

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55723; File No. SR-NYSEArca-2007-38)

May 8, 2007

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Rule 6.80 Governing Accommodation Transactions (Cabinet Trades)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 17, 2007, NYSE Arca, Inc. (“NYSE Arca” or the “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. On May 7, 2007, NYSE Arca filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comment 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

The Exchange proposes to amend NYSE Arca Rule 6.80 governing Accommodation Transactions, also referred to as Cabinet Trades. The text of the proposed rule change is available at NYSE Arca, the Commission’s Public Reference Room, and www.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, 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

An "accommodation" or "cabinet" trade refers to trades in listed options on the Exchange that may be considered worthless or which are not actively traded. Exchange Rule 6.80, Accommodation Transactions (Cabinet Trades), which sets forth specific procedures for engaging in cabinet trades, currently (i) permits cabinet trades to occur via open outcry at a cabinet price of \$1 per option contract when the class does not trade on the NYSE Arca automated electronic trading system,³ and (ii) requires Market Makers and Floor Brokers who wish to conduct a cabinet transactions to place their orders with a Trading Official.

The primary purpose of this rule change is to amend Exchange Rule 6.80 to authorize Floor Brokers and Market Makers to initiate cabinet trades. Under the existing procedures, Market Makers and Floor Brokers are only permitted to (i) place cabinet orders with a Trading Official and (ii) respond at a cabinet price to a request for a quote from a Trading Official. Pursuant to the proposed amendment, Market Makers and Floor Brokers will also be permitted to initiate a cabinet trade in the trading crowd on their own, without the need to first place the order with a Trading Official. This will save the additional time and process involved in a Market Maker or Floor Broker needing to first place a cabinet order that they are initiating, with a

³ Cabinet orders were previously eligible for automated electronic trading on the PCX Plus system. NYSE Arca decommissioned the PCX Plus electronic trading system during the fourth quarter of 2006 and replaced it with the OX electronic trading system. As a result, the Exchange proposes to delete the name "PCX Plus" from the text of Rule 6.80. At this time no issues have been designated for cabinet trading on OX or any other Exchange sponsored electronic system.

Trading Official, who would then in turn represent and execute the order on behalf of the Market Maker or Floor Broker. Permitting Market Makers and Floor Brokers to initiate cabinet orders and trades on their own accord will provide Market Makers and Floor Brokers with additional flexibility and will facilitate the fair, orderly and efficient handling of cabinet transactions on the Exchange. Permitting Market Makers and Floor Brokers to represent cabinet orders is similar to and consistent with Rule 6.54 of the Chicago Board Option Exchange.⁴

The second purpose of this rule change is to make clear that Floor Brokers and Market Makers who enter into either opening or closing cabinet transactions may do so as long as they first yield priority to all corresponding orders in the cabinet book. Rule 6.80 currently provides that all bids and offers for cabinet transactions, both opening and closing, must be placed with a Trading Official, and that opening orders must yield to closing orders in the cabinet. The Exchange now proposes that both opening and closing transactions may be represented by Floor Brokers and Market Makers, so long as they first yield priority to all corresponding orders in the cabinet.

The Exchange also proposes to include a provision in Rule 6.80 stating that the rules governing cabinet trading do not apply to issues that trade as part of the Penny Pilot program. Although cabinet trades involve orders priced at \$1 per option contract, the specific terms and conditions for cabinet trading are not applicable to option classes participating in the Penny Pilot.

⁴ See Securities Exchange Act Release No. 53808 (May 16, 2006), 71 FR 29371 (May 22, 2006) (File no. SR-CBOE-2006-33) (permitting Floor Brokers to represent cabinet orders); Securities Exchange Act Release No. 55081 (January 10, 2007), 72 FR 2317 (January 18, 2007) (File no. SR-CBOE-2007-02) (permitting Market Makers to represent cabinet orders).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act⁶ 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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

Because the foregoing proposed rule change (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁷ and Rule 19b-4(f)(6)(iii) thereunder.⁸

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

⁷ 15 U.S.C. 78s(b)(3)(A).

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. Please include File No. SR-NYSEArca-2007-38 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-2007-38. 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

⁸ 17 CFR 240.19b-4(f)(6)(iii). Rule 19b-4(f)(6)(iii) requires the Exchange to give written notice to the Commission of its intent to file the proposed rule change at least five business days prior to filing. The Exchange complied with this requirement.

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-2007-38 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Florence E. Harmon
Deputy Secretary

⁹ 17 CFR 200.30-3(a)(12).