

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59376; File No. SR-NYSEArca-2008-139)

February 10, 2009

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving Proposed Rule Change Amending the Minor Rule Plan to Increase Certain Sanctions

On December 17, 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”)¹ and Rule 19b-4 thereunder,² a proposed rule change amending NYSE Arca Rule 10.12 (Minor Rule Plan) (“MRP”) to increase the sanctions for certain market maker quoting and trading rule violations and to make other minor changes. The proposed rule change was published for comment in the Federal Register on January 7, 2009.³ The Commission received no comments regarding the proposal. This order approves the proposed rule change.

The Exchange has proposed to increase the fine levels for certain market maker quoting and trading rules violations.⁴ The fine levels for such violations are currently \$500 (1st offense), \$1,000 (2nd offense), and \$1,500-\$2,500 (3rd offense). The proposed rule change would increase the fine levels to \$1,000 (1st offense), \$2,500 (2nd offense), and \$3,500 (3rd offense). The

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 59191 (December 31, 2008), 74 FR 757.

⁴ The proposed increased fines would apply to violations of the following requirements: (i) at least 75% of the trading activity of a market maker be in classes within the market maker’s appointment (Rules 6.35, Commentary .03 and 6.37(h)(5)); (ii) at least 60% of a market maker’s transactions be executed by the market maker in person or thorough an approved facility of the Exchange (Rule 6.37(d)); (iii) market makers on NYSE Arca apply for an appointment in one or more classes of options contracts (Rule 6.35); (iv) market makers, including lead market makers, must comply with certain quoting obligations (Rule 6.37B); and (v) market makers provide accurate quotations and quote markets within the prescribed maximum quote spread differentials (Rules 6.37(b)(1), 6.82(c)(1), and 6.37A(b)).

Exchange believes that the current fine levels for such violations are too low, given the serious nature of such offenses, and that the proposed increases are necessary to be an effective deterrent against future violations and a just penalty for such violations. The Exchange also proposed a few other minor changes to correct an erroneous rule reference and to include an inadvertent omission⁵ in its MRP.

The Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁶ In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,⁷ which requires that the rules of an exchange be designed to, among other things, protect investors and the public interest. The Commission also believes that the proposal is consistent with Sections 6(b)(1) and 6(b)(6) of the Act,⁸ which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of Commission and Exchange rules. Furthermore, the Commission believes that the proposed changes to the MRP should 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. Therefore, the Commission finds that the proposal is consistent with the public interest, the protection of investors, or otherwise in

⁵ The Exchange has proposed to add violations of Rule 6.37A(b) to the MRP, stating that the reference to this rule was inadvertently left off the MRP.

⁶ 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).

⁷ 15 U.S.C. 78f(b)(5).

⁸ 15 U.S.C. 78f(b)(1) and 78f(b)(6).

furtherance of the purposes of the Act, as required by Rule 19d-1(c)(2) under the Act,⁹ which governs minor rule violation plans.

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 MRP 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 will 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 MRP or whether a violation requires formal disciplinary action under NYSE Arca Rules 10.4-10.11.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act¹⁰ and Rule

⁹ 17 CFR 240.19d-1(c)(2).

¹⁰ 15 U.S.C. 78s(b)(2).

19d-1(c)(2) under the Act,¹¹ that the proposed rule change (SR-NYSEArca-2008-139), as amended, be, and hereby is, approved and declared effective.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Florence E. Harmon
Deputy Secretary

¹¹ 17 CFR 240.19d-1(c)(2).

¹² 17 CFR 200.30-3(a)(12); 17 CFR 200.30-3(a)(44).