SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55590; File No. SR-NYSE-2007-29)

April 5, 2007

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Rules 13 ("Definitions of Orders") and 17 ("Use of Exchange Facilities")

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 March 16, 2007, the New York Stock Exchange LLC ("NYSE" 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 substantially prepared by the Exchange. On April 5, 2007, NYSE filed Amendment No. 1 to the proposed rule change. The Exchange has filed the proposal as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b-4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, 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 Exchange Rules 13 ("Definitions of Orders") and 17 ("Use of Exchange Facilities") in order to establish a mechanism to route orders to away market centers when that market center is displaying the national best bid and offer in accordance with Exchange Rules and Regulation NMS under the Act[5] ("Reg. NMS"). The Exchange further proposes to have its order router facilitate the acceptance of executions that

---

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 17 CFR 242.600 et seq.

result in an odd-lot or a sub-penny execution. The text of the proposed rule change is available at NYSE, the Commission's Public Reference Room, and www.nyse.com.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NYSE 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. NYSE 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

The Exchange is proposing to amend Exchange Rules 13 and 17 to establish a mechanism to route orders to away market centers ("Routing Broker") when that market center is displaying the national best bid and offer in accordance with Exchange Rules and Reg. NMS. Through this filing the Exchange further proposes to have its Routing Broker facilitate the acceptance of executions that result in an odd-lot[6] or a sub-penny[7] execution after the Routing Broker routed an Exchange order to an away market center.

---

6 Odd-lot orders are orders for a size less than the standard unit (round lot) of trading, which is 100 shares for most stocks, although some stocks trade in 10 share units.

7 The Exchange notes that trading centers that provide sub-penny executions are currently developing order types that allow market participants to request a non-sub-penny execution. The Exchange states that the Routing Broker will perform this function only until such time as needed for the creation of these new order types and the completion of any systems modifications associated with the handling of the new order types.

The Exchange intends to use its broker-dealer affiliate,[8] Archipelago Securities LLC ("ArcaSec"), as its Routing Broker[9] to route orders,[10] subject to Exchange rules and Reg. NMS, to away market centers displaying protected bids and protected offers, as defined in Rule 600(b)(57) of Reg. NMS. The Exchange believes that the Routing Broker will offer an efficient mechanism for the Exchange to route orders to away market centers for execution in compliance with Exchange Rules and Reg. NMS.

Pursuant to the proposed rule, Exchange systems will provide the Routing Broker with routing instructions to route orders to other market centers and report such executions back to the Exchange. The Exchange states that the Routing Broker cannot

---

[8] On February 27, 2006, the Commission approved the Exchange's business combination with Archipelago Holdings, Inc. ("Merger"). See Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR-NYSE-2005-77). Pursuant to the Merger, NYSE Group, Inc. became the overall parent company of the Exchange and Archipelago Holdings, Inc. NYSE Group, Inc. operates two securities exchanges: the Exchange and NYSE Arca, Inc. (formerly known as the Archipelago Exchange, or ArcaEx®, and the Pacific Exchange). ArcaSec remains a wholly owned subsidiary of Archipelago Holdings, Inc. and is therefore an affiliate of the Exchange.

[9] In the event the Exchange seeks to use another entity as its Routing Broker, the Exchange understands that it would be required to obtain Commission approval.

[10] Currently ArcaSec performs two functions for NYSE Arca, Inc. ArcaSec acts as the outbound order routing facility of NYSE Arca, Inc. See Securities Exchange Act Release No. 52497 (September 22, 2005), 70 FR 56949 (September 29, 2005) (SR-PCX-2005-90); see also Securities Exchange Act Release No. 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (SR-PCX-00-25). The Exchange states that, currently, the NASD is responsible for carrying out the oversight and enforcement responsibilities for ArcaSec as the designated examining authority designated by the Commission pursuant to Rule 17d-1 of the Act with the responsibility for examining the Routing Broker for compliance with the applicable financial responsibility rules. The Exchange states that it intends to enter into a 17d-2 agreement with a regulator other than the Exchange or any of its affiliates to regulate its outbound router.

In addition, on March 12, 2007, the Commission authorized ArcaSec to act as a marketing agent on behalf of NYSE Arca Tech 100 Index and NYSE Arca Tech 100 ETF. This business activity has no connection to ArcaSec's facility functions as described above. See Securities Exchange Act Release No. 55442 (March 12, 2007), 72 FR 12654 (March 16, 2007) (SR-NYSEArca-2007-09).

change the terms of an order or the routing instructions, nor does the Routing Broker have any discretion about where to route an order.

The Exchange states that the Routing Broker will operate as a "facility"[11] of the Exchange in that it will serve as a "system of communication to or from"[12] the Exchange. When an order must be routed to an away market center for execution, Exchange systems will affix all order handling information to the order. Exchange systems will automatically transmit the order and the relevant order handling information to the Routing Broker. In turn, the Routing Broker will facilitate the delivery of the received order to the destination away market. The Routing Broker will obtain receipts of executions and deliver those receipts of executions back to Exchange systems.

In particular, and without limitation, under the Act, the Exchange will be responsible for filing with the Commission rule changes and fees relating to the functions performed by the Routing Broker for the Exchange and will be subject to exchange non-discrimination requirements.

Furthermore, the books, records, premises, officers, agents, directors, and employees of the Routing Broker, as a facility of the Exchange, shall be deemed to be the books, records, premises, officers, agents, directors, and employees of the Exchange for purposes of, and subject

---

11 The term "facility" as defined in Section 3(a)(2) of the Act, as amended, provides,

> …when used with respect to an exchange includes its premises, tangible or intangible property whether on the premises or not, any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange), and any right of the exchange to the use of any property or service. See 15 U.S.C. 78c(a)(2).

12 Id.

to oversight pursuant to, the Act. The books and records of the Routing Broker as a facility of the Exchange shall be subject at all times to inspection and copying by the Exchange and the Commission.

In addition to routing orders to away market centers, the Routing Broker will facilitate the acceptance of executions that results in an odd-lot or a sub-penny execution as Exchange systems are unable to accept such executions after the Routing Broker routes an Exchange order to an away market center. Currently, odd-lot orders on the Exchange are executed in a trading system that is separate from the Exchange system responsible for the execution of round-lot orders ("odd-lot trading platform"). The Exchange odd-lot trading platform executes all odd-lots orders against the specialist as the contra party separate from the trading system that is responsible for the execution of round lot orders. Since odd-lot orders are handled in a separate trading system, the Exchange systems that are responsible for the execution of round lot orders are unable to accept receipts of execution in odd-lots at the present time.

Similarly, the Exchange has chosen not to quote and trade in sub-penny increments when permitted under Reg. NMS.

In order to process receipts of odd-lot and sub-penny executions from an away market, the Exchange proposes to have the Routing Broker facilitate the handling of such odd-lot and sub-penny execution. Specifically, if the Routing Broker is in receipt of an odd-lot execution in response to the Exchange's routing of a round lot order, it will assume the odd-lot position. The Routing Broker will then sell/buy the requested number of round lot shares to the Exchange member. The Routing Broker will perform this adjustment to each odd-lot execution in order to transmit a round lot execution to the

Exchange. The Routing Broker will afford the Exchange order (i.e. for the Exchange member) the most favorable execution price based on the odd-lot execution(s) received by the Routing Broker from the away market.

With regard to a sub-penny execution, the Routing Broker will perform an adjustment to each sub-penny execution. Specifically, the Routing Broker will round down for each buy order and up for each sell order and transmit a round penny execution to the Exchange order. Again, the Routing Broker will afford the Exchange order the most favorable execution price based on the sub-penny execution received by the Routing Broker from the away market.

The Routing Broker will liquidate positions assumed as a result of the services provided to the Exchange. This service provided by the Routing Broker with regard to odd-lot and sub-penny executions is not intended to operate as a means to generate revenue. Rather, the Routing Broker is providing an additional service to the Exchange in order to facilitate the receipt of odd-lot and sub-penny executions from away market centers. To that end, it is the intent of the Routing Broker to be flat in all positions at the end of each trading day.[13] The Routing Broker will incorporate an automated system to immediately assist in the liquidation (acquisition) for any residual long (short) positions. To mitigate financial risk[14] to the Routing Broker, registered trading personnel of the Routing Broker may be required to manually assist, as soon as practicable, in the liquidation (acquisition) of such positions when, due to the nature of the security (e.g.

---

13 Absent any unusual market conditions or the timing of such trades (for example, the execution of the order at 15:59:59) it is intended that the Routing Broker will be flat in all positions at the end of each trading day.

14 Any and all loses incurred during the facilitation of odd-lot and sub-penny executions will be assumed by the Routing Broker as part of the routing service provided.

high-priced securities that trade with a wide spread) and its trading pattern or volatile market conditions, liquidation (acquisition) is not immediately possible.

Below are examples of how the Routing Broker is intended to operate.

ODD-LOT Executions

Example 1:

Exchange member Firm X enters an order on the Exchange to buy 100 shares of ABC at $20.00. Exchange systems transmit the order with order handling instructions to the Routing Broker. The Routing Broker then transmits the order with the order handling instructions received from the Exchange systems to market center A. The Routing Broker receives reports of two odd-lot executions from market center A. The first report of execution is for 30 shares executed at a price of $20.00. The second report of execution completes the original order with an execution of the remaining 70 shares at a price of $20.00. The Routing Broker will sell 100 shares to Exchange member Firm X at $20.00 and use the odd-lots received from market center A to offset the position. The Routing Broker's position is flat.

Example 2:

Exchange member Firm X enters an order on the Exchange to buy 100 shares of ABC at $20.00. The Exchange systems transmit the order with order handling instructions to the Routing Broker. The Routing Broker then transmits the order with the order handling instructions received from the Exchange systems to market center A. The Routing Broker receives two odd-lot fills from market center A. The first report is for 30 shares executed at a price of $19.99. The second report of execution completes the original with an execution of the remaining 70 shares at a price of $20.00. The Routing Broker sells 100 shares to Firm X at

$19.99 and uses the odd-lots to offset the position. The Routing Broker's position is flat, with a loss of $0.70.

Example 3:

Exchange member Firm X enters an order on the Exchange to buy 100 shares of ABC at $20.00. The Exchange systems transmit the order with order handling instructions to the Routing Broker. The Routing Broker then transmits the order with the order handling instructions received from the Exchange systems to market center A. The Routing Broker receives an odd-lot fill of only 30 shares at $20.00 and a report of cancellation for the remaining 70 shares of the original order. The Routing Broker will sell 100 shares to Firm X at $20.00. In turn, the Routing Broker will then go into the market to buy 70 shares of ABC. The Routing Broker receives a fill of 70 at $20.05. The Routing Broker will then use both odd-lots positions to offset the position taken as a result of handling the order of Firm X. The Routing Broker's position is flat, with a loss of $3.50.

Example 4:

Exchange member Firm X enters an order on the Exchange to buy 100 shares of ABC at $20.00. The Exchange systems transmit the order with order handling instructions to the Routing Broker. The Routing Broker then transmits the order with the order handling instructions received from the Exchange systems to market center A. The Routing Broker receives an odd-lot fill of only 30 shares at $20.00 and a report of cancellation for the remaining 70 shares of the original order. The Routing Broker will sell 100 shares to Firm X at $20.00. In turn, the Routing Broker will then go into the market to buy 70 shares of ABC. The Routing Broker receives a fill of 70 at $19.99. The Routing Broker will then use both odd-lots positions to offset the position taken as a result of handling the order of Firm X. The Routing Broker's position is flat, with a profit of $0.70.

<u>SUB-PENNY Executions</u>

Example 1:

Exchange member Firm X enters an order on the Exchange to buy 100 shares of ABC at $20.00. The Exchange's best offer is $19.98. Market Center A is displaying a best offer at $19.97. Market Center A also offers a mid-point match execution process that may result in a trade price that includes sub-pennies. The Exchange systems transmit the order with order handling instructions to the Routing Broker. The Routing Broker then transmits the order with the order handling instructions received from Exchange systems to market center A. The Routing Broker receives a fill of 100 shares at $19.975 due to a mid-point cross occurring at market center A. The Routing Broker will sell 100 shares to member Firm X at $19.97 and uses the fill of 100 shares at $19.975 to offset the position. The Routing Broker will be flat, with a loss of $0.50.

The use of the Routing Broker to route orders to another market center will be optional. In the event a member organization does not want to use the Routing Broker it must enter an immediate-or-cancel order or any such other order type available on the Exchange that is not eligible for routing. All bids and offers entered on the Exchange that are routed to other market centers via the Routing Broker which result in an execution shall be binding on the member organization that entered such bid and offer.

The Routing Broker will not engage in any business for the Exchange other than its outbound router and facilitation functions as described above. In the event the Exchange seeks to have the Routing Broker engage in any other activities, it understands that the ability of the Routing Broker to engage in such new business activity would require Commission approval.

The Exchange believes that the above-described operation of the Routing Broker will serve as the most economically efficient execution of securities transactions. Furthermore, the Routing Broker is necessary for the Exchange to comply with its obligations pursuant to Reg. NMS.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirement under Section 6(b)(5) of the Act[15] that an exchange have rules that are designed to promote just and equitable principles of trade, 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. The proposed rule change is also designed to support the principles of Section 11A(a)(1)[16] in that it seeks to assure economically efficient execution of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in 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

The Exchange has neither solicited nor received written comments on the proposed rule change.

---

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

16 15 U.S.C. 78k-1(a)(1).

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

Because the forgoing rule change does not: (1) significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[17] and Rule 19b-4(f)(6) thereunder.[18]

A proposed rule change filed under 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.[19] However, Rule 19b-4(f)(6)(iii)[20] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would permit NYSE to immediately use the Routing Broker to route orders to other trading centers to prevent trade-

---

17 15 U.S.C. 78s(b)(3)(A).

18 17 CFR 240.19b-4(f)(6).

19 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to 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. NYSE has satisfied the five-day pre-filing notice requirement.

20 Id.

troughs of protected quotations in NMS stocks.[21] For this reason, the Commission designates the proposed rule change to be operative upon filing with the Commission.[22]

At any time within 60 days of the filing of such 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.[23]

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. Please include File Number SR-NYSE-2007-29 on the subject line.

Paper comments:

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

---

21 The Commission notes that NYSE's proposed Rule 17(b) is substantially similar to Rule 2.11 of the National Stock Exchange, Inc.

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

23 15 U.S.C. 78s(b)(3)(C). For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposal, the Commission considers the period to commence on April 5, 2007, the date on which the Exchange submitted Amendment No. 1.

All submissions should refer to File Number SR-NYSE-2007-29. 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 NYSE. 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-NYSE-2007-29 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.[24]

Florence E. Harmon
Deputy Secretary

[24] 17 CFR 200.30-3(a)(12).