

A proposed rule change filed under Rule 19b-4(f)(6)<sup>13</sup> normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>14</sup> the Commission may 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 30-day operative delay so that the proposal may become operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because Phase I of the Plan has become effective and the Band Lookup feature will benefit the Exchange's member firms if made available by the Exchange as soon as possible. For this reason, the Commission designates the proposed rule change to be operative upon filing.<sup>15</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2013-066 on the subject line.

change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has determined to waive the requirement that NASDAQ provide the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date.

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> Rule 19b-4(f)(6)(iii).

<sup>15</sup> For purposes only of waiving the 30-day operative delay, the Commission has also 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 Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2013-066. This file number should be included on the subject line if email 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 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of NASDAQ. 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-NASDAQ-2013-066, and should be submitted on or before May 21, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Kevin M. O'Neill,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69440; File No. SR-FINRA-2013-002]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Withdrawal of Proposed Rule Change To Amend FINRA Rule 2267 (Investor Education and Protection)

April 24, 2013.

On January 7, 2013, Financial Industry Regulatory Authority, Inc. ("FINRA") 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 to amend FINRA Rule 2267 (Investor Education and Protection) to require that members include a prominent description of and link to FINRA BrokerCheck, as prescribed by FINRA, on their Web sites, social media pages, and any comparable Internet presence, and on Web sites, social media pages, and any comparable Internet presence relating to a member's investment banking or securities business maintained by or on behalf of any person associated with a member. The proposed rule change was published for comment in the **Federal Register** on January 25, 2013.<sup>3</sup> The Commission received 24 comment letters on the proposal.<sup>4</sup> On March 7,

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

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

<sup>3</sup> See Securities Exchange Act Release No. 68700 (Jan. 18, 2013), 78 FR 5542.

<sup>4</sup> See Letter from Charles Barker, dated Jan. 29, 2013; Letter from David M. Sobel, Esq., Abel/Noser Corp., dated Jan. 30, 2013; Letter from Pamela Albanese, Legal Intern, and Christine Lazaro, Esq., Acting Director, St. John's University School of Law, Securities Arbitration Clinic, dated Feb. 4, 2013; Letter from Peter J. Chepucavage, General Counsel, Plexus Consulting Group, LLC, dated Feb. 6, 2013; Letter from Jonathan W. Evans and Michael S. Edmiston, Jonathan W. Evans Associates, dated Feb. 10, 2013; Letter from Scott R. Shewan, Pape Shewan, LLP, dated Feb. 11, 2013; Letter from David Neuman, Stoltmann Law Offices, dated Feb. 12, 2013; Letter from Barry D. Estell, dated Feb. 12, 2013; Letter from Scott C. Ilgenfritz, President, Public Investors Arbitration Bar Association, dated Feb. 13, 2013; Letter from Bert Savage, dated Feb. 13, 2013; Letter from William A. Jacobson, Esq., Associate Clinical Professor, Cornell Law School, Director, Securities Law Clinic, and Alexander Wingate, Cornell Law School, dated Feb. 14, 2013; Letter from A. Heath Abshire, President, North American Securities Administrators Association, Inc., dated Feb. 15, 2013; Letter from Robert J. McCarthy, Director of Regulatory Policy, Wells Fargo Advisors, LLC, dated Feb. 15, 2013; Letter from Tamara K. Salmon, Senior Associate Counsel, Investment Company Institute, dated Feb. 15, 2013; Letter from David T. Bellaire, Esq., Executive Vice President & General Counsel, Financial Services Institute, dated Feb. 15, 2013; Letter from Scott A.

Continued

<sup>16</sup> 17 CFR 200.30-3(a)(12).

2013, the Commission extended the time period in which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change, to April 25, 2013.<sup>5</sup> On April 18, 2013, FINRA withdrew the proposed rule change (SR-FINRA-2013-002).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>6</sup>

**Kevin M. O'Neill,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69443; File No. SR-NYSEArca-2013-39]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Amending NYSE Arca Equities Rule 7.31 To Add a Moving Average Check for Incoming Market Orders and Marketable Limit Orders

Dated: April 24, 2013.

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> notice is hereby given that, on April 11, 2013, 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, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to

Eichhorn, Supervising Attorney, and Julianne S. Biscaglia, Legal Intern, University of Miami School of Law, Investor Rights Clinic, dated Feb. 15, 2013; Letter from Melissa MacGregor, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated Feb. 15, 2013; Letter from Brendan Daly, Legal and Compliance Counsel, Commonwealth Financial Network, dated Feb. 15, 2013; Letter from James Cooper, Chief Operating Officer, Zions Direct, dated Feb. 15, 2013; Letter from Melissa Callison, Vice President, Compliance, Charles Schwab & Co., Inc., dated Feb. 15, 2013; Letter from James Smith, Chief Compliance Officer, BlackRock Investments, LLC, Ned Montenecourt, Chief Compliance Officer, BlackRock Capital Markets, LLC, BlackRock Execution Services, and Joanne Medero, Managing Director, BlackRock, Inc., dated Feb. 15, 2013; Letter from Clifford E. Kirsch and Eric A. Arnold, Sutherland Asbill & Brennan LLP, for the Committee of Annuity Insurers, dated Feb. 15, 2013; Letter from Steven B. Caruso, Maddox Hargett Caruso, P.C., dated Feb. 16, 2013; and Letter from Lisa Catalano, Esq., dated Feb. 18, 2013.

<sup>5</sup> See Securities Exchange Act Release No. 69063, 78 FR 15994 (Mar. 13, 2013).

<sup>6</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

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 7.31 to add a Moving Average Check for incoming Market Orders and marketable limit orders. The text of the proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, 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 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 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 proposes to amend NYSE Arca Equities Rule 7.31(a) to add a Moving Average Check that would prevent incoming Market Orders and marketable Limit Orders, as defined in NYSE Arca Equities Rule 7.31(b), from trading if the order size exceeded certain thresholds. The Exchange believes that the proposed Moving Average Check would serve as an additional safeguard that could help limit potential harm from extreme price volatility by preventing executions of potentially erroneously sized orders.

Specifically, the proposed Moving Average Check would reduce the potential for a single order to disrupt trading in that security by comparing the size of the incoming order to a measure of historical trading activity in that security. The Exchange believes that if an incoming order represents a significant volume as compared to the historical trading activity in that security, that order is likely to be erroneous and should be rejected before it has an opportunity to impact the market. As proposed, the Exchange would perform the following Moving

Average Check for all incoming Market Orders and marketable Limit Orders:

- If the size of an incoming Market Order or marketable Limit Order is less than or equal to 50% of the projected 30-day moving average volume for that security, the order would be processed normally.
- If the size of an incoming Market Order or marketable Limit Order is greater than 50% but less than or equal to 75% of the projected 30-day moving average volume for the security, the Exchange would process the order normally and also notify the ETP Holder that the order size was greater than 50% of the projected 30-day moving average volume for the security.
- If the size of an incoming Market Order or marketable limit order is greater than 75% of the projected 30-day moving average volume for the security, the Exchange would reject the order and notify ETP Holder of the reason why the order was rejected.

As proposed, the projected 30-day moving average volume for each security would be calculated by: (i) Taking the prior day's 30-day moving average volume and multiplying that number by 29; (ii) adding to that number the total consolidated last sale volume in that security for the prior trading day; and (iii) dividing the combined number by 30.<sup>4</sup> If a security does not yet have a projected 30-day moving average volume, the default projected 30-day moving average volume shall be 10,000 shares. For example:

##### • Day 0

1. Seed the projected 30-day moving average volume for Day 0 with the default projected 30-day moving average volume (10,000 shares).

2. Total consolidated last sales volume in XYZ on Day 0 of 20,000 shares.

##### • Day 1

1. Projected 30-day moving average volume for Day 1 Moving Average Check = 10,333 shares ((10,000 x 29) + 20,000)/30.

2. Total consolidated last sales volume for XYZ on Day 1 of 10,000 shares.

##### • Day 2

1. Projected 30-day moving average volume for Day 2 Moving Average Check = 10,322 shares ((10,333 x 29) + 10,000)/30.

<sup>4</sup> The Exchange notes that the projected 30-day moving average volume is not the same as the 30-day average daily volume for the security.