

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-57220; File No. SR-NYSEArca-2008-08)

January 29, 2008

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change  
Pertaining to the Imposition of Fines for Minor Rule Violations

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> notice is hereby given that on January 18, 2008, NYSE Arca, Inc. (“NYSE Arca” or “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 prepared substantially 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 NYSE Arca Rule 6.24, “Exercise of Option Contracts,” and NYSE Arca Rule 10.12, “Minor Rule Plan.” The text of the proposed rule change is available on the Exchange’s Web site (<http://www.nyse.com>), at the Exchange’s principal office, and at the Commission’s Public Reference Room.

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.

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

<sup>2</sup> 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

NYSE Arca Rule 6.24 contains special procedures that apply to the exercise of options on the last business day before expiration. The Exchange proposes to amend NYSE Arca Rule 6.24 to: (i) add a reference to new terminology; (ii) make minor revisions to the procedures related to exercising option contracts; (iii) amend Commentary .08 of NYSE Arca Rule 6.24 to authorize the Exchange to sanction an OTP Holder or OTP Firm that fails to follow NYSE Arca Rule 6.24, pursuant to the Minor Rule Plan ("MRP"); and (iv) add the recommended sanctions to the MRP contained in NYSE Arca Rule 10.12. The proposed changes are described briefly below.

An option holder desiring to exercise or not exercise expiring options must either: (i) take no action and allow exercise determinations to be made in accordance with the Options Clearing Corporation's ("OCC") Ex-by-Ex procedures, where applicable; or (ii) submit a Contrary Exercise Advice ("CEA") to the Exchange. A CEA is a communication to either: (i) not exercise an option that would be automatically exercised under OCC's Ex-by-Ex procedure, or (ii) exercise an option that would not be automatically exercised under OCC's Ex-by-Ex procedure. A CEA is also referred to within the options industry as an Expiring Exercise Declaration ("EED"). While the form itself may be called by a different name, the purpose and procedure for submitting an EED is identical to that of a CEA. The Exchange proposes adding a parenthetical reference to EEDs within NYSE Arca Rule 6.24.

An OTP Holder or OTP Firm that manually submits a CEA to the Exchange does so by completing a form and putting it in the Exchange's Contrary Exercise Advice Box. Going forward, the Exchange will discontinue the use of the Contrary Exercise Advice Box; and

instead, an OTP Holder or OTP Firm will submit a CEA directly to a designated representative of the Exchange's Options Surveillance Department.

Commentary .08 to NYSE Arca Rule 6.24 provides that the failure of any OTP Holder to follow the provisions contained in this rule may be referred to the Ethics and Business Conduct Committee ("EBCC") and result in the assessment of a fine, which may include, but is not limited to, the disgorgement of potential economic gain obtained or loss avoided by the subject exercise. Referral to the EBCC involves a formal disciplinary proceeding. NYSE Arca proposes to add a provision to Commentary .08 that would authorize the Exchange to sanction an OTP Holder or OTP Firm that fails to follow NYSE Arca Rule 6.24, pursuant to the MRP. The Exchange would retain the authority to refer violators to the EBCC for formal disciplinary proceedings.

The Exchange also proposes adding the phrase "or OTP Firm" to Commentary .08 to NYSE Arca Rule 6.24. The Exchange has always intended to apply NYSE Arca Rule 6.24 equally to both OTP Holders and OTP Firms. The addition of OTP Firms will codify the original intent of to NYSE Arca Rule 6.24.

Under this proposal, violators of to NYSE Arca Rule 6.24 may be subject to MRP fines based on the number of violations occurring within a rolling 24-month period. An individual OTP Holder would be subject to a fine of \$500 for the first offense, \$1,000 for the second offense, and \$2,500 for the third offense. An OTP Firm would be subject to a \$1,000 fine for the first offense, \$2,500 for the second offense, and \$5,000 for a third offense.<sup>3</sup> A list of the proposed fines would be added to the MRP fine schedule in NYSE Arca Rule 10.12. The MRP provides a reasonable means of addressing rule violations that do not necessarily rise to the level

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<sup>3</sup> The Exchange, in its discretion, processes subsequent violations, after the third violation, according to NYSE Arca Rule 10.4. See NYSE Arca Rule 10.12(h), n.1.

of requiring formal disciplinary proceedings, while also providing a greater flexibility in handling certain violations. Adopting a provision that would allow the Exchange to sanction violators under the MRP by no means minimizes the importance of compliance with NYSE Arca Rule 6.24. The Exchange believes that the violation of any of its rules is a serious matter. The addition of a sanction under the MRP simply serves to add an additional method for disciplining violators of NYSE Arca Rule 6.24. The Exchange would continue to conduct surveillance with due diligence and make its determination, on a case by case basis, whether a fine under the MRP is appropriate, or whether a violation should be subject to formal disciplinary proceedings.

In addition, the Exchange, as a member of the Intermarket Surveillance Group (“ISG”), as well as certain other self-regulatory organizations (“SRO”) executed and filed on October 29, 2007 with the Commission, an Agreement pursuant to Section 17(d) of the Act (the “17d-2 Agreement”).<sup>4</sup> As set forth in the 17d-2 Agreement, the SROs have agreed that their respective rules concerning the filing of CEAs are common rules. As a result, the proposal to add CEA / EED violations to the NYSE Arca MRP will further result in consistency in sanctions among the SROs that are signatories to the 17d-2 Agreement concerning CEA / EED violations.

NYSE Arca Rule 10.12(h)(33) and Rule 10.12(k)(i)(33) are presently designated as “Reserved.” The Exchange proposes to use these reserved rule numbers for new NYSE Arca Rule 10.12(h)(33), which would reference CEA / EED violations pursuant to Rule 6.24, and new NYSE Arca Rule 10.12(k)(i)(33), which would include the recommended fines for CEA / EED violations.

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<sup>4</sup> See letter to Richard Holley, Senior Special Counsel, Division of Trading and Markets, Commission, from Nyieri Nazarian, Assistant General Counsel, American Stock Exchange LLC (“Amex”), dated October 29, 2007.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>5</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>6</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. Specifically, the Exchange believes that the proposed rule change will strengthen its ability to carry out its oversight responsibilities as an SRO and reinforce its surveillance and enforcement functions. Additionally, the Exchange believes that the proposed rule change will promote consistency in minor rule violations and respective SRO reporting obligations as set forth pursuant to Rule 19d-1(c)(2) under the Act,<sup>7</sup> which governs minor rule violation plans.

### B. Self-Regulatory Organization's Statement on Burden on Competition

NYSE Arca 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 Act.

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

The Exchange neither solicited nor received comments on the proposal.

## 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

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> 17 CFR 240.19d-1(c)(2).

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 such 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 an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2008-08 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-2008-08. 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 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-2008-08 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.<sup>8</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>8</sup> 17 CFR 200.30-3(a)(12).