

UNITED STATES OF AMERICA

before the

SECURITIES AND EXCHANGE COMMISSION

Securities Exchange Act of 1934  
Release No. 57648 / April 11, 2008

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In the Matter of: )  
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NYSE Arca, Inc. )  
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File No. SR-NYSEArca-2008-19 )  
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\_\_\_\_\_ )

ORDER  
OF  
SUMMARY  
ABROGATION

Notice is hereby given that the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(3)(C) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> is summarily abrogating a certain proposed rule change of NYSE Arca, Inc. (“NYSE Arca” or “Exchange”).

On February 13, 2008, NYSE Arca filed SR-NYSEArca-2008-19. The proposed rule change amended NYSE Arca Equities Rule 7.31(x) to expand the permissible order entry time and eligibility of its “Primary Only” order type (“PO Order”). The filing was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.<sup>2</sup>

<sup>1</sup> 15 U.S.C. 78s(b)(3)(C).

<sup>2</sup> 15 U.S.C. 78s(b)(3)(A). See Securities Exchange Act Release No. 57377 (February 25, 2008), 73 FR 11177 (February 29, 2008)

NYSE Arca's PO Order is a market or limit order that is routed to the primary, listing market, without sweeping the NYSE Arca book.<sup>3</sup> The proposed rule change modified the PO Order type to permit PO Orders to be entered at any time and to offer an order modifier for Users to designate PO Orders that are eligible for entry and execution throughout the trading day.<sup>4</sup> Previously, NYSE Arca restricted PO Orders to participation in the primary, listing market opening. Specifically, the amended rule permits NYSE Arca Equities system Users to enter a PO Order during any of the Exchange's trading sessions and be routed immediately to the primary, listing market for execution. If the order is not immediate-or-cancel, it remains at the primary, listing market until executed or cancelled that day.

Pursuant to Section 19(b)(3)(C) of the Act,<sup>5</sup> at any time within 60 days of the date of filing a proposed rule change pursuant to Section 19(b)(1) of the Act,<sup>6</sup> the Commission may summarily abrogate the change in the rules of the self-regulatory organization and require that the proposed rule change be re-filed in accordance with the provisions of Section 19(b)(1) of the Act<sup>7</sup> and reviewed in accordance with Section 19(b)(2) of the Act,<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 otherwise in furtherance of the purposes of the Act.

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<sup>3</sup> NYSE Arca Rule 7.31(x).

<sup>4</sup> See NYSE Arca Rule 1.1(yy) for the definition of "User."

<sup>5</sup> 15 U.S.C. 78s(b)(3)(C).

<sup>6</sup> 15 U.S.C. 78s(b)(1).

<sup>7</sup> 15 U.S.C. 78s(b)(1).

<sup>8</sup> 15 U.S.C. 78s(b)(2).

Archipelago Securities, Inc. ("Arca Securities") is a member of the NYSE and an affiliate of the NYSE. The Commission in the past has expressed concern about the potential for unfair competition and conflicts of interest between an exchange's self-regulatory obligations and its commercial interests that could exist if an exchange were affiliated with one of its members, as well as the potential for unfair competitive advantage that the affiliated member could have by virtue of informational or operational advantages, or the ability to receive preferential treatment.<sup>9</sup> The proposed rule change raises this issue by expanding the activities of Arca Securities in sending orders to its affiliate, the NYSE. Thus, the Commission believes that the proposed rule change should be subject to notice and comment and review pursuant to Sections 19(b)(1) and 19(b)(2) of the Act.<sup>10</sup> In addition, the Commission believes that the issue of whether the routing of PO Orders by Arca Securities to the NYSE is consistent with existing NYSE and NYSE Arca rules should be subject to this same notice and comment and review process.<sup>11</sup>

Therefore, the Commission finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act, to abrogate the proposed rule change.

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<sup>9</sup> See Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11251 FR (March 6, 2006) (order approving SR-NYSE-2005-77).

<sup>10</sup> 15 U.S.C. 78s(b)(1) and 78s(b)(2).

<sup>11</sup> See NYSE Rule 2B; NYSE Arca Rule 3.10; NYSE Arca Equities Rule 3.10; and Securities Exchange Act Release Nos. 53382, *supra* note 9; 53383 (February 27, 2006), 71 FR 11271 (March 6, 2006) (order approving SR-PCX-2005-134); and 52497 (September 22, 2005), 70 FR 56949 (September 29, 2005) (order approving SR-PCX-2005-90).

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(3)(C) of the Act,<sup>12</sup> that File No. SR-NYSEArca-2008-19, be and hereby is, summarily abrogated. If NYSE Arca chooses to re-file the proposed rule change, it must do so pursuant to Sections 19(b)(1)<sup>13</sup> and 19(b)(2) of the Act.<sup>14</sup>

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>12</sup> 15 U.S.C. 78s(b)(3)(C).

<sup>13</sup> 15 U.S.C, 78s(b)(1).

<sup>14</sup> 15 U.S.C, 78s(b)(2).

<sup>15</sup> 17 CFR 200.30-3(a)(58).