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–NASDAQ–2008–075 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NASDAQ–2008–075. 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 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–NASDAQ–2008–075 and should be submitted on or before October 27, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.\(^{16}\)

Florence E. Harmon,
Acting Secretary.

[FR Doc. E8–23488 Filed 10–3–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; New York Stock Exchange LLC; Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Amending NYSE Rule 2B To Establish Procedures Designed To Manage Potential Informational Advantages Resulting From the Affiliation Between the Exchange and Archipelago Securities L.L.C.

September 29, 2008.

I. Introduction

On August 20, 2008, the New York Stock Exchange LLC (“NYSE” or “Exchange”), filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”) \(^1\) and Rule 19b–4 thereunder, \(^2\) a proposed rule change amending NYSE Rule 2B to establish procedures designed to manage potential informational advantages resulting from the affiliation between the Exchange and Archipelago Securities L.L.C. (“Arca Securities”), an NYSE affiliated member. On September 4, 2008, the proposed rule change was published for comment in the Federal Register. \(^3\) The Commission received no comments on the proposed rule change. On September 25, 2008, NYSE filed Amendment No. 1. \(^4\) This order approves the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Background

A. NYSE Arca’s PO Plus Proposal

On August 20, 2008, NYSE Arca, Inc. (“NYSE Arca”) filed with the Commission a proposed rule change to expand the availability of its PO Order type (“PO Plus Proposal”). \(^5\) NYSE Arca’s PO Order is a market or limit order that is to be routed to the primary market in that security without first attempting to access liquidity on the NYSE Arca book. The PO Orders are routed to the primary market through NYSE Arca’s routing broker-dealer, Arca Securities, which is an affiliate of NYSE Arca as described more fully below. The “primary market” may be the New York Stock Exchange LLC (“NYSE”) or the American Stock Exchange LLC (“Amex”), \(^6\) each of which, as described more fully below, also is (or will be) an affiliate of NYSE Arca and Arca Securities.

Such orders, currently, may only be entered until a cut-off time established from time to time by the Exchange. \(^7\) In its PO Plus Proposal, NYSE Arca


\(^{4}\) Amendment No. 1, NYSE Arca requested that the PO Orders be included in the PO Plus Proposal (Release No. 58283 Federal Register 51678 (August 27, 2008), 73 FR 51681 (September 4, 2008)).


\(^{6}\) NYSE Arca’s PO Plus Proposal.

\(^{7}\) See NYSE Arca PO Plus Proposal (Release No. 58283 Federal Register 51678 (August 27, 2008), 73 FR 51681 (September 4, 2008)).
proposes to modify the PO Order type so that such orders may be entered at any time throughout the trading day and be immediately routed to the primary listing market for execution. Further, the proposal permits an entering party to designate a PO Order as an Intermarket Sweep Order (as defined in Rule 600(b) of Regulation NMS under the Act). The expanded PO order is referred to as a PO Plus order.

B. Arca Securities Routing Function

NYSE Euronext, a Delaware Corporation ("NYSE Euronext") currently indirectly owns Arca Securities, a broker-dealer that is a member of the NYSE. In addition, NYSE Euronext indirectly owns two registered securities exchanges—NYSE Arca and NYSE—and has entered into an agreement to acquire a third exchange, Amex. Thus, Arca Securities is (or will be) an affiliate of each of these exchanges.

NYSE Rule 2B prohibits NYSE, or any entity with which it is affiliated, from acquiring or maintaining an ownership interest in a member, absent prior Commission approval. Thus, Arca Securities’ affiliation with NYSE would violate NYSE rules, absent Commission approval.

The Commission has approved Arca Securities’ affiliation with, and operation as a facility of, NYSE Arca for the provision of outbound routing from NYSE Arca to other market centers, subject to certain conditions.

Arca Securities also operates as a facility of NYSE and similarly provides outbound routing from NYSE to other market centers, subject to the conditions that: (1) Arca Securities is operated and regulated as a facility of the NYSE; (2) the primary regulatory responsibility for Arca Securities lies with an unaffiliated SRO; and (3) the use of Arca Securities’ outbound routing is available only to NYSE members and the use of Arca Securities’ routing functions remains optional.

Currently, the operation of Arca Securities as a facility of NYSE and NYSE Arca providing outbound routing services from those exchanges is subject, respectively, to NYSE and NYSE Arca oversight, as well as Commission oversight. NYSE and NYSE Arca are each responsible for ensuring that Arca Securities is operated consistent with Section 6 of the Act and their respective rules. In addition, NYSE and NYSE Arca, respectively, must file with the Commission rule changes and fees relating to Arca Securities.

Recognizing that the Commission has previously expressed concern regarding the potential for conflicts of interest in instances where a member firm is affiliated with an exchange to which it is routing orders, NYSE proposes to accept inbound orders that its affiliate Arca Securities routes in its capacity as a facility of NYSE Arca, subject to the following limitations and conditions:

First, NYSE states that NYSE and FINRA have entered into an agreement pursuant to Rule 17d-2 under the Act. Pursuant to this agreement, FINRA is allocated regulatory responsibilities to review Arca Securities’ compliance with certain NYSE rules.

NYSE, however, retains ultimate responsibility for enforcing its rules with respect to Arca Securities.

Second, NYSE Regulation will monitor Arca Securities for compliance with NYSE’s trading rules, and will collect and maintain certain related information.

Third, NYSE states that NYSE Regulation has agreed with NYSE that it will provide a report to NYSE’s CRO, on a quarterly basis, that: (i) Quantifies all alerts (of which NYSE Regulation is aware) that identify Arca Securities as a participant that has potentially violated NYSE or Commission rules, and (ii) quantifies the number of all investigations that identify Arca Securities as a participant that has potentially violated NYSE or Commission rules.

Fourth, NYSE proposes an amendment to Rule 2B that will require NYSE Euronext, as the holding company owning both NYSE and Arca Securities, to establish and maintain procedures and internal controls reasonably designed to ensure that Arca Securities does not develop or implement changes to its system, based on non-public information obtained regarding planned changes to the NYSE Arca system as a result of its affiliation with NYSE, until such information is available generally to similarly situated members of NYSE, in connection with the provision of inbound order routing to NYSE.

Fifth, NYSE proposes that routing of PO Plus Orders from Arca Securities to NYSE, in Arca Securities’ capacity as a facility of NYSE Arca, be authorized for a pilot period of twelve months.

III. Discussion

After careful review, 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. In particular, the
Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act, which requires, among other things, that the rules of an exchange be 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 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 national market system; and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In the past, the Commission has expressed concern that the affiliation of an exchange with one of its members raises potential conflicts of interest, and the potential for unfair competitive advantage. The proposed expansion of NYSE Arca’s PO Order type, which the Commission approved today, will expand the activities of Arca Securities in routing orders to the NYSE. Although the Commission continues to be concerned about potential unfair competition and conflicts of interest between an exchange’s self-regulatory obligations and its commercial interest when the exchange is affiliated with one of its members, for the reasons discussed below, the Commission believes that it is consistent with the Act to permit Arca Securities to provide inbound routing to NYSE, subject to the conditions described above.

NYSE has proposed five conditions applicable to Arca Securities routing activities, which are enumerated above. The Commission believes that these conditions mitigate its concerns about potential conflicts of interest and unfair competitive advantage. In particular, the Commission believes that FINRA’s oversight of Arca Securities, combined with NYSE Regulation’s monitoring of Arca Securities’ compliance with NYSE’s trading rules and quarterly reporting to NYSE’s CRO, will help to protect the independence of NYSE’s regulatory responsibilities with respect to Arca Securities. The Commission also believes that the proposed amendment to NYSE Rule 2B-28 is designed to ensure that Arca Securities cannot use any information advantage it may have because of its affiliation with NYSE. Furthermore, the Commission believes that NYSE’s proposal to allow Arca Securities to route PO Plus orders inbound to NYSE from NYSE Arca, on a pilot basis, will provide NYSE and the Commission an opportunity to assess the impact of any conflicts of interest of allowing an affiliated member of NYSE to route orders inbound to NYSE and whether such affiliation provides an unfair competitive advantage.

IV. Accelerated Approval

NYSE has asked the Commission to accelerate approval of the proposed rule change. NYSE notes that the proposed rule change reflects the Exchange’s efforts to address concerns identified by the Commission regarding informational advantages favoring Arca Securities and states in part that “accelerated approval * * * will permit the Exchange to immediately address this issue.” The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing in the Federal Register. The Commission notes that the protections proposed by NYSE, which are designed to address conflict of interest concerns identified by the Commission in connection with the inbound routing of orders to an exchange when the routing broker-dealer is an affiliate of that exchange, are consistent with those approved by the Commission in another rule filing. The Commission also notes that the proposed rule change was published for the full 21-day comment period, and the comment period ended on September 25, 2008. No comments were received on the proposal. Accordingly, the Commission finds good cause for approving the proposed rule change on an accelerated basis, pursuant to Section 19(b)(2) of the Act.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NYSE–2008–76), as modified by Amendment No. 1 thereto, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.

Florence E. Harmon,
Acting Secretary.

[FR Doc. E8–23486 Filed 10–3–08; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Amending NYSE Arca Equities Rule 7.31(x) to Change the Permissible Order Entry Time and Eligibility of Its Primary Only Order and Amending NYSE Arca Equities Rule 14.3 to Establish Procedures Designed To Manage Potential Informational Advantages Resulting From the Affiliation Between the Exchange and Archipelago Securities L.L.C.

September 29, 2008.

I. Introduction

On August 20, 2008, NYSE Arca, Inc., (“NYSE Arca” or “Exchange”), filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 19b–4 thereunder, a proposed rule change to (i) amend NYSE Arca Equities Rule 7.31(x) to change the permissible order entry time and eligibility of its Primary Only Order type (“PO Order”) and (ii) amend NYSE Arca Equities Rule 14.3 to establish procedures designed to manage

32 See supra note 3 and accompanying text.