

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57523; File No. SR-NYSE-2008-16]

### Self-Regulatory Organizations; New York Stock Exchange LLC.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Rule 15 (Pre-Opening Indications)

March 18, 2008.

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> notice is hereby given that on March 11, 2008, 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 prepared substantially by NYSE. NYSE filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders it effective upon filing with the Commission. 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 proposes to amend Exchange Rule 15 (Pre-Opening Indications) to: (1) Utilize the previous day’s closing price on the NYSE in arranging opening transactions; (2) utilize the relevant price of the underlying security traded on its primary foreign market when arranging opening transactions for American Depositary Receipts (“ADRs”);<sup>5</sup> and (3) revise the price change parameters. The text of the proposed rule change is available at <http://www.nyse.com>, the Exchange, and 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, 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 proposes to amend Exchange Rule 15 to: (1) Utilize the previous day’s closing price on the NYSE in arranging opening transactions; (2) utilize the relevant price of the underlying security traded on its primary foreign market when arranging opening transactions for ADRs; and (3) revise the price change parameters.

###### Background

NYSE Rule 15 was last amended on December 20, 2007 to re-establish procedures for the publication of pre-opening price information, according to the framework established by the national market system plan (“Linkage Plan”).<sup>6</sup> The Exchange sought to amend Rule 15 in response to customer and market participant requests for the pre-opening price information.

Since the re-establishment of the procedures for the publication of pre-opening price information, the Exchange has reviewed the implementation of the rule and conferred with customers and market participants to assess the sufficiency and utility of the pre-opening price information currently being published. The Exchange seeks to amend NYSE Rule 15 to enable specialists to provide pre-opening information that is more accurate and indicative of the current state of the NYSE market.

###### Use of NYSE Closing Price

Currently, Rule 15 requires the specialist to publish a pre-opening price indication whenever the specialist, in arranging an opening transaction in any security, anticipates that the price of the opening transaction will be at a price which is different from the previous day’s consolidated closing price by more than the “applicable price change.” The Exchange proposes to amend Rule 15 to use the NYSE closing price instead of the closing price of the

Consolidated Tape.<sup>6</sup> Since the pre-opening indications of Rule 15 no longer provide intermarket indications, but are published solely as a means of providing information about trading on the NYSE, the Exchange believes it is more appropriate to use the NYSE closing price for the pre-opening indications to more precisely reflect the market conditions on the NYSE. Additionally, this proposed rule change is consistent with NYSE Rule 123D (Openings and Halts in Trading), which utilizes the NYSE previous closing price in determining the need for a mandatory indication.

###### Modifications of Price Groupings

When the procedures for the publication of pre-opening price information were reinstated, the current price groupings and corresponding price change parameters were broadened to more accurately address the volatility of today’s markets. However, the Exchange believes that the recent amendment to the rule did not go far enough to distinguish the trading characteristics of the differently priced securities. The NYSE proposes to create five separate price groupings and related price change parameters. The Exchange believes that these smaller groupings and price change parameters better reflect the differences in price movement that occur based on the trading characteristics of the differently priced securities. The proposed five price groupings and their related applicable price change parameters are as follows:

Exchange closing price	Applicable price change (more than)
Under \$20.00 .....	\$0.50
\$20-\$49.99 .....	\$1.00
\$50-\$99.99 .....	\$2.00
\$100-\$500 .....	\$5.00
Above \$500 .....	1.5%

###### Pre-Opening Price Indications, ADRs

The Exchange further believes that it is necessary to have a different procedure for pre-opening indications of ADRs. Where the trading day of the underlying security in its primary foreign market for an ADR concludes after trading on the NYSE for the previous day but before trading on the

<sup>6</sup> See the NYSE glossary, which defines the Consolidated Tape as “A high-speed system that continuously provides the last sale price and volume of any securities transaction in listed stocks to the public. All trades in NYSE-listed securities, regardless of the market center on which such trades occur, are reported to and disseminated on the ticker system.”

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

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

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

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

<sup>5</sup> See the NYSE glossary, which defines an ADR as “[a] receipt that is issued by a U.S. depository bank which represents shares of a foreign corporation held by the bank. \* \* \* ADRs are quoted in U.S. dollars and trade just like any other stock. \* \* \*”

<sup>6</sup> See Securities Exchange Act Release No. 57003 (December 20, 2007), 72 FR 73949 (December 28, 2007) (SR-NYSE-2007-112). The Linkage Plan became effective on October 1, 2006 and terminated on June 30, 2007. See Securities Exchange Act Release No. 54551 (September 29, 2006), 71 FR 59148 (October 6, 2006).

NYSE has opened the next day, use of the closing price for the underlying security in the primary foreign market is a better indicator of the current value of the underlying security when arranging the opening transaction of an ADR on the NYSE. Similarly, in instances where the underlying security of an ADR is still trading on its primary foreign market at the time the specialist is arranging the opening of such ADR on the NYSE, use of the NYSE previous day's closing price may result in the specialist issuing a pre-opening indication that does not adequately reflect the current price of the underlying security.

For example, assume the NYSE previous day's closing price of ADR XYZ was \$28.00. On the following day the specialist is arranging the opening of the ADR XYZ on the NYSE. The primary foreign market for the underlying security XYZ is still open and the last sale price of the underlying security is equivalent to \$30.00. If the specialist anticipates the opening price of ADR XYZ to be \$28.49, according to Rule 15 as it exists today, the applicable price change that would require an indication is \$.50; thus no indication would be required. However, this information is not reflective of the trading in the primary foreign market because the anticipated opening price is not on parity with underlying security XYZ trading on the primary foreign market.

Pursuant to this proposed rule change, however, a specialist will look at the last sale price of the underlying security in the primary foreign market and issue a pre-opening indication if the anticipated opening price of the ADR is not on parity with the last sale price of the underlying security. The pre-opening indication will be based on the change in parity between the anticipated opening price of the ADR and the last sale price of the underlying security on the primary foreign market. Thus, using the prior example, since the last sale price of the underlying security XYZ is equivalent to \$30.00, there is a difference in parity of \$1.51; thus, the specialist would issue a pre-opening indication based on the change in parity.

Accordingly, the Exchange proposes to amend Rule 15 to provide that in the case of an ADR, where the trading day of the underlying security in the primary foreign market concludes after trading on the NYSE for the previous day has ended, the specialists, when arranging an opening transaction on the NYSE, shall use the closing price of the primary foreign market of the underlying security to determine

whether such opening transaction represents a change of more than the "applicable price change." Where the primary foreign market on which the underlying security trades is open at the time of the opening on the Exchange, the specialist shall issue pre-opening indications based on a change from parity with the last sale price of the underlying security.

The Exchange believes this proposed rule change will enable specialists to provide more accurate and timely market information to all Exchange customers and market participants. Additionally, this proposed rule change will further consistency of Exchange rules by aligning Rule 15 with how specialists determine the need for indications pursuant to other Exchange Rules.

## 2. Statutory Basis

The Exchange believes that this proposal is consistent with Section 6(b) of the Act<sup>7</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>8</sup> in particular, in that it is 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. This proposed rule change to Exchange Rule 15 supports the system of a free and open market and serves to protect investors and the public interest by ensuring that specialists disseminate more accurate information based on the most currently available pricing information when arranging opening transactions on the NYSE.

### *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 were neither solicited nor received.

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

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) 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 public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup>

Normally, a proposed rule change filed under 19b-4(f)(6) may not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)<sup>11</sup> 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 set forth in Rule 19b-4(f)(6)(iii) under the Act.<sup>12</sup> The Commission believes that the earlier operative date is consistent with the protection of investors and the public interest because the proposed rule change permits the Exchange to immediately implement changes to its pre-opening that should enable the specialists to disseminate more accurate pre-opening information that is indicative of the current state of the NYSE market. For these reasons, the Commission designates the proposal to be operative upon filing with the Commission.<sup>13</sup>

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:

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> 17 CFR 240.19b-4(f)(6). 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. The Commission notes that NYSE has satisfied the five-day pre-filing notice requirement.

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>13</sup> For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

<sup>8</sup> 15 U.S.C. 78f(b)(5).

*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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2008-16 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.

All submissions should refer to File Number SR-NYSE-2008-16. 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such 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-2008-16 and should be submitted on or before April 15, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-57521; File No. SR-NYSEArca-2008-27]

**Self-Regulatory Organizations; NYSE Arca, Inc; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Delete NYSE Arca Rule 6.88—Pacific Options Exchange Trading System**

March 18, 2008.

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> notice is hereby given that on March 13, 2008, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") 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 NYSE Arca. NYSE Arca has designated this proposal as one that neither significantly affects the protection of investors or the public interest nor imposes any significant burden on competition, under Section 19(b)(3)(A)(ii) of the Act,<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. 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**

NYSE Arca is proposing to amend its rules to delete NYSE Arca Rule 6.88 because it has determined that rule to be obsolete. The text of the proposed rule change is available on the Exchange's Web site, <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, NYSE Arca 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 Arca 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

Upon review of NYSE Arca Rule 6.88, the Exchange has determined that the rule is outdated and obsolete. This rule relates to options trading on the Pacific Options Exchange Trading System ("POETS"). The Exchange, however, no longer uses POETS for options trading. Therefore, the Exchange proposes to eliminate the text of this Rule and reserve the rule number for future use.

POETS was the Exchange's automated trading system comprised of the options order routing system, the automatic execution system (Auto-Ex), the on-line limit order book system (Auto-Book), and the automatic market quote update system (Auto-Quote). All functionality contained in the POETS system has been completely decommissioned. Its replacement, PCX Plus, was fully implemented as of March 2005.<sup>5</sup> Since then, the Exchange decommissioned PCX Plus and implemented its current options trading platform, the OX system, during the third quarter of 2006.<sup>6</sup> At the time POETS was decommissioned and PCX Plus was implemented, rules pertaining to POETS were eliminated, as obsolete, from the Exchange's rule set.<sup>7</sup> Rule 6.88 inadvertently remained within the Exchange's rule set without purpose or regulatory impact.

The Exchange has no plans to reactivate the POETS system; therefore, any rules governing its use are outdated and unnecessary. By eliminating the text of this rule, the Exchange hopes to eliminate any unnecessary confusion for its members.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,<sup>8</sup> in general, and Section 6(b)(5) of the Act,<sup>9</sup> in particular, in that it will promote just and equitable principles of trade, facilitate

<sup>5</sup> See Securities Exchange Act Release No. 47838 (May 13, 2003), 68 FR 27129 (May 19, 2003) (SR-PCX-2002-36) (order approving establishment of the PCX Plus system).

<sup>6</sup> See Securities Exchange Act Release No. 54238 (July 28, 2006), 71 FR 44758 (August 7, 2006) (SR-NYSEArca-2006-13) (order approving establishment of the OX trading platform system).

<sup>7</sup> See Securities Exchange Act Release No. 53221 (February 3, 2006), 71 FR 6811 (February 9, 2006) (SR-PCX-2005-102) (order approving elimination of obsolete rules related to POETS).

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

<sup>9</sup> 15 U.S.C. 78f(b)(5).

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

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

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

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

<sup>14</sup> 17 CFR 200.30-3(a)(12).