

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-62259; File No. SR-NYSEArca-2010-47)

June 10, 2010

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish New Rule 6.89

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 June 2, 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 and II 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 establish new procedures to account for erroneous trades occurring from disruptions and/or malfunctions of Exchange systems. The changes described in this proposal would establish new NYSE Arca Rule 6.89. The text of the proposed rule change is available at the Commission’s website at www.sec.gov. 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

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 Exchange is proposing to establish NYSE Arca Rule 6.89, in order to adopt new procedures regarding system disruptions and malfunctions. Specifically, the Exchange proposes to include “verifiable systems disruptions and malfunctions which the nullification or modification of transactions may be necessary” as a condition in which a designated Trading Official⁴ may act, on its own motion, to review erroneous transactions. The Exchange believes that it is appropriate to provide this flexibility and authority so as not to limit the Exchange’s ability to plan for and respond to unforeseen system’s problems. Proposed Rule 6.89 is similar to rules in effect at other options exchanges that allow for the nullification or modification of transactions that resulted from verifiable disruptions and/or malfunctions of Exchanges systems.⁵

According to the proposal, in the event of any verifiable disruption or malfunction in the use or operation of any electronic communications and trading facilities of the Exchange, in which the nullification or modification of transactions may be necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest exist, a Trading Official, on his or her own motion, may review such transactions and declare such transactions arising out of the use or operation of such facilities during such period null and void or modify

⁴ See NYSE Arca Rule 6.1(b)(34). Trading Officials are employees or officers of the Exchange and are not affiliated with OTP Holders or OTP Firms.

⁵ Proposed Rule 6.89 is based in part on NASDAQ OMX PHLX Rule 1092(c)(ii)(A), and in addition is substantially similar to Chicago Board Options Exchange Rule 6.25(a)(3).

the terms of these transactions, in accordance with the guidelines contained in sections (a)(3)(C)(i)(aa)-(bb) of Rule 6.87. Pursuant to the proposal, the Trading Official, absent extraordinary circumstances, must initiate action under this authority within sixty (60) minutes of the occurrence of the erroneous transaction that was a result of the verifiable disruption or malfunction. Each OTP Holder involved in the transaction shall be notified as soon as practicable, and any OTP Holder aggrieved by the action may appeal such action in accordance with the provisions of subsection (b) of Rule 6.89.

Appeal Process

If a Trading Official determines that a transaction(s) is erroneous pursuant to Rule 6.89(a) as described above, any OTP Holder aggrieved by the action may appeal such action in accordance with the provisions provided in Rule 6.89(b).

The Exchange plans to utilize a Review Panel (“Panel”) to review decisions made by the Exchange Officer, under this Rule.

Once an OTP Holder has properly notified the Exchange that it wishes to appeal the decision of the Exchange Officer, a three person Panel will review and make a determination as to the appeal. The Panel as described in proposed Rule 6.89(b)(1)(A) will be comprised of the NYSE Arca Chief Regulatory Officer (“CRO”), or a designee of the CRO, and a representative from two (2) different OTP Firms. One representative on the Panel will always be from an OTP Firm directly engaged in market making activities and one representative on the Panel will always be from an OTP Firm directly engaged in the handling of options orders for public customers.⁶ The Exchange feels that by having a three person panel, of which the majority is made up of individuals from member firms, will help to ensure that determinations regarding

⁶ The composition of the Review Panel, is similar to that of the NYSE Arca Obvious Error Panel, as defined in Rule 6.87(a)(4)(A)(i). [sic]

erroneous transactions resulting from system malfunctions or extraordinary market conditions are made by a diverse representative group in a manner that will help to ensure fairness and impartiality.

The Exchange shall designate at least ten (10) OTP Firm representatives to be called upon to serve on the Panel as needed. In no case shall a Panel include a person related to a party to the trade in question. To the extent reasonably possible, the Exchange shall call upon the designated representatives to participate in a Panel on an equally frequent basis.

2. Statutory Basis

The Exchange believes that the proposed rule change will allow the Exchange, in extraordinary market conditions, to maintain a fair and orderly market. The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder and, in particular, the requirements of section 6(b) of the Act. Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)⁷ requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

Allowing for the nullification or modification of transactions that result from verifiable disruptions and/or malfunctions of Exchanges systems will offer market participants on NYSE Arca a level of relief presently not available. The rule changes proposed in this filing are consistent with the rules governing verifiable systems disruptions malfunctions at other options exchanges and are designed to protect investors and the public interest.

⁷ 15 U.S.C. 78(f)(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.

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.

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
- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-NYSEArca-2010-47 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 No. SR-NYSEArca-2010-47. 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 NYSE Arca. 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 No. SR-NYSEArca-2010-47 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).