

*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-ISE-2009-34 on the subject line.

*Paper Comments*

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

All submissions should refer to File Number SR-ISE-2009-34. 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 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-ISE-2009-34 and should be submitted on or before August 4, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Elizabeth M. Murphy,**  
*Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-60255; File No. SR-NYSE-2009-58]

**Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to Amend the Scope of the Exchange's Prior Approval to Receive Inbound Routes from Archipelago Securities LLC ("ArcaSec"), an Affiliated Member**

July 7, 2009.

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 June 23, 2009, the 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 and II below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and is approving the proposal on an accelerated basis.

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

The Exchange proposes to amend the scope of the Exchange's prior approval to receive inbound routes of PO Plus Orders from Archipelago Securities LLC ("ArcaSec"), 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, 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.

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

<sup>2</sup> 17 CFR 240.19b-4.

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

1. Purpose

ArcaSec is the approved outbound order routing facility of the NYSE, NYSE Arca Inc. ("NYSE Arca") and NYSE Amex LLC.<sup>3</sup> In this context, the Exchange has been previously authorized, on a pilot basis, to receive inbound PO Plus Orders from ArcaSec, acting in its capacity as the outbound order routing facility for NYSE Arca.<sup>4</sup> The Exchange hereby proposes that, in addition to PO Plus Orders, the Commission authorize the NYSE to receive all NYSE Arca order types approved or implemented on or after the date of approval of this proposal. The Exchange does not propose any further changes to its authorization to receive inbound routes from ArcaSec or to the term of the pilot period. All existing conditions currently in place with respect to ArcaSec routing orders to the NYSE, in its capacity as an outbound order routing facility for NYSE Arca, will continue to apply. The Exchange believes that this proposal, if approved, will authorize the Exchange to receive any NYSE Arca order types approved subsequent to the approval of this proposal and going forward through the end of the pilot period.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)<sup>5</sup> of the Securities Exchange Act of 1934 (the "Act"), in general, and furthers the objectives of Section 6(b)(5),<sup>6</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster

<sup>3</sup> 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). See Securities Exchange Act Release No. 55590 (April 5, 2007), 72 FR 18707 (April 13, 2007) (notice of immediate effectiveness of SR-NYSE-2007-29); see also Securities Exchange Act Release No. 58680 (September 29, 2008), 73 FR 58283 (October 6, 2008) (order approving SR-NYSE-2008-76). See Securities Exchange Act Release No. 59009 (November 24, 2008), 73 FR 73363 (December 2, 2008) (SR-NYSEALTR-2008-07).

<sup>4</sup> See Securities Exchange Act Release No. 58680 (September 29, 2008), 73 FR 58283 (October 6, 2008) (order approving SR-NYSE-2008-76). ArcaSec had been previously authorized to deliver inbound routes to the NYSE, acting in its capacity as an order routing facility for NYSE Arca. See *supra* note 3.

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system. The Exchange believes authorizing the Exchange to receive inbound routes, via ArcaSec, of all NYSE Arca order types approved or implemented on or after the date of approval of this proposal reflects the Exchange's ongoing efforts to effectively address the concerns previously identified by the Commission regarding the potential for informational advantages favoring ArcaSec vis-à-vis other non-affiliated NYSE members.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2009-58 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-2009-58. 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-2009-58 and should be submitted on or before August 4, 2009.

### 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.<sup>7</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>8</sup> 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.

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.<sup>9</sup> 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 inbound routing to the NYSE from NYSE Arca for all NYSE Arca order types approved or implemented on or after the date of this approval order on a pilot basis and subject to certain conditions. The Commission notes that this proposal seeks to expand a previously approved pilot program that allows the NYSE to receive PO Plus Orders from NYSE Arca via ArcaSec<sup>10</sup> to include any additional order types approved or implemented on or after the date of this approval order. The Commission also notes that all existing conditions currently in place with respect to ArcaSec routing orders to the NYSE, in its capacity as an outbound routing facility for NYSE Arca, will continue to apply.<sup>11</sup>

The NYSE has asked the Commission to accelerate approval of the proposed rule change. The NYSE notes that the proposed rule change reflects the Exchange's efforts to effectively include within the pilot program authorizing the NYSE to receive certain inbound orders routed via ArcaSec, all NYSE Arca order types approved or implemented on or after the date of approval of this proposal.<sup>12</sup> NYSE also states that accelerated approval will authorize the Exchange to receive such order types through the end of the pilot period, including certain pending NYSE Arca proposed order types.<sup>13</sup> 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 currently in place with respect to ArcaSec routing orders to the NYSE, in its capacity as an outbound routing facility for NYSE

(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; see also Securities Exchange Act Release No. 58681, *supra* note 3.

<sup>10</sup> See Securities Exchange Act Release No. 58680, *supra* note 4.

<sup>11</sup> See *id.* at notes 16-21 and accompanying text. ArcaSec's routing of orders to the NYSE, in its capacity as an outbound routing facility for NYSE Arca with respect to order types in effect prior to the establishment of the pilot program for PO Plus Orders, is not subject to the pilot program.

<sup>12</sup> See SR-NYSE-2009-58, Item 7.

<sup>13</sup> See *id.* See also SR-NYSEArca-2009-56.

<sup>7</sup> 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).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> See, e.g., Securities Exchange Act Release Nos. 54170 (July 18, 2006), 71 FR 42149 (July 25, 2006)

Arca, which are designed to address conflicts of interest concerns identified by the Commission in connection with inbound routing of orders to an exchange when the routing broker-dealer is an affiliate of the exchange, will continue to apply and were previously approved by the Commission.<sup>14</sup> The Commission also notes that no comments were received in connection with SR-NYSE-2008-76.<sup>15</sup> Accordingly, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,<sup>16</sup> 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-2009-58) 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.<sup>17</sup>

**Elizabeth M. Murphy**,  
Secretary.

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BILLING CODE 8010-01-17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60252; File No. SR-NYSEAmes-2009-24]

### Self-Regulatory Organizations; NYSE Amex LLC; Order Granting Accelerated Approval to a Proposed Rule Change Amending Rule 70.25 To Permit All Available Contra-Side Liquidity To Trigger the Execution of a d-Quote

July 7, 2009.

On June 4, 2009, NYSE Amex LLC (“NYSE Amex” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”), 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> a proposed rule change to amend NYSE Amex Equities Rule 70.25 to permit all available contra-side liquidity to trigger the execution of a d-Quote. The proposed rule change was published for comment in the **Federal Register** on June 15,

2009.<sup>3</sup> The Commission received no comments regarding the proposal. This order approves the proposed rule change on an accelerated basis.

The Exchange proposes to amend Rule 70.25 to expand the categories of liquidity that would be considered when determining whether the contra-side volume is within the discretionary size range of the d-Quote.<sup>4</sup> Currently, only displayed interest is considered by Exchange systems in determining whether the d-Quote is triggered. Under the proposed rule change, all available contra-side interest at a possible execution price of the d-Quote, including undisplayed liquidity, would be considered. This rule change will conform Rule 70.25 to the corresponding rule of the New York Stock Exchange LLC (“NYSE”) that governs the execution of NYSE Floor broker interest.<sup>5</sup>

In its filing, the Exchange stated that this rule change would provide Floor brokers with a similar functionality that was previously available to Floor brokers with convert-and-parity (“CAP”) orders, and that was also previously available to NYSE Floor brokers with CAP-DI orders under former NYSE Rule 123A.30(a).<sup>6</sup> Under that former rule, an elected CAP-DI order would automatically execute against any contra-side volume available at the electing price, and was eligible to participate in a sweep.<sup>7</sup> At the time the CAP order was eliminated, the NYSE did not have the technology to replicate a similar functionality with d-Quotes.<sup>8</sup> Since that time, both the Exchange and the NYSE have introduced two new order types, the Minimum Display Reserve Order, and the Non-Displayed Reserve Order.<sup>9</sup> With the proposed rule change, these two order types would be considered when determining whether

there is sufficient contra-side volume to trigger a d-Quote.

The Commission has carefully reviewed the proposed rule change and 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>10</sup> including, in particular, Section 6(b)(5) of the Act,<sup>11</sup> which requires that an exchange have rules 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, protect investors and the public interest.

Because it would provide a d-Quote with access to both displayed and undisplayed liquidity, the proposed rule change benefits Floor brokers by allowing their d-Quotes to be triggered more often. This proposal should also benefit customers by providing them with more opportunities to have their non-displayed reserve orders receive executions.

The Commission also finds good cause to approve the proposed rule change prior to the thirtieth day after publication in the **Federal Register**. The Commission notes that no comments were received during the 21-day comment period. The purpose of this proposed rule change is to conform Rule 70.25 to the NYSE rule that governs the execution of floor broker interest. In that respect, the Commission believes that the Exchange has provided reasonable support for its representation that the proposed rule change provides Floor brokers with a functionality similar to that previously available with CAP orders, and to the functionality that was previously available to NYSE Floor brokers with CAP-DI orders. In addition, the potential benefits of this proposal to customers, such as the increased opportunities for the execution of customer non-displayed reserve orders, would be available sooner by approving this proposed rule change on an accelerated basis.

Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,<sup>12</sup> to approve the proposed rule change on an accelerated basis.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-NYSEAmes-2009-24) be, and it hereby is, approved on an accelerated basis.

<sup>10</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>14</sup> See Securities Exchange Act Release No. 58680, *supra* note 4.

<sup>15</sup> See *id.*

<sup>16</sup> 15 U.S.C. 78s(b)(2).

<sup>17</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> See Securities Exchange Act Release No. 60055 (June 5, 2009), 74 FR 28299 (“Notice”).

<sup>4</sup> A d-Quote is an e-Quote for which a Floor Broker enters discretionary instructions as to size and/or price. See NYSE Amex Equities Rule 70.25(a)(i). An e-Quote is a broker agency interest file that a Floor broker places within the Display Book system. See NYSE Amex Equities Rule 70(a)(i).

<sup>5</sup> See Securities Exchange Act Release No. 60045 (June 4, 2009), 74 FR 27854 (June 11, 2009) (SR-NYSE-2009-55).

<sup>6</sup> See Notice at 28300. The Exchange noted that the CAP functionality that was historically available to Floor brokers was similar to the NYSE CAP functionality. See *id.* at n.10. The Exchange states that it eliminated this functionality in connection with the implementation of Regulation NMS. *Id.*

<sup>7</sup> See Notice at 28300.

<sup>8</sup> *Id.* at 28301.

<sup>9</sup> *Id.* See also NYSE Amex Equities Rule 13 (Definitions of Orders); NYSE Rule 13 (same).