

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-53609; File No. SR-NYSEArca-2006-01)

April 6, 2006

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Brokers Executing as Principal Orders They Represent as Agent

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 March 21, 2006, NYSE Arca, Inc. (“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. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

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

The Exchange is proposing to change the time period that NYSE Arca Brokers (“Brokers”) must wait prior to executing as principal orders they represent as agent. The text of the proposed rule change is available on the Exchange’s Web site (<http://www.archipelago.com>), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

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

---

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

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

in Item III 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 filing is to amend NYSE Arca Rule 6.76, “Priority and Order Allocation Procedures,” relating to the Exchange’s PCX Plus System (“PCX Plus” or “System”). NYSE Arca Rule 6.76(c), which governs Crossing Orders on PCX Plus, among other things provides for a Crossing Mechanism that Brokers may utilize to electronically cross two orders.<sup>3</sup> With respect to principal-agency crosses effected electronically on the Exchange but not through the Crossing Mechanism, Rule 6.76(c)(3)(B)(i) stipulates that Brokers may not execute as principal orders that they represent as agent unless the agency orders are first exposed on the Exchange for at least 30 seconds.<sup>4</sup> Rule 6.76(c)(3)(B)(i) was included in the rules to guard against Brokers circumventing the time parameters established in the Crossing Mechanism by immediately executing as principal orders they represent as agent. It is this section of Rule 6.76 that the Exchange proposes to change.

---

<sup>3</sup> See NYSE Arca Rule 6.76(c)(2), which defines the Crossing Mechanism as “a process by which a NYSE Arca Broker may facilitate orders or cross two orders.” As detailed below, the Crossing Mechanism exposes one of the orders to market participants for a specified period of time before executing the cross. See also NYSE Arca Rule 6.76(c)(1)(A), which defines Cross Order for the purposes of Rule 6.76(c) as “two orders with instructions to match the identified buy-side with the identified sell-side at a specified price (the “Cross Price”).”

<sup>4</sup> Telephone conversation between Glenn Gsell, Director, Regulation, Exchange, and Ira Brandriss, Special Counsel, and Kate Robbins, Attorney, Division of Market Regulation, Commission, on April 4, 2006 (“Telephone Conversation of April 4, 2006”). The Broker may also execute a cross in open outcry, pursuant to Rule 6.47. Telephone Conversation of April 4, 2006.

When entering two orders into the Crossing Mechanism, one of the orders must be designated as an Exposed Order.<sup>5</sup> Exposed Orders are exposed to market participants for a period of 3 seconds prior to an electronic cross execution. The exposure period allows an opportunity for OTP Holders and OTP Firms to trade against the Exposed Order.

When NYSE Arca Rule 6.76(c)(2), governing the Crossing Mechanism, was approved by the Commission as part of SR-PCX-2002-36,<sup>6</sup> the rule called for a 30-second exposure period. At the time the rule was approved, PCX Plus was not applicable to all issues traded on the Exchange and not all OTP Holders and OTP Firms were utilizing fully electronic trading systems. It was felt that a 30-second exposure period was needed in order to allow an opportunity for all market participants to enter orders.

Once PCX Plus was fully phased in Exchange-wide, with all issues trading on the System, and once all market participants became electronically connected to the System, it was felt that a 30-second exposure period was no longer necessary to insure adequate exposure of orders. Since the full implementation of the all-electronic PCX Plus System, the Exchange has on two previous occasions filed with the Commission to amend Rule 6.76(c) in order to reduce

---

<sup>5</sup> See NYSE Arca Rule 6.76(c)(1)(D), which defines “Exposed Order” as follows: “the buy or sell side of a Cross Order that has been designated by a NYSE Arca Broker as the side to be exposed to the market and that is eligible for execution against all trading interest. Public Customer orders will always be deemed to be the Exposed Order in a Cross Order. In the case of a Cross Order involving a non-customer on both the buy side and sell side, the NYSE Arca Broker must designate one side of the Cross Order as the Exposed Order.”

<sup>6</sup> See Securities Exchange Act Release No. 47838 (May 13, 2003), 68 FR 27129 (May 19, 2003).

the exposure period contained in the Crossing Mechanism. The most recent change established the present 3-second exposure period.<sup>7</sup>

To be consistent with exposure periods included in the rules governing the Crossing Mechanism, the Exchange now proposes to shorten the time that a Broker must wait prior to executing as principal orders he or she represents as agent from 30 seconds to 3 seconds. Under the present rules, the Broker that enters an agency order into the PCX Plus System must wait 30 seconds before entering a principal order to execute against the agency order. All other OTP Holders and OTP Firms are given an opportunity respond to the original order during this period.<sup>8</sup> Since the intent of the original 30-second time period in NYSE Arca Rule 6.76(c)(3)(B)(i) was to prevent circumvention of the 30-second exposure period in the Crossing Mechanism rules, and since the Crossing Mechanism now contains a 3-second exposure period, the Exchange believes that customer orders may be subject to unwarranted delays if Brokers must wait 30 seconds to execute as principal an order they represent as agent. Even if agency orders are subjected to a 3-second exposure period, the Exchange asserts that OTP Holders and OTP Firms will still have adequate time to respond to the agency order prior to the Broker entering an order as principal.

---

<sup>7</sup> See Securities Exchange Act Release Nos. 52814 (November 21, 2005), 70 FR 71591 (November 29, 2005) (order approving a 10-second exposure period in the Crossing Mechanism) and 53384 (February 27, 2006), 71 FR 11280 (March 6, 2006) (order approving a 3-second exposure period in the Crossing Mechanism) (“PCX Plus 3-Second Approval Order”).

<sup>8</sup> Telephone Conversation of April 4, 2006.

The Exchange notes that the proposed rule change is virtually the same as a rule change the Chicago Board of Options Exchange (“CBOE”) proposed in SR-CBOE-2006-09.<sup>9</sup> In that filing, the CBOE proposed a change to the Interpretations and Policies subsection of CBOE Rules 6.45A and 6.45B, so that the rules would read: “Order entry firms may not execute as principal against orders they represent as agent unless: (i) agency orders are first exposed on the Hybrid System for at least three (3) seconds ....”

According to the Exchange, Brokers will be able to provide timelier executions for their customers’ orders once the time period that the Broker must wait prior to executing as principal orders they represent as agent is reduced from 30 seconds down to 3 seconds. Timely executions are consistent with the principles under which the PCX Plus system was developed.

## 2. Statutory Basis

The Exchange notes that the basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>10</sup> that an exchange have rules that are designed 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. The Exchange asserts that the proposed rule

---

<sup>9</sup> See Securities Exchange Act Release No. 53278 (February 13, 2006), 71 FR 9184 (February 22, 2006). The Commission notes that since the time NYSE Arca filed the instant proposal, the Commission approved SR-CBOE-2006-09. See Securities Exchange Act Release No. 53567 (March 29, 2006), 71 FR 17529 (April 6, 2006) (“CBOE Approval Order”).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

change will provide investors with more timely execution of their options orders, while ensuring that there is an adequate exposure of all orders in the NYSE Arca marketplace.

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

The proposed rule change does not 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 not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. 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-2006-01 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- NYSEArca-2006-01. 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. 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- NYSEArca-2006-01 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b) of the Act<sup>11</sup> and the rules and regulations thereunder applicable to a national securities exchange,<sup>12</sup> and in particular with Section 6(b)(5)

---

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

<sup>12</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

of the Act.<sup>13</sup> The Commission believes that the proposal, which reduces the time that a Broker that enters an agency order into PCX Plus must wait before entering a principal order to execute against the agency order to 3 seconds, is consistent with the exposure period recently approved by the Commission for the Crossing Mechanism,<sup>14</sup> and with rules the Commission has approved at other exchanges.<sup>15</sup> The Commission believes that in an electronic environment like that of PCX Plus, in which market participants utilize trading systems that monitor updates to the market and can automatically respond based on pre-set parameters, an exposure period of 3 seconds for orders entered into the System provides participants an adequate opportunity to compete for those orders.

The Exchange has requested accelerated approval of the proposed rule change. The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>16</sup> for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing in the Federal Register so as not to delay implementation of a rule that establishes a consistent exposure period for orders in PCX Plus. The Commission notes that the Exchange's proposal is substantially similar to a rule the Commission recently approved for another exchange.<sup>17</sup>

---

<sup>13</sup> 15 U.S.C. 78f(b)(5).

<sup>14</sup> See PCX Plus 3-Second Approval Order.

<sup>15</sup> See, e.g., CBOE Approval Order.

<sup>16</sup> 15 U.S.C. 78s(b)(2).

<sup>17</sup> See CBOE Approval Order.



V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>18</sup> that the proposed rule change (SR-NYSEArca-2006-01) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>19</sup>

Nancy M. Morris  
Secretary

---

<sup>18</sup> 15 U.S.C. 78s(b)(2).

<sup>19</sup> 17 CFR 200.30-3(a)(12).