SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-70861; File No. SR-NYSEArca-2013-119)

November 13, 2013

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 6.69(a) to Provide That a Pattern or Practice of Late Reporting of Option Transactions to the Exchange for Dissemination to the Options Price Reporting Authority Is Subject to Disciplinary Action

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b-4 thereunder,[3] notice is hereby given that, on November 4, 2013, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") 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 amend Rule 6.69(a) to provide that a pattern or practice of late reporting of option transactions to the Exchange for dissemination to the Options Price Reporting Authority is subject to disciplinary action. The text of the proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, at the Commission's Public Reference Room, and on the Commission's website at http://www.sec.gov.

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

1 15 U.S.C.78s(b)(1).

2 15 U.S.C. 78a.

3 17 CFR 240.19b-4.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 6.69(a) to provide that a pattern or practice of late reporting of option transactions to the Exchange for dissemination to the Options Price Reporting Authority ("OPRA") is subject to disciplinary action, including fines. Current Rule 6.69(a) requires an OTP Holder or OTP Firm to immediately report option transactions to the Exchange for dissemination to OPRA. The rule further provides that transactions not reported to OPRA within 90 seconds after execution will be designated "late," and that an OTP Holder or OTP Firm who is responsible for late reporting of an option transaction, without reasonable justification or excuse, will be subject to a fine under Rule 10.12. Thus, under current rule 6.69(a), a single late-reported transaction is subject to a fine.

To have more flexibility in evaluating whether late reporting of option transactions should be subject to a fine, the Exchange proposes to amend the rule to provide that "a pattern or practice" of late reporting of option transactions to the Exchange would constitute a violation of the 90-second reporting requirement. While the Exchange's proposal does not expressly define what a "pattern or practice" of late reporting is, the Exchange will apply its existing Sanctioning Guidelines, which are contained in Rule 10.16. Rule 10.16 contains both general guidelines for considering and determining the applicability of sanctions under various Exchange rules, and guidelines specific to violations of Rule 6.69, among other rules.[4] Moreover, in determining appropriate disciplinary action for late reporting of option transactions, the Exchange may apply, at its discretion, the Minor Rule Plan contained in Rule 10.12 for minor violations of Rule 6.69,[5] which would result in a fine of not more than $5,000, or Rule 10.16 in the case of more serious late reporting violations. Rule 10.16(e)(3)(B) lists suggested monetary sanctions for violations of Rule 6.69 that range from $10,000 to $100,000. Because violations of Rule 6.69 may be adjudicated pursuant to either Rule 10.12 or Rule 10.16, the Exchange proposes to further amend Rule 6.69(a) by adding a cite to Rule 10.16.

The Exchange notes that the proposed rule change is substantially similar to current rules of the Chicago Board Options Exchange ("CBOE") Rule 6.51(a) and NASDAQ OMX PHLX LLC ("PHLX") Rule 1051(a).[6] Both CBOE and PHLX rules utilize the "pattern or practice" standard for evaluating late trade reporting violations.

---

4 Rule 10.16(b) General Principles Applicable to All Sanction Determinations includes an aggregation provision under Rule 10.16(b)(4) to guide the Exchange in determining whether to aggregate, or "batch" violations together, thereby treating them as one "violation" for purposes of determining sanctions if the misconduct meets certain objective parameters, such as "[w]hether the violations involved unintentional or negligent misconduct or manipulative, fraudulent, or deceptive intent. (If aggregated, the violations should not have involved manipulative, fraudulent, or deceptive intent)." Rule 10.16(d) Principal Considerations in Determining Sanctions includes "(6) whether the named party engaged in numerous acts and/or a pattern of misconduct." Additionally, Rule 10.16(e) Specific Sanctioning Guidelines for Options Order Handling Rules provides in subparagraph (3) Trade Reporting – NYSE Arca Rule 6.69 that "(ii) the extent of the abuse, i.e. whether a pattern of abuse exists, and the number of transactions involved" are to be considered among additional principal considerations in determining sanctions.

5 Violations of Rule 6.69 are listed as eligible for adjudication under the Minor Rule Plan in Rule 10.12(h)(38).

6 See CBOE Rule 6.51(a); PHLX Rule 1051(a). PHLX rules also permit, but do not require the exchange, in evaluating whether a pattern or practice of rules violations exists, to aggregate or "batch" individual order handling violations as a single occurrence of a violation of a specific order handling rule by a member or member organization over a specific time period. See PHLX Rule 970.01.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5),[8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, 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, and, in general, to protect investors and the public interest. Specifically, the Exchange believes that the proposed amendment providing the Exchange with flexibility in determining whether an OTP Holder's late reporting of option transactions to the Exchange constitutes a pattern or practice that should subject the late reporter to disciplinary action addresses an inconsistency between in [sic] the processes for adjudication of late-trade reporting on the Exchange and those of other self-regulatory organizations. Eliminating this inconsistency will help foster cooperation and coordination with persons engaged in facilitating transactions in securities. Moreover, the proposed rule change would not result in any material diminution of the Exchange's overall enforcement authority or any material change in surveillance of late-trade reporting. As such, the proposed rule change is consistent with the Act because it would continue to protect investors and the public interest. In addition, amending Rule 6.69 by including references to rules governing the adjudication of late trade violations is designed to add clarity to the rules of the Exchange. Providing clear and well defined rules helps to remove impediments to, and perfect the mechanism of a free and open market and a national market system

---

7 15 U.S.C. § 78f(b).

8 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. To the contrary, the Exchange's proposal allows the Exchange to compete more effectively with other options exchanges that currently have rules in effect substantially similar to what the Exchange now proposes.

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) of the Act[9] and Rule 19b-4(f)(6) thereunder.[10] 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[11] and Rule 19b-4(f)(6) thereunder.[12]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such

9 15 U.S.C. 78s(b)(3)(A).

10 17 CFR 240.19b-4(f)(6).

11 15 U.S.C. 78s(b)(3)(A).

12 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires the Exchange to give the Commission written notice of the Exchange's 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.

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 Number SR-NYSEArca-2013-119 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-NYSEArca-2013-119. 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 website (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 website viewing and printing in the Commission's Public Reference Section, 100 F Street, NE, Washington, DC 20549-1090, on official business days between the hours of 10:00

a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the Exchange's principal office and on its Internet website at www.nyse.com. 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-2013-119 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill
Deputy Secretary

---

[13] 17 CFR 200.30-3(a)(12).