

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-57103; File No. SR-NYSEArca-2007-115)

January 4, 2008

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of a Proposed Rule Change Relating to Rule 6.87 – Obvious Error

On November 8, 2007, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend NYSE Arca Rule 6.87 governing obvious errors to revise the review procedure for contesting decisions made pursuant to the rule. The proposed rule change was published for comment in the Federal Register on November 27, 2007.<sup>3</sup> The Commission received no comment letters on the proposal. This order approves the proposed rule change.

Currently, NYSE Arca Rule 6.87 provides that the Exchange will determine whether a transaction resulted from an “Obvious Error”<sup>4</sup> after it receives notification within the prescribed time frame. If the Exchange believes that an Obvious Error has occurred, the Exchange will adjust the price of the trade, with or without an adjustment penalty, or will nullify the trade, depending on the status of the parties to the trade. Currently, a party may appeal the Exchange’s decision to the Exchange’s Board of Directors (“Board”) pursuant to NYSE Arca Rule 10.14.

The Exchange proposes to eliminate a party’s right to appeal to the Board and instead allow a party to appeal to an Obvious Error Panel (“OE Panel”). The OE Panel would be

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

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

<sup>3</sup> Securities Exchange Act Release No. 56819 (November 19, 2007), 72 FR 66214.

<sup>4</sup> “Obvious Error” is defined in NYSE Arca Rule 6.87(a)(1).

composed of the Exchange's Chief Regulatory Officer ("CRO"), or a designee of the CRO,<sup>5</sup> and representatives from two options trading permit firms ("OTP Firms").<sup>6</sup> One OE Panel representative would be from an OTP Firm directly engaged in market making activities and one OE Panel representative would be from an OTP Firm directly engaged in the handling of options orders for public customers.

In addition, requests for an appeal would have to be made via facsimile or e-mail within thirty minutes after the party requesting the appeal is given notification of the initial determination. Thereafter, the OE Panel would review the information and may overturn or modify the action previously taken by the Exchange. Such determination by the OE Panel would be considered a final action by the Exchange on the matter at issue. All final determinations made by the OE Panel would be rendered, without prejudice, as to the rights of the parties to the transaction to submit their dispute to arbitration. The revised process is intended to provide for a quicker resolution of appeal requests than the Board process currently governed by Rule 10.14.

Further, if the OE Panel upholds the Exchange's decision made pursuant to Rule 6.87(a)(4) to nullify or adjust a trade, the Exchange would assess a \$500.00 fee against the party or parties who initiated the request for appeal.

The Exchange also proposes to amend Rule 10.14 to remove the reference to Rule 6.87 and amend Rule 6.87 to remove Commentary .02.

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<sup>5</sup> The Exchange represents that a designee of the CRO would be an employee of the Exchange, working closely with and reporting directly to, the CRO, such as one of the Directors of Options Regulation.

<sup>6</sup> The Exchange proposes to designate at least ten OTP Firm representatives to be called upon to serve on the OE Panel. In no case would the OE Panel include a person related to a party to the trade in question. To the extent reasonably possible, the Exchange proposes to call upon the designated representatives to participate on an OE Panel on an equally frequent basis.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange<sup>7</sup> and, in particular, the requirements of Section 6(b) of the Act<sup>8</sup> and the rules and regulations thereunder. Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>9</sup> in that the proposal is designed to promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities, and remove impediments and perfect the mechanisms of a free and open market and to protect investors and the public interest.

The Commission considers that in most circumstances trades that are executed between parties should be honored. On rare occasions, the price of the executed trade indicates an "obvious error" may exist, suggesting that it is unrealistic to expect that the parties to the trade had come to a meeting of the minds regarding the terms of the transaction. In the Commission's view, the determination of whether an "obvious error" has occurred and the process for reviewing such a determination should be based on specific and objective criteria and subject to specific and objective procedures.

The Commission believes that the Exchange's proposal to create the OE Panel to review obvious error determinations of the Exchange, and to eliminate Board review of such determinations, is appropriate. The Commission believes that the OE Panel's review procedures are clear and objective and that the composition of the OE Panel is designed to be balanced and fair.

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<sup>7</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

<sup>9</sup> 15 U.S.C. 78f(b)(5).

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR-NYSEArca-2007-115), as amended, is hereby approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> 17 CFR 200.30-3(a)(12).