

### *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 either solicited or received with respect to the proposed rule change.

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

The Exchange represented that the proposed rule change qualifies for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act<sup>13</sup> and Rule 19b-4(f)(6) thereunder<sup>14</sup> because it: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.<sup>15</sup>

The Exchange has requested that the Commission waive the 30-day operative delay, so that the proposed rule change may become operative upon filing. The Commission hereby grants the Exchange's request and believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.<sup>16</sup> As a result of this action, the Exchange will be able to implement without undue delay a proposed rule change that reduces the likelihood of quotations or orders on NYSE Alternext Bonds from being stepped ahead of by an insignificant amount. Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.

At any time within 60 days of the filing of the proposed 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-NYSEALTR-2008-13 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-NYSEALTR-2008-13. 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 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-NYSEALTR-2008-13 and should be submitted on or before January 20, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8-30898 Filed 12-29-08; 8:45 am]

BILLING CODE 8011-01-P

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-59117; File No. SR-NYSEArca-2008-134]

### **Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NYSE Arca, Inc. To Amend the Sanctioning Guidelines**

December 18, 2008.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on December 11, 2008, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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 10.16 ("Sanctioning Guidelines"). A copy of this filing is available on the Exchange's Web site at <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 self-regulatory organization 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

<sup>15</sup> In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has determined to waive the five-day pre-filing notice requirement in this case.

<sup>16</sup> For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

NYSE Arca Rule 10.16—NYSE Arca Sanctioning Guidelines, is used by various Exchange bodies that adjudicate disciplinary actions, including the Ethics and Business Conduct Committee (“EBCC”), the NYSE Arca Board of Governors, the Exchange’s Surveillance and Enforcement Departments (collectively, “Adjudicatory Bodies”), in determining appropriate remedial sanctions. The purpose of this proposal is to amend Rule 10.16 in order to (i) replace the existing three tiered monetary sanctioning guidelines with a new single range of suggested monetary penalties, (ii) establish new guidelines applicable to certain violations that are not presently included in the rule, (iii) increase the suggested ranges of monetary and other sanctioning guidelines, (iv) expand the jurisdiction of the guidelines to include Associated Persons of an OTP Firm, and (v) make minor non-substantive changes to Rule 10.16. An explanation of each of the proposed changes is shown below.

Associated Persons

The Rules of NYSE Arca are applicable not only to OTP Holders and OTP Firms but may also apply to Allied Persons, Affiliated Persons, Approved Persons and other employees, (collectively known as “Associated Persons”)<sup>4</sup> of OTP Firms. Accordingly, to clarify that the sanctioning guidelines in Rule 10.16 are intended to apply to all persons using the facilities of the Exchange, the Exchange proposes adding the term “Associated Person” in addition to OTP Holder and OTP Firm, where applicable throughout Rule 10.16.

Suggested Monetary Sanctions

NYSE Arca Sanctioning Guidelines currently features a three tiered monetary penalty structure, where the applicable tier depends on the number of disciplinary actions, involving similar violative conduct by the same party, which occurred within the two years prior to the misconduct at issue. The suggested monetary sanctions increase with each occurrence, creating a range of penalties from a low of \$1,000

for the first disciplinary action to a high of \$50,000 in some cases, for the third and subsequent actions. While continued misconduct on the part of an OTP Holder, OTP Firm or Associated Person may warrant an increased sanction, the Exchange feels that these guidelines do not offer the flexibility needed to always make the best effort of applying an appropriate sanction when needed.

There may be situations where a first disciplinary action against an OTP Firm, OTP Holder or Associated Person is considered extremely egregious, especially in situations where willful intent and/or gross negligence are involved, or where investor protection and the integrity of the markets has been compromised. On the other hand, a second or subsequent disciplinary action against an OTP Firm for violations of administrative guidelines or minor actions involving different Associated Person of the same OTP Firm may not warrant an increased penalty. Therefore, the Exchange feels that a suggested monetary sanction, specifically targeted to the first or a subsequent violation, does not necessarily serve as an adequate deterrent, nor an appropriate penalty to the violative conduct. The Exchange agrees that violations that constitute a second or a subsequent disciplinary action with respect to similar volatile [sic] conduct by the same party may still be relevant and could still be taken into consideration when determining sanctions. Accordingly, the Exchange proposes to include a provision in each of the Specific Sanctioning Guidelines contained in Rule 10.16(e), stating that recent acts of similar misconduct may be considered to be aggravating factors.

In lieu of the three tiered monetary penalty schedule, the Exchange now proposes a single suggested range of monetary penalties of which an Adjudicatory Body may use to determine an appropriate sanction. The Principal Considerations in Determining Sanctions, as contained in Rule 10.16(d) already suggests that the sanctioning guidelines are not intended to necessarily prescribe fixed sanctions for particular violations, but rather provide direction for Adjudicatory Bodies to assist them in imposing sanctions consistently and fairly. The Exchange feels that the broader range of suggested penalties will afford Adjudicatory Bodies a greater latitude than they presently have, when it comes to applying sanctions in a fair and consistent manner.

In conjunction with the move to a single range of suggested monetary sanctions, the Exchange proposes to

increase both the minimum and maximum suggested monetary penalty levels. The Exchange notes that the NYSE Arca Minor Rule Plan,<sup>5</sup> which is applied in lieu of formal disciplinary proceedings for violations that have been determined to be minor in nature, already authorizes monetary sanctions of up to \$5,000.

The Exchange feels the current minimum monetary penalty levels contained in Rule 10.16, which range from between \$1,000 and \$5,000 are therefore too low, given the serious nature of the violations covered by these sanction guidelines, verses [sic] less serious minor rule violations. 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 feels a minimum suggested sanction of \$10,000 is appropriate. Present guidelines contained in Rules 10.16(e)–(f) call for a maximum suggested sanctions of \$25,000 to \$50,000, depending on the violation. Once again, given the serious nature of the violations covered by these sanction guidelines, the Exchange feels these maximum suggested penalty levels are too restrictive. The Exchange now proposes to raise the maximum suggested penalty level to \$100,000, for violations covered by Rule 10.16(e)–(f). As a result, the new minimum penalty is \$10,000 and the new maximum penalty \$100,000.

Proposed Sanctioning Guidelines for Certain Violations Not Previously Covered

NYSE Arca proposes adopting new sanctioning guidelines for two additional categories of rule violations. New Rule 10.16(g) will offer guidelines for sanctions related to violations of NYSE Arca for Rule 9—Conducting Business with the Public, while new Rule 10.16(h) will offer guidelines for sanctions related to violations of NYSE Arca Rule 11—Business Conduct. Rule 9 generally consists of rules specifically intended to provide protection to public customers and their accounts. Rule 11 generally consists of rules that are intended to prevent actions that could be deemed detrimental to the welfare and protection of investors, or conduct or proceedings inconsistent with just and equitable principals [sic] of trade. While these proposed guidelines are substantially similar to those contained in Rules 10.16(e)–(f), the Exchange is proposing a modified range of suggested monetary sanctions.

NYSE Arca feels that the two proposed rules described above, which

<sup>4</sup> NYSE Arca Rule 1.1(d) defines an “Associated Person” as a person who is a partner, officer, director, member of a limited liability company, trustee of a business trust, employee of an OTP Firm or any person directly or indirectly controlling, controlled by or under common control with an OTP Firm.

<sup>5</sup> See NYSE Arca Rule 10.12.

encompass some extremely serious violations, appropriately set forth increased ranges of monetary penalties. Therefore, the Exchange proposes sanctioning guidelines that include a suggested minimum fine level of \$15,000 and a maximum suggested fine level of \$150,000. The Exchange feels that these monetary levels are appropriate given the serious nature of these offenses. This proposed range will act not only as an effective deterrent against future violations, but will also provide an appropriate penalty.

#### Suspension

Each of the sanctioning guidelines provided for in Rule 10.16, along with the new guidelines outlined in this proposal, contain [sic] a provision that allows for the suspension or expulsion of a named party in a disciplinary action. Under existing guidelines, the Exchange has no option other than the expulsion of a named party if it is determined that a two year suspension is not adequate. The Exchange feels that there are certain violations where a suspension of more than two years is appropriate, but does [sic] go as far as to warrant an expulsion or permanent bar. In particularly egregious cases involving a pattern of misconduct, the guidelines allow for an expulsion or permanent bar of the named party. The Exchange now proposes to expand the allowable suspension to up to five years. The Exchange feels that by expanding the time frame of which a named party may be subject to a suspension, Adjudicatory Bodies will be afforded greater flexibility in determining appropriate sanctions.

#### Miscellaneous and Minor Revisions

Rule 10.16(b)(2)—This provision presently states that there are certain regulatory incidents that are not relevant to the determination of disciplinary sanctions, and goes on to list examples. The Exchange proposes to revise the language of this provision by saying that *any* regulatory incident, which is not relevant to the determination of a disciplinary sanction, should not be considered. Since all non-relevant incidents should not be considered, the Exchange proposes removing the existing examples in the provision.

Rule 10.16(b)(5)—This provision deals with restitution when an identifiable party has suffered a quantifiable loss as a result of a named party's misconduct. Since it is not always possible to determine an exact loss in every instance, the Exchange proposes changing the criteria for calculating orders of restitution from the

actual loss sustained by the injured party, to a reasonable calculation of any loss sustained. It will be the responsibility of the Adjudicatory Body to calculate what is considered a reasonable loss, based on the evidence. Adjudicatory Bodies will continue to be required to include a description of the method used to calculate any restitution as part of any decisions rendered.

The Exchange also proposes at this time to correct a minor typographical error, which appears in the first sentence of this subsection of the existing rule text. The correction is marked on the attached on the Exhibit 5.<sup>6</sup>

Rule 10.16(b)(7)—The Adjudicatory Bodies may require OTP Holders to obtain additional training before continuing as a floor official. NYSE Arca does not utilize OTP Holders as floor officials. Therefore the Exchange proposes removing any reference to floor official training contained in this provision. The Exchange also proposes making minor, non-substantive, changes to this provision.

Rule 10.16(d)(2)—The Exchange proposes adding "affiliated OTP Holder or OTP Firm" as an acceptable entity that an individual may acknowledge their misconduct to. This will serve to include individuals that may be affiliated with an OTP Holder OTP Firm, such as officers, partners or other Associated persons, but who are not technically employed by that firm.

Rule 10.16(d)(3)—The Exchange proposes replacing the word "employer" with the phrase OTP Holder or OTP Firm.

Rule 10.16(d)(8)—The Exchange proposes replacing the word "employer" with the phrase OTP Holder or OTP Firm or other relevant party.

Rule 10.16(d)(12)—The Exchange proposes replacing the word "supervisor" with the phrase employer or associated OTP Holder or OTP Firm.

Rule 10.16(e)—The Exchange proposes adding Rule 6.37A in addition to the list of covered rules contained in this provision, as it too, is applicable to Market Maker Obligations.

#### 2. Statutory Basis

The proposed rule change is consistent with Section 6(b)<sup>7</sup> of the Securities Exchange Act of 1934 (the "Act"), in general, and furthers the objectives of Section 6(b)(5)<sup>8</sup> in particular in that it is designed to

<sup>6</sup> The Commission notes that Exhibit 5 is attached to the rule filing filed with the Commission but not to this release.

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

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

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>9</sup> and 6(b)(7),<sup>10</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 such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the 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

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

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

- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR-NYSEArca-2008-134 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-2008-134. 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 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-2008-134 and should be submitted on or before January 20, 2009.

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

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

[FR Doc. E8-30938 Filed 12-29-08; 8:45 am]

**BILLING CODE 8011-01-P**

**SMALL BUSINESS ADMINISTRATION**

[Disaster Declaration # 11596 and # 11597]

**Texas Disaster # TX-00326**

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a notice of an Administrative declaration of a disaster for the State of Texas dated 12/18/2008.

*Incident:* Severe Storms and Tornados.

*Incident Period:* 12/08/2008.

*Effective Date:* 12/18/2008.

*Physical Loan Application Deadline Date:* 02/16/2009.

*Economic Injury (EIDL) Loan Application Deadline Date:* 09/18/2009.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* Grayson.

*Contiguous Counties:*

Texas: Collin, Cooke, Denton, Fannin.

Oklahoma: Bryan, Love, Marshall.

The Interest Rates are:

|   | Percent |
|---|---------|
| Homeowners With Credit Available Elsewhere .....                                      | 5.375   |
| Homeowners Without Credit Available Elsewhere .....                                   | 2.687   |
| Businesses With Credit Available Elsewhere .....                                      | 7.750   |
| Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere ..... | 4.000   |
| Other (Including Non-Profit Organizations) With Credit Available Elsewhere .....      | 4.500   |
| Businesses And Non-Profit Organizations Without Credit Available Elsewhere .....      | 4.000   |

The number assigned to this disaster for physical damage is 11596 C and for economic injury is 11597 O. The States which received an EIDL Declaration # are Texas, Oklahoma. (Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

December 18, 2008.

**Sandy K. Baruah,**  
*Acting Administrator.*

[FR Doc. E8-31000 Filed 12-29-08; 8:45 am]

**BILLING CODE 8025-01-P**

**SMALL BUSINESS ADMINISTRATION**

**Interest Rates**

The Small Business Administration publishes an interest rate called the optional "peg" rate (13 CFR 120.214) on a quarterly basis. This rate is a weighted average cost of money to the government for maturities similar to the average SBA direct loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. This rate will be 4.500 (4½) percent for the January-March quarter of FY 2009.

Pursuant to 13 CFR 120.921(b), the maximum legal interest rate for any third party lender's commercial loan which funds any portion of the cost of a 504 project (see 13 CFR 120.801) shall be 6% over the New York Prime rate or, if that exceeds the maximum interest rate permitted by the constitution or laws of a given State, the maximum interest rate will be the rate permitted by the constitution or laws of the given State.

**Grady B. Hedgespeth,**

*Director, Office of Financial Assistance.*

[FR Doc. E8-30998 Filed 12-29-08; 8:45 am]

**BILLING CODE 8025-01-P**

**DEPARTMENT OF STATE**

[Public Notice 6462]

**Shipping Coordinating Committee; Notice of Subcommittee Meetings**

Various subcommittees of the Shipping Coordinating Committee (SHC) will be holding public meetings in January 2009. Members of the public may attend these meetings up to the seating capacity of the rooms. Details for the meetings, including points of contact for further information, are provided in this notice.

**I. Facilitation**

The SHC's Subcommittee on Facilitation will conduct an open meeting at 9:30 a.m. on Wednesday, January 7, 2009, in Room 1303 of the United States Coast Guard Headquarters building, 2100 Second Street, SW., Washington, DC 20593. The primary purpose of the meeting is to prepare for the thirty-fifth session of the Facilitation Committee (FAL 35) of the International Maritime Organization (IMO) to be held 12-16 January 2009 at the IMO's London Headquarters. The primary matters for discussion for FAL 35 will include:

—General review and implementation of the Convention on Facilitation of International Maritime Traffic;

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