SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-62598; File No. SR-NYSEArca-2010-48)

July 29, 2010

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change Relating to the Guaranteed Allocation for Lead Market Makers and Directed Order Market Makers

On June 8, 2010, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change relating to the guaranteed allocation for Lead Market Makers ("LMM"s) and Directed Order Market Makers ("DOMM"s). Notice of the proposed rule change was published for comment in the Federal Register on June 29, 2010.[3] The Commission received no comments on the proposal.

Generally, incoming marketable orders are allocated among contra side orders resting on the NYSE Arca Consolidated Book at the same price on the basis of time priority. Exchange Rule 6.76A nonetheless provides an exception to this principle: When an LMM or DOMM is quoting on the book at the National Best Bid or Offer ("NBBO"), the LMM or DOMM receives a guaranteed allocation of 40% of the incoming order ahead of any other non-Customer interest ranked earlier in time. Rule 6.76A further provides that if a Customer order is ranked earlier than the LMM or DOMM, the Customer order is filled first. The LMM or DOMM then receives its 40% guarantee out of the remainder, if any, of the incoming order, and any other non-Customer is filled from the balance on the basis of time priority.

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 See Securities Exchange Act Release No. 62328 (June 21, 2010), 75 FR 37516.

According to the Exchange, in the latter situation, non-Customers have submitted orders that set a new price, only to find themselves left with just a small portion of an incoming order, because Customer orders at the same price must be satisfied first, and 40% of the balance is allocated to the LMM or DOMM before the price-setter can receive any allocation. Thus, the Exchange proposes to amend Rule 6.76A to provide that the guaranteed allocation will not apply if there are Customer orders on the Consolidated Book ranked ahead of the LMM or DOMM. In such a case, the incoming order will be allocated strictly on the basis of time priority. The guarantee will apply only if there are no resting Customer orders ranked ahead of the LMM or DOMM.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[4] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,[5] which requires, among other things, that the rules of a national securities exchange remove impediments to and perfect the mechanism of a free and open market and a national market system. The Commission believes that eliminating the 40% guarantee for LMMs and DOMMs when Customer orders are ranked ahead in the Consolidated Book is reasonable to encourage non-Customer market participants to competitively price their orders.

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4 In approving this 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).

5 15 U.S.C. 78f(b)(5).

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-NYSEArca-2010-48), be and hereby is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Florence E. Harmon
Deputy Secretary

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[6] 17 CFR 200.30-3(a)(12).