

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58089; File No. SR-NYSEArca-2008-71)

July 2, 2008

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Enable the Exchange to Conduct Market Order and Closing Auctions in NYSE-Listed Securities Subject to a Sub-Penny Trading Condition

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 27, 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 the Exchange. NYSE Arca has designated 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 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 is proposing to amend Rule 7.35 in order to add the ability to conduct a Market Order and Closing Auction in securities listed on the New York Stock Exchange LLC (“NYSE”) subject to a sub-penny trading condition.⁵ The text of the proposed rule change is available at www.nyse.com, the principal office of the Exchange, and the Commission’s Public Reference Room.

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).

⁵ A sub-penny trading condition is defined by NYSE Rule 123D and applies to securities that are trading at a price of \$1.05 or less.

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

NYSE Arca Equities Rule 7.35 establishes rules for auctions that are conducted at different times during the trading day and in different eligible securities. NYSE Arca Equities Rule 7.35(b) states that the Opening Auction will be conducted at 4:00 a.m. (ET) and will include all eligible securities traded on the Exchange. NYSE Arca Equities Rule 7.35(c) states that the Exchange will conduct a Market Order Auction at 9:29 a.m. (ET) for: (1) exchange-listed securities for which the Exchange is the primary market; and (2) all exchange-listed exchange traded funds ("ETFs"). All other securities are routed to the primary market until after the first opening print. Similarly, NYSE Arca Equities Rule 7.35(e) states that the Exchange will conduct a Closing Auction at 4:00 p.m. (ET) for: (1) exchange-listed securities for which NYSE Arca is the primary market and; (2) all exchange-listed ETFs. All other securities are routed to the primary market.

NYSE Rule 123D establishes a "sub-penny trading condition" that requires NYSE to place a non-regulatory trading halt on a security that is, or is immediately likely to be, trading at a price of less than \$1.00. Specifically, NYSE Rule 123D states, "[w]henever a security trading

on the Exchange is reported on the Consolidated Tape during normal trading hours as having traded at a price of \$1.05 or less, or if a security would open on the Exchange at a price of \$1.05 or less, trading in the security on the Exchange shall be immediately halted because of a ‘[s]ub-penny trading’ condition.” The rule further states that, “[a]ny orders received by the NYSE in a security subject to a ‘[s]ub-penny trading’ condition will be routed to NYSE Arca, Inc. (‘NYSE Arca’) where they will be handled in accordance with the rules governing that market.”

The non-regulatory trading halt for securities with a sub-penny trading condition was added to NYSE Rule 123D in March 2007.⁶ This rule filing resulted from the combination of Rule 612 of Regulation NMS⁷ requiring securities priced at less than \$1.00 be quoted in increments no smaller than \$0.0001, and the fact that NYSE’s trading system is not able to accommodate sub-penny trading, nor can it recognize a quote disseminated by another market center if such quote has a sub-penny component. NYSE determined that it would not be cost-effective to make the changes that would allow its trading system to fully accommodate sub-penny trading and, therefore, introduced the non-regulatory trading halt described above. Later in March 2007, NYSE again changed Rule 123D, this time adding language to establish that any orders received by NYSE in a security subject to a sub-penny trading condition will be routed to NYSE Arca.⁸ The Exchange’s ability to quote in sub-pennies allows for continued trading in securities that otherwise may have been halted, and brings continuity to the marketplace by preventing potentially harmful trading interruptions.

⁶ See Securities Exchange Act Release No. 55398 (March 5, 2007), 72 FR 11072 (March 12, 2007) (SR-NYSE-2007-25).

⁷ 17 CFR 242.612.

⁸ See Securities Exchange Act Release No. 55537 (March 27, 2007), 72 FR 15749 (April 2, 2007) (SR-NYSE-2007-30).

The purpose of this rule filing is to add new language to Rule 7.35 that will give the Exchange the ability to conduct a Market Order and Closing Auction in NYSE-listed securities subject to a sub-penny trading condition when NYSE directs orders to NYSE Arca for execution.

Currently, NYSE Arca rules do not permit the Exchange to conduct a Market Order and/or Closing Auction in securities for which it is not the primary market. This restriction applies when NYSE has placed a non-regulatory trading halt on a security due to a sub-penny trading condition and NYSE orders are routed to NYSE Arca for execution. The Exchange believes that in those circumstances NYSE Arca must have the ability to conduct a Market Order Auction and Closing Auction for NYSE-listed securities subject to a sub-penny trading condition in order to facilitate a fair and orderly market and give customers the ability to interact with the market when not otherwise permitted to participate at NYSE. Accordingly, the Exchange proposes to amend Rule 7.35(c) and (e) to permit the Exchange to conduct a Market Order and Closing Auction in: (1) exchange-listed securities for which the Exchange is the primary market; (2) all exchange-listed ETFs; and (3) NYSE-listed securities subject to a sub-penny trading condition.

The Exchange believes that the proposed rule change offers the Exchange the ability to conduct a Market Order Auction and a Closing Auction in those instances where NYSE is prevented from trading in a security due to a sub-penny trading condition, but where NYSE Arca is permitted to conduct transactions. In that scenario, it is appropriate for the Exchange to conduct a Market Order Auction and a Closing Auction in order to best facilitate a fair and orderly market by providing the maximum number of matched orders at the best available price. This is particularly important because it will allow customers to interact with the market when not otherwise permitted to participate at NYSE.

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,⁹ in that it is designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; 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 Exchange's ability to quote in sub-pennies allows for continued trading in securities that otherwise may have been halted and brings continuity to the marketplace by preventing potentially harmful trading interruptions.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

The proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁰ and Rule 19b-4(f)(6) thereunder¹¹ because the foregoing proposed rule: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days after the date

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.¹²

The Exchange has asked the Commission to waive the 30-day operative delay and designate the proposed rule change as operative upon filing. The Commission hereby grants the Exchange's request and believes that such action is consistent with the protection of investors and the public interest. This action will permit without further delay more continuous trading of certain securities that are subject to a non-regulatory halt on their primary market, NYSE.¹³

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:

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 Number SR-NYSEArca-2008-71 on the subject line.

¹² In addition, Rule 19b-4(f)(6)(iii) requires the self-regulatory organization to give the Commission 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. NYSE Arca has satisfied this requirement.

¹³ For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Paper comments:

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

All submissions should refer to File Number SR-NYSEArca-2008-71. 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, 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-NYSEArca-2008-71 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.¹⁴

Florence E. Harmon
Acting Secretary

¹⁴ 17 CFR 200.30-3(a)(12).