

Securities to the NYSE in its capacity as a facility of NYSE Alternext. Pursuant to this agreement, FINRA is allocated regulatory responsibilities to review Arca Securities' compliance with certain NYSE rules.²²

- Second, NYSE Regulation²³ will monitor Arca Securities for compliance with the NYSE's trading rules, and will collect and maintain certain related information.²⁴

- Third, the NYSE states that NYSE Regulation has agreed with the NYSE that it will provide a report to the 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.²⁵

- Fourth, NYSE Rule 2B(2), which requires NYSE Euronext, as the holding company owning both the 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 NYSE systems as a result of its affiliation with the NYSE, until such information is available generally to similarly situated members of NYSE, in connection with the provision of inbound order routing to the NYSE, will apply.²⁶

- Fifth, the NYSE proposes that routing from Arca Securities to NYSE, in Arca Securities's capacity as a facility of NYSE Alternext, be authorized for a pilot period to run concurrently with a

twelve month pilot period for the NYSE's receipt of "PO+" orders from Arca Securities, which commenced on September 29, 2008.²⁷

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,²⁸ combined with NYSE Regulation's monitoring of Arca Securities' compliance with the NYSE's trading rules and quarterly reporting to the NYSE's CRO, will help to protect the independence of the NYSE's regulatory responsibilities with respect to Arca Securities. Furthermore, the Commission believes that the NYSE's proposal to allow Arca Securities to route orders inbound to the NYSE from NYSE Alternext, on a pilot basis, will provide the NYSE and the Commission an opportunity to assess the impact of any conflicts of interest of allowing an affiliated member of the NYSE to route orders inbound to the NYSE and whether such affiliation provides an unfair competitive advantage.

The NYSE has asked the Commission to accelerate approval of the proposed rule change. The NYSE in part that the proposed changes are "required due to NYSE Alternext's planned implementation of a new trading system and the use of Arca Securities as its outbound routing facility."²⁹ The NYSE also states that accelerated approval "will permit the Exchange to amend its mechanisms that are designed to address the Commission's concerns regarding affiliated members in time to provide these protections at the time of NYSE Alternext's implementation of its new trading system, which is targeted for December 1, 2008."³⁰ The Commission finds good cause for approving the proposed rule change before the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission notes that the protections proposed by the NYSE, which are designed to address conflicts 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 substantially the same as the conditions the Exchange currently has in place to address inbound routing from NYSE Arca, which were previously approved by the

Commission.³¹ The Commission also notes that no comments were received in connection with SR-NYSE-2008-76. Accordingly, the Commission finds good cause, consistent with section 19(b)(2) of the Act,³² to approve the proposed rule change on an accelerated basis for a pilot period expiring September 29, 2009.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR-NYSE-2008-122) is hereby approved on an accelerated basis for a pilot period to expire on September 29, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³³

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E8-28499 Filed 12-1-08; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59009; File No. SR-NYSEALTR-2008-07]

Self-Regulatory Organizations; NYSE Alternext US LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Use Its Broker Dealer Affiliate, Archipelago Securities, LLC, as Its Routing Broker

November 24, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 19, 2008, NYSE Alternext US LLC ("NYSE Alternext" 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 the Exchange. On November 20, 2008, the Exchange submitted Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons, and is granting accelerated approval to

³¹ See Securities Exchange Act Release No. 58680, *supra* note 3. See also Securities Exchange Act Release Nos. 58673, *supra* note 5, and 58681, *supra* note 19, (establishing similar protections for inbound routing from Arca Securities to Alternext and NYSE Arca, respectively).

³² 15 U.S.C. 78s(b)(2).

³³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

²² NYSE Arca also states that Arca Securities is subject to independent oversight by FINRA, its Designated Examining Authority, for compliance with financial responsibility requirements. See *supra* section II.A.1.

²³ NYSE Regulation is a wholly owned subsidiary of the NYSE that performs the regulatory functions of the NYSE pursuant to a delegation agreement. NYSE Regulation also performs many of the regulatory functions of NYSE pursuant to a regulatory services agreement. See Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR-NYSE-2005-77) ("NYSE/Arca Order") at 11255.

²⁴ Specifically, NYSE Regulation "will collect and maintain the following information of which NYSE Regulation staff becomes aware—namely, all alerts, complaints, investigations and enforcement actions where Arca Securities (in its capacity as a facility of both the NYSE Arca and NYSE Alternext, routing orders to NYSE Arca) is identified as a participant that has potentially violated NYSE or applicable SEC rules—in an easily accessible manner so as to facilitate any review conducted by the SEC's Office of Compliance Inspections and Examination." See *supra* section II.A.1.

²⁵ See *supra* section II.A.1.

²⁶ See *id.* See also NYSE Rule 2B(2).

²⁷ See *supra* note 8 and accompanying text.

²⁸ This oversight will be accomplished through the 17d-2 agreement between FINRA and NYSE.

²⁹ See SR-NYSE-2008-122, Item 7.

³⁰ *Id.*

the proposed rule change, as modified by Amendment No. 1.

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

The Exchange is proposing to use its broker dealer affiliate,³ Archipelago Securities LLC ("ArcaSec"), as its Routing Broker to route orders⁴ to away market centers when that market center is displaying the national best bid and offer in accordance with Exchange Rules and SEC Regulation National Market System⁵ ("Reg. NMS"). The Exchange further proposes to have its Routing Broker facilitate the acceptance of executions that result in an odd-lot or sub-penny executions. A copy of this filing is available on the Exchange's Web site at <http://www.nyse.com>, at the

³ On September 29, 2008, the Commission approved the Exchange's business combination with NYSE Euronext, Inc. ("Merger"). See, Securities Exchange Act Release No. 34-58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (order approving SR-NYSE-2008-60 and SR-Amex-2008-62). Pursuant to the Merger, NYSE Euronext became the overall parent company of the Exchange. NYSE Euronext now operates three self-regulatory entities: The Exchange, the NYSE, and NYSE Arca, Inc. ArcaSec, the approved outbound order routing facility of both the NYSE and NYSE Arca, Inc., is also a wholly owned subsidiary of NYSE Euronext, and is therefore an affiliate of the Exchange.

⁴ ArcaSec currently acts as the outbound order routing facility of the NYSE and NYSE Arca. See, Securities Exchange Act Release No. 52497 (September 22, 2005), 70 FR 56949 (September 29, 2005) (SR-PCX-2005-90); see also, Securities Exchange Act Release No. 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (SR-PCX-00-25); see also, Securities Exchange Act Release No. 58681 (September 29, 2008), 73 FR 58285 (October 6, 2008) (order approving NYSEArca-2008-90). ArcaSec also currently acts as the outbound order routing facility of the NYSE. See, Securities Exchange Act Release No. 34-55590 (April 5, 2007), 72 FR 18707 (April 13, 2007) (notice of immediate effectiveness of SR-NYSE-2007-29); see also, Securities and Exchange Act Release No. 34-58680 (September 29, 2008), 73 FR 58283 (October 6, 2008) (order approving SR-NYSE-2008-76). Currently, FINRA is the examining authority for the Routing Broker designated by the Commission pursuant to Rule 17d-1 of the Act. As such, FINRA is responsible for the oversight and enforcement of the Routing Broker for compliance with the applicable financial responsibility rules.

On January 25, 2007, NYSE Arca, Inc. filed with the Commission to allow ArcaSec to act as a marketing agent on behalf of NYSE Arca Tech 100 Index and NYSE Arca Tech 100 ETF. This proposed business activity has no connection to ArcaSec's facility functions as described above. See Securities and Exchange Act Release No. 55442 (March 12, 2007), 72 FR 12654 (March 16, 2007) (order approving SR-NYSEArca-2007-09).

⁵ See Securities Exchange Act Release No. 51808 (June 9, 2005), 17 CFR Parts 200, 201, 230, 240, 242, 249 and 270; see also, 70 FR 374496 (June 29, 2005). Pursuant to Reg. NMS the Exchange, among other things, must: (i) "Establish, maintain, and enforce written policies and procedures reasonably designed to prevent the execution of trades at prices inferior to protected quotations displayed by other trading centers" and (ii) provide access to the trading center displaying the protected quotations.

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 III 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to use ArcaSec as its Routing Broker to route orders to away market centers when that market center is displaying the national best bid and offer in accordance with Exchange Rules and Reg. NMS.⁶ Through this filing the Exchange further proposes to otherwise have its Routing Broker facilitate the acceptance of executions that result in an odd-lot⁷ or a sub-penny⁸ execution after the Routing Broker routed an Exchange order to an away market center. Presently, the Exchange employs an unaffiliated broker-dealer for purposes of routing orders to away market centers in furtherance of Reg. NMS compliance. The Exchange intends to use ArcaSec as its Routing Broker, pending approval, as of the date that the Exchange implements its new electronic trading system in conjunction with the opening

⁶ The Exchange is not proposing at this time to use ArcaSec as its routing broker to route option orders to away market centers.

⁷ Odd-lot orders are orders for a size less than the standard unit (round-lot) of trading, which is 100 shares for most stocks, although some stocks trade in 10 share units.

⁸ It should be noted that the Exchange's current electronic trading system can handle odd-lot and sub-penny executions. Upon transfer to its new electronic system, which is based on the NYSE's existing system, the Exchange will require that its Routing Broker facilitate these transactions until such time as the platform is modified. Recently, the NYSE modified its electronic trading system in order to accommodate away market center executions in sub-pennies; implementation of this modification should substantially reduce the need for ArcaSec to facilitate sub-penny executions on behalf of NYSE Alternext. See Securities Exchange Act Release No. 34-58936 (November 13, 2008) (notice of filing and immediate effectiveness of SR-NYSE-2008-117).

of its new trading floor at 11 Wall Street in New York, New York.

Rule 2B—NYSE Alternext Equities provides, in pertinent part, that:

without prior approval by the Securities and Exchange Commission, the Exchange or any entity with which it is affiliated shall not, directly or indirectly, acquire or maintain an ownership interest in a member organization.

In its Order approving the acquisition of the American Stock Exchange LLC by NYSE Euronext, the SEC, among other things, approved the affiliation between NYSE Alternext and ArcaSec, subject to certain conditions.⁹ By that Order, the SEC also approved revisions to Exchange Rule 1(b), in order to address inbound routing by affiliated members.¹⁰ The Exchange also recently received approval to implement Rules 13 and 17—NYSE Alternext Equities, which define the term Routing Broker and establish the conditions under which the Exchange's Routing Broker shall operate.¹¹ In that filing, the Exchange sought to revise its equities rules to substantially mirror those of the New York Stock Exchange LLC ("NYSE"), including NYSE Rule 2B. Unfortunately, certain text of Rule 2B—NYSE Alternext Equities was inadvertently omitted as part of the intended revision. The Exchange seeks to rectify this omission and revise Rule 2B—NYSE Alternext Equities (in keeping with its prior intent) so that it mirrors NYSE Rule 2B.¹² Accordingly, as set forth in Exhibit 5 attached hereto, Rule 2B—NYSE Alternext Equities shall provide as follows:

The holding company owning both the Exchange and Archipelago Securities L.L.C. shall establish and maintain procedures and internal controls reasonably designed to ensure that Archipelago Securities, L.L.C. does not develop or implement changes to its system on the basis of non-public information regarding planned changes to Exchange systems, obtained as a result of its affiliation with the Exchange, until such information is available generally to similarly situated members of the Exchange in connection with the provision of inbound order routing to the Exchange.

⁹ See, Securities Exchange Act Release No. 34-58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (order approving SR-Amex-2008-62).

¹⁰ *Id.* Rule 1(b) remains effective for trading that continues at 86 Trinity on legacy systems until the options relocation scheduled for February 2009. Rule 2B—NYSE Alternext Equities will apply to all trading conducted on its new equities platform to be implemented in conjunction with its move to 11 Wall Street on December 1, 2008.

¹¹ See, Securities Exchange Act Release No. 34-58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (order approving SR-AMEX-2008-63).

¹² Please note, NYSE Rule 2B matches previously approved Alternext Rule 1 in its entirety. The Exchange is not seeking to make any substantive changes, but simply seeks to rectify an inadvertent omission of rule text.

Pursuant to Rule 2B—NYSE Alternext Equities, as revised herein, the Exchange now seeks authorization to use ArcaSec, an affiliated broker-dealer, to operate as its Routing Broker.

Pursuant to the proposal, the Exchange systems will provide the Routing Broker with routing instructions, to route orders to other market centers and report such executions back to the Exchange. The Routing Broker cannot change the terms of an order or the routing instructions, nor does the Routing Broker have any discretion about where to route an order.

The Routing Broker will operate as a “facility”¹³ of the Exchange in that it will serve as a “system of communication to or from”¹⁴ the Exchange. When an order must be routed to an away market center for execution, the Exchange systems will affix all order handling information to the order. Exchange systems will automatically transmit the order and the relevant order handling information to the Routing Broker. In turn, the Routing Broker will facilitate the delivery of the received order to the destination away market. The Routing Broker will obtain receipts of executions and deliver those receipts of executions back to Exchange systems.¹⁵ The Routing Broker, as merely a conduit between the Exchange and away market centers, cannot change the terms of an order, systemically reject an order, or otherwise perform data validation prior to delivery of the order to an away market center or after return receipt and delivery of the execution to the Exchange.

In particular, and without limitation, under the Act, the exchange will be responsible for filing with the Commission rule changes and fees relating to the functions performed by the Routing Broker for the Exchange and will be subject to exchange non-discrimination requirements.

Furthermore, the books, records, premises, officers, agents, directors, and

employees of the Routing Broker, as a facility of the Exchange, shall be deemed to be the books, records, premises, officers, agents, directors, and employees of the Exchange for purposes of, and subject to oversight pursuant to, the Act. The books and records of the Routing Broker as a facility of the Exchange shall be subject at all times to inspection and copying by the Exchange and the Commission.

In addition to routing orders to away market centers, the Routing Broker will facilitate the acceptance of executions that results in an odd-lot or a sub-penny execution as Exchange systems will be unable to accept such executions after the Routing Broker routes an Exchange order to an away market center.¹⁶ Upon transfer to its new electronic trading system, odd-lot orders on the Exchange will be executed in a system that is separate from the Exchange system responsible for the execution of round-lot orders (“the odd-lot trading platform”). The Exchange’s new odd-lot trading platform will execute all odd-lots orders against the specialist as the contra party separate from the trading system that is responsible for the execution of round lot orders. Since odd-lot orders will be handled in a separate trading system, the Exchange systems that are responsible for the execution of round lot orders will be unable to accept receipts of execution in odd-lots at the present time.

Similarly, the Exchange has chosen not to quote and trade in sub-penny increments when permitted under Reg. NMS.

In order to process receipts of odd lot and sub-penny executions from an away market, the Exchange proposes to have the Routing Broker facilitate the handling of such odd-lot and sub-penny executions. Specifically, if the Routing Broker is in receipt of an odd-lot execution in response to the Exchange’s routing of a round lot order, it will assume the odd-lot position. The Routing Broker will then sell/buy the requested number of round lot shares to the Exchange member. The Routing Broker will perform this adjustment to each odd-lot execution in order to transmit a round lot execution to the Exchange. The Routing Broker will afford the Exchange order, *i.e.* for the Exchange member, the most favorable execution price based on the odd-lot execution(s) received by Routing Broker from the away market.

With regard to a sub-penny execution, the Routing Broker will perform an adjustment to each sub-penny execution. Specifically, the Routing

Broker will round down for each buy order and up for each sell order and transmit a round penny execution to the Exchange order. Again, the Routing Broker will afford the Exchange order the most favorable execution price based on the sub-penny execution received by Routing Broker from the away market.

The Router Broker will liquidate positions assumed as a result of the services provided to the Exchange. This service provided by the Routing Broker with regard to odd-lot and sub-penny executions is not intended to operate as a means to generate revenue. Rather, the Routing Broker is providing an additional service to the Exchange in order to facilitate the receipt of odd-lot and sub-penny executions from away market centers. To that end, it is the intent of the Routing Broker to be flat in all positions at the end of each trading day.¹⁷ The Routing Broker will incorporate an automated system to assist, as soon as practicable, in the liquidation (acquisition) for any residual long (short) positions. To mitigate financial risk¹⁸ to the Routing Broker, registered trading personnel of the Routing Broker may be required to manually assist, as soon as practicable, in the liquidation (acquisition) of such positions, particularly high-priced securities that may trade with a wide spread.

Below are examples of how the Router Broker is intended to operate.

ODD-LOT Executions

Example 1: Exchange member Firm X enters an order on the Exchange to buy 100 shares of ABC at \$20.00. The Exchange systems transmit the order with order handling instructions to the Routing Broker. The Routing Broker then transmits the order with the order handling instructions received from the Exchange systems to market center A. The Routing Broker receives reports of two odd-lot executions from market center A. The first report of execution is for 30 shares executed at a price of \$20.00. The second report of execution completes the original order with an execution of the remaining 70 shares at a price of \$20.00. The Routing Broker will sell 100 shares to Exchange member Firm X at \$20.00 and use the odd-lots received from market center A to offset the position. The Routing Broker’s position is flat.

Example 2: Exchange member Firm X enters an order on the Exchange to buy 100

¹⁷ Absent any unusual market conditions or the timing of such trades (for example the execution of the order at 15:59:59) it is intended that the Routing Broker will be flat in all positions at the end of each trading day.

¹⁸ Any and all losses incurred during the facilitation of odd-lot and sub-penny executions will be assumed by the Routing Broker as part of the routing service provided.

¹³ The term “facility” as defined in Section 3(a)(2) of the Securities Exchange Act of 1934, as amended provides,

* * * when used with respect to an exchange includes its premises, tangible or intangible property whether on the premises or not, any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange), and any right of the exchange to the use of any property or service. *See*, 15 U.S.C. 78c.

¹⁴ *Id.*

¹⁵ Comparable to the operation of ArcaSec in its capacity as a facility of the NYSE and NYSE Arca, the use of ArcaSec by the Exchange will only be available to members of NYSE Alternext.

¹⁶ *See supra* note 8.

shares of ABC at \$20.00. The Exchange systems transmit the order with order handling instructions to the Routing Broker. The Routing Broker then transmits the order with the order handling instructions received from the Exchange systems to market center A. The Routing Broker receives two odd-lot fills from market center A. The first report is for 30 shares executed at a price of \$19.99. The second report of execution completes the original with an execution of the remaining 70 shares at a price of \$20.00. The Routing Broker sells 100 shares to Firm X at \$19.99 and uses the odd-lots to offset the position. The Routing Broker's position is flat, with a loss of \$0.70.

Example 3: Exchange member Firm X enters an order on the Exchange to buy 100 shares of ABC at \$20.00. The Exchange systems transmit the order with order handling instructions to the Routing Broker. The Routing Broker then transmits the order with the order handling instructions received from the Exchange systems to market center A. The Routing Broker receives an odd-lot fill of only 30 at \$20.00 and a report of cancellation for the remaining 70 shares of the original order. The Routing Broker will sell 100 shares to Firm X at \$20.00. In turn, the Routing Broker will then go into the market to buy 70 shares of ABC. The Routing Broker receives a fill of 70 at \$20.05. The Routing Broker will then use both odd-lots positions to offset the position taken as a result of handling the order of Firm X. The Routing Broker's position is flat, with a loss of \$3.50.

Example 4: Exchange member Firm X enters an order on the Exchange to buy 100 shares of ABC at \$20.00. The Exchange systems transmit the order with order handling instructions to the Routing Broker. The Routing Broker then transmits the order with the order handling instructions received from the Exchange systems to market center A. The Routing Broker receives an odd-lot fill of only 30 at \$20.00 and a report of cancellation for the remaining 70 shares of the original order. The Routing Broker will sell 100 shares to Firm X at \$20.00. In turn, the Routing Broker will then go into the market to buy 70 shares of ABC. The Routing Broker receives a fill of 70 at \$19.99. The Routing Broker will then use both odd-lots positions to offset the position taken as a result of handling the order of Firm X. The Routing Broker's position is flat, with a profit of \$0.70.

SUB-PENNY Executions

Example 1: Exchange member Firm X enters an order on the Exchange to buy 100 shares of ABC at \$20.00. The Exchange's best offer is \$19.98. Market Center A is displaying a best offer at \$19.97. Market Center A also offers a mid-point match execution process that may result in a trade price that includes sub-pennies. The Exchange systems transmit the order with order handling instructions to the Routing Broker. The Routing Broker then transmits the order with the order handling instructions received from Exchange systems to market center A. The Routing Broker receives a fill of 100 shares at \$19.965 due to a mid-point cross occurring at market center A. The Routing Broker will sell 100

shares to member Firm X at \$19.96 and uses the fill of 100 shares at \$19.965 to offset the position. The Routing Broker will be flat, with a loss of \$0.50.

The use of the Routing Broker to route orders to another market center will be optional. In the event a member organization does not want to use the Routing Broker it must enter an immediate-or-cancel order or any such other order type available on the Exchange that is not eligible for routing. All bids and offers entered on the Exchange that are routed to other market centers via the Routing Broker which result in an execution shall be binding on the member organization that entered such bid and offer.

The Routing Broker will not engage in any business for the Exchange other than its outbound router and facilitation functions as described above. In the event the Exchange seeks to have the Routing Broker engage in any other activities it understands that the ability of the Routing Broker to engage in such new business activity would require Commission approval.

The Exchange believes that the above described operation of the Routing Broker will serve as the most economically efficient execution of securities transactions. Furthermore, the Routing Broker is necessary for the Exchange to comply with its obligations pursuant to Reg. NMS.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirement under Section 6(b)(5)¹⁹ of the Securities Exchange Act of 1934 (the "Act")²⁰ 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. The proposed rule change also is designed to support the principles of Section 11A(a)(1)²¹ in that it seeks to assure economically efficient execution of securities transactions. Specifically, the proposed rule change will allow Exchange to establish and implement mechanisms to remain fully compliant with Reg. NMS and other Exchange rules.

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

The Exchange does not believe that this 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. 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-NYSEALTR-2008-07 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-NYSEALTR-2008-07. 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-

¹⁹ 15 U.S.C. 78f(b)(5).

²⁰ 15 U.S.C. 78a.

²¹ 15 U.S.C. 78k-1(a)(1).

NYSEALTR-2008-122 and should be submitted on or before December 23, 2008

IV. Commission's Findings and Order Granting Accelerated Approval of a Proposed Rule Change

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.²² In particular, it is consistent with Section 6(b)(5) of the Act,²³ which requires, among other things, that the rules of a national securities 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 market and a 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.

On September 29, 2008, the Commission approved the Exchange's business combination with NYSE Euronext.²⁴ In conjunction with the Merger, the Exchange proposed to transfer trading from the American Stock Exchange LLC system to a new system based on NYSE's existing system. Accordingly, the Exchange proposed new rules that would govern trading on the Exchange once trading was transferred to the new electronic system.²⁵ Included in those recently approved rules were NYSE Alternext Rules 13 and 17, which define the term Routing Broker and establish the conditions under which the Exchange's Routing Broker shall operate.²⁶ In the instant filing, the Exchange proposes to use ArcaSec, an affiliated broker-dealer, as its Routing Broker once trading is transferred to the new electronic system.

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.²⁷ 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 interests when the exchange is affiliated with one of its members, the Commission believes that it is consistent with the Act to permit ArcaSec to provide outbound routing services to NYSE Alternext, subject to certain conditions.

NYSE Alternext Equities Rule 17 imposes certain conditions on an Exchange Routing Broker, which would apply to ArcaSec as the Exchange's outbound order router. For example, ArcaSec must: (1) Be a member of a self-regulatory organization unaffiliated with NYSE Alternext that is its designated examining authority; (2) establish and maintain procedures and internal controls reasonably designed to restrict the flow of confidential and proprietary information between NYSE Alternext and its facilities, including ArcaSec, and any other entity; (3) be regulated as a facility of the Exchange;²⁸ and (4) not engage in any business other than its outbound router function unless otherwise approved by the Commission. Also, the books, records, premises, officers, agents, directors and employees of ArcaSec, as a facility of NYSE Alternext, will be deemed to be those of the Exchange for purposes of and subject to oversight pursuant to the Act.²⁹ In addition, use of ArcaSec to route order from NYSE Alternext to away market centers is optional, and a NYSE Alternext member is free to route orders to other market centers through alternative means.

In light of the protections discussed above and contained in NYSE Alternext Equities Rule 17, the Commission believes that it is consistent with the Act to permit NYSE Alternext to use its

²⁷ See, e.g., Securities Exchange Act Release Nos. 58673, *supra* note 3; 54170 (July 18, 2006), 71 FR 42149 (July 25, 2006) (SR-NASDAQ-2006-006) (order approving Nasdaq's proposal to adopt Nasdaq Rule 2140, restricting affiliations between Nasdaq and its members); and 53382 (February 27, 2006, 71 FR 11251 (March 6, 2006) (SR-NYSE-2005-77) (order approving the combination of the New York Stock Exchange, Inc. and Archipelago Holdings) at 11255.

²⁸ The Commission notes that, as a facility of the Exchange, ArcaSec will be subject to Exchange oversight, as well as Commission oversight. Further, the Exchange will be responsible for filing with the Commission proposed rule changes and fees relating to ArcaSec's outbound router function and ArcaSec's outbound router function will be subject to exchange non-discrimination requirements.

²⁹ See NYSE Alternext Equities Rule 17(b). In addition, the books and records of ArcaSec, as a facility of the Exchange, will be subject at all times to inspection and copying by the Exchange and the Commission. *Id.*

affiliate, ArcaSec, as its Routing Broker, as proposed.

In addition, the Exchange proposes to have its Routing Broker facilitate the acceptance of executions that result in an odd-lot or a sub-penny execution of an order that the Routing Broker routed to an away market center. The Commission notes that ArcaSec currently provides these services to NYSE in its capacity as NYSE's outbound order router.³⁰ The Commission notes that in each instance the Routing Broker will execute the Exchange member's order at the most favorable execution price based on the odd-lot or sub-penny execution received from the away market. The Commission also notes that the Exchange has represented the Routing Broker will liquidate positions assumed as a result of this service, with the intent to be flat at the end of each trading day. The Commission believes that allowing ArcaSec to facilitate the acceptance of executions on away markets that result in an odd-lot or a sub-penny execution, as proposed, is consistent with the Act and will enable NYSE Alternext to comply with Reg. NMS.

NYSE Alternext has asked the Commission to accelerate approval of the proposed rule change. NYSE Alternext states that accelerated approval "will permit the Exchange to establish and implement mechanisms to remain fully compliant with Reg. NMS and other Exchange rules immediately upon implementation of its new electronic trading system and in conjunction with the opening of its new trading floor at 11 Wall Street."³¹ NYSE Alternext notes that it "intends to implement its new trading system and open its new trading floor on December 1, 2008."³² The Commission finds good cause for approving the proposed rule change before the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission notes that NYSE Alternext's proposal to use ArcaSec as its outbound order routing facility is consistent with prior Commission action.³³ Accordingly, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,³⁴ to approve the proposed rule change on an accelerated basis.

³⁰ See Securities Exchange Act Release No. 55590, *supra* note 4.

³¹ See SR-NYSEALTR-2008-07, Item 7.

³² *Id.*

³³ See, e.g., Securities Exchange Act Release Nos. 52497 and 55590, *supra* note 4.

³⁴ 15 U.S.C. 78s(b)(2).

²² In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²³ 15 U.S.C. 78f(b)(5).

²⁴ See *supra* note 3.

²⁵ See *supra* note 11. The Commission notes that the Exchange intends to transfer trading to its new system on December 1, 2008.

²⁶ *Id.*

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-NYSEALTR-2008-07), as modified by Amendment No. 1, is hereby approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁵

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E8-28497 Filed 12-1-08; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58983; File No. SR-NYSEArca-2008-126]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by NYSE Arca, Inc. Relating to Listing Shares of the GreenHaven Continuous Commodity Index Fund

November 20, 2008.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Act")² and Rule 19b-4 thereunder,³ notice is hereby given that, on November 5, 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 and order to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change on an accelerated basis.

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

The Exchange, through its wholly-owned subsidiary NYSE Arca Equities, Inc. ("NYSE Arca Equities"), proposes to list and trade shares ("Shares") of the GreenHaven Continuous Commodity Index Fund ("Fund") pursuant to Commentary.02 to NYSE Arca Equities Rule 8.200. The text of the proposed rule change is available on the Exchange's Web site at <http://www.nyse.com>, at the Exchange's principal office and at the Commission's Public Reference Room.

³⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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

Pursuant to Commentary .02 to NYSE Arca Equities Rule 8.200, the Exchange may approve for listing and trading trust issued receipts ("TIRs") investing in shares or securities ("Investment Shares") that hold investments in any combination of futures contracts, options on futures contracts, forward contracts, commodities, swaps or high credit quality short-term fixed income securities or other securities. The Exchange proposes to list and trade the Shares under Commentary .02 to NYSE Arca Equities Rule 8.200. The Shares represent beneficial ownership interests in the GreenHaven Continuous Commodity Index Master Fund's ("Master Fund") net assets, consisting solely of the common units of beneficial interest of the Master Fund ("Master Fund Units"). The Fund's primary objective is to reflect the performance of the Continuous Commodity Total Return Index ("Index").

The Fund is currently listed on NYSE Alternext U.S. LLC (NYSE Alternext U.S. (formerly, the American Stock Exchange LLC ("Amex"))⁴ and is traded on the Exchange pursuant to unlisted trading privileges ("UTP").⁵ Prior to listing on the Exchange, the Fund would be required to satisfy the applicable delisting procedures of NYSE Alternext U.S. and applicable statutory and regulatory requirements, including, without limitation, Section 12 of the Securities Exchange Act of 1934

⁴ See Securities Exchange Act Release No. 56969 (December 14, 2007), 72 FR 72424 (December 20, 2007) (SR-Amex-2007-53) ("Amex Filing"). See e-mail from Michael Cavalier, Chief Counsel, NYSE Euronext, to Christopher W. Chow, Special Counsel, Commission, dated November 13, 2008 ("November 13 e-mail").

⁵ See Securities Exchange Act Release No. 57029 (December 21, 2007), 72 FR 74388 (December 31, 2007) (SR-NYSEArca-2007-68) ("UTP Filing").

("Act"),⁶ relating to listing the Shares on the Exchange.⁷

A description of the Fund is included in the Amex Filing, the UTP Filing, and the Registration Statement for the Fund.⁸ The Exchange represents that the Shares satisfy the applicable requirements of Rule 8.200, including Commentary .02 to Rule 8.200, and thereby qualify for listing on the Exchange.⁹ The Exchange states that all of the facts describing the Fund, the Master Fund, Master Fund Units and the Shares contained in the Amex Filing are true and correct as of the date of this filing. The Exchange states further that the representations included in the Amex Filing relating to the dissemination and availability of information regarding the Shares will apply to listing and trading of the Shares on the Exchange. To the extent NYSE Alternext U.S. has any affirmative obligations with respect to dissemination of information or key values relating to the Shares, the Exchange represents that it would take the place of NYSE Alternext U.S. in such role and discharge such obligations.

The Fund will comply with the requirements of Rule 10A-3¹⁰ under the Act.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. Eastern time. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. The minimum trading increment for Shares on the Exchange will be \$0.01.

The trading of the Shares will be subject to Commentary .02(e)(1)-(4) to NYSE Arca Equities Rule 8.200, which sets forth certain restrictions on ETP Holders acting as registered Market Makers in TIRs that invest in Investment Shares to facilitate surveillance. See "Surveillance" below for more information.

With respect to trading halts, the Exchange may consider all relevant

⁶ 15 U.S.C. 78(l).

⁷ The Exchange will seek the voluntary consent of the issuer of the Shares to be delisted from NYSE Alternext U.S. and listed on the Exchange. The Exchange notes that its approval of the Fund's listing application would be required prior to listing.

⁸ See the Fund's Registration Statement on Form S-1, dated November 21, 2007 (No. 333-138424) ("Registration Statement").

⁹ See November 13 e-mail, *supra*, note 4.

¹⁰ 17 CFR 240.10A-3.