SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57697; File No. SR-NYSEArca-2008-32)

April 22, 2008

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of a Proposed Rule Change as Modified by Amendment No. 1 Thereto Relating to the 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 March 18, 2008, NYSE Arca, Inc. ("NYSE Arca" or the "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 substantially prepared by the Exchange. On April 17, 2008, the Exchange submitted 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

NYSE Arca through its wholly owned subsidiary, NYSE Arca Equities, Inc. ("NYSE Arca Equities" or the "Corporation"), proposes to amend Rule 10.12 (Minor Rule Plan) ("MRP") and other related rules that underlie the minor rules violations, including Rules 5.2(b)(1) (Applications to List), 6.1 (Adherence to Law), 6.15 (Miscellaneous Prohibitions), 6.18 (Supervision), and 9.2(c) (Customer Records).

The text of the proposed rule change is available at NYSE Arca's principal office, the Commission's Public Reference Room, and http://www.nyse.com.

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

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

In its filing with the Commission, NYSE Arca 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 these 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 aspects of such statements.

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

1. Purpose

The Minor Rule Plan fosters compliance with applicable rules and also helps to reduce the number and extent of rule violations committed by ETP Holders and associated persons. The Corporation's enforcement staff has found that the MRP is particularly useful in reducing both the number and extent of rule violations because Rule 10.12 enables staff to promptly impose a limited but meaningful financial penalty soon after the violations are detected. The prompt imposition of a financial penalty helps to quickly educate and improve the conduct of ETP Holders who have engaged in inadvertent or otherwise minor violations of the Corporation's rules, particularly those who may not pay attention to mere warnings that they are violating Exchange rules. By promptly imposing a meaningful financial penalty for such violations, the MRP helps such ETP Holders focus on correcting their conduct before it gives rise to more serious enforcement action.

The last amendments to Rule 10.12 were approved in 2004.[3] Since then, new and altered patterns of activity by ETP Holders, as well as numerous additions and amendments to other

[3] See Securities Exchange Act Release No. 50356 (September 13, 2004), 69 FR 56259 (September 20, 2004) (SR-PCX-2004-29).

Exchange rules, have created the need for numerous additions and updates to the MRP and underlying rules, as described in greater detail below. The changes are designed to update Rule 10.12 to encompass appropriate new types of violations, as well as to update or otherwise correct existing MRP provisions and further clarify the circumstances in which use of the MRP is appropriate.

The MRP will continue to be used for inadvertent and occasional rule violations. Serious violations of Exchange rules will continue to be addressed through formal enforcement action.

Rule 10.12 – Minor Rule Plan

Rule 10.12(e) – Minor Rule Plan

The Corporation proposes to clarify that any person or organization found in violation of a minor rule under Rule 10.12 is not required to report such violation on SEC Form BD or Form U-4.

Rule 10.12(f) – Minor Rule Plan

The Corporation seeks to amend Rule 10.12(f) to remove the provision stating that the Business Conduct Committee ("BCC") shall review "each citation" of the MRP citation. When the NYSE Arca equity rules were first drafted based upon the NYSE Arca options rules, this provision was not removed. The provision should have been removed because there is no such concept of "floor citations" under the equity rules. As a result, the Exchange seeks to correct 10.12(f) now and remove the provision from the rule.

10.12(g) – Minor Rule Plan: Minor Trading Rule Violations; 10.12(h) – Minor Rule Plan: Record Keeping and Other Minor Rule Violations

The Corporation proposes to amend Rule 10.12(g) to add several minor violations related to trading rule violations and subsection (h) related to record keeping and other violations. Corporation staff frequently encounters inadvertent or otherwise minor violations of certain

trading rules, including Rules 6.2(g), 6.15(b), 7.20(a), 7.23(a)(1), 7.29, 7.30, and 7.38(c), and certain recordkeeping and other rules, including Rules 2.16(b), 2.21, 2.23, 2.24, 5.2(b)(1), 6.3, 6.17, 6.18, and 9.2. Such minor violations do not give rise to formal enforcement action. However, staff believes that it can further enhance compliance with these rules by imposing MRP fines, which will draw ETP Holders' attention to the need for improved compliance by promptly imposing meaningful but limited financial penalties for violations.

10.12(i) – Minor Rule Plan: Recommended Fine Schedule

The Corporation proposes to change the procedure set forth in the MRP fine schedules to escalate MRP fine levels in cases involving multiple instances of the same offense. This change will enhance the fair administration of the MRP in the context of higher speed and volume of electronic trading on the NYSE Arca Marketplace.

Currently, the MRP Recommended Fine Schedule sets forth an initial MRP fine for a "First Violation," as well as a higher level for a "Second Violation" and a still higher level for a "Third Violation." This escalation plan, which predates the widespread use of electronic trading on the Exchange, has led to several difficulties when applied to the much greater speed and volume of electronic trading.

First, while the fine escalation is meant to deter repeat offenses, it often fails to deliver this effect, because Permit Holders engaged in the high speed and volume of electronic trading can frequently incur "second" and "third" offenses before they are sanctioned or even notified of the initial violation. For the same reason, these Permit Holders complain that it is unfair for them to incur escalated fine levels for second and third violations before they learn of their first violations.

Additionally, the current fine schedule does not allow an MRP sanction for any more than three violations. In some cases, this is appropriate, but in other cases, it makes sense to impose an MRP fine for the fourth violation as for the first three. The MRP can best assist the Exchange's regulatory and enforcement efforts if it provides Exchange officials with discretion to determine how to address particular instances of multiple violations, rather than implicitly requiring formal enforcement action whenever there are more than three violations.

To address these concerns, the Exchange proposes to modify the Recommended Fine Schedules in NYSE Arca Equities Rule 10.12(i) so that MRP fines are escalated based not on the number of "violations," but upon the number of times the Exchange has imposed one or more MRP fines upon a Permit Holder for the violation of a particular rule. The three current column headers in the Fine Schedules that specify different fine levels for first, second, and third "violations" will be replaced with "First Level," "Second Level," and "Third Level."

With this change, the Fine Schedule will continue to specify the fine to be imposed for each violation, but the first time a Permit Holder is fined under the MRP for the violation of a given rule, the fine for each violation will be imposed at the "First Level," whether there is one or more than one such violation.

EXAMPLE:

Due to a systems breakdown that goes undiscovered for an entire afternoon, an ETP Holder with no previous rules violations executes three sell orders on the Exchange that are not properly labeled "short," as required by NYSE Arca Equities Rule 7.16(b). Under the current MRP Fine Schedule in NYSE Arca Equities Rule 10.12(i)(1), the ETP Holder would be charged under the MRP with a first violation fine of $500, as well as a second violation fine of $1,000, and a third violation fine of $2,500, for a total MRP fine of $4,000. The escalation for the

second and third offenses would be imposed under the current Fine Schedule even though all the violations occurred in the same afternoon, and the second and third violations occurred before the ETP Holder became aware of the first violation.

By contrast, under the proposed Fine Schedule, the fines no longer escalate based upon the number of offenses, but instead based on the number of times the ETP Holder has been fined for the same offense. Because the ETP Holder here had not previously been fined for violations of Rule 7.16, the ETP Holder would receive the "First Level" of $500 per violation for each of the three violations, for a total MRP fine of $1,500.

If the ETP Holder were later fined again under the MRP for more such violations, the fine for each violation would then be $1,000.

This proposed new procedure for escalating MRP fines is largely the same as the escalation procedure specified by the New York Stock Exchange in its "List of Exchange Rule Violations and Fines" for imposing summary fines pursuant to NYSE Rule 476A.

It will continue to be the case that nothing in the MRP will require the imposition of a MRP fine when Exchange enforcement officials believe that repeat violations or other aggravating factors warrant formal enforcement action.

Other Changes to Rule 10.12(i)

The fines for the proposed minor rule violations in subsections (g) and (h) are reflected in the Recommended Fine Schedule in Rule 10.12(i). NYSE Arca Equities staff believes that the proposed fines are fair in relation to the scope and occurrence of the MRP violation by an ETP Holder.

The Corporation has also proposed to amend Rule 10.12(i)(2) to include a new footnote 2. Rule 2.21 (employee registration) requires ETP Holders to pay certain fees to the

Corporation. Footnote 2 permits the Corporation to require violators of Rule 2.21 to remit all fees that it should have paid to the Exchange pursuant to compliance with Rule 2.21. The Corporation has based this proposed amendment upon a similar provision of the Boston Stock Exchange's MRP for violation of trade-through rules, which was recently approved by the Commission.[4]

NYSE Arca Equities Rule 2.21 requires an ETP Holder to continually disclose to the Corporation through the registration process the ETP Holder's personnel who are responsible for trading decisions on behalf of the ETP Holder. By requiring such disclosure, Rule 2.21, like the trade-through rules, substantially protects the Corporation's ability to regulate its marketplace and help ensure marketplace integrity. Corporation staff proposes to include the back-payment of registration fees in addition to a MRP fine so that the MRP can effectively deter ETP Holders from trying to save money and effort by not registering their appropriate personnel.

In addition to the changes proposed to the MRP, the Corporation also proposes the following related changes.

Rule 5.2(b)(1) – Notification Requirements for Offering of Securities

The Corporation proposes amendments to correct a scrivener's error that was inadvertently created when the NYSE Arca Rules were updated to replace the obsolete term "Member" with the replacement term "ETP Holder." The intended reference in this rule, however, is to all members of a syndicate, which is related to compliance with Regulation M, so we propose to reinsert the correct term "members."

Rule 6.1 – Adherence to Law and Good Business Practices

The proposed rule change clarifies the language of the newly designated Rule 6.1(a) by

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[4] See Securities Exchange Act Release No. 55606 (April 10, 2007), 72 FR 19221 (April 17, 2007) (approving SR-BSE-2006-11).

substituting the word "just" for "fair." The Corporation proposes to adopt Rule 6.1(b) and make violations of the rule eligible for MRP disposition. New subsection (b) to Rule 6.1 would require all ETP Holders, their associated persons, and other participants to adhere to the principles of good business practice in the conduct of their business operations. This Rule is patterned on the current NYSE Rule 401(a). Like NYSE Rule 401(a), it encompasses miscellaneous conduct that is inconsistent with the maintenance of a fair and orderly marketplace or that otherwise violates good business practices without also showing the bad faith or unethical conduct that have been found to be essential elements of "conduct inconsistent with just and equitable principles of trade," as that standard has been clarified in decisions such as In re. Calvin David Fox.[5]

Rule 6.15 – Miscellaneous Prohibitions

The Corporation proposes to add a subsection (c) that will expressly prohibit transactions in a security that involves no change in beneficial ownership, commonly known as "wash trades." This filing also proposes to make violation of the wash trade prohibition eligible for disposition through an MRP fine. Exchange Market Regulation has observed a trend toward increasing amounts of wash trading. Much of this trading may be unintentional or otherwise resulting from circumstances that do not rise to the level of prearranged trading or other purposeful market manipulation. However, even inadvertent wash trading can create an exaggerated or otherwise false appearance of trading activity in the affected securities. The Corporation proposes to halt this trend by expressly prohibiting wash trading. By also including this violation among those eligible for disposition through MRP fines, Exchange Market Regulation and Enforcement will have the flexibility to impose appropriate fine levels based upon the particular circumstances of each individual case.

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[5] See Securities Exchange Act Release No. 48731, 81 SEC Docket 1511-31 (October 31, 2003).

Rule 6.18 - Supervision

The Corporation proposes to amend Rule 6.18 to remove language that limits the reach of its supervisory rules. The current language of Rule 6.18(b) provides that only ETP Holders for whom the Corporation is the Designated Examining Authority ("DEA") are subject to its supervisory requirements. The amendment removes the language limiting the scope of the rule so that all ETP Holders regardless of DEA are subject to maintaining systems to supervise activities of their associated persons and the operations of their businesses.

As noted above, this filing also proposes to make minor violations of Rule 6.18 eligible for disposition through an MRP fine. Exchange Market Regulation frequently encounters "minor" supervisory failures by Permit Holders, i.e., supervisory failures whose consequences have not yet risen to a level justifying formal enforcement action, but which could have serious consequences if not remedied. By making such failures eligible for MRP fines, Exchange Market Regulation and Enforcement will have a greater ability to encourage ETP Holders to correct their supervisory problems before they lead to more serious violations.

To further enhance the ability of the Exchange to use the MRP to improve Permit Holder supervisory procedures and overall compliance on a prospective basis, the filing proposes to add a new footnote 1 to the MRP Fine Schedule that will allow Exchange enforcement staff, as part of an MRP disposition of certain supervisory-related offenses, not only to impose a monetary fine, but also to require the violator to make specified changes to its supervisory or other compliance procedures. This will enable Exchange enforcement staff to negotiate, as part of an MRP disposition of a supervisory violation, a requirement that the violator undertake certain remedial measures to ensure that such violations do not recur, as is already done in some formal enforcement actions for such offenses.

Rule 7.38(c) – Odd and Mixed Lots – Prohibitions

The Corporation proposes to delete language in the current subsection (c) of Rule 7.38 that presently defines all odd-lot violations to be conduct inconsistent with just and equitable principles of trade. The Corporation believes that this change keeps Rule 7.38(c) consistent with current Commission caselaw because many violations of Exchange odd-lot rules do not necessarily involve the bad faith or unethical conduct, which has been determined to be required for a finding of "conduct inconsistent with just and equitable principles of trade," as that standard has been clarified by the Commission in decisions such as In re. Calvin David Fox.[6] This and other changes in this filing would also permit minor odd-lot violations to be disposed of through the MRP.

Rule 9.2(c) – Customer Records

The Corporation proposes to change Rule 9.2(c) by adding the single word "current," to clarify and reiterate the obligation that firms with customer accounts must not only keep records of their customer accounts, but also keep them current.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[7] in general, and with Section 6(b)(5) of the Act,[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 a free and open market and a national market system, and, in general, to protect investors and the public interest.

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6 See id.

7 15 U.S.C. 78f.

8 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 would result in 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

Written comments were neither solicited nor received.

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 Amex consents, the Commission will:

A. by order approve such 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:

- 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-2008-32 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-NYSEArca-2008-32. 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 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 Number SR-NYSEArca-2008-32 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.[9]

Florence E. Harmon
Deputy Secretary

[9] 17 CFR 200.30-3(a)(12).