

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

1. Purpose

Nasdaq proposes to modify the manner in which a member's average daily volume is determined by excluding from the calculation days when the market is not open for the entire trading day. An example of such a partial trading day is Tuesday, July 3, 2007. On that day Nasdaq will cease trading at 1 p.m. Eastern Time ("ET")<sup>5</sup> and, thus, trading for that day will be excluded from the calculation of a member's average daily volume. The change will ensure that members close to achieving the average daily volume required for a particular pricing level will not find it more difficult to achieve that level simply because a month contains a partial trading day.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 6 of the Act,<sup>6</sup> in general, and with sections 6(b)(4) of the Act,<sup>7</sup> in particular, in that the proposal provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using any facility or system which Nasdaq operates or controls. Nasdaq believes that the change is reasonable because it will facilitate members achieving volume levels required for particular pricing levels in months with partial trading days.

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

Nasdaq does not believe that the proposed rule change will result in 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*

Written comments were neither solicited nor received.

<sup>5</sup> Although Nasdaq will officially "close" at 1 p.m. ET, Nasdaq will continue trading in an after hours session until 5 p.m. ET; compared to "full trading days" times of 4 p.m. ET and 8 p.m. ET, respectively.

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

<sup>7</sup> 15 U.S.C. 78f(b)(4).

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act<sup>8</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder<sup>9</sup> because it establishes or changes a due, fee, or other charge applicable only to a member imposed by the self-regulatory organization. Accordingly, the proposal is effective upon Commission receipt of the filing. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2007-062 on the subject line.

*Paper Comments*

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

All submissions should refer to File Number SR-NASDAQ-2007-062. 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

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

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of Nasdaq. 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-2007-062 and should be submitted on or August 10, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-56072; File No. SR-NYSEArca-2007-61]

**Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Adding a New Order Type Known As the Mid-Point Passive Liquidity Order**

July 13, 2007.

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 29, 2007, NYSE Arca, Inc. ("NYSE Arca" or "Exchange"), through its wholly-owned subsidiary, NYSE Arca Equities, Inc. ("NYSE Arca Equities" or "Corporation") 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 Exchange filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder, which renders it effective upon filing with the Commission.<sup>4</sup> The Commission is publishing this notice to

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

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

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

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

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

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, through its wholly-owned subsidiary, NYSE Arca Equities proposes to amend its rules in order to add a new order type known as the Mid-Point Passive Liquidity Order ("MPL Order"). The changes described in this rule proposal would add new NYSE Arca Equities Rule 7.31(h)(5) and would amend existing Rule 7.37(d)(2). 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 Exchange 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 Exchange 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**

As part of its continuing efforts to provide additional flexibility and increased functionality to its system and its Users,<sup>5</sup> the Exchange proposes to add a new order type known as the MPL Order. The MPL Order is a version of the NYSE Arca Passive Liquidity Order,<sup>6</sup> except that it will be executable only at the midpoint of the Protected Best Bid and Offer ("PBBO").<sup>7</sup>

##### **MPL Order Execution in NYSE Arca**

The MPL Order will follow the same execution priority rules as the Passive Liquidity Order.<sup>8</sup> MPL Orders always execute at the midpoint of the PBBO and do not receive price improvement.

MPL Orders will be ranked in time priority for the purposes of execution as long as the midpoint is within the limit range of the order. The Exchange may set a minimum entry size for MPL Orders from time to time, with the

initial minimum entry size set at 1,000 shares. Users may specify a minimum executable size for an MPL Order, but no less than 1,000 shares. An MPL Order with a specified minimum executable size will execute against an incoming order that meets the minimum executable size and is priced at or better than the midpoint of the PBBO.<sup>9</sup>

An MPL Order may be executed in subpennies if necessary to attain a midpoint price. Users may mark incoming limit orders with a "No Midpoint Execution" designator; so marked, those limit orders will ignore MPL Orders and trade against the rest of the book in the ordinary course.

MPL Orders will not be exclusive to Lead Market Makers<sup>10</sup> ("LMMs") where NYSE Arca is the primary listings market. MPL Orders will be valid for any session but will not participate in any auctions. If the market is locked, the eligible MPL Order will trade at the locked price. If the market is crossed, the MPL Order will wait for the market to uncross before becoming eligible to trade again. MPL Orders will interact with all order types including contra MPL Orders, with the exception of cross orders.

MPL Orders will not route out of NYSE Arca to other market centers. For purposes of the NYSE Arca rules related to Regulation NMS, MPL Orders will never be routed to Protected or Manual Quotations. An MPL Order will not trade-through a Protected Quotation.

The Exchange believes that the implementation of the aforementioned rule changes adding a new order type and the related NYSE Arca order processing modifications will enhance order execution opportunities on NYSE Arca.<sup>11</sup> The Exchange believes that the proposed order type will allow for additional opportunities for liquidity providers, especially institutions, to passively interact with interest in the NYSE Arca book.

##### **2. Statutory Basis**

The Exchange believes that the proposed rule change is consistent with

section 6(b) of the Act<sup>12</sup> in general, and furthers the objectives of section 6(b)(5) of the Act<sup>13</sup> in particular, because it is 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 facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

#### **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**

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 foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A)<sup>14</sup> of the Act and Rule 19b-4(f)(6) thereunder.<sup>15</sup> At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

NYSE Arca has asked the Commission to waive the 30-day operative delay. The Commission believes such a waiver is consistent with the protection of investors and the public interest because it would permit the Exchange to codify the proposed order type, the MPL without delay.<sup>16</sup> For this reason, the Commission designates the proposal to

<sup>5</sup> See NYSE Arca Equities Rule 1.1(yy) for the definition of "User."

<sup>6</sup> See NYSE Arca Equities Rule 7.31(h)(4).

<sup>7</sup> See NYSE Arca Equities Rule 1.1(eee) for the definitions of "Protected Bid" and Protected Offer."

<sup>8</sup> See NYSE Arca Equities Rule 7.31(h)(4) and 7.37(b)(2)(A)(iv).

<sup>9</sup> For example, an order may be entered to buy 10,000 MPL with a minimum size of 2,000. This would allow for execution of the MPL order only if the contra size order were at least 2,000 shares. If the leaves quantity becomes less than the minimum size, the minimum size restriction will no longer be enforced on executions.

<sup>10</sup> See NYSE Arca Equities Rule 1.1(ccc) for definition of "Lead Market Makers."

<sup>11</sup> This proposed order type is similar to the MidPoint Match mechanism of the International Securities Exchange, Inc. ("ISE"), previously approved by the Commission. See Securities Exchange Act Release No. 54528 (September 28, 2006), 71 FR 58650 (October 4, 2006) (SR-ISE-2006-48).

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

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

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

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

<sup>16</sup> For purposes only of waiving the 30-day pre-operative period, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

be operative upon filing with the Commission.

#### 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-NYSEArca-2007-61 on the subject line.

##### *Paper Comments*

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

All submissions should refer to File Number SR-NYSEArca-2007-61. 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 NYSE Arca. 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-NYSEArca-2007-61 and should be submitted on or before August 10, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>17</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56069; File No. SR-OCC-2006-19]

### Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to Close-Out Netting Procedures

July 13, 2007.

#### I. Introduction

On October 10, 2006, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-OCC-2006-19 pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> On May 15, 2007, OCC amended the proposed rule change. Notice of the proposal was published in the **Federal Register** on May 29, 2007.<sup>2</sup> On June 21, 2007, OCC again amended the proposed rule change.<sup>3</sup> Three comment letters were received.<sup>4</sup> For the reasons discussed below, the Commission is granting approval of the proposed rule change.

#### II. Description

##### *Background*

OCC was asked by several of its Clearing Members to consider adopting a rule that would allow for close-out netting of obligations running between OCC and Clearing Members in the event of an OCC default or insolvency. The reason was that such a rule could reduce applicable capital requirements for a Clearing Member's parent company where the parent is a U.S. or non-U.S. bank or part of a Consolidated

Supervised Entity ("CSE"). The absence of a netting agreement that would apply in a default or insolvency of OCC could cause the minimum capital requirement applicable to such a parent company and its subsidiaries to be substantially larger on a consolidated basis than it would be otherwise. In the absence of a netting agreement, applicable banking regulations generally prohibit offsetting the Clearing Member's liabilities to OCC on short positions in options and on other obligations against the Clearing Member's credits from OCC with respect to long options positions and from other obligations of OCC. In addition, OCC believes that a close-out netting rule would clarify the accounting treatment of obligations between OCC and its Clearing Members.

The proposed rule change is designed to allow Clearing Members to comply with international standards under the Basel Capital Accord adopted by the Basel Committee on Banking Supervision relating to bilateral netting ("Basel Netting Standards").<sup>5</sup> It is OCC's understanding that the capital rules applicable to most banks following the Basel Netting Standards require that an enforceable netting agreement be in place in order for mutual obligations between a Clearing Member that is a bank affiliate and a counterparty such as OCC to be treated on a net basis. The policy behind this requirement is to ensure that obligations that are treated on a net basis for capital purposes can actually be offset against one another in the event of the failure of the counterparty. In the absence of an enforceable netting agreement, there is concern that the representative of the failed counterparty (*i.e.*, OCC in this scenario) under applicable insolvency law might be able to "cherry pick" by assuming the benefit of contracts representing an asset to the bankruptcy estate while rejecting contracts representing a liability. This would force the non-defaulting counterparty (*i.e.*, the Clearing Member in this scenario) to perform in full on its liabilities while sharing with other unsecured creditors in any amounts available for distribution from the bankruptcy estate to satisfy its claims. An enforceable netting agreement providing for "close-out netting" in the event of a default or insolvency of OCC would avoid this potential result.

Chapter XI of OCC's Rules, Suspension of a Clearing Member, provides in considerable detail for

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

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

<sup>2</sup> Securities Exchange Act Release No. 55788 (May 21, 2007), 72 FR 29569.

<sup>3</sup> Although the proposed rule change was amended after it was noticed for comment in the **Federal Register**, republication of the notice was not necessary because the June 21, 2007, amendment made only a technical change regarding the application of a financial accounting interpretation.

<sup>4</sup> Edward S. Grieb, Managing Director and Financial Controller, Lehman Brothers Holdings Inc. (June 19, 2007); Matthew Schroeder, Chairman, Dealer Accounting Committee, Securities Industry and Financial Markets Association (June 19, 2007); Gregory A. Sigris, Managing Director, Morgan Stanley, New York, New York (June 19, 2007).

<sup>5</sup> For more information on the Basel Committee on Banking Supervision and the Basel Netting Standards, see the Bank for International Settlement's Web site at: <http://www.bis.org>.