

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-56899; File No. SR-NYSEArca-2007-120)

December 5, 2007

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of a Proposed Rule Change Relating to Restrictions on Acting as Market Makers and Floor Broker

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 27, 2007, the 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, II, and III below, which Items have been substantially prepared by the Exchange. 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 certain Exchange rules to restrict an OTP Holder from concurrently registering as both a Market Maker and a Floor Broker. The text of the proposed rule change is available at the Exchange, at the Commission’s Public Reference Room, and 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 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 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.

¹ 15 U.S.C.78s(b)(1).

² 17 CFR 240.19b-4.

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

1. Purpose

The Exchange states that the purpose of this proposal is to amend NYSE Arca Rules 6.33 and 6.44, in order to restrict an OTP Holder from concurrently registering as both a Market Maker and as a Floor Broker, on NYSE Arca. The Exchange also proposes to revise Rule 6.82(h) to restrict a Lead Market Maker from performing the functions of a Floor Broker. Further, the Exchange proposes to eliminate, in its entirety, Rule 6.38, which deals with restrictions when acting as a Market Maker and Floor Broker.

Presently, OTP Holders may be registered as either a Market Maker or a Floor Broker, or in certain situations, both. An OTP Holder that wished to act in both capacities must apply for and receive approval from the Exchange.³ The Exchange noted that presently there are no OTP Holders registered in the dual capacity of Market Maker and Floor Broker, nor does the Exchange have any pending applications from existing OTP Holders.

The practice of dual registration dates back to the early days of floor-based, open outcry trading. Open outcry trading was for the most part a manual process, necessitating the need for a large number of Floor Brokers. On occasion, often in periods of unusually active market conditions, there might have been a shortage of brokers on the floor, and in the interest of maintaining a fair and orderly market, Market Makers could be called upon to act as a Floor Broker. Automation has led to a dramatic decrease in open outcry trading and has greatly reduced the reliance on Floor Brokers to execute orders. Because the vast majority of trades on NYSE Arca now occur electronically, the Exchange does not feel there would ever be a shortage

³ See NYSE Arca Rule 6.38(b)(4).

of Floor Brokers such that it could be detrimental to efficient order handling, even in times of unusual market activity.

The Exchange proposes establishing new Rule 6.33(b) stating that an OTP Holder registered as a Market Maker on NYSE Arca may not be concurrently registered as a Floor Broker on NYSE Arca. Accordingly, the Exchange also proposes establishing new Rule 6.44(b), stating that an OTP Holder presently registered as a Floor Broker on NYSE Arca can not be concurrently registered as a Market Maker on NYSE Arca. The Exchange also proposes making non-substantive changes regarding the numbering of existing rules in order to accommodate the new rules.

Pursuant to NYSE Arca Rule 6.82(h)(3), Lead Market Makers (“LMM”) may perform the functions of a Floor Broker. Historically, LMMs might perform the duties of a Floor Broker and represent public customer orders when there was a shortage of Floor Brokers available. As stated above, due to increased automation in the marketplace, the Exchange does not anticipate a shortage of Floor Brokers such that it would necessitate an LMM to have to act as a Floor Broker. As such, the Exchange proposes deleting Rule 6.82(h)(3) in its entirety. The Exchange also proposes deleting Commentary .02 to Rule 6.82 relating to a LMMs handling of public customer orders.

Presently, OTP Holders acting as both Floor Broker and Market Maker are subject to certain restriction under NYSE Arca Rule 6.38. Upon approval of the above mentioned rule changes, these restrictions will become obsolete. Since Market Makers will be prohibited from acting as a Floor Broker, and visa-versa, there is no need to have specific restrictions governing their trading activity. Therefore, the Exchange proposes eliminating Rule 6.38 in its entirety.

