

611 of Regulation NMS ("Rule 611" or "Rule"), either unconditionally or on specified terms and conditions, any person, security, transaction, quotation, or order, or any class or classes of persons, securities, quotations, or orders, if the Commission determines that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.<sup>3</sup> As discussed below, the Commission is exempting from Rule 611 trading centers executing transactions that trade through a low-priced protected quotation by less than \$0.01 per share. The exemption is designed to promote more workable and efficient intermarket price priority in NMS stocks with quoted prices of \$1.00 or less per share that can be quoted in increments as small as \$0.0001.

## II. Background

The Commission adopted Regulation NMS in June 2005.<sup>4</sup> Rule 611(a)(1) requires a trading center to establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trade-throughs on that trading center of protected quotations in NMS stocks that do not fall within an exception set forth in the Rule. Rule 611(b)(6) provides an exception for a trade-through transaction effected by a trading center that simultaneously routes an intermarket sweep order ("ISO") to execute against the full displayed size of any protected quotation in the NMS that was traded through.

Rule 612(a) of Regulation NMS prohibits, among other things, the display of quotations priced in an increment smaller than \$0.01 if the quotation is priced equal to or greater than \$1.00 per share.<sup>5</sup> Under Rule 612(b), however, it is permissible to display quotations in increments as small as \$0.0001 if the quotation is priced less than \$1.00 per share. As a result, quotations priced in increments as small as \$0.0001 could qualify as "protected quotations" under Rule 600(b)(58).<sup>6</sup>

<sup>3</sup> See also 15 U.S.C. 78mm(a)(1) (providing general authority for Commission to grant exemptions from provisions of Exchange Act and rules thereunder).

<sup>4</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) ("Regulation NMS Adopting Release").

<sup>5</sup> 17 CFR 242.612(a).

<sup>6</sup> 17 CFR 242.600(b)(58). A "protected quotation" is defined as a protected bid or protected offer. Under Rule 600(b)(57), a "protected bid" or "protected offer" means a quotation in an NMS stock that: (i) is displayed by an automated trading center; (ii) is disseminated pursuant to an effective national market system plan; and (iii) is an automated quotation that is the best bid or best offer

## III. Discussion

The Commission has decided to exempt trading centers from the requirement in Rule 611(a) to establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trade-throughs when: (1) The price of the protected quotation that is traded through is \$1.00 or less; and (2) the price of the trade-through transaction is less than \$0.01 away from the price of the protected quotation that was traded through ("Sub-Penny Trade-Throughs").

The Commission believes that granting an exemption for Sub-Penny Trade-Throughs will promote a more workable and efficient trade-through rule in NMS stocks that can be priced in very small increments of less than \$0.01. The Regulation NMS Adopting Release notes that implementation of the Rule 611 trade-through provisions is likely to present the greatest challenge for agency markets trading active stocks that handle a large volume of buy and sell orders.<sup>7</sup> These trading centers must assure that such orders interact in an orderly and efficient manner in compliance with all applicable priority rules. The Rule 611(a) requirement of written policies and procedures is designed to achieve the objective of eliminating all trade-throughs that reasonably can be prevented, while also acknowledging the inherent difficulties of eliminating trade-through transactions in active stocks with quotations that change rapidly.<sup>8</sup>

Consistent with this approach, the Commission is adopting an exemption for Sub-Penny Trade-Throughs, particularly to allow active agency trading centers that continuously display quotations and execute orders against such quotations to operate their trading systems efficiently in stocks that can be quoted in increments of as small as \$0.0001. Given these small quoting increments for protected quotations priced at less than \$1.00 per share, the Commission does not believe it is appropriate to require trading centers to prevent trade-throughs of less than \$0.01. In the absence of an exemption, trading centers generally would be required to prevent the execution of incoming orders against their own displayed quotations with prices that could be only \$0.0001 away from a protected quotation displayed by another trading center. The Commission does not believe that the very small economic benefit to be gained by

of a national securities exchange or a national securities association.

<sup>7</sup> 70 FR at 37524.

<sup>8</sup> 70 FR at 37534.

protecting such a quotation would justify the practical difficulties faced by trading centers in operating their trading systems efficiently.

For the foregoing reasons, the Commission finds that granting an exemption for Sub-Penny Trade-Throughs is necessary and appropriate in the public interest, and is consistent with the protection of investors.

## IV. Conclusion

*It is hereby ordered*, pursuant to Rule 611(d) of Regulation NMS, that trading centers shall be exempt from the requirement in Rule 611(a) to establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trade-throughs when: (1) The price of the protected quotation that is traded through is \$1.00 or less; and (2) the price of the trade-through transaction is less than \$0.01 away from the price of the protected quotation that was traded through.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

Nancy M. Morris,

Secretary.

[FR Doc. E6-18635 Filed 11-3-06; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54675; File No. SR-NYSE-2006-96]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a Request to Extend the Pilot Operating During the Exchange's Implementation of NYSE Hybrid Market Phase 3 Until November 30, 2006

October 31, 2006.

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 October 26, 2006, 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 by the Exchange. NYSE filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and

<sup>9</sup> 7 CFR 200.30-3(a)(82).

<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).

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 proposes to extend the pilot ("Pilot")<sup>5</sup> which put into operation certain rule changes pending before the Commission to coincide with the Exchange's implementation of NYSE HYBRID MARKET<sup>SM</sup> ("Hybrid Market")<sup>6</sup> Phase 3.

### **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**

On October 5, 2006, the Commission approved the Pilot to, among other things, put into operation certain proposed modifications to Exchange Rules that are currently pending<sup>7</sup> before the Commission to coincide with the Exchange's implementation of the Hybrid Market Phase 3. The Pilot

commenced on October 6, 2006<sup>8</sup> and is scheduled to terminate on the close of business October 31, 2006.

The Exchange proposes to extend the Pilot through November 30, 2006 or the earlier of Commission approval of the Omnibus Filing, Stabilization Filing and the Block Cross Filing while the Commission continues to review the aforementioned pending filings. The approval of any one of the pending filings terminates the operation of the rules associated with the approved filing from the Pilot. The Pilot shall not terminate in its entirety unless and until all pending filings are approved or November 30, 2006.

An extension of the Pilot will allow the Exchange to continue to operate the Hybrid Market Phase 3 and commence implementation of Hybrid Market Phase 4 in a timely manner. The Exchange believes that an extension of the Pilot will also enable the Exchange to be fully Regulation NMS<sup>9</sup>-compliant by February 5, 2007 date and comply with its obligations under the proposed NMS Linkage Plan.<sup>10</sup>

The Exchange further believes that extending the Pilot will allow it to continue identifying and addressing any system problems. The Exchange will continue to identify and incorporate beneficial system changes that become apparent as a result of usage in real time and under real market conditions.

An extension of the Pilot will further the Exchange's ability to have real time user interface which is proving very useful to the Exchange. Moreover, by extending the Pilot, current users will continue gaining the essential practical experience with the new systems and processes in a well-modulated way, in real time and under real market conditions that cannot be completely replicated in the mock-trading environment.

The Exchange is currently in the process of phasing in the securities operating under the Pilot. As expected, the Pilot is operating with minimal

problems and the benefits as described above are proving invaluable. Therefore, the Exchange believes it is appropriate to extend the Pilot through November 30, 2006 or the earlier of Commission approval of the pending filings as described above.

##### **2. Statutory Basis**

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>11</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>12</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. The Exchange believes that the proposed rule change is also designed to support the principles of Section 11A(a)(1) of the Act<sup>13</sup> 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 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*

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

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

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest; does not impose any significant burden on competition; and 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, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>14</sup> and Rule 19b-4(f)(6) thereunder.<sup>15</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing. However, Rule 19b-

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

<sup>5</sup> See Securities Exchange Act Release Nos. 54578 (October 5, 2006), 71 FR 60216 (October 12, 2006) and 54610 (October 16, 2006), 71 FR 62142 (October 23, 2006).

<sup>6</sup> The Hybrid Market was approved on March 22, 2006. See Securities Exchange Act Release No. 53539 (March 22, 2006), 71 FR 16353 (March 31, 2006).

<sup>7</sup> See, Securities Exchange Act Release Nos. 54520 (September 27, 2006), 71 FR 57590 (September 29, 2006) (proposing to amend several Exchange Rules to clarify certain definitions and systemic processes ("Omnibus Filing")); 54504 (September 26, 2006), 71 FR 57011 (September 28, 2006) (proposing to amend the specialist stabilization requirements set forth in Exchange Rule 104.10 ("Stabilization Filing")); and SR-NYSE-2006-73 (filed on September 13, 2006) and Amendment No. 1 thereto (filed on October 13, 2006) (proposing to amend Exchange Rule 127 which governs the execution of a block cross transaction at a price outside the prevailing NYSE quotation ("Block Cross Filing")).

<sup>8</sup> The changes related to stop orders and stop limit orders proposed in the Omnibus Filing were implemented on October 16, 2006 in order to give customers and member organizations sufficient time to make any changes necessary as a result of the elimination of stop limit orders.

<sup>9</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

<sup>10</sup> A "Plan for the Purpose of Creating and Operating an Intermarket Communications Linkage Pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act of 1934" to facilitate trades between different market centers. See Securities Exchange Act Release No. 54551 (September 29, 2006), 71 FR 59148 (October 6, 2006). The Commission published notice of the NMS Linkage Plan on July 28, 2006. See Securities Exchange Act Release No. 54239 (July 28, 2006), 71 FR 44328 (August 4, 2006).

<sup>11</sup> 15 U.S.C. 78f.

<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> 15 U.S.C. 78k-1(a)(1).

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

4(f)(6)(iii)<sup>16</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 five-day pre-filing notice requirement and the 30-day operative delay and designate the proposed rule change immediately operative upon filing. The Commission believes that waiver of the five-day pre-filing notice requirement and the 30-day operative delay is consistent with the protection of investors and the public interest because it would allow the Pilot to continue without interruption. Accordingly, the Commission designates the proposal to be effective and operative upon filing with the Commission on a pilot basis until November 30, 2006.<sup>17</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:

##### 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-2006-96 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-2006-96. 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](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 such 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 SR-NYSE-2006-96 and should be submitted on or before November 27, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>18</sup>

Nancy M. Morris,  
Secretary.

[FR Doc. E6-18634 Filed 11-3-06; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54672; File No. SR-NYSEArca-2006-47]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to Modify the Voluntary Withdrawal Procedures of Securities From Listing on the Exchange and, for Dually-Listed Issuers Voluntarily Withdrawing Listed Securities on the Exchange, To Eliminate the Requirement To Submit Resolutions by Their Board of Directors

October 30, 2006.

#### I. Introduction

On August 4, 2006, NYSE Arca, Inc. ("Exchange") 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 Rule 5.4(b) of NYSE Arca Equities, Inc. ("NYSE Arca Equities"), a wholly-owned subsidiary of the Exchange. The Exchange amended the proposal on August 17, 2006. The proposed rule change, as amended, was published for comment in the **Federal Register** on August 29, 2006.<sup>3</sup> The Commission received no comments on the proposal. On October 17, 2006, the Exchange filed Amendment No. 2 to the proposal.<sup>4</sup> In Amendment No. 2, the Exchange amended the proposed rule text to reflect The Nasdaq Stock Market's change in status as a national securities exchange,<sup>5</sup> and to add that only an authorized executive officer may submit a delisting notice to the Exchange in the case of dually-listed issuers (as defined below). This order approves the proposed rule change, as amended by Amendment Nos. 1 and 2. The Commission has accelerated approval of Amendment No. 2 and is also providing notice and soliciting comments on Amendment No. 2 to the proposed rule change.

#### II. Description of the Proposal

The Exchange proposes to amend NYSE Arca Equities Rule 5.4(b) to modify the voluntary withdrawal procedures of securities from listing on NYSE Arca, L.L.C. ("NYSE Arca Marketplace"), the equities trading facility of NYSE Arca Equities. For an issuer who wishes to voluntarily withdraw securities listed on NYSE Arca Marketplace, the Exchange proposes to eliminate the requirement that such issuer submit a letter from an authorized officer of the issuer, providing the specific reasons cited by its board of directors for the proposed withdrawal.<sup>6</sup> Further, the Exchange proposes to eliminate the requirement that such issuer, under special

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

<sup>3</sup> See Securities Exchange Act Release No. 54348 (August 22, 2006), 71 FR 51264.

<sup>4</sup> See Partial Amendment dated October 17, 2006 ("Amendment No. 2").

<sup>5</sup> See Securities Exchange Act Release Nos. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006); 54240 (July 31, 2006), 71 FR 45246 (August 8, 2006); and 54241 (July 31, 2006), 71 FR 45359 (August 8, 2006).

<sup>6</sup> Although the provision requiring submission of a letter stating the board of director's specific reasons for delisting would be eliminated from NYSE Arca Equities rules, Rule 12d2-2(c)(2)(ii) under the Act has a similar provision that requires issuers to "provide written notice to the national securities exchange of its determination to withdraw the class of securities from listing and/or registration on such exchange. Such written notice must set forth a description of the security involved, together with a statement of all material facts relating to the reasons for withdrawal from listing and/or registration." 17 CFR 240.12d2-2(c)(2)(ii).

<sup>16</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>17</sup> 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).

<sup>18</sup> 17 CFR 200.30-3(a)(12).

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