



Number 10-14
March 15, 2010

ATTENTION: CHIEF EXECUTIVE OFFICER, MANAGING PARTNERS,
COMPLIANCE AND LEGAL DEPARTMENTS

TO: ALL NYSE MEMBERS AND MEMBER ORGANIZATIONS AND
NYSE ARCA ETP HOLDERS

SUBJECT: BUSINESS CONTINUITY PLANNING AND EMERGENCY
POWERS - NYSE RULE 49 AND NYSE ARCA EQUITIES RULE
2.100

I. Purpose

The purpose of this Information Memo is to advise NYSE members and member organizations and NYSE Arca ETP Holders that, as part of the NYSE Euronext's overall Business Continuity Planning efforts, New York Stock Exchange, LLC ("NYSE") and NYSE Arca, Inc. ("NYSE Arca") (collectively, the "Exchanges") have adopted new NYSE Rule 49 and amended NYSE Arca Equities Rule 2.100.¹

As described more fully below, these Rules provide the Exchanges with the authority, under circumstances where the NYSE systems and/or facilities located at 11 Wall Street are substantially impaired or inoperable, to declare an Emergency Condition (defined below) and to transfer the trading of NYSE-listed securities to the systems and facilities of NYSE Arca.

II. Background

For several years, NYSE Euronext has participated in the "Pandemic Planning and Regulatory Coordination Working Group", an inter-regulatory initiative of the Securities and Exchange Commission (the "Commission" of "SEC") that was established to ensure that self-regulatory organizations have sufficient rules and procedures in place to effectively address pandemic or other emergency conditions that could disrupt the markets (known as "Business Continuity Planning"). NYSE Euronext has designated NYSE Arca as a back-up trading facility for the NYSE as part of NYSE Euronext's broader efforts pursuant to that initiative to develop a comprehensive Business

¹ These rule changes are effective as of December 16, 2009. See Securities Exchange Act Release Nos. 61177 (December 16, 2009), 74 FR 68643 (December 28, 2009) (SR-NYSE-2009-105) and 61178 (December 16, 2009), 74 FR 68434 (December 24, 2009) (SR-NYSEArca-2009-90).

Continuity Plan for the Exchanges. The changes to NYSE Rule 49 and NYSE Arca Equities Rule 2.100 were adopted to effectuate that part of the Plan.

III. NYSE Rule 49 and NYSE Arca Equities Rule 2.100

NYSE Rule 49 and NYSE Arca Equities Rule 2.100 provide the Exchanges with the authority to respond to a regional or national emergency², such as a pandemic crisis, or other situations, such as government action or environmental causes, whereby the NYSE's systems and/or facilities located at 11 Wall Street are substantially impaired or inoperable (an "Emergency Condition"), so that the securities markets in general, and the NYSE's market in particular, may continue to perform in a manner consistent with the protection of investors and in pursuit of the public interest.

A. Declaration of an Emergency Condition

Upon the declaration of an Emergency Condition by a qualified NYSE and/or NYSE Arca officer,³ the Exchanges will designate NYSE Arca to receive and process bids and offers and to execute orders on behalf of the NYSE, and will coordinate the orderly transfer of the trading of NYSE-listed securities to the systems and facilities of NYSE Arca. The Exchanges will make concerted efforts to alert and consult with the SEC before invoking their authority under the Rules.

Once an Emergency Condition has been declared, the Exchanges will broadcast the declaration to the market using any and all available communications resources and will then halt all trading conducted on the NYSE's Trading Floor. The Exchanges will open trading of NYSE-listed securities on the systems and facilities of NYSE Arca as soon thereafter as possible, but not earlier than at least the next trading day.

During the halt, all unexecuted orders will remain on the NYSE's systems unless cancelled by the entering NYSE member or member organization. **Please note that, in the event the NYSE's Trading Floor is rendered inoperable, it will not be technically feasible for NYSE to route unexecuted orders from the NYSE's systems and facilities to the systems and facilities of NYSE Arca. As a result, NYSE members and member organizations should ensure that, in the event of an Emergency Condition, their order entry systems are capable of re-routing orders for NYSE-listed securities to the systems and facilities of NYSE Arca.** In addition, those members and member organizations that have open orders on the NYSE at the time an Emergency Condition is declared should cancel those orders and re-enter them on NYSE Arca as soon as possible.

² The term "emergency" is defined in Section 12(k)(7) of the Securities Exchange Act of 1934, as amended (the "Act"). See 15 U.S.C. § 78l(k)(7). See also NYSE Rule 49(a)(30) and NYSE Arca Equities Rule 2.100(a)(3).

³ The terms "qualified Exchange officer" and "qualified Corporation officer" are both defined as the "NYSE Euronext Chief Executive Officer or his or her designee, or the NYSE Regulation, Inc. Chief Executive Officer or his or her designee." See NYSE Rule 49(a)(3) and NYSE Arca Equities Rule 2.100(a)(3). In the event that none of these individuals is able to act, the next "most senior surviving officer of NYSE Euronext or NYSE Regulation, Inc." may assume the authority provided under the Rules. See id.

Once trading of NYSE-listed securities commences on the systems and facilities of NYSE Arca pursuant to an Emergency Condition, any unexecuted orders left open on the NYSE's systems and facilities will be processed.

B. Processing trades of NYSE-listed securities on or through NYSE Arca systems and facilities during an Emergency Condition

In an Emergency Condition, the NYSE will, as a practical and legal matter, continue to operate as an exchange using the systems and facilities of NYSE Arca.⁴ Thus, for the duration of the Emergency Condition, trades in NYSE-listed securities will be identified by "N" on the Consolidated Tape and quotes will be designated as NYSE quotes in the Consolidated Quote Stream, notwithstanding the fact that they were processed on or through the NYSE Arca systems and facilities.⁵

During the Emergency Condition, NYSE members and member organizations will be required to comply with NYSE Arca's rules while trading NYSE-listed securities on NYSE Arca and surveillance will be conducted by NYSE Regulation employees responsible for surveillance of NYSE Arca.

C. Use of NYSE Arca trading systems and facilities to trade NYSE-listed securities during an Emergency Condition

1. NYSE-only members, member organizations or Sponsored Participants

NYSE Arca will provide temporary membership and/or access to those NYSE members, member organizations and Sponsored Participants⁶ that are not already members or sponsored participants of NYSE Arca at the time an Emergency Condition is declared so that they can submit bids and offers, and execute trades, in NYSE-listed securities on or through the systems and facilities of NYSE Arca. NYSE Arca will establish inactive equity trading permits and connectivity for such members and member organizations, which will become active during an Emergency Condition. These trading permits will have the same trading rights and obligations as current ETP Holders on

⁴ This is essentially the arrangement used by the American Stock Exchange ("Amex") to continue operations after its trading floor was closed in the wake of the World Trade Center disaster on September 11, 2001. The Amex utilized NYSE systems and facilities to process and trade Amex-listed securities and quotes and trades were marked "A" and considered to have originated from Amex, notwithstanding that they were processed on the NYSE.

⁵ Currently, NYSE Arca trades NYSE-listed securities on a UTP basis and these trades are reported to the Consolidated Tape with a "P" modifier. Upon the declaration of an Emergency Condition and during the trading halt on the NYSE, orders in NYSE-listed securities entered on NYSE Arca on a UTP basis will not be cancelled and will remain available for execution, continuing to print with a "P" modifier. Once trading of NYSE-listed securities resumes on the NYSE Arca systems, executions of such orders will subsequently be printed with an "N" modifier for the duration of the Emergency Condition.

⁶ Under NYSE Rules, a "Sponsored Participant" is a person (as defined in Rule 2(e)) who has entered into a sponsorship arrangement with a Sponsoring Member Organization to obtain authorized access to the Exchange pursuant to this rule. See NYSE Rule 123B.30(a)(ii)(B). A "Sponsoring Member Organization" is a NYSE member or member organization that enters into a written sponsorship agreement to provide a Sponsored Participant with authorized access to the Exchange. See NYSE Rule 123B.30(a)(ii)(A).

NYSE Arca. See NYSE Arca Equities Rule 1.1(m)-(n). Those NYSE-only members and member organizations that are granted temporary membership and/or access will not be required to meet any of NYSE Arca's membership requirements.

Sponsored Participants of the NYSE that do not have sponsored access to NYSE Arca at the time of an Emergency Condition will be permitted to obtain such access through either an existing NYSE Arca member or through an NYSE member or member organization that is granted temporary access in accordance with NYSE Arca Equities Rule 2.100, provided the Sponsored Participants can establish connectivity and complete the required documentation incident to such sponsored access.

Such temporary membership or access will be valid only for the duration of the Emergency Condition until regular trading resumes on NYSE's systems and facilities.

NYSE-only members, member organizations or Sponsored Participants are encouraged to contact NYSE Arca at their earliest convenience about obtaining temporary membership and/or access to NYSE Arca and establishing BCP connectivity. The process for establishing BCP connectivity to NYSE Arca is as follows:

- NYSE-only members, member organizations or Sponsored Participants must request a BCP Connectivity Application/Questionnaire ("BCP CQ") from NYSE Euronext Client Relationship Services ("CRS") at crs@nyx.com;
- The BCP CQ requires a firm to provide a valid NYSE Mnemonic(s) and the mnemonic(s) must clear through a current NYSE Arca Clearing Equity Trading Permit Holder;
- Upon receipt of a completed BCP CQ, CRS will validate the request against permissioned NYSE Mnemonics for the firm and will submit the BCP CQ to NYSE and NYSE Regulation for approval;
- Upon receipt of regulatory approval, CRS will permission the NYSE Mnemonic(s) for capability to send order flow to NYSE Arca in the event of an Emergency Condition.

A description of the specific steps that NYSE-only members, member organizations and Sponsored Participants will need to take in order to access and effect transactions through NYSE Arca systems and facilities will be made available at the time an Emergency Condition is declared.

2. NYSE Arca-only ETP Holders or Sponsored Participants

Similarly, in the event of an Emergency Condition the NYSE will provide temporary membership and/or authorized access to those NYSE Arca ETP Holders or Sponsored Participants⁷ that are not already members, member organizations or sponsored participants of the NYSE.

⁷ Pursuant to NYSE Arca Equities Rules, a "Sponsored Participant" is a person or entity that has entered into a sponsorship arrangement with a Sponsoring ETP Holder in accordance with NYSE Arca Equities Rule 7.29. See NYSE Arca Equities Rule 1.1(tt). In addition, a "Sponsoring ETP Holder" is a broker-dealer

The NYSE will temporarily designate NYSE Arca-only members as NYSE members because, in the event of an Emergency Condition, NYSE Arca systems will not be able to prevent NYSE Arca-only members from trading NYSE-listed securities even though such trades will be printed as NYSE trades. By granting NYSE Arca-only members temporary NYSE membership, the NYSE seeks to avoid any issue as to the legitimacy of such trades. However, NYSE Arca-only members that are granted a temporary membership will not be required to meet any of the NYSE's membership requirements.

For the same reasons, NYSE Arca sponsored participants that are not set up with sponsored access to the NYSE will be authorized access through either an existing NYSE member or member organization or an NYSE Arca member that is granted temporary membership in accordance with NYSE Rule 49 and NYSE Arca Equities Rule 2.100.

Such temporary membership or authorized access will be valid only for the duration of the Emergency Condition until regular trading resumes on the NYSE.

D. NYSE Member, Member Organization and Sponsored Participant obligations during an Emergency Condition

NYSE members, member organizations and Sponsored Participants that quote or trade NYSE-listed securities on or through the systems and facilities of NYSE Arca during an Emergency Condition will be bound by the rules and procedures of NYSE Arca and will be required to comply with the NYSE Arca Equities Rules governing trading (e.g. NYSE Arca Equities Rule 7). For regulatory purposes, such rules will be considered NYSE rules for the duration of the Emergency Condition.

Even though the applicable NYSE Arca Equities rules will govern trading during an Emergency Condition, the NYSE's rules governing member firm conduct will continue to apply to its members, member organizations and Sponsored Participants, including membership and net capital requirements. In addition, the NYSE's listing requirements for its listed securities will continue to apply.

Because of differences between the systems of NYSE and NYSE Arca, NYSE Arca is not able to support the NYSE's Designated Market Makers ("DMMs") operating in the same manner that they operate on the NYSE. In particular, DMMs will not have the Capital Commitment System or the DMM API when acting as market makers on the NYSE Arca system. Thus, NYSE DMMs will not be able to fulfill their DMM obligations, including the affirmative obligation to make a market in a reasonable depth and with reasonable price continuity, and will have limited ability to stabilize the market in their NYSE securities. As a result, during an Emergency Condition NYSE DMMs will not be considered DMMs under the NYSE Rules. In order to ensure that there continues to be a market for NYSE-listed securities, however, DMM member firms will be designated as

that has been issued an ETP by the Corporation who has been designated by a Sponsored Participant to execute, clear and settle transactions on NYSE Arca Marketplace. The Sponsoring ETP Holder must be either (i) a clearing firm with membership in a clearing agency registered with the Commission that maintains facilities through which transactions may be cleared or (ii) a correspondent firm with a clearing arrangement with any such clearing firm. See NYSE Arca Equities Rule 1.1(uu).

“Market Makers” in accordance with NYSE Arca Equities Rule 7.23 and will be required to meet the requirements of those Rules for the duration of an Emergency Condition.⁸ Once regular trading resumes on the NYSE, DMM member firms will resume their roles as DMMs and be subject to their obligations under NYSE rules.

E. Limitations on authority under NYSE Rule 49 and NYSE Arca Equities Rule 2.100

The emergency authority granted under NYSE Rule 49 and NYSE Arca Equities Rule 2.100 is available for up to 10 calendar days from the date that it is invoked. In addition, if approved by the SEC, such authority may be extended. At any time after declaring an Emergency Condition the Exchanges may, with Commission approval, cease or alter the use of their authority under the Rules. The Commission may also unilaterally direct the Exchanges to cease or alter the use of their emergency powers.

The Exchanges will provide their members, member organizations and sponsored participants with advance notice of when the emergency authority will expire or terminate.

V. **Staff Contacts**

Questions concerning NYSE Rule 49 may be addressed to:

Daniel Labovitz, NYSE Regulation, Inc., (212) 656-2081.

Questions concerning NYSE Arca Equities Rule 2.100 may be addressed to:

James Draddy, NYSE Arca, Inc., (312) 442-7930.

Questions concerning NYSE Euronext’s Business Continuity Plan may be addressed to:

Mitch Simon, New York Stock Exchange, LLC, (212) 656-3267.

NYSE Regulation, Inc.

⁸ NYSE DMMs will be required to meet the same margin requirements as NYSE Arca Market Makers.