

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 that the instant filing is consistent with these principles because the NMM Pilot provides its market participants with a trading venue that utilizes an enhanced market structure to encourage the addition of liquidity, facilitate the trading of larger orders more efficiently and operates to reward aggressive liquidity providers. Moreover, the instant filing requesting an extension of the NMM Pilot will permit adequate time for: (i) The Exchange to prepare and submit a filing to make the rules governing the NMM Pilot permanent rules; (ii) public notice and comment; and (iii) completion of the 19b-4 approval process.

#### *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**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>13</sup> and Rule 19b-4(f)(6) thereunder.<sup>14</sup> Because the 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 prior to 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.<sup>15</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>16</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>17</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that because the pilot program will expire on October 1, 2009, waiver of the operative delay is necessary so that no interruption of the pilot program will occur. In addition, the Commission notes that the Exchange has requested extensions of the pilot to allow the Exchange time to formally request permanent approval for the pilot. Therefore, the Commission designates the proposal operative upon filing.<sup>18</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-NYSEAmex-2009-65 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission,

100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEAmex-2009-65. 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 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-NYSEAmex-2009-65 and should be submitted on or before October 28, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

[FR Doc. E9-24084 Filed 10-6-09; 8:45 am]

BILLING CODE 8011-01-P

### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-60752; File No. SR-NYSE-2009-101]

#### **Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Pilot Period To Receive Inbound Routes of Orders From Archipelago Securities LLC**

September 30, 2009.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the

<sup>19</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

<sup>15</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the self-regulatory organization to 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 this requirement.

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

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

<sup>18</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

“Act”) and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on September 30, 2009, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II, below, which Items have been prepared by the self-regulatory organization. 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 extend the pilot period of the Exchange’s prior approvals to receive inbound routes of certain equities orders from Archipelago Securities LLC (“Arca Securities”), an NYSE affiliated member. The text of the proposed rule change is available at the Exchange, 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, the self-regulatory organization 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 those 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 parts of such statements.

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

##### 1. Purpose

Currently, Arca Securities is the approved outbound order routing facility of the Exchange.<sup>3</sup> Arca Securities is also the approved outbound order routing facility of NYSE Arca and NYSE Amex LLC (“NYSE Amex”).<sup>4</sup> The Exchange has also been

previously approved to receive inbound routes of equities orders by Arca Securities in its capacity as an order routing facility of NYSE Arca and NYSE Amex.<sup>5</sup> The Exchange’s authority to receive inbound routes of equities orders by Arca Securities was subject to a pilot period ending September 29, 2009. The Exchange hereby seeks to extend the previously approved pilot period (with the attendant obligations and conditions) for an additional 3 months, through December 31, 2009.

##### 2. Statutory Basis

The proposed rule change is consistent with Section 6(b)<sup>6</sup> of the Securities Exchange Act of 1934 (the “Act”), in general, and furthers the objectives of Section 6(b)(5)<sup>7</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. Specifically, the proposed rule change will allow the Exchange to continue receiving inbound routes of equities orders from Arca Securities acting in its capacity as a facility of the NYSE Arca and NYSE Amex, in a manner consistent with prior approvals and established protections. The Exchange believes that extending the previously approved pilot period for three months is of sufficient length to permit both the Exchange and the Commission to assess the impact of the Exchange’s authority to receive direct inbound routes of equities orders via Arca Securities (including the attendant obligations and conditions).

2005) (SR-PCX-2005-90); *see also*, Securities Exchange Act Release No. 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (SR-PCX-00-25); *see also*, Securities Exchange Act Release No. 58681 (September 29, 2008), 73 FR 58285 (October 6, 2008) (order approving NYSEArca-2008-90). *See* Securities Exchange Act Release No. 59009 (November 24, 2008), 73 FR 73363 (December 2, 2008) (order approving SR-NYSEALTR-2008-07); *see also*, Securities and Exchange Act Release No. 34-59473 (February 27, 2009), 74 FR 9853 (March 6, 2009) (order approving SR-NYSEALTR-2009-18).

<sup>5</sup> *See* Securities and Exchange Act Release No. 34-58680 (September 29, 2008), 73 FR 58283 (October 6, 2008) (order approving SR-NYSE-2008-76); *see* Securities Exchange Act Release No. 59011 (November 24, 2008), 73 FR 73360 (December 2, 2008) (order approving SR-NYSE-2008-122); *see also* Securities and Exchange Act Release No. 60255 (July 7, 2009), 74 FR 34065 (July 14, 2009) (order approving SR-NYSE-2009-58).

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

<sup>7</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 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 Act<sup>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</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>10</sup> However, Rule 19b-4(f)(6)(iii)<sup>11</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. The Exchange notes that the proposal will allow the Exchange to continue receiving inbound routes of equities orders from Arca Securities, in a manner consistent with prior approvals and established protections, while also permitting the Exchange and the Commission to assess the impact of the pilot.<sup>12</sup> 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 pilot period to be extended without interruption through December 31, 2009. For this reason, the Commission

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>10</sup> 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 this requirement.

<sup>11</sup> *Id.*

<sup>12</sup> *See* SR-NYSE-2009-101, Item 7.

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

<sup>3</sup> *See* Securities Exchange Act Release No. 34-55590 (April 5, 2007), 72 FR 18707 (April 13, 2007) (notice of immediate effectiveness of SR-NYSE-2007-29); *see also*, Securities and Exchange Act Release No. 34-58680 (September 29, 2008), 73 FR 58283 (October 6, 2008) (order approving SR-NYSE-2008-76).

<sup>4</sup> *See* Securities Exchange Act Release No. 34-53238 (July 28, 2006), 71 FR 44758 (August 7, 2006) (order approving SR-NYSEArca-2006-13); *see also*, Securities Exchange Act Release No. 52497 (September 22, 2005), 70 FR 56949 (September 29,

designates the proposed rule change to be operative upon filing with the Commission.<sup>13</sup>

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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2009-101 on the subject line.

##### *Paper Comments*

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

All submissions should refer to File Number SR-NYSE-2009-101. 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 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-2009-101 and should be submitted on or before October 28, 2009.

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

**Florence E. Harmon,**

*Deputy Secretary.*

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## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA-2009-0310; Notice No. 09-05]

#### Advisory Guidance; Transportation of Batteries and Battery-Powered Devices

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** Safety advisory.

**SUMMARY:** The Pipeline and Hazardous Materials Safety Administration (PHMSA) and the Federal Aviation Administration (FAA) are alerting shippers and carriers to the importance of transporting lithium batteries safely. PHMSA and FAA are concerned that many persons who ship lithium batteries do not recognize the hazards posed by these batteries during transportation. We are issuing this advisory guidance to (1) Inform persons of recent aviation incidents involving fires aboard both passenger and cargo aircraft and the potential hazards that shipments of lithium batteries may present while in transportation, (2) provide information concerning the current requirements for the transportation of lithium batteries and (3) inform persons of the actions we have taken to date and plan to take in the future to address the hazards of these batteries.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Lithium batteries are considered hazardous materials in transportation because they present both chemical (e.g., flammable electrolytes) and electrical hazards. If not safely packaged

and handled when transported, lithium batteries can become dangerous. Defective batteries or batteries that are misused, mishandled, improperly packaged, improperly stored, improperly manufactured, or overcharged can overheat and ignite and, once ignited, fires can be especially difficult to extinguish. Overheating has the potential to create a thermal runaway, a chain reaction leading to self-heating and release of the battery's stored energy. Fires in aircraft can result in catastrophic events presenting unique challenges not encountered in other transport modes.

#### II. Recent Transportation Incidents

Since 1991, we have identified over 40 air transport-related incidents involving lithium batteries and devices powered by lithium batteries. A list of these incidents can be found on the FAA Web site at: [http://www.faa.gov/about/office\\_org/headquarters\\_offices/ash/ash\\_programs/hazmat/aircarrier\\_info/media/Battery\\_incident\\_chart.pdf](http://www.faa.gov/about/office_org/headquarters_offices/ash/ash_programs/hazmat/aircarrier_info/media/Battery_incident_chart.pdf). These incidents occurred aboard passenger aircraft and cargo aircraft, prior to loading batteries aboard an aircraft, and after batteries were transported by air. Many of the incidents were directly related to a lack of awareness of the required safety measures applicable to shipments of lithium batteries or because passengers failed to follow preventative measures to protect batteries from short circuit or damage.

- On September 9, 2009 a passenger flight declared an emergency after a passenger attempted to hand the flight attendant a carrier-provided personal electronic device (PED). The PED was dropped and upon impact with the cabin floor the battery pack sparked and began smoking. Two flight attendants extinguished the fire with water.

- On August 25, 2009 DOT received information related to a smoking and burning package that was discovered at a Medford, Massachusetts sorting facility. Upon inspection, the consignment was discovered to contain 30 individual batteries grouped together in six or seven battery packs. The package contained lithium batteries that were shipped as general cargo. There were no markings or labels on the outer package indicating the material was a hazardous material.

- On August 15, 2009 a package containing lithium ion batteries was found smoldering, and emitting smoke in a unit load device (ULD) in an aircraft loading facility in Taipei, Taiwan. The ULD had been carried from the Island of Macau. Personnel in the Taiwan facility responded quickly to extinguish the

<sup>13</sup> 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).

<sup>14</sup> 17 CFR 200.30-3(a)(12).