

and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest. The Exchange believes the proposed delta neutral-based hedge exemption from equity options position and exercise limits is appropriate in that it is based on a widely accepted risk management method used in options trading. Also, the Commission has previously stated its support for recognizing options positions hedged on a delta neutral basis as properly exempted from position limits.²⁵

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 not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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

Because the foregoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act²⁶ and Rule 19b-4(f)(6) thereunder.²⁷

A proposed rule change filed under 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.²⁸ However, Rule 19b-4(f)(6)(iii)²⁹ 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 such waiver would allow the Exchange to implement the delta hedging exemption from equity options position limits without needless delay. The Commission notes that it recently approved a substantially similar proposal filed by the Chicago Board Options Exchange, Incorporated.³⁰ The Commission believes that ISE's proposal to create a delta hedging exemption from equity options position limits raises no new issues. For these reasons, the Commission designates the proposed rule change to be operative upon filing with the Commission.³¹

At any time within 60 days of the filing of such 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. Please include File Number SR-ISE-2008-06 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-ISE-2008-06. 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 also will be available for inspection and copying at the principal office of ISE. 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-2008-06 and should be submitted on or before March 21, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³²

Florence E. Harmon,
Deputy Secretary.

[FR Doc. E8-3842 Filed 2-28-08; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57358; File No. SR-NYSEArca-2008-17]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Create a Delta Hedging Exemption From Equity Options Position Limits

February 20, 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 February 6, 2008, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II

²⁵ See Securities Exchange Act Release No. 40594 (October 23, 1998), 63 FR 59362, 59380 (November 3, 1998) (adopting rules relating to OTC Derivatives Dealers).

²⁶ 15 U.S.C. 78s(b)(3)(A).

²⁷ CFR 240.19b-4(f)(6).

²⁸ 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent 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 the five-day pre-filing notice requirement.

²⁹ *Id.*

³⁰ See Securities Exchange Act Release No. 56970 (December 14, 2007), 72 FR 72428 (December 20, 2007) (SR-CBOE-2007-99).

³¹ For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

³² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

below, which Items have been substantially prepared by NYSE Arca. The Exchange has filed the proposal as a “non-controversial” rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders it effective upon filing with the Commission. 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

NYSE Arca proposes to amend Exchange Rule 6.8 in order to create a delta hedging exemption from equity options position limits. The text of the proposed rule change is available at NYSE Arca, the Commission’s Public Reference Room, and <http://www.nysearca.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, NYSE Arca 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. NYSE Arca 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

All options traded on the Exchange are subject to position and exercise limits, as provided under NYSE Arca Rule 6.8.⁵ Position limits are imposed, generally, to maintain fair and orderly markets for options and other securities by limiting the amount of control by one or more affiliated persons or entities over one particular options class or the security or securities that underlie that options class. Exchange rules also contain various hedge exemptions to allow certain hedged positions in excess of the applicable standard position limit.⁶

Over the years, NYSE Arca has, at times, increased the size of options position and exercise limits, as well as the size and scope of available hedge exemptions to the applicable position limits.⁷ These hedge exemptions generally require a one-to-one hedge (*i.e.*, one stock option contract must be hedged by the number of shares underlying the options contract, typically 100 shares). In practice, however, many firms do not hedge their options positions in this manner. Instead, these firms engage in what is commonly known as “delta hedging.” Delta hedging varies the number of shares of the underlying security used to hedge an options position based upon the relative sensitivity of the value of the option contract to a change in the price of the underlying security.⁸ The Exchange believes that delta hedging is a widely accepted method for risk management.

Delta Neutral-Based Equity Hedge Exemption. The Exchange proposes to adopt a new exemption from equity options position and exercise limits⁹ for positions held by NYSE Arca OTP Holders and OTP Firms,¹⁰ and certain of their affiliates, that are “delta neutral”¹¹ under a “permitted pricing model” (as defined below), subject to certain conditions (“Exemption”). The proposed Exemption would apply only to equity options (stock options and options on exchange-traded funds (“ETFs”)).¹²

⁷ See Securities Exchange Act Release Nos. 55347 (February 26, 2007), 72 FR 9823 (March 5, 2007) (SR-NYSEArca-2007-19); 54385 (August 30, 2006), 71 FR 53150 (September 8, 2006) (SR-NYSEArca-2006-49); 51286 (March 1, 2005) 70 FR 11297 (SR-PCX-2003-55); and 45737 (April 11, 2005), 67 FR 18975 (SR-PCX-2000-45).

⁸ To illustrate, a stock option contract with a delta of .5 will move \$0.50 for every \$1.00 move in the underlying stock.

⁹ NYSE Arca Rule 6.9 establishes exercise limits for an option at the same level as the option’s position limit under NYSE Arca Rule 6.8; therefore, no changes are proposed to Rule 6.9.

¹⁰ OTP Holders (NYSE Arca Rule 1.1(q)) and OTP Firms (NYSE Arca Rule 1.1(r)) have the status of a “member” of the Exchange as defined in Section 3 of the Act, 15 U.S.C. 78c.

¹¹ The term “delta neutral” is defined in proposed Rule 6.8 Commentary .09(a) as referring to an equity option position that is hedged, in accordance with a permitted pricing model, by a position in the underlying security or one or more instruments relating to the underlying security, for the purpose of offsetting the risk that the value of the option position will change with incremental changes in the price of the security underlying the option position.

¹² The Exchange intends to submit a separate proposed rule change to adopt a delta neutral-based hedge exemption for certain index options and to expand the delta neutral-based hedge exemption for ETF options to allow highly correlated instruments to be included in any ETF option net delta calculation.

Any equity option position that is not delta neutral would be subject to position and exercise limits, subject to the availability of other exemptions. Only the “option contract equivalent of the net delta” of such position would be subject to the appropriate position limit.¹³

Only financial instruments relating to the security underlying an equity options position could be included in any determination of an equity options position’s net delta or whether the options position is delta neutral. In addition, members could not use the same equity or other financial instrument position in connection with more than one hedge exemption. Therefore, a stock position used as part of a delta hedging strategy could not also serve as the basis for any other equity hedge exemption.

Permitted Pricing Model. Under the proposed rule, the calculation of the delta for any equity option position, and the determination of whether a particular equity option position is delta neutral, must be made using a permitted pricing model. A “permitted pricing model” is defined in proposed Rule 6.8 Commentary .09(c) to mean the pricing model maintained and operated by The Options Clearing Corporation (“OCC”) and the pricing models used by: (i) An OTP Holder or OTP Firm or its affiliate subject to consolidated supervision by the Commission pursuant to Appendix E of Rule 15c3-1 under the Act; (ii) a financial holding company (“FHC”) or a company treated as an FHC under the Bank Holding Company Act of 1956, or its affiliate subject to consolidated holding company group supervision;¹⁴

¹³ Under proposed Rule 6.8 Commentary .09(b) the term “options contract equivalent of the net delta” is defined as the net delta divided by the number of shares underlying the option contract, and the term “net delta” is defined as, at any time, the number of shares (either long or short) required to offset the risk that the value of an equity option position will change with incremental changes in the price of the security underlying the option position, as determined in accordance with a permitted pricing model.

¹⁴ The pricing model of an FHC or of an affiliate of an FHC would have to be consistent with: (i) The requirements of the Board of Governors of the Federal Reserve System (“FRB”), as amended from time to time, in connection with the calculation of risk-based adjustments to capital for market risk under capital requirements of the FRB, provided that the OTP Holder or OTP Firm (or affiliate thereof) relying on this exemption in connection with the use of such model is an entity that is part of such company’s consolidated supervised holding company group; or (ii) the standards published by the Basel Committee on Banking Supervision, as amended from time to time and as implemented by such company’s principal regulator, in connection with the calculation of risk-based deductions or adjustments to or allowances for the market risk capital requirements of such principal regulator applicable to such company—where “principal

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ Position limits for index options are provided separately under NYSE Arca Rule 5.15 through Rule 5.17.

⁶ See NYSE Arca Rule 6.8 Commentary .07-.08.

(iii) a Commission-registered OTC derivatives dealer;¹⁵ and (iv) a national bank.¹⁶

Aggregation of Accounts. An OTP Holder or OTP Firm (or an affiliate thereof) relying on the Exemption would be required to ensure that the permitted pricing model is applied to all positions in or relating to the security underlying the relevant options position that are owned or controlled by the OTP Holder or OTP Firm, or its affiliate.

However, the net delta of an options position held by an entity entitled to rely on the Exemption, or by a separate and distinct trading unit of such entity, may be calculated without regard to positions in or relating to the security underlying the option position held by an affiliated entity or by another trading unit within the same entity, provided that: (i) The entity demonstrates to the Exchange's satisfaction that no control relationship¹⁷ exists between such affiliates or trading units; and (ii) the entity has provided the Exchange written notice in advance that it intends to be considered separate and distinct from any affiliate, or, as applicable, which trading units within the entity are to be considered separate and distinct from each other for purposes of the Exemption.¹⁸

The Exchange has previously set forth in a regulatory bulletin the conditions under which it will deem control exists between affiliated broker dealers and between separate and distinct trading

units within the same broker-dealer.¹⁹ The Exchange will also issue a subsequent regulatory bulletin, explaining the aggregation of accounts, for the purpose of position limits, for broker-dealers and their non-broker dealer affiliates. The Exchange will issue this bulletin prior to the operative date of this rule change.

Any OTP Holder or OTP Firm (or affiliate thereof) relying on the Exemption must designate, by prior written notice to the Exchange, each trading unit or entity whose options positions are required by Exchange rules to be aggregated with the options positions of such OTP Holder or OTP Firm (or affiliate thereof) relying on the Exemption for purposes of compliance with Exchange position or exercise limits.²⁰

Obligations of OTP Holders and OTP Firms (and affiliates thereof). Any OTP Holder or OTP Firm relying on the Exemption would be required to provide a written certification to the Exchange that it is using a permitted pricing model as defined in the rule for purposes of the Exemption. In addition, by such reliance, such OTP Holder or OTP Firm would authorize any other person carrying for such OTP Holder or OTP Firm an account including, or with whom such OTP Holder or OTP Firm has entered into, a position in or relating to a security underlying the relevant option position to provide to the Exchange or OCC such information regarding such account or position as the Exchange or OCC may request as part of the Exchange's confirmation or verification of the accuracy of any net delta calculation under this Exemption.²¹

The options positions of a non-OTP Holder or Firm affiliate, relying on the Exemption must be carried by an OTP Holder or OTP Firm with which it is affiliated. An OTP Holder or OTP Firm carrying an account that includes an equity option position for an affiliate that intends to rely on the Exemption would be required to obtain from such affiliate a written certification that it is using a permitted pricing model as defined in the rule for purposes of the Exemption.²²

Reporting. Under proposed Rule 6.8 Commentary .09(f) each OTP Holder or OTP Firm relying on the Exemption would be required to report, in accordance with Rule 6.6,²³ (i) all equity option positions (including those that are delta neutral) that are reportable thereunder, and (ii) on its own behalf or on behalf of a designated aggregation unit pursuant to proposed Rule 6.8 Commentary .09(d), for each such account that holds an equity option position subject to the Exemption in excess of the levels specified in Rule 6.8(a) Commentary .05–06, the net delta and the options contract equivalent of the net delta of such position.

The Exchange and other self-regulatory organizations are working on modifying the Large Options Position Report system and/or OCC reports to allow a member organization to indicate that an equity options position is delta neutral.

Records. Under proposed Rule 6.8 Commentary .09(g) each OTP Holder or OTP Firm relying on the Exemption would be required to (i) retain, and would be required to undertake reasonable efforts to ensure that any affiliate of the OTP Holder or OTP Firm relying on the exemption retains, a list of the options, securities and other instruments underlying each options position net delta calculation reported to the Exchange hereunder, and (ii) produce such information to the Exchange upon request.²⁴

Reliance on Federal Oversight. As provided under proposed Rule 6.8 Commentary .09(c) a permitted pricing model includes proprietary pricing models used by OTP Holders and OTP Firms (and affiliates thereof) that have been approved by the Commission, the FRB, or another federal financial regulator. In adopting the proposed Exemption, the Exchange would be

rely on the Exemption; (d) authorizes the OTP Holder or OTP Firm to provide to the Exchange or the OCC such information regarding positions of the affiliate as the Exchange or OCC may request as part of the Exchange's confirmation or verification of the accuracy of any net delta calculation under the Exemption; and (e) if the affiliate is using the OCC Model, has duly executed and delivered to the Exchange such documents as the Exchange may require to be executed and delivered to the Exchange as a condition to reliance on the Exemption. See subparagraph (e)(3) of proposed Rule 6.8 Commentary .09.

²³ NYSE Arca Rule 6.6 requires, among other things, that OTP Holders and OTP Firms report to the Exchange aggregate long or short positions on the same side of the market of 200 or more contracts of any single class of options contracts dealt in on the Exchange.

²⁴ An OTP Holder or OTP Firm would be authorized to report position information of its affiliate pursuant to the written statement required under proposed Rule 6.8 Commentary .09(e)(3)(ii)(d).

regulator" means a member of the Basel Committee on Banking Supervision that is the home country consolidated supervisor of such company—provided that the OTP Holder or OTP Firm (or affiliate thereof) relying on this exemption in connection with the use of such model is an entity that is part of such company's consolidated supervised holding company group. See subsection (c)(3) of proposed Rule 6.8 Commentary .09.

¹⁵ The pricing model of a Commission-registered OTC derivatives dealer would have to be consistent with the requirements of Appendix F to Rules 15c3–1 and 15c3–4 under the Act, as amended from time to time, in connection with the calculation of risk-based deductions from capital for market risk thereunder. Only an OTC derivatives dealer and no other affiliated entity (including an OTP Holder or OTP Firm) would be able to rely on this part of the Exemption. See subsection (c)(4) of proposed Rule 6.8 Commentary .09.

¹⁶ The pricing model of a national bank would have to be consistent with the requirements of the Office of the Comptroller of the Currency, as amended from time to time, in connection with the calculation of risk-based adjustments to capital for market risk under capital requirements of the Office of the Comptroller of the Currency. Only a national bank and no other affiliated entity (including an OTP Holder or OTP Firm) would be able to rely on this part of the Exemption. See subparagraph (c)(5) of proposed Rule 6.8 Commentary .09.

¹⁷ For purposes of the proposed rule, "control" is as defined in *Position and Exercise Limits*, NYSE Arca Regulatory Bulletin RBO–07–08 (August 31, 2007).

¹⁸ See subsection (d) of proposed Rule 6.8 Commentary .09.

¹⁹ See *supra* note 17.

²⁰ See subparagraph (d)(3) of proposed Rule 6.8 Commentary .09.

²¹ See subsection (e) of proposed Rule 6.8 Commentary .09.

²² In addition, the OTP Holder or OTP Firm would be required to obtain from such affiliate a written statement confirming that such affiliate: (a) is relying on the Exemption; (b) will use only a permitted pricing model for purposes of calculating the net delta of its option positions for purposes of the Exemption; (c) will promptly notify the affiliated OTP Holder or OTP Firm if it ceases to

relying upon the rigorous approval processes and ongoing oversight of a federal financial regulator. The Exchange notes that it would not be under any obligation to verify whether an OTP Holder or OTP Firm or its affiliate's use of a proprietary pricing model is appropriate or yielding accurate results.

This rule change will become effective upon filing, although it will not become operative until such time that the Exchange, the OCC, and the Securities Industry Automation Corporation ("SIAC") have completed required technology changes to automated reports used for position limit surveillance. The operative date for the rule change will be announced by NYSE Arca via an options regulatory bulletin, within 30 days following the effective date of the filing. OTP Firms and OTP Holders will not be able to take advantage of the delta neutral-based equity hedge exemption contained in this proposal until the announced operative date.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,²⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act,²⁶ in particular, in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, 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 Exchange believes the proposed delta neutral-based hedge exemption from equity options position and exercise limits is appropriate in that it is based on a widely accepted risk management method used in options trading. Also, the Commission has previously stated its support for recognizing options positions hedged on a delta neutral basis as properly exempted from position limits.²⁷

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

Written comments on the proposed rule change were neither solicited nor received.

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

Because the foregoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act²⁸ and Rule 19b-4(f)(6) thereunder.²⁹

A proposed rule change filed under 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.³⁰ However, Rule 19b-4(f)(6)(iii)³¹ 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 such waiver would allow the Exchange to implement the delta hedging exemption from equity options position limits without needless delay. The Commission notes that it recently approved a substantially similar proposal filed by the Chicago Board Options Exchange, Incorporated.³² The Commission believes that NYSE Arca's proposal to create a delta hedging exemption from equity options position limits raises no new issues. For these reasons, the Commission designates the proposed rule change to be operative upon filing with the Commission.³³

²⁸ 15 U.S.C. 78s(b)(3)(A).

²⁹ 17 CFR 240.19b-4(f)(6).

³⁰ 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent 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 the five-day pre-filing notice requirement.

³¹ *Id.*

³² See Securities Exchange Act Release No. 56970 (December 14, 2007), 72 FR 72428 (December 20, 2007) (SR-CBOE-2007-99).

³³ For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

At any time within 60 days of the filing of such 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. Please include File Number SR-NYSEArca-2008-17 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-2008-17. 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 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

²⁵ 15 U.S.C. 78f(b).

²⁶ 15 U.S.C. 78f(b)(5).

²⁷ See Securities Exchange Act Release No. 40594 (October 23, 1998), 63 FR 59362, 59380 (November 3, 1998) (S7-30-97) (adopting rules relating to OTC Derivatives Dealers).

submissions should refer to File Number SR-NYSEArca-2008-17 and should be submitted on or before March 21, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁴

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8-3844 Filed 2-28-08; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57377; File No. SR-NYSE Arca-2008-19]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 7.31 To Modify the Primary Only Order Type

February 25, 2008.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 13, 2008, NYSE Arca, Inc. (“NYSE Arca” 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 substantially by NYSE Arca. NYSE Arca filed the proposed rule change as a “non-controversial” proposed rule change pursuant to section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders it effective upon filing with the Commission. 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

NYSE Arca proposes to amend Rule 7.31(x) in order to modify the permissible order entry time and eligibility of its Primary Only Order (“PO Order”). The text of the proposed rule change is available at NYSE Arca, 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, NYSE Arca included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NYSE Arca 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 NYSE Arca Equities rule 7.31(x) to modify the operability and eligibility of PO Orders in order to provide additional flexibility and increased functionality to its system and its Users.⁵

The PO Order is a market or limit order that is routed to the primary, listing market, without sweeping the NYSE Arca book.⁶ PO Orders may be entered until a cut-off time as determined from time to time by the Corporation. Presently, the Exchange restricts PO Orders to participation in the primary, listing market opening. In an effort to enhance order execution opportunities for its Users, the Exchange proposes to modify the PO Order type so that they may be entered at any time and to offer an order modifier for Users to designate PO Orders that are eligible for entry and execution throughout the trading day.

According to the proposal, a PO Order may be entered at any time⁷; and will be immediately routed to the primary, listing market for execution. If the order is not IOC, the order is not returned to the NYSE Arca book; rather it remains at the venue routed to, until executed or cancelled that day. In instances where a symbol is halted, the PO Order will remain at the primary, listing market until such time that it is cancelled or the symbol is re-opened. PO Orders eligible for participation in the primary, listing market’s opening must be entered before 6:28 a.m. (Pacific Time). A PO Order entered for participation in the primary, listing market re-opening after a trading halt must be entered after trading was

halted on the Corporation and before the Re-Opening Time. Otherwise, PO Orders eligible for participation in the primary, listing market at all other times must be marked with the modifier: PO+.

The proposed changes to the PO Order type will provide additional flexibility and functionality to the Exchange’s system and its Users that wish to use the system to comply with their obligations to avoid trading through any Protected Quotation within the meaning of Rule 600(b)(58) of Regulation NMS.⁸ PO Orders may be designated as intermarket sweep orders thereby providing the entering party the ability to trade-through any protected bid or offer (as defined in Rule 600(b) of Regulation NMS under the Act) and to execute at the primary, listing market. Of course, a broker-dealer that designates an order as an intermarket sweep order has the responsibility of complying with Rules 610 and 611 of Regulation NMS.

The Exchange believes that the proposed clarification and additional modifier will enhance flexibility and order execution opportunities for its Users. The Exchange also believes that the proposed amendments will also allow its Users to comply with their obligation to avoid trading through any protected bid or offer within the meaning of Rule 600(b) of Regulation NMS. In addition, the Exchange believes that the proposed functionality is substantially similar to the “Directed Orders” presently offered by The NASDAQ Stock Market LLC (“Nasdaq”).⁹

2. Statutory Basis

The proposed rule change is consistent with the provisions of section 6 of the Act,¹⁰ in general, and with sections 6(b)(1) and (b)(5) of the Act,¹¹ in particular, in that the proposal 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

NYSE Arca does not believe that the proposed rule change will impose any

³⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ See NYSE Arca Rule 1.1(yy) for the definition of “User.”

⁶ NYSE Arca Rule 7.31(x).

⁷ Users would be able to enter PO Orders into the system for execution during any of the Exchange’s trading sessions (Opening, Core and Late Sessions).

⁸ 17 CFR 242.600(b)(58).

⁹ See Securities Exchange Act Release No. 55405 (March 6, 2007), 72 FR 11069 (March 12, 2007) (SR-NASDAQ-2007-020).

¹⁰ 15 U.S.C. 78f.

¹¹ 15 U.S.C. 78f(b)(1) and (b)(5).