Production Lists, and to make conforming changes to Rules 12506 and 12508 of the Code of Arbitration Procedure for Customer Disputes (“Customer Code”).

The text of the proposed rule change is available on FINRA’s Web site at <http://www.finra.org>, at the principal office of FINRA 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, FINRA 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. FINRA 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

FINRA proposes to revise the Discovery Guide (“Guide”) to expand the guidance FINRA gives to parties and arbitrators on the discovery process and to update the Document Production Lists (“Lists”). The proposal includes conforming changes to Rules 12506 and 12508 of the Customer Code.

##### Background

The SEC approved the current Guide in 1999 and FINRA made it available for use in arbitration proceedings involving customer disputes upon the publication of Notice to Members (NTM) 99–90 (November 1999). The Guide provides guidance to parties on which documents parties should exchange without arbitrator or staff intervention, and to arbitrators in determining which documents customers and member firms or associated persons are presumptively required to produce in customer arbitrations.

In March 2004, FINRA determined to review the Guide and consider whether FINRA should update the Guide after more than four years of use. A FINRA Advisory Committee, the National Arbitration and Mediation Committee (“NAMC”), conducted the review. The NAMC is a majority public committee made up of attorneys who represent investors, attorneys who represent brokerage firms, arbitrators, and mediators. In addition, FINRA staff met with other frequent users of the forum representing both the public and the industry to listen to the concerns of each side about the current lists, their proposals for changes, and their reactions to other constituents’ proposals. FINRA worked for three years to build a consensus on revisions to the Guide.

In 2008, FINRA filed a proposed rule change with the SEC to update the Guide (“the 2008 proposal”). The 2008 proposal added clarifying and conforming language to the introduction in the Guide and updated the Lists. The SEC received 53 comment letters on the 2008 proposal that clearly signaled that the consensus reached on revisions to the Guide was not broad enough. In

light of the comment letters, FINRA withdrew the filing.<sup>3</sup>

FINRA staff drafted a new Guide which would replace the current Guide in its entirety. The starting point was the 2008 proposal and the comment letters submitted to the SEC on the 2008 proposal. NAMC members shared the staff’s draft with interested parties including, among others, attorneys who represent investors, in-house counsel at brokerage firms, and attorneys who handle investor claims at Law School clinics. The NAMC recommended that FINRA appoint a Subcommittee to review the proposal. The Subcommittee, comprised of public and industry NAMC members, reached consensus on a number of revisions to the Guide. The NAMC reviewed the Subcommittee’s recommended changes and agreed to make additional revisions. The proposed rule change incorporates the NAMC’s suggested revisions.

Commenters on the 2008 proposal suggested that it may be appropriate to eliminate the Lists for specific types of claims since claimants are not required to plead causes of action under the Customer Code. In response to these comments, FINRA proposes to replace the 14 current Lists (two general Lists and 12 separate Lists for specific types of claims) with two Lists. The Lists identify “presumptively discoverable” documents—one for firms/associated persons to produce and one for customers to produce. Although each item on the Lists (with a few exceptions) would be presumptively discoverable in every customer case, parties can still urge that certain documents should not be discoverable. Likewise, parties can ask arbitrators to order production of additional documents that are not on the Lists. The proposed rule change emphasizes that arbitrators retain the flexibility necessary to tailor the Guide to the facts and circumstances of each case. This is especially important because, with the reduction of the Lists from 14 to two, production is no longer dependent on the nature of the claim.

#### Proposed Revisions to the Guide’s Introduction

FINRA is proposing a number of revisions to the Guide’s introduction that expand the guidance given to parties and arbitrators on the discovery process generally and clarify how arbitrators should apply the Guide in arbitration proceedings.

The current Guide states that it does not intend to remove the arbitrators’ and parties’ flexibility in the discovery

<sup>3</sup> FINRA filed SR–FINRA 2008–024 on June 11, 2008 and withdrew the filing on May 21, 2009.

<sup>5</sup> 17 CFR 200.30–3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b–4.