

operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive.

Although the proposed rule change increases order execution and routing fees and decreases liquidity provider credits for non-displayed liquidity, it also increases credits for displayed liquidity. Nasdaq believes that its fees remain competitive with those charged by other venues and therefore continue to be reasonable and equitably allocated to those members that opt to direct orders to Nasdaq rather than competing venues.

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

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

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

The foregoing proposed rule change has become effective upon filing with the Commission pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>13</sup> and Rule 19b-4(f)(2) thereunder,<sup>14</sup> in that the proposed rule change establishes or changes a member due, fee, or other charge imposed by the self-regulatory organization. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### **IV. Solicitation of Comments**

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

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2008-036 on the subject line.

#### *Paper Comments*

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

All submissions should refer to File Number SR-NASDAQ-2008-036. 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 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 Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2008-036 and should be submitted on or before May 29, 2008.

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

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E8-10211 Filed 5-7-08; 8:45 am]

**BILLING CODE 8010-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-57759; File No. SR-NYSEArca-2008-44]

### **Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Rule 6.62 To Include an Opening Only Order**

May 1, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 23, 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 Act<sup>3</sup> and Rule 19b-4(f)(6) 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 NYSE Arca Rule 6.62 to include an additional order type, known as the Opening Only Order, to provide investors greater flexibility. The text of the proposed rule change is available at <http://www.nyse.com>, the principal office of NYSE Arca, and 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, 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.

<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).

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

<sup>14</sup> 17 CFR 240.19b-4(f)(2).

<sup>15</sup> 17 CFR 200.30-3(a)(12).

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

1. Purpose

In order to provide additional flexibility and increased functionality to its system and its users, the Exchange proposes to amend NYSE Arca Rule 6.62 in order to add a new order type known as the Opening Only Order.<sup>5</sup> The Opening Only Order will provide investors with the opportunity to enter orders that will participate only in the Opening Auction, and not be available for trading after the opening. Some investors wish to transact business when a series opens for trading, but not later. Currently, without an Opening Only Order, these investors must cancel any unexecuted portion of an order after the opening. During the time between the opening and the submission and processing of the cancellation, the order entrant is exposed to the risk of an unwanted execution. Opening Only Orders that are not executed during the Opening Auction will automatically be cancelled. The Opening Only Order offers investors greater flexibility to manage their risk.<sup>6</sup>

Although not currently a defined order type and not currently accepted by the Exchange, NYSE Arca Rule 6.64A(b) already provides for the implementation and inclusion of "opening only" orders in the opening auction.<sup>7</sup>

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>8</sup> in general, and with Section (b)(5) of the Act,<sup>9</sup> in particular, in that the proposal is designed to prevent fraudulent and manipulative practices, promote just and equitable principles of trade, 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.

<sup>5</sup> Opening Only Orders will only apply to the Opening Auction on the OX system. This order type will not be available for PCX Plus Opening Rotations. NYSE Arca has decommissioned its PCX Plus system.

<sup>6</sup> This order type is substantially similar to the opening order offered by the Philadelphia Stock Exchange (Rule 1066(c)(5)) and by the Chicago Board Options Exchange (Rule 6.53(l)).

<sup>7</sup> Rule 6.64A(b) reads in part: "Contingency orders (except for 'opening only' orders) will not participate in the Auction Process."

<sup>8</sup> 15 U.S.C. 78f.

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

*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 solicited or received with respect to the proposed rule change.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

A proposed rule change filed under 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.<sup>12</sup> However, Rule 19b-4(f)(6)(iii)<sup>13</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 30-day operative delay so that the proposal can become operative immediately. The Exchange believes that the creation of an opening only order type helps to promote a fair, orderly and competitive options market. Further, the Exchange notes that waiver of the operative delay will immediately afford market participants on NYSE Arca the same investment opportunities presently available at other option exchanges. Based on the foregoing, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and therefore designates the proposal as operative upon filing.<sup>14</sup>

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file 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. NYSE Arca has complied with this requirement.

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

<sup>14</sup> For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on

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 No. SR-NYSEArca-2008-44 on the subject line.

*Paper Comments*

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

All submissions should refer to File Number SR-NYSEArca-2008-44. 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, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NYSE Arca. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2008-44 and should be submitted on or before May 29, 2008.

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

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E8-10250 Filed 5-7-08; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57768; File No. SR-DTC-2007-10]

### Self-Regulatory Organizations; The Depository Trust Company; Order Granting Accelerated Approval of an Amended Proposed Rule Change To Implement the New Issue Information Dissemination Service for Municipal Securities

May 2, 2008.

#### I. Introduction

On August 16, 2007, The Depository Trust Company (“DTC”) filed with the Securities and Exchange Commission (“Commission”) and on September 12, 2007,<sup>1</sup> March 3, 2008,<sup>2</sup> and April 9, 2008<sup>3</sup> amended proposed rule change SR-DTC-2007-10 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”).<sup>4</sup> Notice of the proposal was published in the **Federal Register** on October 3, 2007,<sup>5</sup> March 24, 2008,<sup>6</sup> and April 16, 2008.<sup>7</sup> The Commission received no comment letters. For the reasons discussed below, the Commission is approving the proposed rule change on an accelerated basis.

#### II. Description

The New Issue Identification Dissemination Service (“NIIDS”) is designed to improve the process by which municipal securities new issue information is provided by underwriters to information vendors. NIIDS will provide for the collection of information

about new issues from underwriters or their representatives in an electronic format and for making that data available immediately to information vendors. NIIDS is designed to enable the dissemination of new issue information as quickly and efficiently as possible after the information is made available by underwriters.

Municipal Securities Rulemaking Board (“MSRB”) Rule G-14 generally requires municipal securities dealers to report municipal securities transactions to the MSRB within 15 minutes of the time of the trade.<sup>8</sup> Inter-dealer trades eligible for comparison by a clearing agency are required to be submitted to the MSRB through the National Securities Clearing Corporation’s (“NSCC”) Real Time Trade Matching System (“RTTM”) within the 15 minute time frame in Rule G-14. NSCC requires certain securities information in order to process and to report transactions involving those securities. Therefore, it is necessary that dealers trading newly issued municipal securities have the securities information needed for trade submission by the time the trade is required to be reported.

Pursuant to current practice in the municipal securities market, each information vendor works separately to obtain information from offering documents and from underwriters. Each information vendor’s success in obtaining information about newly issued municipal securities depends in large part upon the voluntary cooperation of the underwriters. It is not unusual for information vendors to have inconsistent information or for some information vendors to receive information before others. Consequently, critical new issue information may be missing, inaccurate, or both in the automated trade processing systems used by dealers to report trades in new issues. This can result in the late submission of trade reports or in trade reports that must be canceled and resubmitted or amended because they contain inaccurate data.

To address concerns that dealers often lack timely access to electronically formatted accurate securities information necessary to process and report municipal securities transactions in real-time, MSRB Rule G-14 provides for reporting of trades within three-hours of the time of trade for a dealer trading in “when, as, and if issued” municipal securities if the dealer is not a syndicate manager or syndicate member for the issue, has not traded the issue in the previous year, and does not have the CUSIP information or

indicative data for that issue in their securities master file (“Reporting Exemption”).<sup>9</sup> The Reporting Exemption will expire in 2008. In order to prepare for the Reporting Exemption’s expiration, the Securities Industry and Financial Markets Association asked DTC to include a centralized automated mechanism for the real-time collection and dissemination of the required information as part of the planned reengineering of DTC’s underwriting system. In response to this request, DTC built NIIDS to help make the collection and dissemination of municipal securities new issue information more efficient for the industry.

#### NIIDS Process

To commence the process, the Dissemination Agent for a new issue municipal security must input the key data elements required for the reporting, comparison, confirmation, and settlement of trades in municipal securities (“NIIDS Data Elements”) into NIIDS. The inputting will constitute a request that DTC make the information available to the industry through NIIDS. DTC will not confirm the accuracy of the NIIDS Data Elements and will act only as a conduit to pass along such information to data vendors.<sup>10</sup> DTC anticipates the data vendors will then disseminate the information to the industry thereby enabling dealers to make timely and accurate reporting of their municipal trades. DTC will record the name of the Dissemination Agent that inputs the NIIDS Data Elements and the time such information is submitted. DTC will begin disseminating the data when it has received authorization from the Dissemination Agent through NIIDS. In addition, NIIDS will contain the contact information for the Dissemination Agent that populated the NIIDS Data Elements for each issue to enable users of the data to contact them with questions or comments.

DTC is providing NIIDS to the industry in order to facilitate the collection and dissemination of municipal securities new issue information. As DTC is only a conduit of the information and does not confirm the validity of any of the NIIDS Data Elements, use of NIIDS by any party will constitute an agreement that DTC shall not be liable for any loss or damages in relation to its collection and dissemination of NIIDS Data Elements. Each NIIDS user will agree to indemnify

<sup>15</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> The amendment changed a misplaced word in a footnote.

<sup>2</sup> The amendment changed the implementation date of the service and made other technical changes.

<sup>3</sup> The amendment changed the implementation date of the service.

<sup>4</sup> 15 U.S.C. 78s(b)(1).

<sup>5</sup> Securities Exchange Act Release No. 56552 (September 27, 2007), 72 FR 56407.

<sup>6</sup> Securities Exchange Act Release No. 57513 (March 17, 2008), 73 FR 15548.

<sup>7</sup> Securities Exchange Act Release No. 57647 (April 10, 2008), 73 FR 20727.

<sup>8</sup> MSRB Rule G-14, RTRS Procedures (a)(ii).

<sup>9</sup> MSRB Rule G-14, RTRS Procedures (a)(ii)(C).

<sup>10</sup> Data vendors or others that wish to receive NIIDS Data Elements must register in advance with DTC.