

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-58596; File No. SR-NYSEArca-2008-98)

September 19, 2008

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Arca, Inc., Amending NYSE Arca Equities Rule 7.35 Governing Auctions

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on September 15, 2008, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) 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 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 Arca Equities Rule 7.35(c) and (e) to permit the Exchange to conduct a Market Order Auction and a Closing Auction in all exchange listed “Derivative Securities Products” as defined by NYSE Arca Equities Rule 7.34(a)(4)(A).

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.

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

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 Arca Equities Rule 7.35(c) and (e) to permit the Exchange to conduct a Market Order Auction and a Closing Auction in all exchange listed “Derivative Securities Products” as defined by NYSE Arca Equities Rule 7.34(a)(4)(A).

Currently NYSE Arca Equities Rule 7.35(c) states that the Exchange will conduct a Market Order Auction in (i) exchange-listed securities for which the Corporation is the primary market; (ii) all exchange-listed exchange traded funds; and (iii) NYSE listed securities subject to a sub-penny trading condition. Similarly, NYSE Arca Equities Rule 7.35(e) states that the Exchange will conduct a Closing Auction in (i) exchange-listed securities for which the Corporation is the primary market; (ii) all exchange-listed exchange traded funds; and (iii) NYSE listed securities subject to a sub-penny trading condition. The Exchange proposes to expand subpart (ii) in both Rules by replacing the term “exchange-listed exchange traded funds” with the term “exchange-listed Derivative Securities Products” as that term is defined in NYSE Arca Equities Rule 7.34(a)(4)(A).

The Exchange believes this rule change will foster increased liquidity by expanding the type of securities eligible for Market Order and Closing auctions. This proposed amendment is also consistent with Rules 4752 and 4754 of the Nasdaq Stock Market, L.L.C. (“Nasdaq”), which do not limit the securities or products that may be traded in the opening and closing auctions.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act in general, and furthers the objectives of Section 6(b)(5) 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, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. This proposed rule change will foster increased liquidity by expanding the type of securities eligible for Market Order and Closing auctions.

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

The proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>4</sup> and Rule 19b-4(f)(6) thereunder<sup>5</sup> 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 of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.<sup>6</sup> The Exchange notes that this filing does not propose any new policies or provisions that are unique or unproven, and is consistent with Nasdaq Rules 4752 and 4754.

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<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(6).

<sup>6</sup> 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.

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.<sup>7</sup> The Commission believes that such action is consistent with the protection of investors and the public interest because the Exchange's proposal is similar to that of another exchange that was previously approved by the Commission.<sup>8</sup>

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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2008-98 on the subject line.

##### Paper comments:

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

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<sup>7</sup> 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).

<sup>8</sup> See Securities Exchange Act Release No. 54155 (July 14, 2006), 71 FR 41291 (July 20, 2006) (SR-NASDAQ-2006-001) (approving, among other things, Nasdaq Rules 4752 and 4754.)

All submissions should refer to File Number SR-NYSEArca-2008-98. 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-2008-98 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>9</sup>

Florence E. Harmon  
Acting Secretary

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<sup>9</sup> 17 CFR 200.30-3(a)(12).