information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2009–85 and should be submitted on or before October 22, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–23698 Filed 9–30–09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60716; File No. SR–NYSEArca–2009–70]

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

September 24, 2009.

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 affect 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 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 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 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

[16] 17 CFR 200.30–3(a)(12).

[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'').

[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.

[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).

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.

[FR Doc. E9–23625 Filed 9–30–09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60718; File No. S7–35–08]

Order Pursuant to Section 36 of the Securities Exchange Act of 1934 Extending Temporary Exemptions from Sections 5 and 6 of the Exchange Act for Broker-Dealers and Exchanges Effecting Transactions in Credit Default Swaps

September 25, 2009.

On December 24, 2008, in connection with its efforts to facilitate the establishment of one or more central counterparties for clearing credit default swap (''CDS'') transactions,[1] the Securities and Exchange Commission (''Commission'') granted temporary, conditional exemptions from the registration requirements under Sections 5 and 6 of the Securities Exchange Act of 1934 (''Exchange Act'') to certain exchanges and broker-dealers (''December Order'').[2] Subject to conditions specified in the December Order, any exchange that effects or reports transactions in CDS that are not swap agreements (''non-excluded CDS'')[3] and is not otherwise subject to the requirements under Sections 5 and 6 of the Exchange Act,[4] and the rules and regulations thereunder, is exempt from the requirement to register as a national securities exchange.[5] In addition, any broker or dealer that effects or reports transactions in non-excluded CDS on such an exchange is exempt from the prohibition on trading activity in Section 5 of the Exchange Act. The December Order expires on September 25, 2009. Pursuant to its authority under Section 36 of the Exchange Act,[6] for the reasons described herein, the Commission is today extending the exemption granted in the December Order until March 24, 2010.

Section 5 of the Exchange Act states that ''[i]t shall be unlawful for any broker, dealer, or exchange, directly or indirectly, to make use of the mails or any means or instrumentality of interstate commerce for the purpose of using any facility of an exchange * * * to effect any transaction in a security, or to report any such transactions, unless such exchange (1) is registered as a national securities exchange under section 6 of [the Exchange Act], or (2) is exempted from such registration * * * by reason of the limited volume of transactions effected on such exchange * * *.'' Section 6 of the Exchange Act sets forth a procedure whereby an exchange[7] may register as a national securities exchange.[8]

Section 36 of the Exchange Act provides that the Commission, ''by rule, regulation, or order, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of [the Exchange Act] or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.''[9] To facilitate the establishment of one or more exchanges for non-excluded CDS, the Commission in the December Order exercised its authority under Section 36 to temporarily exempt any exchange, broker, or dealer that effects transactions in non-excluded CDS from the prohibition in Section 5 of the Exchange Act and (in the case of exchanges) the requirements in Section 6 of the Exchange Act and the rules and regulations thereunder.

The exemptions were conditioned on an exchange providing notice to the Commission of its reliance on the December Order, and certain other requirements that generally mirror those applicable to alternative trading systems under Regulation ATS.[10] As we noted at the time, the temporary exemptions from Sections 5 and 6 of the Exchange Act in the December Order were designed to allow brokers, dealers, and exchanges to effect transactions in non-excluded CDS on exchanges, while providing an opportunity for the Commission to gain experience with the

[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).

[1] A CDS is a bilateral contract between two parties, known as counterparties. The value of this financial contract is based on underlying obligations (''reference obligations'') of a single entity (a ''reference entity'') or on a particular security or other debt obligation (''reference security''), or an index of several such entities, securities, or obligations. The obligation of a seller under a CDS to make payments under a CDS contract is triggered by a default or other credit event as to such entity or entities or such security or securities. Investors may use CDS for a variety of reasons, including to offset or insure against risk in their fixed-income portfolios, to take positions in bonds or in segments of the debt market as represented by an index, or to capitalize on the volatility in credit spreads during times of economic uncertainty. The over-the-counter (''OTC'') market for CDS poses systemic risk to the financial system as well as operational risks, risks relating to manipulation and fraud, and regulatory arbitrage risks.

[2] Securities Exchange Act Release No. 59165 (December 24, 2008), 74 FR 133 (January 2, 2009).

[3] Section 3A of the Exchange Act limits the Commission's authority over swap agreements, as defined in Section 206A of the Gramm-Leach-Bliley Act. 15 U.S.C. 78c–1. Section 3A excludes both a non-security-based and a security-based swap agreement from the definition of ''security'' under Section 3(a)(10) of the Exchange Act, 15 U.S.C. 78c(a)(10). Section 206A of the Gramm-Leach-Bliley Act defines a ''swap agreement'' as ''any agreement, contract, or transaction between eligible contract participants (as defined in section 1a(12) of the Commodity Exchange Act * * *) * * * the material terms of which (other than price and quantity) are subject to individual negotiation.'' 15 U.S.C. 78c note.

[4] 15 U.S.C. 78e and 78f.

[5] A national securities exchange that effects transactions in CDS would continue to be required to comply with all requirements under the Exchange Act applicable to such transactions. A national securities exchange could form subsidiaries or affiliates that operate exchanges exempt under this order. Any subsidiary or affiliate of a registered exchange could not integrate, or otherwise link, the exempt CDS exchange with the registered exchange, including the premises or property of such exchange for effecting or reporting a transaction, without being considered a ''facility of the exchange.'' *See* Section 3(a)(2) of the Exchange Act, 15 U.S.C. 78c(a)(2).

[6] 15 U.S.C. 78mm.

[7] Section 3(a)(1) of the Exchange Act, 15 U.S.C. 78c(a)(1), defines ''exchange.'' Rule 3b–16 under the Exchange Act, 17 CFR 240.3b–16, defines certain terms used in the statutory definition of exchange. *See* Securities Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844 (December 22, 1998) (''Regulation ATS Adopting Release'') (adopting Rule 3b–16 in addition to Regulation ATS).

[8] 15 U.S.C. 78f. Section 6 of the Exchange Act also sets forth various requirements to which a national securities exchange is subject.

[9] 15 U.S.C. 78mm(a)(1).

[10] *See* Regulation ATS, 17 CFR 242.300 *et seq.* In 1998, the Commission exercised its exemptive authority under Section 36 of the Exchange Act and its general authority under Section 11A of the Exchange Act, 15 U.S.C. 78k–1, to establish a regulatory framework for ''alternative trading systems,'' which perform many of the same functions as exchanges. Under this framework, an entity that, like an exchange, matches the orders in securities of multiple buyers and sellers according to established, non-discretionary methods is exempt from the definition of ''exchange'' if it instead registers as a broker-dealer and complies with Regulation ATS. Regulation ATS is designed, among other things, ''to adopt a regulatory framework that addresses [the Commission's] concerns without jeopardizing the commercial viability of these markets.'' Regulation ATS Adopting Release, *supra* note 7, 63 FR at 70846.