

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-58079; File No. SR-NYSEArca-2008-69)

July 2, 2008

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Permit the Use of a New Order Type Known as Price Improving Orders and Quotes

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 June 25, 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 substantially prepared by the Exchange. NYSE Arca designated the proposed rule change as “non-controversial” under Section 19(b)(3)(A)(iii) 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

The Exchange proposes to amend various rules to permit the use of a new order type known as Price Improving Orders and Quotes that may be submitted in increments as small as one cent, and to govern their use. The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and [www.nyse.com](http://www.nyse.com).

---

<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)(iii).

<sup>4</sup> 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, 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

The purpose of this rule change is to permit all authorized Exchange participants to submit Price Improving Orders and Quotes in increments smaller than the minimum price variation ("MPV") in the security. The Exchange will designate the classes/series eligible for this penny pricing, and the penny pricing will be available electronically and in open outcry.

Price Improving Orders and Quotes will allow market participants to submit an order priced between the MPV that will be rounded to the nearest lower MPV bid or the nearest higher MPV offer for display, but would maintain the one-cent increment limit for trade allocation purposes. Without this order type, market participants would not be able to submit orders priced between the disseminated MPV. However, since the orders will be displayed in aggregate at the nearest MPV, the order type will not "take away" transparency that would already exist.

Incoming market and marketable limit orders will receive price improvement when executed against Price Improving Orders or Quotes resting in the Consolidated Book. For example, where the NYSE Arca market is 1.00 – 1.20 and an order is received to buy 10 contracts at 1.08, NYSE Arca would disseminate a 1.05 bid for 10 contracts, and any subsequent sell market order

received by the Exchange would trade at 1.08 for up to 10 contracts (after which the quote would revert back to 1.00 – 1.20).

The Exchange also proposes to allow OTP Holders to execute Price Improving Orders in open outcry in one-cent increments and to allow Market Makers to respond to a call for a market with bids and offers in one-cent increments. However, the Exchange will require OTP Holders, prior to effecting any transactions in open outcry in one-cent increments, to electronically "sweep" any Price Improving Orders or Quotes in the NYSE Arca System. The "sweep" would ensure that better-priced orders resting in one-cent increments are executed prior to the open outcry transaction and would also ensure that same priced orders receive executions consistent with existing rules governing priority of orders in the Consolidated Book when trading with an order represented in open outcry (NYSE Arca Rules 6.47 and 6.75).

The applicability of split-price priority under NYSE Arca Rule 6.75(h) to transactions effected under proposed NYSE Arca Rule 6.73(b) would be determined by the Exchange, and the mechanics of split-price priority in those instances would be the same as the mechanics of split-price priority in five- and ten-cent increments.

In addition, open outcry penny pricing would generally be available in instances where a Floor Broker is attempting to cross an order pursuant to NYSE Arca Rule 6.47(a) through (d). However, it would not be available in those instances where a Floor Broker is utilizing the Exchange's Size Quote Mechanism (NYSE Arca Rule 6.47(f)).

The Exchange believes that this order type will provide investors the opportunity to trade at a better price than otherwise would be available—inside the disseminated best bid and offer for a security. The Exchange also believes that this order type may serve to increase liquidity to the extent that market participants find the order type results in better executions. Further,

market participants may be incented to compete by putting forth their best price—priced in a penny increment—to potentially match or better any other trading interest resident in the system. This may result in more aggressive, rather than less aggressive, trading interest.

This rule change is based on Chapter VI, Section 1(e)(6) and Section 5 of the NASDAQ Options Rules<sup>5</sup> and Chicago Board Options Exchange Rule 6.13B.<sup>6</sup>

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

### 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.

---

<sup>5</sup> See Securities Exchange Act Release No. 57478 (March 12, 2008) 73 FR 14521 (March 18, 2008) (order approving SR-NASDAQ-2007-004, as modified by Amendment 2, and SR-NASDAQ-2007-080).

<sup>6</sup> See Securities Exchange Act Release No. 57716 (April 25, 2008), 73 FR 24329 (May 2, 2008) (SR-CBOE-2007-39) (order approving CBOE-2007-39 as modified by Amendment No. 2).

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

Because the 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 after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>7</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>8</sup> As required under Rule 19b-4(f)(6)(iii),<sup>9</sup> NYSE Arca provided the Commission with 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 5 days prior to the filing of the proposed rule change.

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to the 30<sup>th</sup> day after the date of filing.<sup>10</sup> 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. NYSE Arca requested that the Commission waive the 30-day operative delay and make the proposed rule change operative upon filing because the proposal is similar to rules on the Chicago Board Options Exchange and the NASDAQ Options Market,<sup>12</sup> raises no new issues, and will allow NYSE Arca to compete for Price Improving Orders and Quotes. For these reasons, the Commission believes that waiving the 30-day operative delay is

---

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(6).

<sup>9</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>10</sup> See id.

<sup>11</sup> Id.

<sup>12</sup> See supra notes 5 and 6.

consistent with the protection of investors and the public interest. Accordingly, the Commission designates the proposed rule change 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 the 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-NYSEArca-2008-69 on the subject line.

##### Paper comments:

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

All submissions should refer to File Number SR-NYSEArca-2008-69. 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

---

<sup>13</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. See 15 U.S.C. 78c(f).

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 10:00 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 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-2008-69 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>14</sup>

Florence E. Harmon  
Acting Secretary

---

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