

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58899; File No. SR-NYSEArca-2008-116)

November 5, 2008

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of
Proposed Rule Change by NYSE Arca, Inc. Amending Exchange Rule 6.39 - Securities
Accounts of Market Makers

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on November 3, 2008, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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 Exchange Rule 6.39 - Securities Accounts of Market Makers. The text of the proposed rule change is attached as Exhibit 5, is available on the Exchange’s Web site at 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 self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

discussed any comments it received on the proposed rule change. The text of those 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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend Rule 6.39 by modifying the terms under which a clearing firm reports trade information to the Exchange on behalf of a Market Maker.

Presently, with respect to transactions to be cleared into all accounts carried for Market Makers, each clearing firm shall, on the business day following order entry date report to the Exchange every executed order entered by the Market Maker for the purchase or sale of a security underlying options traded on the Exchange, as well as opening and closing positions in all such securities held in each account.

The Exchange does, on occasion, find the need to review Market Maker order records in conjunction with an investigation, inquiries regarding a specific trade, or a routine examination. However, since this is not information that the Exchange typically uses on a daily basis, there is no need for Exchange to collect such information, on a daily basis. Requiring this information to be reported on a daily basis, instead of "upon request" creates an unnecessary burden on Market Makers, clearing firms and the Exchange alike.

The Exchange hereby proposes to amend Rule 6.39 by removing the obligation for a clearing firm to report such trades on a daily basis, and instead require the firms to

report such trades only upon request of the Exchange. Supplying the Exchange with trade information, when requested instead of on a daily basis, is consistent with the requirements at both the International Securities Exchange (“ISE”)⁴ and the Boston Options Exchange (“BOX”).⁵

2. Statutory Basis

This rule change is designed to merely to create a more efficient mechanism for clearing firms to report market maker trade information to the Exchange. NYSE Arca believes that the proposed rule change is consistent with Section 6(b) of the Act⁶ in general, and furthers the objectives of Section 6(b)(5) of the Act⁷ 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 a national market system.

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 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

No written comments were solicited or received with respect to the proposed rule change.

⁴ See ISE Rule 807(b) – *Reports of Orders*.

⁵ See BOX Trading Rules Chapter VI Sec. 7(b) – *Reports of Orders*.

⁶ 15 U.S.C. 78f (b).

⁷ 15 U.S.C. 78f (b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A)⁸ of the Act and Rule 19b-4(f)(6)⁹ thereunder, NYSE Arca has designated this proposed rule change as one that does not:

- (i) significantly affect the protection of investors or the public interest;
- (ii) impose any significant burden on competition; and
- (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest.

The Exchange provided the Commission with written notice of its intent to file this proposed rule change at least five business days prior to the date of the filing. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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

⁸ 15 U.S.C. §78s(b)(3)(A).

⁹ 17 CRF 240.19b-4(f)(6).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2008-116 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2008-116. 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 Section, 100 F Street, NE, Washington, DC 20549-1090. Copies of the filing will also be available for inspection and copying at NYSE Arca's principal office and on its Internet Web site at www.nyse.com. 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-2008-116 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.¹⁰

Florence E. Harmon
Acting Secretary

¹⁰ 17 CFR 200.30-3(a)(12).