

and the rules and regulations thereunder applicable to NSCC because the proposed rule change should promote processing efficiencies between insurance companies and distributors of variable insurance products, thereby facilitating the prompt and accurate processing of securities transactions.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

NSCC 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 relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>9</sup> and Rule 19b-4(f)(6)<sup>10</sup> thereunder in that it (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; (iii) by its terms, does not become operative for 30 days after the date from which it was filed (June 19, 2008), or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**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-NSCC-2008-03 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-SCC-2008-03. 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 a.m. and 3 p.m. Copies of such filings also will be available for inspection and copying at the principal office of NSCC and on NSCC's Web site, <http://www.nsc.com/legal/>. 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-NSCC-2008-03 and should be submitted on or before July 28, 2008.

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

**Florence E. Harmon,**  
*Acting Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-58034; File No. SR-NYSEArca-2008-49]

**Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving Proposed Rule Change To Amend Minor Rule Plan and Certain Underlying Rules**

June 26, 2008.

**I. Introduction**

On May 14, 2008, 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")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend NYSE Arca Rule 10.12 (Minor Rule Plan) ("MRP") and related rules that underlie the MRP. The proposed rule change was published for comment in the **Federal Register** on May 23, 2008.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposal.

**II. Description of the Proposal**

The Exchange proposed to amend its Minor Rule Plan and related rules that underlie the MRP, including Rules 9.2(c) (Customer Records), 11.1 (Adherence to Law), and 11.18 (Supervision).

*Rule 9.2(c)—Customer Records*

The Exchange proposed to change Rule 9.2(c) by adding the 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.

*Rule 11.1—Adherence to Law and Good Business Practices*

The Exchange designated existing Rule 11.1 as Rule 11.1(a) and substituted the word "fair" in the rule's requirement that certain actions of "any OTP Holder or OTP firm shall at all times comply with fair and equitable principles of trade" by the word "just." The Exchange also proposed new Rule 11.1(b), which would require all OTP Holders and firms, their associated persons, and other participants to adhere to the principles of good business practice in the conduct of their business operations.<sup>4</sup> Violations of Rule

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

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

<sup>3</sup> See Securities Exchange Act Release No. 57827 (May 15, 2008), 73 FR 30179 ("Notice").

<sup>4</sup> This rule is based on the current NYSE Rule 401(a).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

11.1(b) would be eligible for MRP disposition.

#### Rule 11.18—Supervision

The current language of Rule 11.18(b) provides that only OTP Holders and firms for whom the Exchange is the Designated Examining Authority (“DEA”) are subject to its supervisory requirements. The Exchange proposed to amend Rule 11.18 to provide that all OTP Holders and firms, regardless of DEA, are subject to the Exchange’s supervisory requirements. The Exchange also proposed to make violations of Rule 11.18 eligible for MRP disposition.

#### Rule 10.12—Minor Rule Plan

The Exchange proposed to make several modifications to its MRP, including to:

- Make several trading and recordkeeping rules eligible for MRP disposition.<sup>5</sup>
- Modify the Recommended Fine Schedule in Rule 10.12(k) so that MRP fines are based not on the number of violations but on the number of times the Exchange has imposed one or more MRP fines upon an OTP Holder or firm for the violation of a particular rule.
- Enable the Exchange to require that violators of Rules 6.94(a) and (c)<sup>6</sup> not only pay the MRP fines for their violations, but also disgorge any quantifiable monetary gains attributable to these violations;
- 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; and
- Enable the Exchange to require violators of Rule 2.23 (Registration) to remit all the fees that they should have paid in connection with registration, in addition to any MRP fines.

### III. Discussion

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.<sup>7</sup> In particular, the Commission believes that the proposed rule change relating to both the MRP

and the related underlying rules is consistent with Section 6(b)(5) of the Act,<sup>8</sup> which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission further believes that the proposed changes to the Exchange’s MRP are consistent with Sections 6(b)(1) and 6(b)(6) of the Act,<sup>9</sup> which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of Commission and Exchange rules. In addition, because the MRP provides procedural rights to contest the fine and permits disciplinary proceedings on the matter, the Commission believes that the MRP, as amended by this proposal, provides a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d)(1) of the Act.<sup>10</sup> Finally, 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,<sup>11</sup> which governs minor rule violation plans. The Commission believes that the proposed rule change would 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.

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 organization’s rules, as well as Commission rules, is a serious matter. However, the Exchange 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 the Exchange would 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 MRP disposition or whether a violation requires formal disciplinary action.

### III. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act<sup>12</sup> and Rule 19d–1(c)(2) under the Act<sup>13</sup> that the proposed rule change (SR–NYSEArca–2008–49) be, and it hereby is, approved and declared effective.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8–15197 Filed 7–3–08; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58056; File No. SR–NYSEArca–2008–67]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Schedule of Fees and Charges for Exchange Services in Order To Extend the Current Pilot Program Regarding Transaction Fees Charged for Trades Executed Through the Intermarket Options Linkage

June 30, 2008.

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 June 24, 2008, 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 prepared substantially 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 its Schedule of Fees and Charges for Exchange Services in order to extend until July 31, 2009 the current pilot program regarding transaction fees

<sup>5</sup> See Notice, 73 FR at 30180, for a detailed description of these additions.

<sup>6</sup> Rules 6.94(a) and (c) require OTP Holders to avoid violations of its trade-through rules and, where such violation is unavoidable, to provide satisfaction orders.

<sup>7</sup> In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78f(b)(1) and 78f(b)(6).

<sup>10</sup> 15 U.S.C. 78f(b)(7) and 78f(d)(1).

<sup>11</sup> 17 CFR 240.19d–1(c)(2).

<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>13</sup> 17 CFR 240.19d–1(c)(2).

<sup>14</sup> 17 CFR 200.30–3(a)(12) and 17 CFR 200.30–3(a)(44).

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

<sup>2</sup> 17 CFR 240.19b–4.