

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58034; File No. SR-NYSEArca-2008-49)

June 26, 2008

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving Proposed Rule Change to Amend Minor Rule Plan and Certain Underlying Rules

I. Introduction

On May 14, 2008, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend NYSE Arca Rule 10.12 (Minor Rule Plan) (“MRP”) and related rules that underlie the MRP. The proposed rule change was published for comment in the Federal Register on May 23, 2008.³ The Commission received no comments on the proposal. This order approves the proposal.

II. Description of the Proposal

The Exchange proposed to amend its Minor Rule Plan and related rules that underlie the MRP, including Rules 9.2(c) (Customer Records), 11.1 (Adherence to Law), and 11.18 (Supervision).

Rule 9.2(c) – Customer Records

The Exchange proposed to change Rule 9.2(c) by adding the word “current,” to clarify and reiterate the obligation that firms with customer accounts must not only keep records of their customer accounts, but also keep them current.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 57827 (May 15, 2008), 73 FR 30179 (“Notice”).

Rule 11.1 – Adherence to Law and Good Business Practices

The Exchange designated existing Rule 11.1 as Rule 11.1(a) and substituted the word “fair” in the rule’s requirement that certain actions of “any OTP Holder or OTP firm shall at all times comply with fair and equitable principles of trade” by the word “just.” The Exchange also proposed new Rule 11.1(b), which would require all OTP Holders and firms, their associated persons, and other participants to adhere to the principles of good business practice in the conduct of their business operations.⁴ Violations of Rule 11.1(b) would be eligible for MRP disposition.

Rule 11.18 - Supervision

The current language of Rule 11.18(b) provides that only OTP Holders and firms for whom the Exchange is the Designated Examining Authority (“DEA”) are subject to its supervisory requirements. The Exchange proposed to amend Rule 11.18 to provide that all OTP Holders and firms, regardless of DEA, are subject to the Exchange’s supervisory requirements. The Exchange also proposed to make violations of Rule 11.18 eligible for MRP disposition.

Rule 10.12. Minor Rule Plan

The Exchange proposed to make several modifications to its MRP, including to:

- Make several trading and record keeping rules eligible for MRP disposition.⁵
- Modify the Recommended Fine Schedule in Rule 10.12(k) so that MRP fines are based not on the number of violations but on the number of times the Exchange has imposed one or more MRP fines upon an OTP Holder or firm for the violation of a particular rule.

⁴ This rule is based on the current NYSE Rule 401(a).

⁵ See Notice, 73 FR at 30180, for a detailed description of these additions.

- Enable the Exchange to require that violators of Rules 6.94(a) and (c)⁶ not only pay the MRP fines for their violations, but also disgorge any quantifiable monetary gains attributable to these violations;
- Allow Exchange enforcement staff, as part of an MRP disposition of certain supervisory-related offenses, not only to impose a monetary fine, but also to require the violator to make specified changes to its supervisory or other compliance procedures; and
- Enable the Exchange to require violators of Rule 2.23 (Registration) to remit all the fees that they should have paid in connection with registration, in addition to any MRP fines.

III. Discussion

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.⁷ In particular, the Commission believes that the proposed rule change relating to both the MRP and the related underlying rules is consistent with Section 6(b)(5) of the Act,⁸ which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and to 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 the proposed changes to the Exchange's MRP are consistent with Sections 6(b)(1) and 6(b)(6) of the Act,⁹ which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of

⁶ Rules 6.94(a) and (c) require OTP Holders to avoid violations of its trade-through rules and, where such violation is unavoidable, to provide satisfaction orders.

⁷ In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78f(b)(1) and 78f(b)(6).

Commission and Exchange rules. In addition, because the MRP provides procedural rights to contest the fine and permits disciplinary proceedings on the matter, the Commission believes that the MRP, as amended by this proposal, provides a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d)(1) of the Act.¹⁰ Finally, 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,¹¹ which governs minor rule violation plans. The Commission believes that the proposed rule change would strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities as a self-regulatory organization 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 MRP. The Commission believes that the violation of any self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, the Exchange 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 the Exchange 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 MRP disposition or whether a violation requires formal disciplinary action.

¹⁰ 15 U.S.C. 78f(b)(7) and 78f(d)(1).

¹¹ 17 CFR 240.19d-1(c)(2).

III. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act¹² and Rule 19d-1(c)(2) under the Act¹³ that the proposed rule change (SR-NYSEArca-2008-49) be, and it hereby is, approved and declared effective.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Florence E. Harmon
Acting Secretary

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 CFR 240.19d-1(c)(2).

¹⁴ 17 CFR 200.30-3(a)(12) and 17 CFR 200.30-3(a)(44).