

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-59191; File No. SR-NYSEArca-2008-139)

December 31, 2008

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NYSE Arca, Inc.  
Amending the Minor Rule Plan to Increase Certain Sanctions

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 17, 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 prepared by the Exchange. 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 amend Rule 10.12 Minor Rule Plan by increasing certain sanctions contained in the fine schedule. The Exchange also proposes to make minor technical changes at this time. A copy of this filing is available on the Exchange’s Web site at [www.nyse.com](http://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 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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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 (“MRP”) fosters compliance with applicable rules and also helps to reduce the number and extent of rule violations committed by Options Trading Permit (“OTP”) Holders, OTP Firms and associated persons. The prompt imposition of a financial penalty helps to quickly educate and improve the conduct of OTP Holders, OTP Firms and associated persons that have engaged in inadvertent or otherwise minor violations of the Exchange’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 focuses on correcting conduct before it gives rise to more serious enforcement action.

Market Makers on NYSE Arca receive certain rights and privileges in return for meeting certain obligations. These obligations include adhering to certain rules regarding quoting, in-person trading requirements, and fulfilling the terms of a Market Maker Appointment.<sup>3</sup> Failure to comply with rules these governing Market Maker obligations may result in a fine pursuant to the MRP. At this time the Exchange feels the current monetary fine levels contained in the MRP, for violations of certain rules pertaining to Market Makers, are too low, given the serious nature of these rules. In order to act as an effective deterrent against future violations, while also serving as a just penalty for those who commit these violations, the Exchange proposes to raise the fine levels for violations related to certain rules governing Market Maker obligations. A brief description of each proposed changes is shown below.

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<sup>3</sup> See NYSE Arca Rule 6.35 - Appointment of Market Makers.

Rule 10.12(k)(i) 25.

At least 75% of the trading activity of a Market Maker (measured in terms of contract volume per quarter) must be in classes within the Market Maker's Appointment. A failure to comply with the 75% contract volume requirement may result in a fine of \$500.00 for a first offense, \$1,000.00 for a second offense and \$2,500.00 for a third offense. The Exchange proposes to raise these suggested fines to \$1,000.00 for a first offense, \$2,500.00 for a second offense and \$3,500.00 for a third offense.

Rule 10.12(k)(i) 26.

At least 60% of a Market Maker's transactions must be executed by the Market Maker in person or through an approved facility of the Exchange. A failure to comply with this 60% in-person trading requirement may result in a fine of \$500.00 for a first offense, \$1,000.00 for a second offense and \$2,500.00 for a third offense. The Exchange proposes to raise these suggested fines to \$1,000.00 for a first offense, \$2,500.00 for a second offense and \$3,500.00 for a third offense.

Rule 10.12(k)(i) 37.

Market Makers on NYSE Arca must apply for an appointment in one or more classes of option contracts. A Market Maker who fails to apply for an Appointment may be subject to a fine of \$500.00 for a first offense, \$1,000.00 for a second offense and \$1,500.00 for a third offense. The Exchange proposes to raise these suggested fines to \$1,000.00 for a first offense, \$2,500.00 for a second offense and \$3,500.00 for a third offense.

Rule 10.12(k)(i) 39.

Market Makers, including Lead Market Makers, have certain obligations pertaining to quotes and quoting, which are governed by Rule 6.37B. Market Makers or Lead Market

Makes who fail to comply with the Quotation Requirements of Rule 6.37B may be subject to a fine of \$500.00 for a first offense, \$1000.00 for a second offense and \$2,500.00 for a third offense. The Exchange proposes to raise these suggested fines to \$1,000.00 for a first offense, \$2,500.00 for a second offense and \$3,500.00 for a third offense.

Rule 10.12(k)(i) 41.

Market Makers are required to provide accurate quotes, and quote markets within the maximum quote spread differentials prescribed in Rule 6.37. Market Makers who fail to provide accurate quotes within the maximum quote spread differentials may be subject to a fine of \$500.00 for a first offense, \$1,000.00 for a second offense and \$2,000.00 for a third offense. The Exchange proposes to raise these suggested fines to \$1000.00 for a first offense, \$2,500.00 for a second offense and \$3,500.00 for a third offense.

Other Minor Changes

Rule 10.12(h)(25) deals with a failure to meet a 75% Primary Appointment requirement for Market Makers and cites Rules 6.35 Commentary .03 and 6.37(h)(5). The 75% Appointment requirement is actually governed by Rule 6.35(i). The Exchange proposes to make a change so that the correct rule number is properly referenced. A similar change is proposed for the corresponding fine schedule in Rule 10.12(k)(i)25.

Rule 10.12(h)(41) deals with Market Makers who fail to quote markets within the maximum quote spread differentials or who fail to disseminate quotes accurately and cites only Rules 6.37(b)(1) and 6.82(c)(1). However, Rule 6.37A (b) also deals with maximum quote spread differentials, and was inadvertently left out of the MRP. It has always been the intent of the Exchange to have violations of Market Maker quoting obligations eligible for disposition under the MRP. This rule change simply serves to add the previously omitted rule cite at this

time. A similar change is proposed for the corresponding fine schedule in Rule 10.12(k)(i)41.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b)<sup>4</sup> of the Securities Exchange Act of 1934 (the “Act”), in general, and furthers the objectives of Section 6(b)(5)<sup>5</sup> 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 proposal is also consistent with Section 6(b)(6)<sup>6</sup> and 6(b)(7),<sup>7</sup> which requires that members and persons associated with members are appropriately disciplined for violations of Exchange rules and are provided a fair procedure for disciplinary procedures.

### 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

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

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<sup>4</sup> 15 U.S.C. 78f(b).

<sup>5</sup> 15 U.S.C. 78f(b)(5).

<sup>6</sup> 15 U.S.C. 78f(b)(6).

<sup>7</sup> 15 U.S.C. 78f(b)(7).

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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2008-139 on the subject line.

##### Paper Comments:

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

All submissions should refer to File Number SR-NYSEArca-2008-139. 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, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. 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-2008-139 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.<sup>8</sup>

Florence E. Harmon  
Acting Secretary

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<sup>8</sup> 17 CFR 200.30-3(a)(12).