

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-2005-48 and should be submitted on or before August 23, 2007.

## V. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the NYSE, and, in particular, with section 6(b)(5) of the Act.<sup>12</sup> Section 6(b)(5) requires, among other things, that the NYSE's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.<sup>13</sup> The Commission believes that the proposed rule change is designed to accomplish these ends by permitting only arbitrators to issue subpoenas and by making the arbitration subpoena process more orderly and efficient.

### *Accelerated Approval of Amendment No. 5*

The Commission finds good cause for approving Amendment No. 5 to the proposed rule change prior to the thirtieth day after the amendment is published for comment in the **Federal Register** pursuant to section 19(b)(2) of the Act. Amendment No. 5 clarifies that calendar days, and not business days, apply to various filing deadlines under the proposed rule. The Commission anticipates that these changes will provide for greater clarity with respect to the subpoena process. Accordingly, the Commission finds that accelerated approval of Amendment No. 5 is appropriate.

## VI. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act<sup>14</sup> that the proposed rule change, as modified by Amendment Nos. 1, 2, 3, 4, and 5, (SR-NYSE-2005-48), be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

Nancy M. Morris,  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56157; File No. SR-NYSEArca-2007-71]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Rule 6.86

July 27, 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 July 26, 2007, 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 substantially prepared by the NYSE Arca. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which rendered the proposal 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 implement the Exchange's quote mitigation strategy, reflected in NYSE Arca Rule 6.86, on a permanent basis. The text of the proposed rule change is available at NYSE Arca, the Commission's Public Reference Room, and <http://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. 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 implement the Exchange's quote mitigation strategy, reflected in NYSE Arca Rule 6.86, on a permanent basis. The Exchange's quote mitigation strategy, which is designed to reduce the number of quotations generated by NYSE Arca for all option issues traded on NYSE Arca, not just issues in the Penny Pilot, was previously approved by the Commission in conjunction with approval of the Penny Pilot.<sup>5</sup> According to that approval order, the Commission approved both the Penny Pilot and the changes to NYSE Arca Rule 6.86 for a six month period, ending July 25, 2007. The quote mitigation strategy reflected in NYSE Arca Rule 6.86 was not intended to be approved on a pilot or short term basis.<sup>6</sup>

##### 2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act<sup>7</sup> in general, and furthers the objectives of section 6(b)(5) of the Act<sup>8</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 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

No written comments were either solicited or received by the Exchange.

<sup>5</sup> See Securities Exchange Act Release No. 34-55156 (January 23, 2007), 72 FR 4759 (February 1, 2007) (SR-NYSEArca-2006-73).

<sup>6</sup> The Exchange reported that its quote mitigation strategy has resulted in a daily mitigation savings of, on average, 13% of NYSE Arca's daily quote traffic sent to the Options Price Reporting Authority. See Exhibit 3 to SR-NYSEArca-2007-56, "Understanding Economic and Capacity Impacts of the Penny Pilot" (analyzing data collected during the first three months of the Penny Pilot).

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

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

<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> *Id.*

<sup>14</sup> 15 U.S.C. 78s(b)(2).

<sup>15</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).

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

The proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder,<sup>10</sup> because the foregoing proposed rule 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 if consistent with the protection of investors and the public interest.

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to 30-days after the date of filing.<sup>11</sup> However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.<sup>12</sup> 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 will ensure continuity of the Exchange's rules and will allow the Exchange's quote mitigation strategy to remain in effect without interruption. For these reasons, the Commission designates the proposal to be operative upon filing with the Commission.<sup>13</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.<sup>14</sup>

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires the self-regulatory organization to give the Commission 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 provided written notice of its intent to file the proposed rule change on July 24, 2007. The Commission deems this to satisfy the pre-filing requirement.

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>13</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>14</sup> See 15 U.S.C. 78s(b)(3)(C).

### 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 Arca-2007-71 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 Arca-2007-71. 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 the 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-NYSE Arca-2007-71 and should be submitted on or before August 23, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

Nancy M. Morris,  
Secretary.

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56150; File No. SR-NYSE Arca-2007-56]

#### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change as Modified by Amendment Nos. 1 and 2 thereto Relating to NYSE Arca Rule 6.72 and the Penny Pilot for Options Trading

July 26, 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 18, 2007, 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 substantially prepared by NYSE Arca. On July 23, 2007, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Exchange filed Amendment No. 2 to the proposal on July 25, 2007. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to section 19(b)(3)(A) of the Act<sup>4</sup> and Rule 19b-4(f)(6) thereunder,<sup>5</sup> which rendered the proposal effective upon filing with the Commission.<sup>6</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

NYSE Arca proposes to amend its option trading rules in order to extend the Penny Pilot in options classes in certain issues ("Pilot Program") previously approved by the Commission through September 27, 2007. The text of the proposed rule change is available on NYSE Arca's Web site at <http://www.nysearca.com>, at the Exchange's

<sup>15</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> Amendment No. 1 superseded and replaced the original filing in its entirety.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(6).

<sup>6</sup> See Amendment No. 1.