

4(f)(6)(iii)<sup>16</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the five-day pre-filing notice requirement and the 30-day operative delay and designate the proposed rule change immediately operative upon filing. The Commission believes that waiver of the five-day pre-filing notice requirement and the 30-day operative delay is consistent with the protection of investors and the public interest because it would allow the Pilot to continue without interruption. Accordingly, the Commission designates the proposal to be effective and operative upon filing with the Commission on a pilot basis until November 30, 2006.<sup>17</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.

#### IV. Solicitation of Comments

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

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2006-96 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-NYSE-2006-96. 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](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. 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-NYSE-2006-96 and should be submitted on or before November 27, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>18</sup>

Nancy M. Morris,  
Secretary.

[FR Doc. E6-18634 Filed 11-3-06; 8:45 am]

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54672; File No. SR-NYSEArca-2006-47]

#### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to Modify the Voluntary Withdrawal Procedures of Securities From Listing on the Exchange and, for Dually-Listed Issuers Voluntarily Withdrawing Listed Securities on the Exchange, To Eliminate the Requirement To Submit Resolutions by Their Board of Directors

October 30, 2006.

#### I. Introduction

On August 4, 2006, NYSE Arca, Inc. ("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 Rule 5.4(b) of NYSE Arca Equities, Inc. ("NYSE Arca Equities"), a wholly-owned subsidiary of the Exchange. The Exchange amended the proposal on August 17, 2006. The proposed rule change, as amended, was published for comment in the **Federal Register** on August 29, 2006.<sup>3</sup> The Commission received no comments on the proposal. On October 17, 2006, the Exchange filed Amendment No. 2 to the proposal.<sup>4</sup> In Amendment No. 2, the Exchange amended the proposed rule text to reflect The Nasdaq Stock Market's change in status as a national securities exchange,<sup>5</sup> and to add that only an authorized executive officer may submit a delisting notice to the Exchange in the case of dually-listed issuers (as defined below). This order approves the proposed rule change, as amended by Amendment Nos. 1 and 2. The Commission has accelerated approval of Amendment No. 2 and is also providing notice and soliciting comments on Amendment No. 2 to the proposed rule change.

#### II. Description of the Proposal

The Exchange proposes to amend NYSE Arca Equities Rule 5.4(b) to modify the voluntary withdrawal procedures of securities from listing on NYSE Arca, L.L.C. ("NYSE Arca Marketplace"), the equities trading facility of NYSE Arca Equities. For an issuer who wishes to voluntarily withdraw securities listed on NYSE Arca Marketplace, the Exchange proposes to eliminate the requirement that such issuer submit a letter from an authorized officer of the issuer, providing the specific reasons cited by its board of directors for the proposed withdrawal.<sup>6</sup> Further, the Exchange proposes to eliminate the requirement that such issuer, under special

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

<sup>3</sup> See Securities Exchange Act Release No. 54348 (August 22, 2006), 71 FR 51264.

<sup>4</sup> See Partial Amendment dated October 17, 2006 ("Amendment No. 2").

<sup>5</sup> See Securities Exchange Act Release Nos. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006); 54240 (July 31, 2006), 71 FR 45246 (August 8, 2006); and 54241 (July 31, 2006), 71 FR 45359 (August 8, 2006).

<sup>6</sup> Although the provision requiring submission of a letter stating the board of director's specific reasons for delisting would be eliminated from NYSE Arca Equities rules, Rule 12d2-2(c)(2)(ii) under the Act has a similar provision that requires issuers to "provide written notice to the national securities exchange of its determination to withdraw the class of securities from listing and/or registration on such exchange. Such written notice must set forth a description of the security involved, together with a statement of all material facts relating to the reasons for withdrawal from listing and/or registration." 17 CFR 240.12d2-2(c)(2)(ii).

<sup>16</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>17</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>18</sup> 17 CFR 200.30-3(a)(12).

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

circumstances, submit the proposed withdrawal to its shareholders for their vote at a meeting for which proxies are solicited, provided the security is not also listed on another exchange with similar requirements.

In place of these requirements, the Exchange proposes that an issuer may voluntarily delist a security from the Exchange after the issuer's board approves the action and the issuer (i) furnishes the Exchange with a copy of the Board resolution authorizing such delisting certified by the secretary of the issuer and (ii) complies with all of the requirements of Rule 12d2-2(c) under the Act.<sup>7</sup> The issuer must thereafter file a Form 25 with the Commission to withdraw the security from listing on the Exchange and from registration under the Act. In addition, the issuer must provide a copy of the Form 25 to the Exchange simultaneously with the filing of such Form 25 with the Commission. In addition, if an issuer delists a class of stock from the Exchange and does not delist other classes of listed securities, the Exchange may consider delisting one or more of such other classes.

Finally, for an issuer whose securities are listed on both the Exchange and another national securities exchange ("dually-listed issuer"), the Exchange proposes to eliminate the requirement that such issuer provide to the Exchange a certified copy of the resolutions of the issuer's board of directors authorizing the withdrawal from listing on the Exchange. Instead, the Exchange proposes to require the submission of a letter signed by an authorized executive officer of the issuer setting forth the reason for the proposed withdrawal.

### III. Discussion and Commission Findings

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations applicable to a national securities exchange, and in particular, with the requirements of Section 6(b) of the Act.<sup>8</sup> Specifically, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act<sup>9</sup> in that it is designed 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, and 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 Commission believes the Exchange's proposal to modify voluntary withdrawal procedures is consistent with the requirements of the Act and does not raise any significant regulatory issues. The Exchange proposes to amend the voluntary delisting process by requiring that an issuer may voluntarily delist a security from the Exchange after the issuer's board approves the action and the issuer (i) furnishes the Exchange with a copy of the Board resolution authorizing such delisting certified by the secretary of the issuer and (ii) complies with all of the requirements of Rule 12d2-2(c) under the Act.<sup>10</sup> The issuer must thereafter file a Form 25 with the Commission to withdraw the security from listing on the Exchange and from registration under the Act. In addition, the issuer must provide a copy of the Form 25 to the Exchange simultaneously with the filing of such Form 25 with the Commission. Further, the Exchange may consider delisting one or more other classes of securities if an issuer delists a class of security and does not delist other classes of listed securities. The Commission notes that the proposed voluntary withdrawal procedures are consistent with the requirements of Rule 12d2-2 under the Act<sup>11</sup> and are virtually identical to the voluntary withdrawal procedures of the New York Stock Exchange LLC ("NYSE").<sup>12</sup> Further, some of the provisions to be deleted are already imposed on issuers by Rule 12d2-2 under the Act.<sup>13</sup>

Further, the Exchange proposes to eliminate the requirement that a dually-listed issuer provide to the Exchange a certified copy of the resolutions of the issuer's board of directors authorizing the withdrawal from listing on the Exchange. The proposed rule requires that each dually-listed issuer provide a letter signed by an authorized executive officer of the issuer setting forth the reasons for the proposed withdrawal.<sup>14</sup> Dually-listed issuers also must still comply with all the other requirements of NYSE Arca Equities Rule 5.4(b) and

Rule 12d2-2 under the Act,<sup>15</sup> which specifically requires, among other things, that issuers comply with all applicable laws in effect in the state in which they are incorporated.

The elimination of the board certification requirement may ease the burden on dually-listed issuers who wish to voluntarily withdraw securities from listing on the Exchange. Moreover, the security of a dually-listed issuer would continue to be listed and traded on a registered national securities exchange. As noted by the Exchange, this should ensure that transparent last sale information will continue to be disseminated on the delisted security on an uninterrupted basis. It would also ensure the other protections for trading a security on a national securities exchange remain, such as the periodic reporting obligations under the Act. Based on the above reasons, the Commission finds that the proposal is consistent with the requirements of the Act.

### IV. Accelerated Approval of Amendment No. 2

Pursuant to Section 19(b)(2) of the Act,<sup>16</sup> the Commission may not approve any proposed rule change, or amendment thereto, prior to the 30th day after the date of publication of notice of the filing thereof, unless the Commission finds good cause for so doing and publishes its reasons for so finding.

In Amendment No. 2, the Exchange proposed to amend the proposed rules to reflect the change in status of the Nasdaq Stock Market to a national securities exchange, and to add that only an authorized executive officer may submit a delisting notice to the Exchange in the case of dually-listed issuers. The Commission finds good cause to accelerate approval of these changes prior to the 30th day after publication in the **Federal Register**. The revisions made to the proposal in Amendment No. 2 accurately reflect the Nasdaq Stock Market's status as a national securities exchange, and clarify that only an authorized executive officer of a dually-listed issuer may submit a delisting notice to the Exchange. The Commission believes that accelerating approval of Amendment No. 2 is appropriate because these revisions do not raise any new regulatory issues and make the proposal more accurate and clearer.

<sup>10</sup> 17 CFR 240.12d2-2(c).

<sup>11</sup> 17 CFR 240.12d2-2.

<sup>12</sup> See NYSE Listed Company Manual Section 806.02. NYSE and the Exchange are both owned by the NYSE Group, Inc. as a result of a merger between the Archipelago Holdings, Inc. and the New York Stock Exchange, Inc. on March 7, 2006.

<sup>13</sup> 17 CFR 240.12d2-2(c)(2)(ii).

<sup>14</sup> See proposed NYSE Arca Equities Rule 5.4(b); see also *supra* note 6.

<sup>15</sup> See 17 CFR 240.12d2-2(c)(2).

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

<sup>7</sup> 17 CFR 240.12d2-2(c).

<sup>8</sup> 15 U.S.C. 78f(b). In approving the proposed rule change, as amended, the Commission considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

## V. Solicitation of Comments on Amendment No. 2

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2, including whether Amendment No. 2 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-2006-47 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-2006-47. 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. 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-NYSEArca-2006-47 and should be submitted on or before November 27, 2006.

## VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>17</sup> that the proposed rule change (SR-NYSEArca-

2006-47), as amended, is hereby approved, and that Amendment No. 2 thereto is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>18</sup>

Nancy M. Morris,  
Secretary.

[FR Doc. E6-18631 Filed 11-3-06; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54673; File No. SR-NYSEArca-2006-78]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Market Maker Transaction Fees and Credits

October 30, 2006.

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 October 23, 2006, NYSE Arca, Inc. (the "Exchange"), through its wholly-owned subsidiary NYSE Arca Equities, Inc. ("NYSE Arca Equities"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Exchange under 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> 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

The Exchange proposes to amend the section of its Schedule of Fees and Charges for Exchange Services (the "Fee Schedule") that applies to Market Maker<sup>5</sup> fees and charges. The text of the proposed rule change is available on the Exchange's Web site (<http://www.nysearca.com>), at the Exchange's

Office of the Secretary, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the 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 text of these 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 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 the section of its Fee Schedule that applies to Market Maker fees and charges.

*Market Maker Transaction Fees and Credits—Round Lots.* The Fee Schedule currently provides that Market Makers are entitled to a \$0.001 per share credit for round-lot transactions in NYSE-listed securities. This credit is applicable to Q orders executed against other participants' orders. The Exchange proposes to amend the Fee Schedule to increase this credit to \$0.002 per share and to clarify that it will apply to orders that provide liquidity to the NYSE Arca Book (the "Book") in securities for which the Market Makers are registered as Market Makers. The Exchange proposes this change so that the credit given to Market Makers is consistent with the \$0.002 per share credit given to all ETP Holders<sup>6</sup> executing round-lot transactions in NYSE-listed securities in the Book against inbound orders. The Exchange further proposes this change so that the credit given to Market Makers submitting such orders in NYSE-listed securities is the same as the credit given to Market Makers submitting such orders in other listed securities and Nasdaq securities.

The Fee Schedule currently provides that the \$0.002 per share credit that Market Makers are entitled to for round-lot transactions in listed securities (other than NYSE-listed securities) and Nasdaq securities applies to Q orders executed against other participants' orders. The Exchange proposes to amend this language to clarify that the credit applies to orders that provide

<sup>17</sup> 15 U.S.C. 78s(b)(2).

<sup>18</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)(ii).

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

<sup>5</sup> See NYSE Arca Equities Rule 1.1(u).

<sup>6</sup> See NYSE Arca Equities Rule 1.1(n).