

participants to effectively execute large-sized orders. The Commission will analyze the information provided in the Exchange's reports, in conjunction with the information provided by other exchanges and market participants, to inform its evaluation and consideration of any exchange's proposed further expansion of the Pilot.

The commenter further noted, to the extent that additional size may be available below the best bid or offer,<sup>25</sup> options market participants discount the value of such liquidity because it is generally not transparent to the market and is not easily accessible even if displayed.<sup>26</sup> The commenter noted that, unlike in the equities markets, market participants cannot quickly sweep multiple markets through multiple price levels to reach such additional liquidity. The Commission encourages the exchanges to consider measures that would facilitate access to depth of book quotes.

Finally, the commenter recommends removing the poorest performing single stock names from the Pilot and replacing them with liquid index or sector products.<sup>27</sup> The Commission agrees that there should be a mechanism for removing option classes from the Pilot. The Commission specifically requested comment in the notice of NYSE Arca's proposal on: (1) Whether there are circumstances under which classes included in the Pilot should be removed; (2) if so, what factors should be considered in making the determination to remove a class from the Pilot, specifically whether an objective standard should be used or whether a more subjective analysis should be allowed; (3) what concerns might arise by removing a class from the Pilot, and how could such concerns be ameliorated; (4) how frequently should such an analysis be undertaken, or should the evaluation be automated;

<sup>25</sup> Only two exchanges provided information on "depth of book" on their markets in the Pilot classes. See NYSE Arca Report at 8–10, *supra* note 14, and ISE Report, *supra* note 14, at 9. ISE reported that the average total size of all quotes on its book at all price levels, weighted for volume, for all thirteen Pilot classes was reduced by 61%. See ISE Report, *supra* note 14, at 9. NYSE Arca compared liquidity resident in its book within the legacy minimum price variation to pre-Pilot top of book liquidity and reported that volume weighted liquidity across all thirteen Pilot classes decreased 1%. See NYSE Arca Report, *supra* note 14, at 8.

<sup>26</sup> The Commission notes that currently only NYSE Arca makes available quotes and orders on its book below the NBBO. See <http://www.nysedata.com/nysedata/InformationProducts/ArcaBook/tabid/293/Default.aspx>. The Commission anticipates that to the extent this display of information proves to be valuable to the options market as a whole, other exchanges may choose to make this information available as well.

<sup>27</sup> See *supra*, note 22.

and (5) if a class is to be removed from the Pilot, how much notice should be given to market participants that the quoting increment will change, but did not receive any comments. The Commission will continue to consider comments on how to fairly and objectively determine if a class should be removed from the Pilot. Finally, to the extent that the Exchange files a proposed rule change to further expand the Pilot, the Commission urges it to include in any such proposal a methodology for removing classes from the Pilot.

For the reasons discussed above, the Commission believes that the proposed rule change is consistent with the Act.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>28</sup> that the proposed rule change (SR–NYSEArca–2007–88) be, and hereby is, approved on a pilot basis, which will end on March 27, 2009.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>29</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7–19498 Filed 10–2–07; 8:45 am]

BILLING CODE 8011–01–P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56545; File No. SR–NYSEArca–2007–95]

### Self-Regulatory Organizations; NYSEArca, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rules 7.34 and 7.35

September 27, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> notice is hereby given that on September 17, 2007, NYSE Arca, Inc. ("NYSE Arca" or "Exchange"), through its wholly owned subsidiary, NYSE Arca Equities, Inc. ("NYSE Arca Equities" or "Corporation"), filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been substantially prepared by the Exchange. NYSE Arca has designated this proposal pursuant to Section

19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b–4(f)(5)<sup>4</sup> thereunder, 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, among other minor changes, to amend NYSE Arca Equities Rule 7.35 in order to reduce the Opening, Market Order, and Closing auction lock-out period to one minute. 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).

#### 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. The text of these statements may be examined at the places specified in Item IV below. The Exchange has substantially 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 Exchange proposes to amend NYSE Arca Equities Rule 7.35 in order to reduce the Opening, Market Order, and Closing Auction lock-out periods to one minute.<sup>5</sup> The Exchange believes that compressing the lock-out periods will offer its Users<sup>6</sup> greater order entry or cancellation flexibility and more informed market participation by allowing its Users to benefit from the dissemination of auction related information for an additional minute prior to the lock-out periods.

###### Opening Auction

Pursuant to NYSE Arca Rule 7.35(a)(4), Users are currently prevented from cancelling orders that are eligible

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

<sup>4</sup> 17 CFR 240.19b–4(f)(5).

<sup>5</sup> NYSE Arca Equities Rule 7.34(a) provides for three equities trading sessions on the Exchange: The Opening Session (4 a.m. to 9:30 a.m. Eastern Time ("E.T.")), the Core Trading Session (9:30 a.m. to 4 p.m. E.T.), and the Late Trading Session (4 p.m. to 8 p.m. E.T.).

<sup>6</sup> See NYSE Arca Rule 1.1(yy) for the definition of "User."

<sup>28</sup> 15 U.S.C. 78s(b)(2).

<sup>29</sup> 17 CFR 200.30–3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b–4.

for the Opening Auction in the last two minutes prior to the Opening Session until the conclusion of the Opening Auction. The Exchange proposes to reduce this freeze or lock-out period to one minute.

#### Market Order Auction

Pursuant to NYSE Arca Rule 7.35(c)(2), Users are also currently prevented from entering certain orders for the final two minutes before the Opening Auction and the Start of the Exchange's Core Trading Session. Specifically, Market Orders and Auction-Only Limit Orders may not be entered on the same side as the imbalance between 6:28 a.m. (Pacific Time) and the conclusion of the Market Order Auction. Also, Limited Price Orders not eligible for the Opening Session, Market Orders, Auction-Only Limit Orders, and Cleanup Orders may not be cancelled between 6:28 a.m. (Pacific Time) and the conclusion of the Market Order Auction. The Exchange proposes herein to amend NYSE Arca Rule 7.35(c)(2)(A)(1)(iii) and NYSE Arca Rules 7.35(c)(2)(A)(2) & (3) to compress these freeze or lock-out periods to one minute. In addition, the Exchange proposes to amend NYSE Arca Rules 7.35(d)(1) & (2) in order to compress the lock-out periods governing the execution eligibility of Limit Price Orders and Market Orders entered before the Market Order Auction to one minute, from 6:28 a.m. (Pacific Time) to 6:29 a.m. (Pacific Time). Similarly, the Exchange proposes amending Rule 7.34(d)(1)(H) to permit Limit Price Orders designated for the Core Trading Session, entered for an additional minute up until 6:29 a.m. (Pacific Time) (instead of 6:28 a.m. Pacific Time), to participate in the Market Order Auction.

#### Closing Auction

Further, according to NYSE Arca Rule 7.35(e)(2)(B), Market-on-Close Orders and Limit-on-Close Orders may not be cancelled between 12:58 p.m. (Pacific Time) and the conclusion of the Closing Auction. In addition, according to NYSE Arca Rule 7.35(e)(2)(C), Market-on-Close Orders and Limit-on-Close Orders may not be entered on the same side as the imbalance between 12:58 p.m. (Pacific Time) and the conclusion of the Closing Auction. The Exchange proposes to compress the lock-out periods for either entering or cancelling certain orders preceding the Closing Auction, as described above, from two minutes to one minute.

#### Exchange Traded Funds

The Closing Auction for Exchange Traded Funds ("ETFs") commences at

1:15 p.m. (Pacific Time). Pursuant to NYSE Arca Rule 7.35(e)(3)(E), Closing Auctions for ETFs follow the same two-minute freeze or lock-out limitations described above. Specifically, Market-on-Close Orders and Limit-on-Close Orders may not be cancelled, and Market-on-Close Orders and Limit-on-Close Orders may not be entered on the same side as the imbalance between 1:13 p.m. (Pacific Time) and the conclusion of the Closing Auction.<sup>7</sup> Consistent with the above described rule change pertaining to Closing Auctions, the Exchange proposes reducing this lock-out period to one minute.

By compressing the lock-out periods to one minute as described above, Users will benefit from the dissemination of auction related information for an additional minute resulting in greater order entry or cancellation flexibility and more informed market participation. The Exchange intends this system change to be effective on filing and operative on September 17, 2007.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>9</sup> in particular, because 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.

#### 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.

<sup>7</sup> Pursuant to telephone conversation between Hong-Anh Tran, Special Counsel, Division of Market Regulation, and Andrew Stevens, Assistant General Counsel, Exchange, dated September 19, 2007.

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

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

Because the foregoing proposed rule change effects a change in an existing order-entry or trading system of a self-regulatory organization that: (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 have the effect of limiting the access to or availability of the system, it has become effective pursuant to Section 19(b)(3)(A)<sup>10</sup> of the Act and Rule 19b-4(f)(5)<sup>11</sup> thereunder. At any time within 60 days of the filing of such 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-2007-95 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-2007-95. 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

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(5).

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 a.m. and 3 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 available publicly. All submissions should refer to File Number SR-NYSEArca-2007-95 and should be submitted on or before October 24, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56541; File No. SR-Phlx-2007-63]

### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to Short Interest Reporting

September 26, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup>, and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on August 16, 2007, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), and on September 20, 2007 amended, the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Phlx, pursuant to Section 19(b)(1) of the Act<sup>3</sup> and Rule 19b-4 thereunder,<sup>4</sup> proposes to make a technical amendment to the text of Phlx Rule 786, Supplementary Material .01, changing the reference to Rule 200 of Regulation SHO to Rule 200(a) of Regulation SHO. In addition, Phlx proposes to add a new Supplementary Material section to Rule 786 to amend the exceptions to the short interest reporting requirement for certain transactions.

The text of the amended Phlx Rule is set forth below. Underlining indicates additions; brackets indicate deletions.

\* \* \* \* \*

#### Rule 786.

##### *Periodic Reports*

Member organizations shall submit, as required by the Exchange, periodic reports with respect to short positions in securities.

Supplementary Material: \* \* \*

.01 Short Positions—Member organizations for which the Exchange is the designated examining authority ("DEA") are required to report short positions, including odd-lots, in each stock or warrant traded on the Exchange, and in each other stock or warrant not traded on the Exchange for which short positions are not otherwise reported to another United States securities exchange or association, using such automated format and methods as prescribed by the Exchange. Such reports must include customer and proprietary positions and must be made at such times and covering such time period as may be designated by the Exchange. Member organizations whose short positions have properly been reported to, and are carried by, a non-member clearing organization will be in compliance with this rule if adequate arrangements have been made providing for the clearing organization to properly report such positions to the Exchange or to another United States securities exchange or association.

- "Short" positions to be reported are those resulting from "short" sales as defined in Securities and Exchange Commission Rule 200(a) of Regulation SHO, but excluding sales that meet an exception in .02 below [marked "sell short exempt" pursuant to Rule 200(g) of Regulation SHO]. Also, to be excluded are "short" positions carried for other members and member organizations reporting for themselves.

Only one report should be made for each stock or warrant for which there is a short position, if more than one "account" has a short position in the same stock or warrant, the combined aggregate should be reported.

Member organizations for which the Exchange is not the DEA must report short positions to its DEA if such DEA has a requirement for such reports. If the DEA does not have such a reporting requirement, then such member organization must comply with the provisions of this rule.

##### *.02 Exceptions*

(a) Any sale by any person, for an account in which he has an interest, if such person owns the security sold and intends to deliver such security as soon as is possible without undue inconvenience or expense.

(b) Any sale of a security covered by a short sale rule on a national securities exchange (except a sale to a stabilizing bid complying with Rule 104 of Regulation M) effected with the approval of such exchange which is necessary to equalize the price of such security thereon with the current price of such security on another national securities exchange which is the principal exchange market for such security.

(c) Any sale of a security for a special arbitrage account by a person who then owns another security by virtue of which he is, or presently will be, entitled to acquire an equivalent number of securities of the same class as the securities sold; provided such sale, or the purchase which such sale offsets, is effected for the bona fide purpose of profiting from a current difference between the price of security sold and the security owned and that such right of acquisition was originally attached to or represented by another security or was issued to all the holders of any such class of securities of the issuer.

(d) Any sale of a security registered on, or admitted to unlisted trading privileges on, a national securities exchange effected for a special international arbitrage account for the bona fide purpose of profiting from a current difference between the price of such security on a securities market not within or subject to the jurisdiction of the United States and on a securities market subject to the jurisdiction of the United States; provided the seller at the time of such sale knows or, by virtue of information currently received, has reasonable grounds to believe that an offer enabling him to cover such sale is then available to him such foreign securities market and intends to accept such offer immediately.

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

<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)(1).

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