SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60716; File No. SR-NYSEArca-2009-70)

September 24, 2009

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving Proposed Rule Change Amending Rule 10.12 (Minor Rule Plan)

On July 29, 2009, NYSE Arca, Inc. ("NYSE Arca" or "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 amending NYSE Arca Rule 10.12 (Minor Rule Plan) ("MRP") to incorporate additional violations into the MRP, and to increase the fine levels for certain MRP violations. The proposed rule change was published for comment in the Federal Register on August 24, 2009.[3] The Commission received no comments regarding the proposal. This order approves the proposed rule change.

The Exchange proposes to amend its MRP to incorporate violations for trading in restricted classes, and failure to report position and account information. Specifically, the Exchange proposes to implement a fine schedule for Options Trading Permit ("OTP") Holders that effect opening transactions in restricted series of options, inconsistent with the terms of any such restriction, in violation of Rule 5.4(a). This fine will consist of $1,000 for the first violation during a rolling 24-month period, $2,500 for a second violation within the same period, and $5,000 for a third violation during the same period. The Exchange also proposes to incorporate violations for failing to accurately report position and account information to the Exchange on a Large Option Position Report ("LOPR") pursuant to Rule 6.6(a). This fine will consist of $1,000 for the first

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

2 17 CFR 240.19b-4.

3 See Securities Exchange Act Release No. 60518 (August 18, 2009), 74 FR 42725 ("Notice").

violation in a rolling 24-month period, $2,500 for a second violation within the same period, and $5,000 for a third violation within the same period. The Exchange believes that, in most cases, violations of trading in restricted classes and violations of LOPR reporting may be handled efficiently through the MRP. However, any egregious activity or activity that is believed to be manipulative will continue to be subject to formal disciplinary proceedings.[4]

The Exchange also proposes to increase fines for violations of NYSE Arca Rules 6.46(a),[5] 6.47A,[6] and 6.75[7] to $1,000 for the first violation in a rolling 24-month period, $2,500 for a second violation within the same period, and $5,000 for a third violation within the same period. The MRP currently provides for fines of $1,000 for the first violation of Rule 6.46(a) in a rolling 24-month period, $2,500 for a second violation within the same period, and $3,500 for a third violation within the same period. The MRP currently provides for fines of $500 for the first violation of Rule 6.47A in a rolling 24-month period, $1,000 for a second violation within the same period, and $2,500 for a third violation within the same period. The MRP currently provides for a fine of $500 for the first violation of Rule 6.75 in a rolling 24-month period, $1,000 for a

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4 See Notice, supra note 3, 74 FR at 42725-26.

5 NYSE Arca Rule 6.46(a) requires that a Floor Broker handling an order use due diligence to execute the order at the best price or prices available to him, in accordance with the Rules of the Exchange.

6 NYSE Arca Rule 6.47A states that users may not execute as principal orders they represent as agent unless (i) agency orders are first exposed on the Exchange for at least one second or (ii) the user has been bidding or offering on the Exchange for at least one second prior to receiving an agency order that is executable against such bid or offer.

7 NYSE Arca Rule 6.75 states that the highest bid/lowest offer shall have priority over all other orders. In the event there are two or more bids/offers for the same option contract representing the best price and one such bid/offer is displayed in the Consolidated Book, such bid shall have priority over any other bid at the post. In addition, if two or more bids/offers represent the best price and a bid/offer displayed in the Consolidated Book is not involved, priority shall be afforded to such bids in the sequence in which they are made. Rule 6.75 also contains certain provisions related to split-price priority and priority of complex orders.

second violation within the same period, and $2,000 for a third violation within the same period. The Exchange believes that, given the nature of these violations, the current fine levels are inadequate, and that increased fines for these violations are needed to deter future violations.[8]

The Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[9] In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,[10] which requires that the rules of an exchange be designed to, among other things, protect investors and the public interest. The Commission also believes that the proposal is consistent with Sections 6(b)(1) and 6(b)(6) of the Act,[11] which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of Commission and exchange rules. Furthermore, the Commission believes that the proposed changes to the MRP should strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities as a self-regulatory organization in cases where full disciplinary proceedings are unsuitable in view of the minor nature of the particular violation. Therefore, the Commission finds that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d-1(c)(2) under the Act,[12] which governs minor rule violation plans.

In approving this proposed rule change, the Commission in no way minimizes the importance of compliance with NYSE Arca rules and all other rules subject to the imposition of fines under the MRP. The Commission believes that the violation of any self-regulatory

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[8] See Notice, supra note 3, 74 FR at 42726.

[9] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78f(b)(1) and 78f(b)(6).

[12] 17 CFR 240.19d-1(c)(2).

organization's rules, as well as Commission rules, is a serious matter. However, the MRP provides a reasonable means of addressing rule violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Commission expects that NYSE Arca will continue to conduct surveillance with due diligence and make a determination based on its findings, on a case-by-case basis, whether a fine of more or less than the recommended amount is appropriate for a violation under the MRP or whether a violation requires formal disciplinary action under NYSE Arca Rules 10.4-10.11.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act[13] and Rule 19d-1(c)(2) under the Act,[14] that the proposed rule change (SR-NYSEArca-2009-70) be, and it hereby is, approved and declared effective.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon
Deputy Secretary

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 240.19d-1(c)(2).

[15] 17 CFR 200.30-3(a)(12); 17 CFR 200.30-3(a)(44).