

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55215; File No. SR-NYSEArca-2006-51)

January 31, 2007

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to Amendments to Registration Rules of NYSE Arca, Inc.

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 November 14, 2006, 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 substantially prepared by the Exchange. The Exchange filed Amendment No. 1 to the proposed rule change on January 12, 2007. 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 NYSE Arca Rules governing registration of OTP Holders³ and employees of Option Trading Permit (“OTP”) Firms⁴ in order to: (i) clarify registration procedures and make them consistent with the procedures of other self-regulatory organizations (“SROs”), and (ii) include an additional registration category in connection with the Exchange’s new options trading platform, OX.⁵ The text of the proposed rule change is

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See NYSE Arca Rule 1.1(q).

⁴ See NYSE Arca Rule 1.1(r).

⁵ See Securities Exchange Act Release No. 54238 (July 28, 2006), 71 FR 44758 (August 7, 2006) (SR-NYSEArca-2006-13).

available at NYSE Arca, the Commission's Public Reference Room, and

www.nysearca.com/regulation/filings.asp.

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 Exchange 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 Exchange proposes to amend NYSE Arca Rules 2.5, 2.23, 6.33, 6.34A and 9.27 (referred to herein as Rules 2.5, 2.23, 6.33, 6.34A and 9.27) in order to clarify registration procedures and ongoing compliance obligations for OTP Holders and OTP Firms and their registered persons. Further, the Exchange proposes to amend these rules so that they are consistent with industry practices and with the operation of the Central Registration Depository ("CRD") system maintained by the National Association of Securities Dealers, Inc. ("NASD"). The proposed rule changes are similar to the rules of other SROs.⁶

⁶ See NASD Rules 1070(d) and 1120(a) and (b) and New York Stock Exchange LLC ("NYSE") Rule 345A and Supplementary Material .15(1)(b) to NYSE Rule 345.

Registration Category

The Exchange proposes to amend Rule 2.5(b)(10)(A) to include the registration category, Market Maker Authorized Trader,⁷ for individuals who perform market making activity on behalf of an OTP Firm on the OX trading facility. This registration category is new at this time because Market Maker Authorized Traders did not exist at NYSE Arca until the adoption of the OX trading rules in July 2006.⁸ These individuals will be required to maintain registration requirements similar to existing Market Makers on the Exchange.

Exceptions to Required Registration Examinations

The Exchange proposes to further amend Rule 2.5(b)(10)(A) to include certain exceptions to the registration examination requirements. Currently, similar, but not identical, exceptions are included as circumstances under which the Exchange will consider a waiver of the registration examination requirements under Rule 2.5(c), as described below. The Exchange believes that the added exceptions are clear cases when registration requirements need not apply, and does not believe that it is necessary to consider similar circumstances on a case-by-case basis as required under the waiver provisions in Rule 2.5(c).

Consideration of Requests for Waivers of Examination Requirements

The Exchange proposes to amend Rule 2.5(c), which governs requests from OTP Firm applicants to waive applicable examinations requirements prescribed by the Exchange. Specifically, the Exchange proposes to add new waiver standards under which the Exchange has discretion to grant waivers so that the Exchange's practices are generally consistent with the

⁷ See NYSE Arca Rule 6.1A(9).

⁸ See note 5, *supra*.

criterion set forth in NASD Rule 1070(d) and Supplementary Material .15(1)(b) to NYSE Rule 345 and to make other clarifications.

In connection with changing the waiver standards, the Exchange also proposes to delete the remainder of Rule 2.5(c), which sets forth specific listed instances when the Exchange will waive required examinations. The purpose for deleting this language is because the Exchange proposes: (i) waiver standards under which the Exchange has discretion to grant waivers rather than specific listed circumstances, which is consistent with the other SROs as noted above, and (ii) to make certain of these specific instances actual exceptions to the registration examination requirements in Rule 2.5(b)(10)(A), rather than circumstances under which the Exchange will consider a waiver. As explained above, the Exchange believes that such circumstances are clear cases when registration requirements need not apply, and does not believe that it is necessary to consider such circumstances on a case-by-case basis as required under the waiver provisions in Rule 2.5(c).

Filing of Registration Documentation with the Exchange

The Exchange proposes to amend Rule 2.23, which governs registration procedures for employees of OTP Firms. Specifically, the Exchange proposes to amend the rule to provide manual registration procedures for registration categories (e.g., floor clerk) for which CRD does not provide electronic registration.⁹

⁹ In 2005, NYSE Arca (formerly Pacific Exchange, Inc.) became a participant of the CRD system for maintenance of certain registration categories with the Exchange. As part of this implementation, applicable rules of the Exchange were amended to address filing appropriate registration documentation electronically with the CRD system for employees of ETP Holders. These amended rules, however, inadvertently omitted certain registration procedures for positions not available on the CRD system.

Continuing Education Requirements

Currently, employees of OTP Firms who wish to initiate and maintain registration with the Exchange must follow two separate rules - Rules 2.23 and 9.27. Rule 2.23 sets forth initial registration requirements, whereas Rule 9.27 sets forth the continuing education requirements that must be satisfied to maintain registration with the Exchange.

In order to simplify compliance for employees of OTP Firms, the Exchange proposes to provide continuing registration requirements in the same rule as initial registration requirements. Specifically, the Exchange proposes to add continuing education requirements to new Rule 2.23(d) and certain definitions and clarifications with respect thereto to new Commentary .01 - .06 to Rule 2.23.

The continuing education requirements in proposed new Rule 2.23(d) and related Commentary .01 - .06 to Rule 2.23 are substantially similar to those contained in current Rule 9.27(c) and (d) and related Commentary .01 - .06 to Rule 9.27(c) and (d), except that the Exchange has made certain clarifications so that the continuing education requirements and related definitions and clarifications are more closely aligned with NASD Rule 1120 and NYSE Rule 345A and other clean-up changes, as set forth in detail below.

Specifically, the Exchange proposes in Rule 2.23(d)(1) that the content of the Regulatory Element of the program shall be consistent with the standards set forth by the Exchange and other SROs, rather than just determined by the Exchange as is set forth in the current Rule 9.27(c). In addition, the Exchange proposes to add language in Rule 2.23(d)(2)(B)(i) providing that if an OTP Firm's or an OTP Holder's analysis establishes the need for supervisory training

for persons with supervisory responsibilities, such training must be included in the OTP Firm's or OTP Holder's training plan. Such language is not included in the current Rule 9.27(d)(2)(A).

The Exchange has not proposed for inclusion NASD's continuing education requirements applicable to research analysts because the Exchange does not provide for research analyst registration. Additionally, unlike current NASD Rule 1120(a)(6), the Exchange is not proposing to permit OTP Firms or OTP Holders to self-administer the Regulatory Element of continuing education, as the Exchange does not have the resources or capability to offer an approval process or monitoring of such self-administered programs. OTP Firms and OTP Holders will be responsible for ensuring continuing education information related to their associated persons is received by the firm in a timely manner and, as such, shall designate a person or persons to receive applicable information via electronic mail directly from the CRD system. OTP Firms and OTP Holders will not be required to submit to the Exchange the names of such designated persons, as is required by the current NASD rule. This is based on the fact that the Exchange does not have a contact management system comparable to that of NASD.

With respect to the proposed new Commentary to Rule 2.23, the Exchange proposes to add a definition of "registered person" to Commentary .01 to Rule 2.23 as is currently set forth in Commentary .01 to Rule 9.27(c) and (d), except that the definition that the Exchange is proposing does not include the carve-out for "any such person whose activities are limited solely to the transaction of business on the facilities of the Exchange," but rather includes a carve-out for "such persons who are not subject to the registration requirements for traders as set forth in Rule 2.5(b)(10)(A)." In addition, the Exchange proposes in Commentary .03 to Rule 2.23 to correct a mistake in the language in Commentary .03 to Rule 9.27(c) and (d) to provide that

reassociated registered persons shall participate in the Regulatory Element at intervals based on their initial base date, rather than their new base date. Lastly, the Exchange proposes in Commentary .06 to Rule 2.23 to change the reference of “any registered member who is an OTP Holder,” which is currently in Commentary .06 to Rule 9.27(c) and (d), to “any registered person who is associated with an OTP Firm or OTP Holder” in order to be consistent with the language of other SROs.

In connection with the addition of proposed new Rule 2.23(d) and Commentary .01 - .06 to Rule 2.23 as set forth above, the Exchange proposes to delete the specific continuing education requirements in Rule 9.27(c) and (d) and the related Commentary .01 - .06 to Rule 9.27(c) and (d). The purpose for deleting the continuing education requirements in Rule 9.27(c) and (d) is to avoid needless repetition and risk of inconsistencies. The Exchange proposes to include cross-reference language in Rule 9.27(c) that provides that registered persons shall follow the continuing education requirements set forth in Rule 2.23(d).

In addition, the Exchange proposes to delete current Rule 2.23(i) with respect to transition to the CRD system because registration with CRD is already provided for in Rule 2.23(a).

Orientation Program for Certain Market Makers and Market Maker Authorized Traders

The Exchange proposes to amend Rules 6.33 and 6.34A(b)(2) to provide that Market Maker and Market Maker Authorized Trader applicants to the Exchange who have previously successfully completed the required examination and have been absent from registration with the Exchange in such capacity for six months or more will be required to complete an orientation program prescribed by the Exchange.

The Exchange proposes these rule changes because it believes that Market Makers and Market Maker Authorized Traders that have been absent from the Exchange for six months or more should be required to take a program to reacquaint them with the requirements of the Exchange due to the length of time that they have been absent from the Exchange.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Section 6(b)(5)¹¹ 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.

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

Written comments on the proposed rule change 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

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

the Exchange 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-2006-51 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-2006-51. 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. 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-2006-51 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Florence E. Harmon
Deputy Secretary

¹² 17 CFR 200.30-3(a)(12).