

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.

The Exchange noted that LMMs and InterMarket Linkage Maker Makers (“IMM”) are exempt from certain provisions contained in NYSE Arca Rule 6.38. Currently, LMMs and IMM may be called upon to send Principal Acting as Agent (“P/A”) Orders through the InterMarket Linkage System (“Linkage”) pursuant to NYSE Arca Rules 6.92 and 6.93. Linkage is a fully automated process on NYSE Arca, and while the IMM or LMM may be acting in an agency capacity, as the responsible party for sending the order, they are not acting in the capacity of a Floor Broker. The Exchange’s electronic system automatically routes orders through Linkage, on behalf of the IMM or LMM. Neither the IMM nor LMM has any manual interaction with the system, nor the individual Linkage orders. Eliminating NYSE Arca Rule 6.38 will not affect their ability to carry out any Linkage obligations. Thus, the Exchange proposes to add language to Rule 6.33(b) stating that a prohibition on concurrent registration as both a Market Maker and Floor Broker will not prevent an IMM or LMM from acting in an agency capacity for Linkage purposes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act⁴ in general, and furthers the objectives of Section 6(b)(5) of the Act⁵ in particular, because 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 to protect investors and the public interest.

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

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5).

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

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 Exchange consents, the Commission will:

- A. by order approve the proposed rule change, or
- 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 e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2007-120 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-2007-120. 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 a.m. and 3:00 p.m. Copies of such filing will also 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-2007-120 and should be submitted by [insert date 21 days from date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶

Florence E. Harmon
Deputy Secretary

⁶ 17 CFR 200.30-3(a)(12).