

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-65184; File No. SR-NYSEAmex-2011-63)

August 22, 2011

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing of Proposed Rule Change Amending NYSE Amex Equities Rule 17(c)(2)(B) to Make Permanent the Pilot Program that Permits the Exchange to Accept Inbound Orders Routed by Archipelago Securities LLC in Its Capacity as a Facility of Affiliated exchanges and to Clarify the NYSE Amex Equities Rule 17(c)(2)(A)(ii) to More Accurately Reflect the Regulatory Services Agreement between the Exchange and the Financial Industry Regulatory Authority

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 August 18, 2011, NYSE Amex LLC (“NYSE Amex” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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 NYSE Amex Equities Rule 17(c)(2)(B) to make permanent the pilot program that permits the Exchange to accept inbound orders routed by Archipelago Securities LLC (“Arca Securities”) in its capacity as a facility of affiliated exchanges (with the attendant obligations and conditions) and to clarify the text of NYSE Amex Equities Rule 17(c)(2)(A)(ii) to more accurately reflect the regulatory services agreement (“RSA”) between the Exchange and the Financial Industry Regulatory Authority (“FINRA”). The text of the proposed rule change is available at the Exchange, at the Exchange’s website at

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

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

[www.nyse.com](http://www.nyse.com), at the Commission's Public Reference Room, and at the Commission's website at [www.sec.gov](http://www.sec.gov).

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 self-regulatory organization 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 those 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 parts 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 Amex Equities Rule 17(c)(2)(B) to make permanent the pilot program that permits the Exchange to accept inbound orders routed by Arca Securities in its capacity as a facility of affiliated exchanges (with the attendant obligations and conditions) and to clarify the text of NYSE Amex Equities Rule 17(c)(2)(A)(ii) to more accurately reflect the RSA between the Exchange and FINRA.<sup>3</sup>

Currently, Arca Securities is an approved outbound routing facility of the Exchange, providing outbound routing from the Exchange to other market centers.<sup>4</sup> The Exchange also has been previously approved to receive inbound routes of orders by Arca Securities in its capacity

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<sup>3</sup> The change to the rule text to more accurately reflect the RSA between the Exchange and FINRA is similar to language that NASDAQ OMX BX, Inc. uses to describe its relationship with FINRA. See Securities Exchange Act Release No. 64896 (July 15, 2011), 76 FR 43740 (July 21, 2011) (SR-BX-2011-045).

<sup>4</sup> See NYSE Amex Equities Rules 13 and 17(c)(1).

as an order routing facility of affiliated exchanges on a pilot basis until September 30, 2011.<sup>5</sup> On February 24, 2011, the Exchange filed an immediately effective proposal to extend the current pilot program until September 30, 2011.<sup>6</sup> On June 16, 2011, the Exchange filed an immediate effective proposal that codified the inbound routing authority in NYSE Amex Equities Rule 17(c)(2).<sup>7</sup> The Exchange hereby seeks permanent approval to permit the Exchange to accept inbound orders that Arca Securities routes in its capacity as a facility of affiliated exchanges.

Under the pilot, the Exchange is committed to the following obligations and conditions:

- The Exchange will maintain an agreement pursuant to Rule 17d-2 under the Exchange Act with FINRA to relieve the Exchange of regulatory responsibilities for Arca Securities with respect to rules that are common rules between the Exchange and FINRA, and maintain an RSA with FINRA to perform regulatory responsibilities for Arca Securities for unique Exchange rules.
- The RSA will require the Exchange to provide FINRA with information, in an easily accessible manner, regarding all exception reports, alerts, complaints, trading errors, cancellations, investigations, and enforcement matters (collectively “Exceptions”) in which Arca Securities is identified as a participant that has potentially violated Exchange or SEC Rules and of which the Exchange becomes aware, and shall require that FINRA

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<sup>5</sup> See NYSE Amex Equities Rule 17(c)(2); see also Securities Exchange Act Release No. 64728 (June 23, 2011) 76 FR 38223 nn. 4-7 (June 29, 2011) (SR-NYSEAmex-2011-39) (listing prior approval orders for outbound and inbound pilots).

<sup>6</sup> See Securities Exchange Act Release No. 64014 (March 2, 2011), 76 FR 12773 (March 8, 2011) (SR-NYSEAmex-2011-10) (extending pilot from March 31, 2011 to September 30, 2011).

<sup>7</sup> See SR-NYSEAmex-2011-39, supra note 5.

provide a report, at least quarterly, to the Exchange quantifying all Exceptions in which Arca Securities is identified as a participant that has potentially violated Exchange or SEC Rules.<sup>8</sup>

- The Exchange, on behalf of its parent, NYSE Euronext, will establish and maintain procedures and internal controls reasonably designed to prevent Arca Securities from receiving any benefit, taking any action or engaging in any activity based on non-public information regarding planned changes to Exchange systems, obtained as a result of its affiliation with the Exchange, until such information is available generally to similarly situated member organizations of the Exchange in connection with the provision of inbound order routing to the Exchange.
- The Exchange may furnish to Arca Securities the same information on the same terms that the Exchange makes available in the normal course of business to any other member organization.<sup>9</sup>

The Exchange is in compliance with the above-listed obligations and conditions. In meeting them, the Exchange has set up mechanisms that protect the independence of the Exchange's regulatory responsibility with respect to Arca Securities, as well as demonstrate that Arca Securities cannot use any information it may have because of its affiliation with the Exchange to its advantage. Since the Exchange has met all the above-listed obligations and conditions, it now seeks permanent approval of the Exchange and Arca Securities' inbound

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<sup>8</sup> As noted below, the Exchange proposes to change this provision to more accurately reflect the RSA with FINRA.

<sup>9</sup> See SR-NYSEAmex-2011-39, *supra* note 5, and NYSE Amex Equities Rule 17(c)(2)(A)(iv).

routing relationship. The Exchange also proposes to clarify the text of NYSE Amex Equities Rule 17(c)(2)(A)(ii) to more accurately reflect the RSA between the Exchange and FINRA and specify that the quarterly report of Exceptions shall be provided to the Exchange's Chief Regulatory Officer. Upon approval of the proposed rule change, the Exchange will continue to comply with the obligations and conditions as set forth in proposed NYSE Amex Equities Rule 17(c)(2)(A).

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b)<sup>10</sup> of the Act, in general, and furthers the objectives of Section 6(b)(5),<sup>11</sup> 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 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. Specifically, the proposed rule change will allow the Exchange to continue receiving inbound routes of orders from Arca Securities, acting in its capacity as a facility of affiliated exchanges, in a manner consistent with prior approvals and established protections. The Exchange believes that meeting the commitments established during the pilot program demonstrates that the Exchange has mechanisms that protect the independence of the Exchange's regulatory responsibility with respect to Arca Securities, as well as demonstrate that Arca Securities cannot use any information it may have because of its affiliation with the Exchange to its advantage.

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<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 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

No written comments were solicited or received with respect to the proposed rule change.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

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-NYSEAmex-2011-63 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NYSEAmex-2011-63. 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 website (<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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, 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 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 publicly available. All submissions should refer

to File Number SR-NYSEAmex-2011-63 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

Elizabeth M. Murphy  
Secretary

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