

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-57469; File No. SR-NYSEArca-2008-08)

March 11, 2008

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

On January 18, 2008, 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 6.24, “Exercise of Options Contracts,” and NYSE Arca Rule 10.12 “Minor Rule Plan.” The proposed rule change was published for comment in the Federal Register on February 5, 2008.<sup>3</sup> The Commission received no comments regarding the proposal. This order approves the proposed rule change.

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.

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

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

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

Contrary Exercise Advice (“CEA”) to the Exchange.<sup>4</sup> 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. Therefore, 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.

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<sup>3</sup> See Securities Exchange Act Release No. 57220 (January 29, 2008), 73 FR 6757.

<sup>4</sup> 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.

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>5</sup> A list of the proposed fines would be added to the MRP fine schedule in NYSE Arca Rule 10.12. The addition of a sanction under the MRP adds an additional method for disciplining violators of NYSE Arca Rule 6.24.<sup>6</sup> The Exchange submits that it will 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.

Finally, the Exchange proposes to use NYSE Arca Rule 10.12(h)(33) and Rule 10.12(k)(i)(33), which are presently designated as “Reserved,” for new NYSE Arca Rule 10.12(h)(33), which would reference CEA / EED violations pursuant to Rule 6.24, and new

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<sup>5</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.

<sup>6</sup> In addition, as a member of the Intermarket Surveillance Group, the Exchange, as well as certain other self-regulatory organizations (“SROs”) executed and filed on October 29, 2007 with the Commission, a final version of an Agreement pursuant to Section 17(d) of the Act (the “17d-2 Agreement”). As set forth in the 17d-2 Agreement, the SROs have agreed that their respective rules concerning the filing of Expiring Exercise Declarations, also referred to as Contrary Exercise Advices, of options contracts, are common rules. As a result, the proposal to amend NYSE Arca’s MRVP will result in further consistency in sanctions among the SROs that are signatories to the 17d-2 Agreement concerning Contrary Exercise

NYSE Arca Rule 10.12(k)(i)(33), which would include the recommended fines for CEA / EED violations.

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> In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,<sup>8</sup> which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to facilitate transactions in securities, 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.

The Commission further believes that NYSE Arca's proposal to sanction individuals and member organizations who fail to submit Advice Cancel or exercise instructions in a timely manner is consistent with Sections 6(b)(1) and 6(b)(6) of the Act,<sup>9</sup> which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of Commission and Exchange rules. In addition, the Commission finds that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d-1(c)(2) under the Act,<sup>10</sup> which governs minor rule

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Advice violations.

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

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

<sup>9</sup> 15 U.S.C. 78f(b)(1) and 78f(b)(6).

<sup>10</sup> 17 CFR 240.19d-1(c)(2).

violation plans. The Commission believes that the proposed rule change should strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities as an SRO in cases where full disciplinary proceedings are unsuitable in view of the minor nature of the particular violation.

In approving this proposed rule change, the Commission in no way minimizes the importance of compliance with NYSE Arca rules and all other rules subject to the imposition of fines under the MRVP. The Commission believes that the violation of any SRO rules, as well as Commission rules, is a serious matter. However, the MRVP provides a reasonable means of addressing rule violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Commission expects that NYSE Arca would continue to conduct surveillance with due diligence and make a determination based on its findings, on a case-by-case basis, whether a fine of more or less than the recommended amount is appropriate for a violation under the NYSE Arca MRVP or whether a violation requires formal disciplinary action.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act<sup>11</sup> and Rule 19d-1(c)(2) under the Act,<sup>12</sup> that the proposed rule change (SR-NYSEArca-2008-08) be, and hereby is, approved and declared effective.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>11</sup> 15 U.S.C. 78s(b)(2).

<sup>12</sup> 17 CFR 240.19d-1(c)(2).

<sup>13</sup> 17 CFR 200.30-3(a)(12); 17 CFR 200.30-3(a)(44).