

**SECURITIES AND EXCHANGE COMMISSION**

[File No. SR-NYSEArca-2008-19]

**In the Matter of: NYSE Arca, Inc.; Order of Summary Abrogation**

April 11, 2008.

Securities Exchange Act of 1934, Release No. 57648.

Notice is hereby given that the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(3)(C) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> is summarily abrogating a certain proposed rule change of NYSE Arca, Inc. ("NYSE Arca" or "Exchange").

On February 13, 2008, NYSE Arca filed SR-NYSEArca-2008-19. The proposed rule change amended NYSE Arca Equities Rule 7.31(x) to expand the permissible order entry time and eligibility of its "Primary Only" order type ("PO Order"). The filing was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.<sup>2</sup>

NYSE Arca's PO Order is a market or limit order that is routed to the primary, listing market, without sweeping the NYSE Arca book.<sup>3</sup> The proposed rule change modified the PO Order type to permit PO Orders to 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.<sup>4</sup> Previously, NYSE Arca restricted PO Orders to participation in the primary, listing market opening. Specifically, the amended rule permits NYSE Arca Equities system Users to enter a PO Order during any of the Exchange's trading sessions and be routed immediately to the primary, listing market for execution. If the order is not immediate-or-cancel, it remains at the primary, listing market until executed or cancelled that day.

Pursuant to Section 19(b)(3)(C) of the Act,<sup>5</sup> at any time within 60 days of the date of filing a proposed rule change pursuant to Section 19(b)(1) of the Act,<sup>6</sup> the Commission may summarily abrogate the change in the rules of the self-regulatory organization and require that the proposed rule change be re-filed in accordance with the provisions of

Section 19(b)(1) of the Act<sup>7</sup> and reviewed in accordance with Section 19(b)(2) of the Act,<sup>8</sup> 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.

Archipelago Securities, Inc. ("Arca Securities") is a member of the NYSE and an affiliate of the NYSE. The Commission in the past has expressed concern about the potential for unfair competition and conflicts of interest between an exchange's self-regulatory obligations and its commercial interests that could exist if an exchange were affiliated with one of its members, as well as the potential for unfair competitive advantage that the affiliated member could have by virtue of informational or operational advantages, or the ability to receive preferential treatment.<sup>9</sup> The proposed rule change raises this issue by expanding the activities of Arca Securities in sending orders to its affiliate, the NYSE. Thus, the Commission believes that the proposed rule change should be subject to notice and comment and review pursuant to Sections 19(b)(1) and 19(b)(2) of the Act.<sup>10</sup> In addition, the Commission believes that the issue of whether the routing of PO Orders by Arca Securities to the NYSE is consistent with existing NYSE and NYSE Arca rules should be subject to this same notice and comment and review process.<sup>11</sup>

Therefore, the Commission finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act, to abrogate the proposed rule change.

*It is therefore ordered*, pursuant to Section 19(b)(3)(C) of the Act,<sup>12</sup> that File No. SR-NYSEArca-2008-19, be and hereby is, summarily abrogated. If NYSE Arca chooses to re-file the proposed rule change, it must do so pursuant to Sections 19(b)(1)<sup>13</sup> and 19(b)(2) of the Act.<sup>14</sup>

<sup>7</sup> 15 U.S.C. 78s(b)(1).

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</sup> See Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11251 FR (March 6, 2006) (order approving SR-NYSE-2005-77).

<sup>10</sup> 15 U.S.C. 78s(b)(1) and 78s(b)(2).

<sup>11</sup> See NYSE Rule 2B; NYSE Arca Rule 3.10; NYSE Arca Equities Rule 3.10; and Securities Exchange Act Release Nos. 53382, supra note 9; 53383 (February 27, 2006), 71 FR 11271 (March 6, 2006) (order approving SR-PCX-2005-134); and 52497 (September 22, 2005), 70 FR 56949 (September 29, 2005) (order approving SR-PCX-2005-90).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(C).

<sup>13</sup> 15 U.S.C. 78s(b)(1).

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

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E8-8215 Filed 4-16-08; 8:45 am]

BILLING CODE 8010-01-P

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-57644; File No. SR-Amex-2008-32]

**Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Allocation of Executed Options Contracts**

April 10, 2008.

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 March 26, 2008, the American Stock Exchange LLC ("Exchange" or "Amex") 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 has designated this proposal as non-controversial under Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposed rule change 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 Amex proposes to modify the allocation in Exchange Rule 935-ANTE relating to electronically executed option contracts. The text of the proposed rule change is available on the Amex's Web site at <http://www.Amex.com>, at the Office of the Secretary, the Amex 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

<sup>15</sup> 17 CFR 200.30-3(a)(58).

<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)(iii).

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

<sup>1</sup> 15 U.S.C. 78s(b)(3)(C).

<sup>2</sup> 15 U.S.C. 78s(b)(3)(A). See Securities Exchange Act Release No. 57377 (February 25, 2008), 73 FR 11177 (February 29, 2008).

<sup>3</sup> NYSE Arca Rule 7.31(x).

<sup>4</sup> See NYSE Arca Rule 1.1(yy) for the definition of "User."

<sup>5</sup> 15 U.S.C. 78s(b)(3)(C).

<sup>6</sup> 15 U.S.C. 78s(b)(1).

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 seeks to revise the allocation formula set forth in Rule 935—ANTE (“Allocation of Executed Contracts”) when a specialist is on parity for option orders of five (5) contracts or less that are delivered and executed electronically in ANTE. Specifically, the proposal provides that if the specialist is quoting at the Amex best bid or offer (the “ABBO”), after public customer market and marketable limit orders have been executed, the specialist will be entitled to receive the entire allocation of orders for five (5) contracts or less.<sup>5</sup>

Current Rule 935—ANTE provides that if the specialist is eligible for an allocation, the specialist is entitled to receive an allocation (not to exceed the size of the specialist’s quote) equal to the greater of either:

(i) The number of executed contracts to be allocated to the specialist based upon the percentages set forth below;

Number of market participants* on parity	Approximate number of contracts allocated to the specialist (percent)
1 .....	60
2–4 .....	40
5–7 .....	30
8–15 .....	25
16 or more .....	20

\* Not including non-broker-dealer customers.

or

(ii) The number of executed contracts the specialist would be otherwise entitled to pursuant to the allocation algorithm (the “Allocation Algorithm”).

**Allocation Algorithm**

The Allocation Algorithm provides that when more than one market participant is quoting at the ABBO, the ANTE System allocates executed

<sup>5</sup> See Securities Exchange Act Release Nos. 42808 (May 22, 2000), 65 FR 34515 (May 30, 2000)(ISE Rule 713) and 50100 (July 27, 2004), 69 FR 46612 (August 3, 2004) (Phlx Rule 1014(g)).

contracts to non-broker-dealer customers first and then to all other market participants based upon the following:

$$((\text{Component A Percentage} + \text{Component B Percentage})/2) * \text{Number of Executed Contracts})).$$

• Component A (Parity Component)—the percentage used for Component A is an equal percentage, derived by dividing 100 by the number of market participants quoting at the ABBO.

• Component B (Size Pro Rata Component)—the percentage to be used for Component B is the percentage that the size of each market participant’s quote or order at the ABBO represents relative to the total number of contracts in the disseminated quote.

Final Weighting—A weighted average of the percentages derived for Components A and B is calculated, and then multiplied by the size of the incoming order. Currently, the weighting of Components A and B is equal.

The proposed revision to Rule 935—ANTE permits the specialist to receive a 100% allocation after marketable non-broker-dealer customer orders are executed for orders of five (5) contracts or less. A specialist will not receive any portion of an allocation unless it is quoting at the ABBO at the time ANTE receives the executable order. In addition, the size associated with the specialist’s quote must be sufficient to fill the portion of the order that would be allocated to it.

The proposal also specifies that, on a quarterly basis, the Exchange will evaluate what percentage of the volume executed on the Exchange is comprised of orders for five (5) contracts or less executed by specialists, and will reduce the size of the orders included in this provision if such percentage is over 40%.<sup>6</sup>

The Exchange believes that the proposal will provide greater incentive for specialists to competitively quote based on both price and size and therefore will benefit the marketplace.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) <sup>7</sup> of the Act in general and furthers the objectives of Section 6(b)(5) <sup>8</sup> in particular in that it

<sup>6</sup> Supplementary Material .01(c) to International Securities Exchange, LLC (“ISE”) Rule 713 excludes, for purposes of calculating the percentage of volume executed on the ISE consisting of orders of 5 contracts or less, the volume resulting from the execution of orders in its Facilitation Mechanism. Unlike ISE, the Exchange’s ANTE system does not have a similar facilitation mechanism or platform.

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

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

is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, protect investors and the public interest.

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

The Exchange believes that the proposed rule change does not 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**

The Exchange has designated the proposed rule change as one that: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Therefore, the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act <sup>9</sup> and subparagraph (f)(6) of Rule 19b–4 thereunder.<sup>10</sup>

The Exchange notes that the proposed rule change is based on similar proposals approved by the Commission.<sup>11</sup> The Exchange has asked the Commission to waive the operative delay to permit the proposed rule change to become operative prior to the 30th day after filing.

The Commission has determined that waiving the 30-day operative delay of the Exchange’s proposal is consistent with the protection of investors and the

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

<sup>10</sup> 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with 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 fulfilled this requirement.

<sup>11</sup> See supra note 5.

public interest. The Commission notes that the proposed rule change is substantially similar to provisions in the rules of two other exchanges.<sup>12</sup> The Commission believes that, because the proposed rule change raises no new regulatory issues, it is consistent with the protection of investors and the public interest to permit Amex to implement the proposal without needless delay.<sup>13</sup> Therefore, the Commission designates the proposal as operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the 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 No. SR-Amex-2008-32 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-Amex-2008-32. 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 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-Amex-2008-32 and should be submitted on or before May 8, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E8-8194 Filed 4-16-08; 8:45 am]

**BILLING CODE 8010-01-P**

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57645; File No. SR-Amex-2008-35]

#### **Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Clarify That Current Limitations on the Trade Allocation Match for Registered Traders in ETFs Also Apply to DARTs**

April 10, 2008.

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 April 3, 2008, the American Stock Exchange LLC ("Amex" 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 Exchange. Amex 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,<sup>4</sup> which renders the proposed rule change 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**

Amex proposes to amend Commentary .01 to its Rule 157-AEMI to clarify that certain limitations currently applicable to its market makers, who enter quotations in exchange-traded funds ("ETFs") into the AEMI system from the floor of the Exchange (known as "Registered Traders"), are also applicable to its market makers in ETFs who enter quotations into AEMI from an off-floor location (known as "Designated Amex Remote Traders" or "DARTs"). These limitations address whether ETF market makers that have a relationship with the same member organization may trade in the same security at the same time. The proposed rule change would provide that, if such ETF market makers are allowed to trade in the same security at the same time, the current limit on the trade allocation match that the related market makers may receive would not depend on whether their respective quotes are entered from on or off the floor of the Exchange (*i.e.*, whether they are Registered Traders or DARTs). The purpose of these limitations is therefore to ensure fairness in trading crowds.

The text of the proposed rule change is available on Amex's Web site at <http://www.amex.com>, at the Amex's principal office, 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, Amex 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 III below. Amex 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 the Statutory Basis for, the Proposed Rule Change*

###### 1. Purpose

Commentary .01 to the Exchange's Rule 157-AEMI currently prohibits Registered Traders (*i.e.*, market makers in ETFs who enter quotations in the form of Crowd Orders into the AEMI system from the floor of the Exchange)

<sup>12</sup> See *supra* note 5.

<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. See 15 U.S.C. 78c(f).

<sup>14</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).