

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-62209; File No. SR-NYSEArca-2010-42)

June 2, 2010

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Arca, Inc Amending Rule 6.82

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on May 18, 2010, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III 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 amend Rule 6.82 by revising the minimum financial requirements of Lead Market Makers. The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in brackets:

**Rules of NYSE Arca, Inc.**

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**Rule 6.82. Lead Market Makers**

(a) – (b) No Change

(c) Obligations of Lead Market Makers:

Each LMM must meet the following obligations:

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

(1) – (11) No Change

(12) Maintain a cash or liquid asset position of at least \$1,000,000. [\$350,000, plus \$25,000 for each issue over 8 issues that has been allocated to the LMM.] In the event that two or more LMMs are associated with each other and deal for the same LMM account, this requirement will apply to such LMMs collectively, rather than to each LMM individually;

(13) – (14) No Change

(d) – (h) No Change

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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.

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

1. Purpose

The purpose of this filing is to revise Rule 6.82. Specifically, NYSE Arca proposes to revise the minimum financial requirements of a Lead Market Maker (“LMM”) contained in Rule 6.82(c)(12).

Minimum Financial Requirement for LMMs

LMMs on NYSE Arca are required to maintain a cash or net liquid asset position of at least \$350,000. In addition, LMMs that have more than eight allocated issues are required to have an additional \$25,000 in cash or net liquid assets for each additional allocated issue. The

Exchange now proposes that instead of the base minimum financial requirement of \$350,000 plus an additional \$25,000 for each issue over eight, all LMMs will now be required to maintain cash or net liquidating balance of at least \$1,000,000 (“\$1 million”). The \$1 million requirement will apply regardless of the number of issues an LMM is allocated.

Establishing a \$1 million minimum financial requirement, applicable to LMMs regardless of the number of issues they may be allocated, is consistent with the financial obligations rules for Options Specialists on NYSE Amex LLC.<sup>4</sup> The rights and obligations of LMMs pursuant to the rules of NYSE Arca<sup>5</sup> are substantially similar to the rights and obligations of Specialists contained in the rules of NYSE Amex.<sup>6</sup> Accordingly, establishing a \$1 million minimum financial requirement for Arca would further harmonize the rules of the two exchanges.

The Exchange notes that the proposed requirement to maintain at least \$1 million in cash or liquid assets represents only the minimum financial obligation of an LMM. When allocating options issues to LMMs, the Exchange takes into consideration the “adequacy of capital”<sup>7</sup> of each LMM and could require an LMM to have a cash or liquid assets balance in excess of the \$1 million, as a condition of being allocated a given options issue(s). Also, the Exchange may reallocate an options issue(s) if an LMM is to incur a material change to its financial situation.<sup>8</sup> Financial requirements established by the Exchange as a condition of issue allocation are separate from the \$1 million minimum financial requirement of Rule 6.8(c)(12).

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<sup>4</sup> See NYSE Amex Rule 927NY(c)(10).

<sup>5</sup> See NYSE Arca Rules 6.82(c)-(d).

<sup>6</sup> See NYSE Amex Rules 927NY(c)-(d).

<sup>7</sup> See NYSE Arca Rule 6.82(e)(1).

<sup>8</sup> See NYSE Arca Rule 6.82(f)(1)(B).

In addition to any LMM-specific financial obligation or requirement established by NYSE Arca, LMMs must maintain net capital sufficient to comply with the requirements of Exchange Act Rule 15c3-1.

The Exchange has conducted an analysis of financial positions for all OTP Holders presently registered as an LMM. Based on this analysis, the Exchange has determined that certain LMMs will realize a decrease in their present minimum financial requirement, while others may realize an increase. However, due to the fact that LMMs are represented by highly capitalized OTP Holders, the Exchange has concluded that any increase in the minimum financial requirement will not impose undue hardships on any OTP Holders at this time. In addition, the Exchange does not believe that the change to the minimum financial requirement creates an unnecessary burden, or onerous barrier to entry, for OTP Holders who in the future may seek approval to operate as an LMM.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),<sup>9</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>10</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 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. This rule change is designed to make the minimum financial requirement for LMMs consistent with similar requirements at NYSE Amex while still maintaining a standard designed to ensure that OTP Holders on NYSE Arca are adequately capitalized to fulfill their obligations as LMMs.

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

<sup>10</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 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**

Written comments were neither solicited nor received.

**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>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</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:

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

- 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 Number SR-NyseArca-2010-42.

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-NYSEArca-2010-42. 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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. 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-2010-42 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).