

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-54690; File No. SR-NYSEArca-2006-79)

November 2, 2006

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Extending the Time Period by Which the Exchange Will Amend the NASD-NYSE Arca Options Agreement Pursuant to Rule 17d-2

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 25, 2006, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a “non-controversial” rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission.⁵ 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 is proposing to amend its undertaking⁶ to extend for 90 days from the date of this filing the time period by which the Exchange will enter into an agreement with the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ The Exchange has asked the Commission to waive the 5-day pre-filing notice requirement and the 30-day operative delay. See 15 U.S.C. 78s(b)(3)(A), 17 CFR 240.19b-4(f)(6)(iii).

⁶ See Securities Exchange Act Release No. 54238 (July 28, 2006), 71 FR 44758 (August 7, 2006) (SR-NYSEArca-2006-13) (OX Approval Order).

National Association of Securities Dealers, Inc. (“NASD”) pursuant to Rule 17d-2 under the Act⁷ (the “NASD / NYSE Arca Options Agreement” or “Agreement”). The Agreement would expand the allocation to NASD of regulatory responsibility to encompass all the regulatory oversight and enforcement responsibilities with respect to the options activities of Archipelago Securities, L.L.C. (“Archipelago Securities”),⁸ except for “real-time market surveillance.”

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

In connection with the Commission’s approval of the Exchange’s new electronic options trading platform, OX, Archipelago Securities became a routing broker for OX options orders on

⁷ 17 CFR 240.17d-2.

⁸ Archipelago Securities, a wholly-owned subsidiary of Archipelago Holdings, Inc. and a registered broker-dealer, acts as the outbound order router for the NYSE Arca Marketplace (formerly known as the Archipelago Exchange) and, as such, is regulated as an exchange “facility” of NYSE Arca and NYSE Arca Equities, Inc. See 15 U.S.C. 78c(a)(2). As such, any proposed rule change relating to Archipelago Securities’ order-routing function must be filed with the Commission, and must operate in a manner that is consistent with the provisions of the Act applicable to exchanges and with NYSE Arca rules.

the Exchange.⁹ In Amendment No. 3 to its filing seeking approval of the OX platform,¹⁰ the Exchange proposed to clarify that NASD, a self-regulatory organization unaffiliated with the Exchange or any of its affiliates, would continue to carry out oversight and enforcement responsibilities as the Designated Examining Authority designated by the Commission pursuant to Rule 17d-1 under the Act¹¹ with the responsibility for examining Archipelago Securities for compliance with the applicable financial responsibility rules. Furthermore, the Exchange represented that it would enter into the NASD / NYSE Arca Options Agreement pursuant to Rule 17d-2 under the Act,¹² to expand the allocation to NASD of regulatory responsibility to encompass all the regulatory oversight and enforcement responsibilities with respect to the options activities of Archipelago Securities, except for “real-time market surveillance.”¹³ The Exchange agreed to submit the NASD / NYSE Arca Options Agreement to the Commission under Rule 17d-2 within 90 days of the date of the Commission’s approval of the OX trading platform.¹⁴ The 90 day period elapsed on October 26, 2006.

⁹ See OX Approval Order, supra note 6. Pursuant to NYSE Arca Rule 6.1A(a)(15), which was adopted in connection with the establishment of the new OX trading platform, the term “OX Routing Broker” refers to the broker-dealer affiliate of the Exchange that acts as agent for routing orders entered into OX of OTP Holders, OTP Firms and OTP Firms’ Sponsored Participants to other Market Centers for execution whenever such routing is permitted by Exchange Rules. Archipelago Securities is the Exchange’s only OX Routing Broker.

¹⁰ See OX Approval Order, supra note 6.

¹¹ 17 CFR 240.17d-1.

¹² 17 CFR 240.17d-2.

¹³ See OX Approval Order, supra note 6.

¹⁴ Id.

On October 20, 2006, the Exchange submitted to the Commission a draft NASD / NYSE Arca Options Agreement, but has not yet received Commission approval. The Exchange believes that an extension of time for an additional 90 days from the date of this filing to enter into the NASD / NYSE Arca Options Agreement will give the Commission staff sufficient time to publish and take action on the proposal.

The Exchange believes that the requested extension of time is consistent with the Act and the rules and regulations thereunder, will not significantly affect the protection of investors or the public interest, and does not impose any significant burden on competition. The Exchange notes that NASD already carries out oversight and enforcement responsibilities as the Designated Examining Authority designated by the Commission pursuant to Rule 17d-1 under the Act¹⁵ with the responsibility for examining Archipelago Securities for compliance with the applicable financial responsibility rules.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁶ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁷ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest.

¹⁵ 17 CFR 240.17d-1.

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(5).

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

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest,¹⁸ the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁹ and Rule 19b-4(f)(6) thereunder.²⁰

The Exchange has requested that the Commission waive the 30-day operative delay, which would make the rule change effective and operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Such waiver will allow the Exchange to comply with its undertaking made in

¹⁸ Pursuant to Rule 19b-4(f)(6)(iii) under the Act, the Exchange is required to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule 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 Exchange has requested that the Commission waive the 5-day pre-filing notice requirement. The Commission has determined to waive this requirement for this filing.

¹⁹ 15 U.S.C. 78s(b)(3)(A).

²⁰ 17 CFR 240.19b-4(f)(6).

connection with the OX Approval Order to submit the NASD / NYSE Arca Options Agreement to the Commission. The Exchange requests a waiver of the 30-day period on the basis that the current deadline for entering into the NASD / NYSE Arca Options Agreement was October 26, 2006, and a delay of 30 days would place the Exchange out of compliance with its undertaking. Extending the compliance date for the Exchange's undertaking by an additional 90 days will provide time for the Exchange to finalize and file the Agreement. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.²¹

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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.

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. Please include File Number NYSEArca-2006-79 on the subject line.

²¹ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

Paper comments:

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

All submissions should refer to File Number NYSEArca-2006-79. 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 inspection and copying in the Commission's Public Reference Room. 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 NYSEArca-2006-79 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²²

Nancy M. Morris
Secretary

²² 17 CFR 200.30-3(a)(12).