

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-56058; File No. SR-NYSEArca-2006-83)

July 12, 2007

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to Amendments to NYSE Arca Rules 2.17 and 4.5 Relating to Certain OTP Holder and OTP Firm Administrative Procedures

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 7, 2006, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission” or “SEC”) 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 comment 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 NYSE Arca Rules 2.17 and 4.5(c) and (d). The text of the proposed rule change is set forth below. Underlined text indicates additions; brackets indicate deletions.

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**Rule 2.17 Amendments to OTP Firm or OTP Holder Documents**

(a) All formation documents for OTP Firms for which NYSE Arca, Inc. is the Designated Examining Authority, such as articles of incorporation, by-laws, partnership agreements, limited liability company agreements, and all amendments thereto, now in effect or

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

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

adopted in the future, shall be filed with the Exchange and shall be subject to Exchange approval.

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**Rule 4.5(c) Part II Quarterly Reports**

[Two manually signed copies of] Part II of SEC Form X-17A-5 shall be filed electronically with, and in a manner prescribed by, the Exchange for each calendar quarter by any OTP Holder or OTP Firm which carries or clears accounts for customers. Such report shall be due by the seventeenth business day following the end of the calendar quarter being reported upon. Original copies of such reports with manual signatures shall be maintained by the OTP Holder or OTP Firm, as applicable, in accordance with NYSE Arca Rule 11.16(a).

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**Rule 4.5(d) Part IIA Quarterly Reports**

[Two manually signed copies of] Part IIA of SEC Form X-17A-5 shall be filed electronically with, and in a manner prescribed by, the Exchange for each calendar quarter by any OTP Holder or OTP Firm which does not carry or clear accounts for customers. Such report shall be due by the seventeenth business day following the end of the calendar quarter being reported upon. Original copies of such reports with manual signatures shall be maintained by the OTP Holder or OTP Firm, as applicable, in accordance with NYSE Arca Rule 11.16(a).

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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 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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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 Exchange proposes to amend NYSE Arca Rules 2.17 and 4.5(c) and (d) in order to simplify the administrative procedures that Options Trading Permit (“OTP”) Holders<sup>3</sup> and OTP Firms<sup>4</sup> must follow. The Exchange believes that such amendments will not compromise the Exchange’s ability to regulate its OTP Holders and OTP Firms.

NYSE Arca Rule 2.17 currently provides that all OTP Firms must file their formation documents with the Exchange. The Exchange proposes to amend NYSE Arca Rule 2.17 in order to provide that only those OTP Firms for which the Exchange is the Designated Examining Authority must submit such formation documents to the Exchange. The Exchange believes that it is duplicative and unnecessary for an OTP Firm to submit documentation relating to its organizational structure to more than one SRO for review. Further, to the extent an OTP Firm is required to send organizational documents

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<sup>3</sup> See NYSE Arca Rule 1.1(q).

<sup>4</sup> See NYSE Arca Rule 1.1(r).

only to one SRO for review, NYSE Arca believes that the most appropriate SRO to perform that review is the OTP Firm's Designated Examining Authority.

NYSE Arca Rule 4.5(c) currently requires OTP Holders and OTP Firms that carry or clear accounts for customers to file two manually signed copies of Part II of SEC Form X-17A-5 with the Exchange on a quarterly basis. The Exchange proposes to amend NYSE Arca Rule 4.5(c) to provide that such reports shall be filed electronically with the Exchange, rather than manually, and that the OTP Holder or OTP Firm, as applicable, shall maintain original copies of such reports with manual signatures in accordance with NYSE Arca Rule 11.16(a).<sup>5</sup>

NYSE Arca Rule 4.5(d) currently requires OTP Holders and OTP Firms that do not carry or clear accounts for customers to file two manually signed copies of Part IIA of SEC Form X-17A-5 with the Exchange on a quarterly basis. The Exchange proposes to amend NYSE Arca Rule 4.5(d) to provide that such reports shall be filed electronically with the Exchange, rather than manually, and that the OTP Holder or OTP Firm, as applicable, shall maintain original copies of such reports with manual signatures in accordance with NYSE Arca Rule 11.16(a).<sup>6</sup>

The Exchange proposes amending NYSE Arca Rule 4.5(c) and (d) to codify procedural changes that have been implemented by the Exchange and to be consistent with guidance that has been provided previously to OTP Holders and OTP Firms.

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<sup>5</sup> NYSE Arca Rule 11.16(a) provides that each OTP Holder and OTP Firm must make, keep current and preserve such books and records as the Exchange may prescribe and as may be prescribed by the Securities Exchange Act of 1934 (the "Exchange Act") and the rules and regulations thereunder (including any interpretation relating thereto) as though such OTP Holder or OTP Firm were a broker or dealer registered with the SEC pursuant to Section 15 of the Exchange Act.

<sup>6</sup> Id.

(2) Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Exchange Act,<sup>7</sup> in general, and furthers the objectives of Section 6(b)(5)<sup>8</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.

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 Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed modifications, or

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<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

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-NYSEArca-2006-83 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-2006-83. 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, 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 NYSE Arca. 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-2006-83 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>9</sup>

Nancy M. Morris  
Secretary

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<sup>9</sup> 17 CFR 200.30-3(a)(12).