

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57377; File No. SR-NYSEArca-2008-19)

February 25, 2008

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 7.31 to Modify the Primary Only Order Type

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 13, 2008, 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 substantially by NYSE Arca. NYSE Arca filed the proposed rule change as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ 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 from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

NYSE Arca proposes to amend Rule 7.31(x) in order to modify the permissible order entry time and eligibility of its Primary Only Order (“PO Order”). The text of the proposed rule change is available at NYSE Arca, the Commission’s Public Reference Room, and www.nyse.com.

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).

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. 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

The Exchange proposes to amend NYSE Arca Equities rule 7.31(x) to modify the operability and eligibility of PO Orders in order to provide additional flexibility and increased functionality to its system and its Users.⁵

The PO Order is a market or limit order that is routed to the primary, listing market, without sweeping the NYSE Arca book.⁶ PO Orders may be entered until a cut-off time as determined from time to time by the Corporation. Presently, the Exchange restricts PO Orders to participation in the primary, listing market opening. In an effort to enhance order execution opportunities for its Users, the Exchange proposes to modify the PO Order type so that they may 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.

According to the proposal, a PO Order may be entered at any time⁷ and will be immediately routed to the primary, listing market for execution. If the order is not IOC, the

⁵ See NYSE Arca Rule 1.1(yy) for the definition of “User.”

⁶ NYSE Arca Rule 7.31(x).

⁷ Users would be able to enter PO Orders into the system for execution during any of the Exchange’s trading sessions (Opening, Core and Late Sessions).

order is not returned to the NYSE Arca book; rather it remains at the venue routed to, until executed or cancelled that day. In instances where a symbol is halted, the PO Order will remain at the primary, listing market until such time that it is cancelled or the symbol is re-opened.

PO Orders eligible for participation in the primary, listing market's opening must be entered before 6:28 am (Pacific Time). A PO Order entered for participation in the primary, listing market re-opening after a trading halt must be entered after trading was halted on the Corporation and before the Re-Opening Time. Otherwise, PO Orders eligible for participation in the primary, listing market at all other times must be marked with the modifier: PO+.

The proposed changes to the PO Order type will provide additional flexibility and functionality to the Exchange's system and its Users that wish to use the system to comply with their obligations to avoid trading through any Protected Quotation within the meaning of Rule 600(b)(58) of Regulation NMS.⁸ PO Orders may be designated as intermarket sweep orders thereby providing the entering party the ability to trade-through any protected bid or offer (as defined in Rule 600(b) of Regulation NMS under the Act) and to execute at the primary, listing market. Of course, a broker-dealer that designates an order as an intermarket sweep order has the responsibility of complying with Rules 610 and 611 of Regulation NMS.

The Exchange believes that the proposed clarification and additional modifier will enhance flexibility and order execution opportunities for its Users. The Exchange also believes that the proposed amendments will also allow its Users to comply with their obligation to avoid trading through any protected bid or offer within the meaning of Rule 600(b) of Regulation

⁸ 17 CFR 242.600(b)(58).

NMS. In addition, the Exchange believes that the proposed functionality is substantially similar to the “Directed Orders” presently offered by The NASDAQ Stock Market LLC (“Nasdaq”).⁹

2. Statutory Basis

The proposed rule change is consistent with the provisions of Section 6 of the Act,¹⁰ in general, and with Sections 6(b)(1) and (b)(5) of the Act,¹¹ in particular, in that the proposal 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 facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

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

NYSE Arca 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, it has become effective pursuant to Section 19(b)(3)(A) of the

⁹ See Securities Exchange Act Release No. 55405 (March 6, 2007), 72 FR 11069 (March 12, 2007) (SR-NASDAQ-2007-020).

¹⁰ 15 U.S.C. 78f.

¹¹ 15 U.S.C. 78f(b)(1) and (b)(5).

Act¹² and Rule 19b-4(f)(6) thereunder.¹³

A proposed rule change filed under 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.¹⁴ However, Rule 19b-4(f)(6)(iii)¹⁵ 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.¹⁶ The Commission hereby grants the Exchange's request and designates the proposal as operative upon filing.

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:

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6).

¹¹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file 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 Arca has complied with this requirement.

¹⁵ Id.

¹⁶ 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).

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 No. SR-NYSEArca-2008-19 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NYSEArca-2008-19. 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, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NYSE Arca. 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-NYSEArca-2008-19 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Florence E. Harmon
Deputy Secretary

¹⁷ 17 CFR 200.30-3(a)(12).