

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 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-NASDAQ-2008-071 and should be submitted on or before September 25, 2008.

#### 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 the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>20</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>21</sup> which requires that the rules of an exchange be designed, among other things, 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.

Pursuant to Section 19(b) of the Act<sup>22</sup> and Rule 19b-4 thereunder,<sup>23</sup> the listing and trading of a new derivative securities product is a proposed rule change that must be filed with and approved by the Commission. Rule 19b-4(e) under the Act<sup>24</sup> further provides that the listing and trading of a new derivative securities product by an exchange will not be deemed a proposed rule change pursuant to Rule 19b-4(c)(1) under the Act<sup>25</sup> if the Commission has approved, pursuant to Section 19(b) of the Act, the exchange's trading rules, procedures, and listing

standards for the product class that would include the new derivative securities product, and the exchange has a surveillance program for the product class.

The Commission believes that the Exchange's adoption of listing and trading standards for Index Fund Shares that meet the requirements of Nasdaq Rule 4420(j) should fulfill the intended objective of Rule 19b-4(e) by allowing such Index Fund Shares to commence trading on the Exchange without the need for individualized Commission approval. Accordingly, the proposed rule should allow the Exchange to bring these securities to market without delay, thereby reducing the burdens on issuers and other market participants while promoting competition.

The Commission finds that the Exchange's proposal contains adequate rules and procedures to govern the trading and listing pursuant to Rule 19b-4(e) of Inverse Fund Shares and Multiple Fund Shares listed pursuant to Rule 19b-4(e) on the Exchange. Among other things, the proposal would require daily public Web site disclosure of a fund's portfolio holdings and dissemination of its NAV to all market participants at the same time, or else the Exchange would be obligated to halt trading in the fund's shares. In addition, Fund Shares listed and/or traded under the proposed "generic" standards would be subject to existing Nasdaq rules that govern the continued listing and trading of Index Fund Shares.

The Commission finds good cause for approving this proposal before the 30th day after the publication of notice thereof in the **Federal Register**. The Commission notes that it has recently approved a similar proposal of another exchange,<sup>26</sup> and Nasdaq's proposal does not raise any novel regulatory issues. Accordingly, the Commission believes that accelerating approval of this proposal is appropriate and will enable the Exchange to amend its rules to reflect the standards for listing and trading Inverse and Multiple Fund Shares, thereby conforming Nasdaq's rules to those of other exchanges without delay.

#### V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>27</sup> that the proposed rule change (SR-NASDAQ-2008-071) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>28</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58429; File No. SR-NYSE-2008-71]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Rule 123B (Exchange Automated Order Routing System) To Allow a Member Organization To Provide Other Market Participants With Access to the Exchange on an Agency Basis

August 27, 2008.

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 August 18, 2008, New York Stock Exchange LLC ("NYSE" 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 by NYSE. NYSE filed the proposed rule change as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders it 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

NYSE proposes to amend NYSE Rule 123B to set forth the requirements that would allow a member organization to provide other market participants with access to the Exchange on an agency basis for the entry and execution of orders on the Exchange.<sup>5</sup> The text of the proposed rule change is available at NYSE, the Commission's Public

<sup>28</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)(3)(A).

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

<sup>5</sup> NYSE Rule 54 provides that only members are permitted to "make or accept bids or offers, consummate transactions, or otherwise transact business on the Floor for any security admitted to dealings on the [Exchange].\* \* \*" See also NYSE Rule 2.

<sup>20</sup> In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>21</sup> 15 U.S.C. 78f(b)(5).

<sup>22</sup> 15 U.S.C. 78s(b)(1).

<sup>23</sup> 17 CFR 240.19b-4.

<sup>24</sup> 17 CFR 240.19b-4(e).

<sup>25</sup> 17 CFR 240.19b-4(c)(1).

<sup>26</sup> See Securities Exchange Act Release No. 57660 (April 14, 2008), 73 FR 21391 (April 21, 2008) (SR-Amex-2007-131). The Commission notes that it received no comments on the Amex's proposal.

<sup>27</sup> 15 U.S.C. 78s(b)(2).

Reference Room, and <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, NYSE 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. NYSE 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 proposes to amend NYSE Rule 123B to set forth the requirements for a member or member organization ("Sponsoring Member Organization") to provide access ("sponsored access") to a non-member firm or customer ("Sponsored Participant") for the entry and execution of orders on the Exchange. The Exchange seeks the proposed rule amendment to provide a uniform rule for sponsored access to the Exchange as described below.

#### Background

Currently, there are sponsored access provisions included in certain NYSE rules that govern specific Exchange products or facilities;<sup>6</sup> however, the Exchange does not have a general sponsored access rule. The Exchange therefore proposes to adopt the sponsored access rule of its affiliate exchange, NYSE Arca, Inc. ("NYSE Arca").<sup>7</sup> Other exchanges, namely The NASDAQ Stock Market LLC,<sup>8</sup> have similarly adopted identical sponsored access provisions.<sup>9</sup>

<sup>6</sup> See NYSE MatchPoint<sup>SM</sup> (NYSE Rule 1500) and NYSE Bonds<sup>SM</sup> (NYSE Rule 86). The provisions of this proposed rule will not apply to NYSE Rules 1500 and 86.

<sup>7</sup> See NYSE Arca Rules 7.29 (Access) and 7.30 (Authorized Traders).

<sup>8</sup> See Securities Exchange Act Release No. 55550 (March 28, 2007), 72 FR 16389 (April 4, 2007) (SR-NASDAQ-2007-010) (amending NASDAQ Rule 4611(d) to conform its requirements to match NYSE Arca Rules 7.29 and 7.30).

<sup>9</sup> In adopting NYSE Arca's sponsored access rule, NASDAQ stated its intent was, "to match the regulatory requirements imposed by other exchanges and, thereby, to promote uniform regulation of sponsored access relationships." See Securities Exchange Act Release No. 55550 (March 28, 2007) at 2, 72 FR 16389, 16390 (April 2007) (SR-NASDAQ-2007-010).

### Proposed NYSE Rule 123B Sponsored Access

According to the proposed rule, Sponsored Participants must enter into and maintain customer agreements with one or more Sponsoring Member Organizations establishing proper relationship(s) and account(s) through which the Sponsored Participant may trade on the Exchange. As more fully described below, the Sponsoring Member Organization and the Sponsored Participant must agree in writing to specific sponsorship provisions ("Sponsorship Access Agreement") in order for the Sponsored Participant to obtain and maintain authorized access to the Exchange.<sup>10</sup> The first sponsorship provision of the proposed rule requires the Sponsoring Member Organization to enter into and maintain an agreement with the Exchange, designating the Sponsored Participant by name in such agreement.

The Sponsoring Member Organization also agrees to be responsible for the conduct of the Sponsored Participant and/or any person acting on its behalf or in the name of such Sponsored Participant. Further, all orders entered by the Sponsored Participant and/or any person acting on its behalf or in the name of such Sponsored Participant are binding on the Sponsoring Member Organization. Both the Sponsored Participant and the Sponsoring Member Organization agree to comply with the rules and procedures of the Exchange.

In order to ensure compliance with the Sponsorship Access Agreement, it is the responsibility of the Sponsored Participant to implement such internal controls as may be necessary to prevent unauthorized use of and access to the Exchange facilities. Sponsored Participants will be required to establish adequate procedures and controls to monitor use and access to the Exchange by their employees, agents, and customers. The Sponsored Participant also agrees to pay to the Sponsoring Member Organization, the Exchange, or any third party, all amounts (including but not limited to exchange and regulatory fees) related to the Sponsored Participant's access to and the use of Exchange facilities when due.

The proposed rule contemplates that the Sponsored Participant may permit one or more person(s) to submit orders to the Exchange on its behalf

<sup>10</sup> Commentary .30, Section (c)(3) of proposed NYSE Rule 123B requires that the Sponsoring Member Organization provide the Exchange with a notice of consent acknowledging its responsibility for the orders, execution, and conduct of the Sponsored Participant at issue (alteration to original citation that referenced "Section (b)(3) of proposed NYSE Rule 123B").

("Authorized Trader").<sup>11</sup> The Sponsored Participant is required to maintain, keep current and provide, upon request, a list of Authorized Traders to the Sponsoring Member Organization. The Sponsoring Member Organization is required to maintain a current list of the same to be made available to the Exchange upon request.

Although the Sponsored Participant is required to familiarize its Authorized Traders with the obligations of a Sponsored Participant under the proposed rule and ensure that the Authorized Trader receives appropriate training prior to any use or access to the Exchange, it is the Sponsoring Member Organization that bears the ultimate responsibility regarding the conduct and trading activity of Authorized Traders. Specifically, the Sponsoring Member Organization must have reasonable procedures to: (a) Ensure compliance with Exchange rules and procedures; and (b) maintain, as appropriate, the physical security of any equipment on its premises for accessing the Exchange to prevent against improper access or use (including unauthorized entry of information into Exchange systems). Pursuant to the proposed rule, at the direction of the Exchange, the Sponsoring Member Organization must suspend or withdraw the status of Authorized Trader from any person whom the Exchange has determined has caused the Sponsoring Member Organization to fail to comply with Exchange Rules.

Insofar as the amendments proposed herein have been determined by the Commission to be consistent with the protection of investors and the public interest; the Exchange believes that the proposed amendments to NYSE Rule 123B to codify the requirements for sponsored access on the Exchange are necessary to align NYSE rules with what has become the industry standard.<sup>12</sup>

#### 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,<sup>13</sup> in that it is designed to prevent fraudulent and manipulative practices, to promote just and equitable principles of trade, to remove impediments to and perfect the

<sup>11</sup> See Commentary .30, Sections (c)(2)(D) and (d) of proposed NYSE Rule 123B (alteration to original citation that referenced "proposed NYSE Rule 123B sections (b)(2)(D) and (d)").

<sup>12</sup> See Securities Exchange Act Release No. 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (SR-PCX-00-25) (alteration to original citation that referenced "53615 (April 7, 2006), 71 FR 19226 (April 13, 2006) (SR-PCX-2006-24) (adopting NYSE Arca Equities Rules 7.29 and 7.30)").

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

mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest.

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

NYSE 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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>14</sup> and Rule 19b-4(f)(6) thereunder.<sup>15</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>16</sup> However, Rule 19b-4(f)(6)(iii)<sup>17</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 has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission hereby grants the Exchange's request and designates the proposal as operative upon filing.<sup>18</sup>

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

<sup>16</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file 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 has complied with this requirement.

<sup>17</sup> *Id.*

<sup>18</sup> For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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 No. SR-NYSE-2008-71 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.

All submissions should refer to File Number SR-NYSE-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, 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 NYSE. 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-NYSE-2008-71 and

should be submitted on or before September 25, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58430; File No. SR-NYSE-2008-76]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange LLC Amending NYSE Rule 2B in Order To Establish Procedures Designed To Manage Potential Informational Advantages Resulting From the Affiliation Between the Exchange and Archipelago Securities L.L.C.

August 27, 2008.

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 August 20, 2008, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. 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 Exchange Rule 2B in order to establish procedures designed to manage potential informational advantages resulting from the affiliation between the Exchange and Archipelago Securities L.L.C., an NYSE affiliated member. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <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 self-regulatory organization included statements concerning the purpose of,

<sup>19</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.