

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-64732; File No. SR-NYSEAmex-2011-40)

June 23, 2011

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Include Text in Its Options Rules Governing the Use of Its Affiliate Broker-Dealer, Archipelago Securities LLC for Outbound Routing of Option Orders, and to Adopt Text in Its Options Rules to Permit the Exchange to Receive Inbound Routes of Option Orders from Arca Securities, Acting as the Outbound Router for NYSE Arca, Inc.

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 16, 2011, NYSE Amex LLC (the “Exchange” or “NYSE Amex”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by NYSE Amex. 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 (1) to include text in its options rules governing the use of its affiliate broker-dealer, Archipelago Securities LLC (“Arca Securities”), for outbound routing of option orders, and (2) to adopt text in its options rules to permit the Exchange to receive inbound routes of option orders from Arca Securities, acting as the outbound router for NYSE Arca, Inc. (“NYSE Arca”). The text of the proposed rule change is available at the Exchange’s principal office, at [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).

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

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

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to include text in its options rules governing the use of Arca Securities for outbound routing of option orders, and to adopt text in its options rules to permit the Exchange to receive inbound routes of option orders from Arca Securities when it is acting as the outbound router for NYSE Arca.<sup>3</sup> The Exchange notes that it currently uses third-party broker-dealers to route orders to other options exchanges and to have orders routed to it from other options exchanges, including NYSE Arca. In an effort to provide more clarity regarding the functions of Arca Securities and to provide NYSE Amex with the flexibility to use Arca Securities as an outbound and inbound routing broker in the future, the Exchange is filing this proposed rule change.

Background – Authority to Use Arca Securities as Routing Broker

NYSE Amex currently has the authority to use Arca Securities as an outbound router to send option orders to an away market center for execution whenever such routing is required by Exchange Rules and federal securities laws. As noted above, however, the Exchange does not

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<sup>3</sup> The Exchange's affiliate, NYSE Arca, is proposing a substantially similar rule change. See SR-NYSEArca-2011-39.

currently use Arca Securities for this function. The rules providing for this authority are found in the Exchange's equities rules. In particular, Rule 13 – NYSE Amex Equities defines the term “Routing Broker,” and Rule 17(c) – NYSE Amex Equities sets forth the conditions for the operation of a Routing Broker.<sup>4</sup> These rules do not currently provide NYSE Amex with the authority to have inbound option orders routed to it by Arca Securities on behalf of NYSE Arca.

#### Proposed Rule Change

The Exchange proposes to include text in its options rules governing the use of Arca Securities for outbound routing of option orders.<sup>5</sup> This rule text is substantially the same as the rule text in Rule 13 – NYSE Amex Equities and Rule 17(c) – NYSE Amex Equities. In particular, the Exchange proposes to replace the definition of “Routing Broker” found in NYSE Amex Rule 900.2NY(69) with the definition of that term found in Rule 13 – NYSE Amex Equities. This change is designed to provide consistency with respect to rules related to the routing function on the Exchange for equity and option orders. In addition, the Exchange proposes to adopt in NYSE Amex Rule 993NY(a) the text from Rule 17(c) – NYSE Amex Equities. This change would set forth in the options rules the conditions for using Arca Securities as the outbound routing broker for option orders for the Exchange.

In addition, the Exchange has previously represented that if Arca Securities were to route option orders directly from the Exchange to an affiliated market that it would do so only after the affiliated market had rules approved that authorize it to receive such routed option orders from

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<sup>4</sup> See Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR-Amex-2008-63). Rules 13 and 17 – NYSE Amex Equities permit not only Arca Securities but also unaffiliated third-party broker-dealers to perform the outbound routing function, which serves as a risk management function in the event of a system malfunction or failure. As such, Rule 17 – NYSE Amex Equities currently refers generically to “Routing Broker(s),” rather than just Arca Securities.

<sup>5</sup> The Exchange notes that the outbound routing function of Arca Securities is only available with respect to orders of ATP Holders.

its broker-dealer affiliate.<sup>6</sup> The Exchange further recognizes that the same would be true in order for the Exchange to receive routes of option orders from Arca Securities on behalf of the Exchange's affiliate NYSE Arca. In order to address concern that the Commission has previously expressed regarding the potential for conflicts of interest in instances where a member firm is affiliated with an exchange to which it is routing orders, the Exchange hereby proposes to accept inbound option orders that its affiliate, Arca Securities, routes in its capacity as a facility of NYSE Arca, subject to the following limitations and conditions and as reflected in proposed Rule 993NY(b):<sup>7</sup>

- First, the Exchange will (1) maintain an agreement pursuant to Rule 17d-2 under the Exchange Act with a non-affiliated self-regulatory organization ("SRO") (presently the Financial Industry Regulatory Authority ("FINRA")) to relieve the Exchange of regulatory responsibilities for Arca Securities with respect to rules that are common rules between the Exchange and the non-affiliated SRO, and (2) maintain a regulatory services agreement with a non-affiliated SRO (presently

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<sup>6</sup> See Securities Exchange Act Release No. 59473 (February 27, 2009), 74 FR 9853 (March 6, 2009) (SR-NYSEALTR-2009-18), at note 8.

<sup>7</sup> The Exchange notes that the limitations and conditions proposed herein would be substantially the same as those applicable to the Exchange's current pilot program to accept routes of inbound equity orders by Arca Securities, on behalf of the Exchange's affiliates NYSE Arca and New York Stock Exchange, LLC ("NYSE"). See Securities Exchange Act Release No. 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR-Amex-2008-62). See also Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR-Amex-2008-63). The Exchange notes that it has proposed specific rule text for this inbound equity routing functionality, the terms of which are currently generally set forth in the Commission's approval orders, rather than rule text, and have already been approved in substance by the Commission for the Exchange.

FINRA) to perform regulatory responsibilities for Arca Securities for unique Exchange rules.<sup>8</sup>

- Second, the regulatory services agreement discussed above will require the Exchange to provide the non-affiliated SRO 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 the non-affiliated SRO 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.
- Third, the Exchange, on behalf of the holding company owning both the Exchange and Arca Securities, 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 ATP Holders in connection with the provision of inbound order routing to the Exchange.

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<sup>8</sup> The Exchange notes that FINRA reviews both inbound and outbound routing via Arca Securities pursuant to an existing 17d-2 agreement and an existing regulatory services agreement. The Exchange will review the terms of the regulatory services agreement in connection with this proposed rule change, and will amend it to reflect the specific terms of this filing.

- Fourth, 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 ATP Holder.
- Fifth, the inbound routing functionality would operate pursuant to a pilot program that would end on September 30, 2011.

The proposed text within Rule 993NY(b) corresponding to these limitations and conditions would be substantially the same as the language set forth in the Commission orders applicable to the Exchange, as described above, and virtually identical to the inbound router rule text already implemented for another exchange.<sup>9</sup> The Exchange proposes that the operation of the inbound routing function would cover all types of option orders approved for use on NYSE Arca.

## 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 it 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, 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, which in part would add specific rule text for routing functionality that has already been approved in substance by the Commission for the

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<sup>9</sup> See BATS Rule 2.12. See also Securities Exchange Act Release No. 62901 (September 13, 2010), 75 FR 57097 (September 17, 2010) (SR-BATS-2010-024).

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

<sup>11</sup> 15 U.S.C. 78f(b)(5).

Exchange, would enhance the clarity and transparency surrounding such functionality, including the responsibilities and obligations attendant therewith, while also reflecting the Exchange's ongoing efforts to effectively address the concerns previously identified by the Commission regarding the potential for informational advantages favoring Arca Securities vis-à-vis other non-affiliated Exchange ATP Holders. The Exchange also believes that the proposed rule change would support the principles of Section 11A(a)(1) of the Act<sup>12</sup> in that it seeks to assure economically efficient execution of securities transactions.

Additionally, the Exchange believes that the proposal to permit the Exchange to receive inbound routes of option orders from Arca Securities, acting as the outbound router for NYSE Arca, is consistent with previous Commission orders authorizing the Exchange to receive inbound routes of equity orders from Arca Securities on behalf of the Exchange's affiliate exchanges, NYSE and NYSE Arca. Furthermore, by including rule text governing both outbound and inbound routing in proposed Rule 993NY, the Exchange would establish a single, central location in its Rules describing all option order routing broker functions. Additionally, the proposed amendments to align the definition of Routing Broker in the Exchange's equity and option rules would result in greater consistency in defined terms on the Exchange.

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.

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<sup>12</sup> 15 U.S.C. 78k-1(a)(1).

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

Because the proposed rule change: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the 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>13</sup> and Rule 19b-4(f)(6) thereunder.<sup>14</sup>

A proposed rule change filed under 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.<sup>15</sup> However, Rule 19b-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 requests that the Commission waive the 30-day operative delay. The Exchange believes that waiver of the 30-day operative delay would provide more clarity and transparency in its rule text concerning all of the functions that Arca Securities performs on behalf of the Exchange without undue delay. In addition, the Exchange notes that the proposal is consistent with the rules of another national securities exchange. For these reason, the Commission believes that waiving the 30-day operative delay is consistent with the protection of

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<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

<sup>15</sup> 17 CFR 240.19b-4(f)(6)(iii). 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 Exchange has satisfied this requirement.

<sup>16</sup> Id.

investors and the public interest, and designates the proposed rule change to be operative upon filing with the Commission.<sup>17</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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-NYSEAmex-2011-40 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-2011-40. 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

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<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. 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 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 the 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-NYSEAmex-2011-40 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>18</sup>

Cathy H. Ahn  
Deputy Secretary

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