

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60518; File No. SR-NYSEArca-2009-70)

August 18, 2009

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Amending Rule 10.12 (Minor Rule Plan)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that, on July 29, 2009, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“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 Rule 10.12-Minor Rule Plan. The text of the proposed rule change is attached as Exhibit 5 to the 19b-4 form. A copy of this filing 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 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.

¹ 15 U.S.C. 78s(b)(1).

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

1. Purpose

The NYSE Arca Minor Rule Plan (“MRP”) fosters compliance with applicable rules and also helps to reduce the number and extent of rule violations committed by Options Trading Permit (“OTP”) Holders, OTP Firms and associated persons. The prompt imposition of a financial penalty helps to quickly educate and improve the conduct of OTP Holders, OTP Firms and associated persons that have engaged in inadvertent or otherwise minor violations of the Exchange’s rules. By promptly imposing a meaningful financial penalty for such violations, the MRP focuses on correcting conduct before it gives rise to more serious enforcement action.

The Exchange is now proposing to incorporate additional violations into the MRP, these violations include (i) trading in restricted classes; and (ii) failure to report position and account information. The Exchange is also proposing to increase fine levels for certain violations presently included in the MRP. The increases [sic] fine levels will be applicable for violations of due diligence, priority rules and order exposure rules. A brief description of each proposed changes [sic] is shown below.

Proposed Rules 10.12(h)(22) and 10.12(k)(i)22

NYSE Arca Rule 5.4(a) provides, with limited exceptions, that the Exchange may prohibit any opening purchase transactions in a series of options to the extent it deems such action necessary or appropriate. Accordingly, OTP Holders effecting opening transactions in restricted series, that are inconsistent with the terms of any such restriction, will be considered to be in violation of Rule 5.4(a). The Exchange is proposing to incorporate violations related to trading in restricted series into the MRP under Exchange Rule 10.12(h)(22).

² 17 CFR 240.19b-4.

The Exchange is proposing to implement a fine of \$1,000 for the first violation in a rolling twenty-four month period. A second violation within the same period would be allocated a \$2,500 fine and a third violation would be allocated a \$5,000 fine. The schedule of fines will be included under Rule 10.12(k)(i)22. Any subsequent violations within a rolling twenty-four month period would be subject to formal disciplinary proceedings by the Exchange. NYSE Arca believes that establishing a rolling twenty-four month period for cumulative violations will serve as an effective deterrent to future violative conduct.

NYSE Arca believes that in most cases these violations may be handled efficiently through the MRP, however, as with other violations, any egregious activity or activity that is believed to be manipulative will continue to be subject to formal disciplinary proceedings.

Proposed Rules 10.12(h)(23) and 10.12(k)(i)23

Among other things, Rule 6.6(a) requires each OTP Holder and OTP Firm to report to the Exchange the account and position information of any customer who, acting alone, or in concert with others, on the previous business day maintained aggregate long or short positions on the same side of the market of 200 or more contracts of any single class of option contracts dealt in on the Exchange. OTP Holders and OTP Firms report this information on the Large Option Position Report (“LOPR”).

NYSE Arca is proposing to incorporate violations for failing to accurately report position and account information in accordance with Rule 6.6(a) into the MRP. The Exchange believes most of these violations are inadvertent and technical in nature. Not having LOPR reporting violation necessarily subject to formal disciplinary proceedings will allow the Exchange to more expeditiously process routine violations under the MRP Plan.

In addition, NYSE Arca, as a member of the Intermarket Surveillance Group (“ISG”), as well as certain other self-regulatory organizations, have entered into an agreement pursuant to Section 17(d) of the Securities Exchange Act of 1934 (as amended) (“17d-2 Agreement”), which incorporates the surveillance and sanctions of LOPR reporting violations. As such, the SROs have agreed that their respective rules concerning the reporting of large option positions are common rules. As a result, adding LOPR reporting violations to the MRP will further result in the consistency of rules among SROs who are parties to the 17d-2 Agreement with respect to LOPR reporting surveillance.

The Exchange is proposing to implement a fine of \$1,000 for the first violation in a rolling twenty-four month period. A second violation within the same period would be allocated a \$2,500 fine and a third violation would be allocated a \$5,000 fine. The schedule of fines will be included under Rule 10.12(k)(i)23. Any subsequent violations within a rolling twenty-four month period would be subject to formal disciplinary proceedings by the Exchange. NYSE Arca believes that establishing a rolling twenty-four month period for cumulative violations will serve as an effective deterrent to future violative conduct.

NYSE Arca believes that in most cases these LOPR reporting violations may be handled efficiently through the MRP, however, as with other violations, any egregious activity or activity that is believed to be manipulative will continue to be subject to formal disciplinary proceedings.

Changes to Rule 10.12(k)(i)1., Rule 10.12(k)(i)34. and Rule 10.12(k)(i)40.

NYSE Arca Rule 6.46(a) requires that a Floor Broker handling an order is to use due diligence to execute the order at the best price or prices available to him, in accordance with the Rules of the Exchange. Violators of Rule 6.46(a) are subject to a sanction pursuant to the MRP, specifically, Rule 10.12(k)(i)1. Suggested fines for violations of Rule 6.46(a) are presently

\$1,000 for the first violation in a rolling twenty-four month period, \$2,500 for a second violation within the same period fine and a third violation is subject to a \$3,500 fine.

NYSE Arca Rule 6.47A is designed to ensure that orders are properly exposed on the NYSE Arca electronic trading system prior to interaction by the initiating firm. The rule states that users may not execute as principal orders they represent as agent unless (i) agency orders are first exposed on the Exchange for at least one (1) second or (ii) the User has been bidding or offering on the Exchange for at least one (1) second prior to receiving an agency order that is executable against such bid or offer. This rule prevents a user from executing agency orders to increase its economic gain from trading against the order without first giving other trading interest on the Exchange an opportunity to either trade with the agency order or to trade at the execution price when the User was already bidding or offering on the book. Violators of Rule 6.47A are subject to a sanction pursuant to the MRP, specifically, Rule 10.12(k)(i)(34).

Suggested fines for violations of Rule 6.47A are presently \$500 for the first violation in a rolling twenty-four month period, \$1,000 for a second violation within the same period fine and a third violation is subject to a \$2,500 fine.

NYSE Arca Rule 6.75 governs the priority of bids and offers in open outcry trading. In general, Rule 6.75 states that the highest bid/lowest offer shall have priority over all other orders. In the event there are two or more bids/offers for the same option contract representing the best price and one such bid/offer is displayed in the Consolidated Book, such bid shall have priority over any other bid at the post. In addition, if two or more bids/offers represent the best price and a bid/offer displayed in the Consolidated Book is not involved, priority shall be afforded to such bids in the sequence in which they are made. Rule 6.75 also contains certain provisions for [sic] related to split-price priority and priority of complex orders. Violators of any part of Rule 6.75

are subject to a sanction pursuant to the MRP, specifically Rule 10.12(k)(i)(40). Suggested fines for violations of Rule 6.75 are presently \$500 for the first violation in a rolling twenty-four month period, \$1,000 for a second violation within the same period fine and a third violation is subject to a \$2,000 fine.

At this time the Exchange believes the current monetary fine levels contained in the MRP, for the above mentioned violations, are inadequate, given the serious nature of these rules. In order to act as an effective deterrent against future violations, while also serving as a just penalty for those who commit these violations, the Exchange feels an increase in the fine levels for these three violations is warranted. NYSE Arca now proposes fine levels of \$1,000 for the first violation in a rolling twenty-four month period, \$2,500 for a second violation within the same period fine and \$5,000 for a third violation within the same period fine. These fine levels will apply to all three types of violations.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)³ of the Act, in general, and furthers the objectives of Section 6(b)(5)⁴ in particular in that 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.

³ 15 U.S.C. 78f(b).

⁴ 15 U.S.C. 78f(b)(5).

The proposal is also consistent with Section 6(b)(6)⁵ and 6(b)(7),⁶ which requires that members and persons associated with members are appropriately disciplined for violations of Exchange rules and are provided a fair procedure for disciplinary procedures.

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.

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

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

⁵ 15 U.S.C. 78f(b)(6).

⁶ 15 U.S.C. 78f(b)(7).

- 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-2009-70 on the subject line.

Paper comments

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

All submissions should refer to File Number SR-NYSEArca-2009-70. 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 Room, 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 also will be available for inspection and copying at the principal office of the Exchange. 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-2009-70 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.⁷

Florence E. Harmon
Deputy Secretary

⁷ 17 CFR 200.30-3(a)(12).