

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58959; File No. SR-NYSEArca-2008-120)

November 14, 2008

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding NYSE Arca Options Rule Governing the Anti-Money Laundering Compliance Program

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on October 28, 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 and II below, which Items have been substantially prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a “non-controversial” rule change under Rule 19b-4(f)(6) under the Act.⁴ 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 the NYSE Arca Options Rule governing the Anti-Money Laundering Compliance Program (“AMLCP”). The proposed rule change would clarify the frequency with which an Options Trading Permit (“OTP”) Holder must conduct independent testing of its AMLCP and would establish the qualifications of the person designated to perform AMLCP testing as well as provide guidelines for establishing the independence of the person performing the test. The text of the proposed

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ 17 CFR 240.19b-4 (f)(6)

rule change is available on the Exchange’s website 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 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 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

Financial institutions, including broker-dealers, must develop and implement AML Programs pursuant to the Bank Secrecy Act,⁵ as amended by Section 352 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (“PATRIOT Act”).⁶ Consistent with Department of Treasury regulation 31 CFR 103.120 under the BSA, Exchange Rule 11.19 requires that each member organization develop and implement a written Anti-money laundering (“AML”) program that specifies the minimum requirement for these programs.

The AML program must include the development of internal policies, procedures and controls; the designation of a person to implement and monitor the day-to-day operations and internal controls of the program (commonly referred to as an “AML

⁵ 31 U.S.C. 5311 *et seq.*

⁶ Pub. L. No. 107-56, 115 Stat. 272 (2001).

Officer”); ongoing training for appropriate persons; and an independent testing function for overall compliance.

The Exchange proposes to change NYSE Arca Options Rule 11.19(c) to clarify the language governing the frequency with which an OTP Holder must conduct independent testing of its AMLCP. Additionally, the Exchange proposes to add new commentary to Rule 11.19 that establishes qualifications of the person designated to perform AMLCP testing and guidelines for establishing the independence of the person performing the test. In addition, this proposed rule change will clarify the applicability of the rule to all OTP Holders and OTP Firms.

Timeframes for Independent Testing

The proposed rule change would require that independent testing of AML programs be conducted, at a minimum, on an annual (calendar-year) basis by OTP Holders, unless the OTP Holder does not execute transactions for customers or otherwise hold customer accounts or act as an introducing broker with respect to customer accounts (e.g., engages solely in proprietary trading, or conducts business only with other broker-dealers), in which case such independent testing is required every two years (on a calendar-year basis). The Exchange believes that these timeframes are reasonable in that they require more frequent testing of AML programs designed to monitor a business with customers from the general public, which may be more susceptible to money laundering schemes than a strictly proprietary business involving transactions with other broker-dealers. Furthermore, the one-year time frame for testing is consistent with standard industry practice in that it is similar to generally accepted guidelines for conducting tests in the context of, for instance, general audits and branch office visits. The proposed rule

change establishes only a minimum requirement, and makes clear that members should undertake more frequent testing when circumstances warrant (e.g. should the business mix of the member or member organization materially change; in the event of a merger or acquisition; in light of systemic weaknesses uncovered via testing of the AML Program; or in response to other “red flags”).

Qualification and Independence Standards for Testing

Additionally, the Exchange proposes to add Commentary .01 to NYSE Arca Options Rule 11.19 that establishes qualifications of the person designated to perform AMLCP testing as well as guidelines for establishing the independence of the person performing the test. The proposed rule change would require the person conducting the independent test to have a working knowledge of the applicable BSA requirements and related regulations. Such person need not be an employee of the member or member organization since the responsibility being delegated is essentially an auditing function and, as such, it would not be unusual or ineffective for it to be performed by an independent outside party.

The proposed rule change does not preclude an employee of the member or member organization from conducting the required independent testing of the AML Program; however the proposed “independence” standard would prohibit testing from being conducted by a person who performs the functions being tested, or by the designated AML Officer or by a person that reports to either.

AML Officer

The proposed rule change would also clarify that the person responsible for implementing and monitoring the day-to-day operations and controls of the program must be an associated person of the member. This would not prohibit a member that is part of a diversified financial institution from designating an AML Officer that is employed by the member's parent company, sister company, or other affiliate. However, if such a person is designated as a member's AML Officer, the Exchange will consider that person to be an associated person of the member with respect to those activities performed on behalf of the member.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)⁷ of the Securities Exchange Act of 1934 (the "Exchange Act"), in general, and furthers the objectives of Section 6(b)(5)⁸ in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change is designed to accomplish these ends by requiring members to conduct periodic tests of their AML compliance programs and preserve the independence of their testing personnel.

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

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

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.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii)⁹ of the Act and Rule 19b-4(f)(6)¹⁰ thereunder. The Exchange believes that the proposed rule change does not: (i) significantly affect the protection of investors or the public interest, (ii) impose any significant burden on competition, and (iii) will not become operative prior to 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..¹¹

Rule 19b-4(f)(6)(iii)¹² requires the Exchange to give the Commission written notice of the Exchange's intent to file a proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement. The Exchange also requests

⁹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² 17 CFR 240.19b-4(f)(6)(iii).

that the Commission waive the 30-day operative delay contained in Exchange Act Rule 19b-4(f)(6).¹³ The Exchange believes that waiver of the 30-day operative delay will allow the Exchange to immediately begin requiring members to conduct periodic tests of their AMLCP and preserve the independence of their testing personnel. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission believes that the proposed rule is designed to accomplish these ends by requiring OTP Holders to conduct periodic testing of their AMLCPs, preserve the independence of their testing personnel, and by making the Exchange's program requirements consistent with those at other exchanges and self-regulatory organizations.¹⁴ The Commission therefore grants the Exchange's request and designates the proposal to be operative upon filing.¹⁵

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:

¹³ Id.

¹⁴ See e.g., NASD Rule 3011, NYSE Rule 445.

¹⁵ For purposes of waving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. See 15 U.S.C. 78c(f).

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. Please include File Number SR-NYSEArca-2008-120 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-2008-120. 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, on official business days between the hours of 10:00 a.m. and 3:00 p.m. 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-2008-120 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.¹⁶

Florence E. Harmon
Acting Secretary

¹⁶ 17 CFR 200.30-3(a)(12).