

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-62026; File No. SR-NYSEArca-2010-33)

May 4, 2010

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, as Modified by Amendment No. 1, by NYSE Arca, Inc. Amending Rule 4, Capital Requirements, Financial Reports, Margins.

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 April 22, 2010, 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. On April 29, 2010, the Exchange filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend certain financial rules contained in Rule 4. 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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 Exchange proposes to update its minimum net capital requirements in Rule 4.1. Currently, Rule 4.1 does not address OTP Holders that are not subject to the net capital requirements of Rule 15c3-1 of the Securities Exchange Act. The Exchange proposes to amend NYSE Arca Rule 4.1 by adding a provision that requires OTP Holders that are not subject to the net capital requirements of Rule 15c3-1 to meet an initial minimum ownership equity requirement of \$25,000 per Market Maker as defined by Rule 6.32. The rule will further require an OTP Holder to meet a minimum ownership equity maintenance requirement of \$15,000 per Market Maker. The minimum ownership equity will be calculated using Generally Accepted Accounting Principles (GAAP). The Exchange also proposes to require firms that fail to meet the minimum ownership equity requirement to notify the corporation in writing promptly upon discovery of the failure. This proposed rule establishes a minimum equity requirement for Market Maker OTP firms not subject to the net capital requirements of Exchange Act Rule 15c3-1.

The Exchange also proposes to add to Rule 4.1 subsection (c) that requires OTP Holders to suspend all business operations during any period in which it is not in compliance with the net capital or minimum ownership equity requirements of 4.1(a) or 4.1(b).⁴ This new requirement is based in part on FINRA Rule 4110(b)(1).⁵

⁴ The Exchange notes that Securities Exchange Act Rule 15c3-1 requires that every broker or dealer shall at all times have and maintain certain specified levels of net capital. The

The Exchange proposes to amend NYSE Arca Rules 4.5(a) to remove the reference to a date that has past and is no longer applicable. The Exchange also proposes to amend the headings of Rule 4.5(b), (c), and (d) to more accurately reflect the applicability of each subsection. Finally, the Exchange proposes to add language to subsections (b) and (e) of the Rule that will require OTP Holders filing those reports to maintain original copies of such reports with manual signatures. These changes clarify the requirements of Rule 4.5 and increase regulatory efficiency by offering OTP Holders a uniform standard for filing FOCUS Reports.

Finally, the Exchange will amend Rule 4.7 to eliminate a circular rule reference. The Exchange will replace the reference in 4.7(a) to Rule 4.1 with a reference to Exchange Act Rule 15c3-1(b).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Exchange Act,⁶ in general, and furthers the objectives of Section 6(b)(5)⁷ 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. The proposed changes create additional investor protections by enhancing the capital requirements, notification, and recordkeeping provisions of certain NYSE Arca rules.

Exchange further notes that to the extent a broker-dealer fails to maintain at least the amount of net capital specified in Rule 15c3-1, it must cease doing a securities business. See 72 FR 12862, at 12872.

⁵ See Securities Exchange Act Release No. 60933 (November 4, 2009), 74 FR 58334 (November 12, 2009) (Order Approving of SR-FINRA-2008-067).

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act⁸ and Rule 19b-4(f)(6) thereunder.⁹ Because 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) 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁰ and Rule 19b-4(f)(6)(iii) thereunder.¹¹

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

⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

⁹ 17 CFR 240.19b-4(f)(6).

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the 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 the pre-filing requirement.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2010-33 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-2010-33. 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 Web site viewing and printing 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 such filing also will be available for inspection and copying at the principal office of NYSEArca. 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-2010-33 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.¹²

Florence E. Harmon
Deputy Secretary

¹² 17 CFR 200.30-3(a)(12).