

#### 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-Phlx-2008-76 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-Phlx-2008-76. 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 the filing will also be available for inspection and copying at the principal office of the self-regulatory organization. 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-Phlx-2008-76 and should be submitted on or before December 4, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58900; File No. SR-NYSE-2008-105]

#### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC To Shorten the Time Period for Listed Companies To Issue a Press Release After Receipt of Notification That the Company Is Noncompliant With the Exchange's Price Test**

November 5, 2008.

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 October 28, 2008, New York Stock Exchange, LLC (the "NYSE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") 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 Section 802.01C of the Exchange's Listed Company Manual (the "Manual") to provide that the Exchange will require a U.S. company, upon receiving written notification that it has fallen below the Exchange's \$1.00 stock price requirement over a 30 trading-day average, to issue a press release within the same amount of time as allotted by the SEC for the company to disclose such an occurrence, but in any event no later than four business days after receipt of notification from the Exchange, and will require a non-U.S. company to issue a press release within 30 days of receiving written notification from the Exchange that it has fallen below the Exchange's \$1.00 stock price requirement. The text of the proposed

rule change is available on the Exchange's Web site (<http://www.nyse.com>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

#### **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 these statements may be examined at the places specified in Item IV below. The 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**

The Exchange proposes to amend Section 802.01C of the Manual to provide that the Exchange will require a U.S. company, upon receiving written notification that it has fallen below the Exchange's \$1.00 stock price requirement over a 30 trading-day average, to issue a press release within the same amount of time as allotted by the SEC for the company to disclose such an occurrence, but in any event no later than four business days after receipt of notice from the company. The Exchange will require a non-U.S. company to issue a press release within 30 days of receiving written notification from the Exchange that it has fallen below the Exchange's \$1.00 stock price requirement. By doing so, the Exchange is conforming its requirements under Section 802.01C to the press release requirements in relation to other notifications of events of noncompliance as set forth in Section 802.02 (for domestic companies) and Section 802.03 (for foreign private issuers).<sup>4</sup>

<sup>4</sup> See Exchange Act Release No. 58487 (September 8, 2008), 73 FR 53303 (September 15, 2008) (SR-NYSE-2008-59). Nothing in this proposal affects a company's obligations to disclose material news in a timely fashion. See Section 202.05 of the Manual. There are currently no companies that have received notifications from the Exchange regarding non-compliance with the Exchange's stock price continued listing requirements and that have not already issued the required press release. As such, the revised time periods this filing establishes for companies that are non-compliant under Sections 802.01C (including foreign companies) will apply only to those companies that receive a notice of

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>14</sup> 15 U.S.C. 78s(b)(1).

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

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

Currently, Section 802.01C of the Manual requires a U.S. company to issue a press release within 45 days of receiving written notification from the Exchange that it has fallen below the Exchange's stock price requirement. Section 802.01C also provides that, if the company fails to issue a press release by the deadline specified by the rule, the Exchange will itself issue the requisite press release. However, SEC rules require the company to file a Form 8-K giving notice of that event within four business days of being notified by the Exchange.<sup>5</sup> The Exchange believes that its own requirement is too long in light of the much earlier public notice required by the Form 8-K rule and that it is appropriate for the Exchange to issue a press release on the subject itself if the company has not acted within the period provided by Form 8-K and in any event no later than four business days after receipt of notification from the Exchange. The Exchange notes that companies that are incorporated in jurisdictions outside the United States but that do not qualify as foreign private issuers are treated as domestic companies for purposes of Section 802.01C.

Currently, Section 802.01C of the Manual requires a non-U.S. company to issue a press release within 90 days of receiving written notification from the Exchange that it has fallen below the Exchange's stock price requirement. Section 802.01C also provides that, if the company fails to issue a press release by the deadline specified by the rule, the Exchange will itself issue the requisite press release. While foreign private issuers are not subject to the Form 8-K requirement imposed on domestic issuers, the Exchange believes that 90 days is an excessive period to give companies to make such a material disclosure. Based on our experience with these companies, 30 days would be more than sufficient. As such, the Exchange proposes to shorten from 90 to 30 days the period within which foreign private issuers must issue a press release with regard to a notification by the Exchange of noncompliance. If the issuer does not issue a press release within that 30 day period, the Exchange will do so.

non-compliance subsequent to the submission of this filing.

<sup>5</sup> Item 3.01 of Form 8-K requires a registrant to file a Form 8-K within four business days of receipt of notice from the national securities exchange that maintains the principal listing for any class of the registrant's common equity that the registrant or such class of the registrant's securities does not satisfy a rule or standard for continued listing on the exchange.

While Section 802.01C establishes maximum time periods for the issuance of press releases, the Exchange believes that companies should issue their press releases concerning any notice of noncompliance they receive from the Exchange as soon as possible after receipt of such notification and should not wait until close to the end of the permitted period before doing so.

## 2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the "Act")<sup>6</sup> for this proposed rule change is the requirement under Section 6(b)(5)<sup>7</sup> that an Exchange have rules that are designed 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. In particular, the Exchange believes that the proposed amendment protects investors and the public interest by ensuring the prompt disclosure of material information with respect to listed companies.

### *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 purpose of the Exchange 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

Because the proposed rule change: (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 become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</sup>

<sup>6</sup> 15 U.S.C. 78a *et seq.*

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6). Pursuant to Rule 19b-4(f)(6)(iii) under the Act, the Exchange is required to give the Commission written notice of its intent

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>10</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>11</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.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to immediately conform the press release timing requirements for companies that are noncompliant with the Exchange's \$1.00 stock price test in Section 802.01C of the Manual with the press release timing requirements in Sections 802.02 and 802.03 of the Manual that apply to companies that are noncompliant with the Exchange's other continued listing standards.<sup>12</sup> Because the Commission recently approved these similar timing requirements in Sections 802.02 and 802.03 of the Manual,<sup>13</sup> the Commission believes that the proposed rule change raises no new regulatory issues. The Commission also notes that the prior changes to these other sections of the Manual were subject to full notice and comment, and the Commission received one comment in support of that proposal. Further, the Commission notes that the proposed rule change will provide investors with earlier press release notification that a company has fallen out of compliance with the Exchange's stock price requirement and also avoids any confusion for domestic companies by conforming the time periods in the NYSE rules with current Commission requirements for the filing of the Form 8-K. For these reasons, the Commission designates that the proposed rule change become operative immediately upon filing.<sup>14</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is

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. The Exchange has satisfied this requirement.

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>12</sup> See continued listing standards in Section 802.01 of the Manual.

<sup>13</sup> See *supra* note 4.

<sup>14</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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-NYSE-2008-105 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-NYSE-2008-105. 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 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-NYSE-2008-105 and should be submitted on or before December 4, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58899; File No. SR-NYSEArca-2008-116]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Arca, Inc. Amending Exchange Rule 6.39—Securities Accounts of Market Makers

November 5, 2008.

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 November 3, 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, 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 6.39—Securities Accounts of Market Makers. The text of the proposed rule change is attached as Exhibit 5, is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.com), at the Exchange's principal office and at the Commission's Public Reference Room.

#### 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.

#### A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The purpose of this filing is to amend Rule 6.39 by modifying the terms under which a clearing firm reports trade information to the Exchange on behalf of a Market Maker.

Presently, with respect to transactions to be cleared into all accounts carried for Market Makers, each clearing firm shall, on the business day following order entry date report to the Exchange every executed order entered by the Market Maker for the purchase or sale of a security underlying options traded on the Exchange, as well as opening and closing positions in all such securities held in each account.

The Exchange does, on occasion, find the need to review Market Maker order records in conjunction with an investigation, inquiries regarding a specific trade, or a routine examination. However, since this is not information that the Exchange typically uses on a daily basis, there is no need for the Exchange to collect such information, on a daily basis. Requiring this information to be reported on a daily basis, instead of "upon request" creates an unnecessary burden on Market Makers, clearing firms and the Exchange alike.

The Exchange hereby proposes to amend Rule 6.39 by removing the obligation for a clearing firm to report such trades on a daily basis, and instead require the firms to report such trades only upon request of the Exchange. Supplying the Exchange with trade information, when requested instead of on a daily basis, is consistent with the requirements at both the International Securities Exchange ("ISE")<sup>4</sup> and the Boston Options Exchange ("BOX").<sup>5</sup>

##### 2. Statutory Basis

This rule change is designed merely to create a more efficient mechanism for clearing firms to report market maker trade information to the Exchange. NYSE Arca believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>6</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>7</sup> in particular, because it is

<sup>4</sup> See ISE Rule 807(b)—Reports of Orders.

<sup>5</sup> See BOX Trading Rules Chapter VI Sec. 7(b)—Reports of Orders.

<sup>6</sup> 15 U.S.C. 78f (b).

<sup>7</sup> 15 U.S.C. 78f (b)(5).

<sup>15</sup> 17 CFR 200.30-3(a)(12).

<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.