

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59716; File No. SR-NYSEArca-2009-11)

April 6, 2009

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change to Amend Rule 6.69 - Reporting Duties

I. Introduction

On February 13, 2009, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”), filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Rule 6.69 to revise the procedures for reporting open outcry trades that occur on the options trading floor. The proposed rule change was published for comment in the Federal Register on March 3, 2009.³ The Commission received no comment letters on the proposal.

This order approves the proposed rule change.

II. Description

NYSE Arca’s proposal revises the procedures for reporting open outcry trades that occur on the options trading floor. Under existing NYSE Arca rules, all option transactions that occur on the options trading floor must immediately be reported to the Exchange, in a form and manner prescribed by the Exchange, for dissemination to the Options Price Reporting Authority (“OPRA”).⁴ This requirement applies to all OTP Holders who are required to report trades either directly to OPRA or to another party who is responsible for reporting trades to OPRA.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 59440 (February 24, 2009), 74 FR 9325 (“Notice”).

⁴ For transactions executed on the Exchange’s electronic trading platform, NYSE Arca will report the trade directly to OPRA.

Currently, pursuant to existing Rule 6.69(b), the responsible party for reporting a transaction is the party that participates on the transaction as the seller.

The proposed rule change makes several clarifying changes to these reporting obligations. First, the revised rule provides that whenever a Floor Broker is participating on one side of a transaction, the Floor Broker becomes the responsible party for reporting the trade, regardless of whether the Floor Broker is the buyer or seller. Second, in the event that there is a Floor Broker participating on both sides of a transaction, the Floor Broker participating as the seller must report the transaction to the Exchange. Third, for transactions occurring on the Exchange between two Market Makers, the Market Maker participating as the seller must report the transaction to the Exchange.

Finally, in order to further clarify the rules regarding reporting duties, the Exchange proposes a new provision regarding Complex Orders. Since each party to a Complex Order transaction (which involves the simultaneous purchase and/or sale of two or more option series in the same underlying security) could be both buying and selling different series that make up an order, there may be no clearly defined seller, as is required by the existing rule. Consequently, pursuant to the proposed rule change, for Complex Order transactions between two Floor Brokers or two Market Makers, the party responsible for reporting the transaction will be the OTP Holder that first initiated the transaction. This provision does not affect the obligation that a Floor Broker has to report transactions pursuant to proposed Rule 6.69(b)(i), but will have bearing when a Complex Order is executed between two Floor Brokers or between two Market Makers.⁵

⁵ The proposal also eliminates Rule 6.69 Commentary .04, which relates to an obsolete and outdated practice. “Hard cards,” which refer to the cardboard backing of a paper trade ticket, are no longer in use on the trading floor.

Presently, almost all orders on the Exchange are required to be in electronic format prior to representation on the trading floor.⁶ The Exchange represents that, typically, Floor Brokers enter the terms of orders they receive into the Electronic Order Capture System (“EOC”)⁷, and upon consummating a trade, the Floor Broker is able to electronically report the transaction to the Exchange for processing and dissemination to OPRA. In contrast, the Exchange notes that Market Makers trading for their own proprietary account are not required to electronically systematize their orders prior to responding to a call from a Floor Broker. Consequently, a Market Maker acting as a “seller” (who would be the responsible reporting party under the current rules) would be required to re-enter all the order information already contained in the Floor Broker’s EOC system and then send the information to the Exchange for processing. The Exchange believes that it will be more efficient for the Floor Broker to be the responsible party for reporting a transaction. The Exchange further does not believe that requiring a Floor Broker to report every transaction to which they are a party will create any undue hardship or unnecessary burden on the Floor Broker, given the existing requirement that orders be put in electronic format prior to representation on the floor.

III. Discussion and Commission’s Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁸ In particular, the Commission finds that the proposed rule change is

⁶ See Rule 6.67(c).

⁷ The EOC system is the Exchange's electronic audit trail and order tracking system that provides an accurate time-sequenced record of all orders and transactions on the Exchange.

⁸ In approving this proposal, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

consistent with Section 6(b)(5) of the Act,⁹ which requires, among other things, that that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Commission believes that the proposed rule change will increase efficiency in trade reporting and remove potential confusion about which party to a transaction is responsible for reporting such information.

⁹ 15 U.S.C. 78f(b)(5).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-NYSEArca-2009-11) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Florence E. Harmon
Deputy Secretary

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).