

effectiveness is appropriate to ensure a smooth transition of the LBI businesses to another entity. In particular, with respect to BCI, time is of the essence as it has been announced that BCI may succeed to LBI's assets as early as September 19, 2008. Therefore, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and designates the proposed rule change as operative upon filing.

#### 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-NYSE-2008-86 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-NYSE-2008-86. 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 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at [www.nyse.com](http://www.nyse.com). 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-NYSE-2008-86 and should be submitted on or before October 16, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58608; File No. SR-NYSEArca-2008-101]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Arca, Inc. To Temporarily Suspend the Requirements of NYSE Arca Rule 2.4 and Related NYSE Arca Rules Concerning Options Trading Permit Holder Applications and Approvals In Order To Immediately Approve Barclays Capital Inc. as an NYSE Arca OTP Holder

September 19, 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 September 19, 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 and II below, which Items have been prepared by the self-regulatory organization. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act, <sup>4</sup> and Rule 19b-4(f)(6) thereunder, <sup>5</sup> which renders the proposal effective upon filing with the Commission. <sup>6</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>12</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>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(6).

<sup>6</sup> NYSE Arca gave the Commission written notice of its intention to file the proposed rule change on September 19, 2008. The Commission reviewed the proposed rule change and gave NYSE Arca permission to file the proposed rule change on the same day. NYSE Arca asked the Commission to waive the 30-day operative delay. See Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii).

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to temporarily suspend the requirements of NYSE Arca Rule 2.4 and related NYSE Arca rules concerning Options Trading Permit ("OTP") Holder applications and approvals in order to immediately approve Barclays Capital Inc. ("BCI") as an NYSE Arca OTP Holder, subject to BCI complying with Exchange rules for applying to become an OTP Holder (and being approved by the Exchange) within 60 days of the date that BCI is provisionally approved as an NYSE Arca OTP Holder.

### 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.

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

##### 1. Purpose

The Exchange proposes to temporarily suspend the requirements of NYSE Arca Rule 2.4 and related rules regarding the application and approval of OTP Holders in order to immediately approve, as an NYSE Arca OTP Holder, the entity that acquires the assets of Lehman Brothers Inc. ("LBI"). The Exchange proposes this temporary suspension on an emergency basis to ensure that the acquiring entity, Barclays Capital Inc. ("BCI"), which is a U.S. registered broker dealer and FINRA member, will be able to expeditiously complete its proposed acquisition of certain LBI assets and begin operating former LBI business lines, as early as September 22, 2008. This proposed temporary suspension is contingent upon BCI having applied for and been approved as a new NYSE Arca OTP Holder pursuant to Exchange rules within 60 days of the date that BCI is provisionally approved as an NYSE Arca OTP Holder pursuant to this rule filing.

## 1. Background

### A. Lehman Files for Bankruptcy

On September 15, 2008, Lehman Brothers Holding Inc. ("Lehman") filed for bankruptcy protection in the United States Bankruptcy Court for the Southern District of New York under Chapter 11 of the U.S. bankruptcy code. Lehman is the parent holding company of LBI, which is a registered broker dealer and NYSE Arca OTP Holder.

Although LBI did not file for bankruptcy protection at that time, Lehman's Chapter 11 status impacted the ability of LBI to continue operations.

On September 17, 2008, Barclays Bank PLC ("Barclays"), a global financial services provider, announced that it had agreed to acquire the LBI investment banking and capital markets operations and supporting infrastructure for \$1.75 billion (the "proposed acquisition"). As part of the proposed acquisition, Barclays would be acquiring the LBI fixed income and equities sales, trading and research, and investment banking businesses, including Lehman Brothers Market Makers ("LBMM") (the "LBI businesses"). Barclays would also be acquiring approximately 10,000 LBI employees, the Lehman headquarters located at 745 Seventh Avenue in New York City, and two data centers located in New Jersey.

The proposed acquisition is subject to a number of conditions, including approval by the United States Bankruptcy Court for the Southern District of New York and other regulatory approvals and antitrust review. Moreover, if the proposed acquisition is not completed by September 24, 2008, Barclays may terminate the agreement to acquire LBI businesses.

### B. Barclays Will Transfer LBI Assets to BCI

On September 19, 2008, Barclays announced that certain LBI assets, including its employees and businesses, will be transferred to its wholly-owned subsidiary, BCI. BCI is a registered U.S. broker dealer and FINRA member. However, BCI is not currently approved as an NYSE Arca OTP Holder.

The Exchange understands that LBI will likely file for some form of bankruptcy protection on Friday, September 19, 2008, and thus by the close of business on Friday, LBI will be in the control of a trustee. The Exchange further understands that, subject to approval by the bankruptcy court, as part of the bankruptcy proceeding, LBI assets will be sold to Barclays and transferred to BCI. Accordingly, as early

as September 19, 2008, BCI may own and control the LBI businesses.

## 2. Proposed Temporary Suspension of NYSE Arca Rule 2.4 and Related Rules

### A. Background

NYSE Arca Rule 2.4 requires any individual or organization applying to become an OTP Holder to complete an application and file it with the Exchange. NYSE Arca OTP Holder status cannot be transferred to the acquiring entity; the entity that proposes to continue the business operations of the predecessor member organization must be separately approved as an NYSE Arca OTP Holder.

### B. A Temporary Suspension of NYSE Arca Rule 2.4 and Related Rules for BCI Is Consistent With the Act

As proposed, BCI will continue the business operations of LBI in the same manner that they were operated by LBI. Because the bankruptcy proceeding for LBI will likely be on September 19, 2008, BCI could be eligible to begin operations as an NYSE Arca OTP Holder on Monday, September 22, 2008.

To ensure that BCI can continue the LBI operations without unnecessary interruption, including all operations that required LBI to be an NYSE Arca OTP Holder, such as entering orders directly with the Exchange, the Exchange believes that BCI should be approved immediately as an NYSE Arca OTP Holder. The Exchange notes that BCI is already a registered broker dealer, which is a prerequisite to becoming an NYSE Arca OTP Holder. See NYSE Arca Rule 2.3.

The Exchange therefore proposes providing BCI with a temporary suspension of NYSE Arca Rules 2.4 and 2.23, as they relate to approval to operate as an NYSE Arca OTP Holder and approval of a proposed OTP Holder's approved persons, and immediately approve BCI as an OTP Holder. As proposed, this temporary suspension is contingent upon:

- BCI providing the Exchange with sufficient information to confirm that BCI will meet its capital requirements as an NYSE Arca OTP Holder; and
- Within 60 days of BCI's approval as an NYSE Arca OTP Holder under this proposed filing, BCI and its approved persons will have applied for and complied with the Exchange's new member organization requirements, as set forth in the Exchange's rules.

Moreover, the Exchange proposes that in addition to being approved as an NYSE Arca OTP Holder, to ensure that certain LBI market making operations can continue, BCI should also be

deemed approved as a Market Maker as defined under NYSE Arca Rules 6.32A and 6.33. This approval is contingent upon BCI certifying in writing to the Exchange that, for the period immediately following approval as an NYSE Arca OTP Holder until such time that BCI is independently approved as an NYSE Arca OTP Holder:

- BCI will maintain the existing LBMM technologies, staffing, supervisory structure, and written supervisory procedures with respect to its market making operations; and
- Within 60 days of BCI's approval as an NYSE Arca OTP Holder under this proposed filing, BCI and its approved persons will have applied for registration as a Market Maker and will have been approved by the Exchange as a Market Maker, consistent with the Exchange's requirements for registration as a Market Maker pursuant to NYSE Arca Rule 6.33(a).

Upon receipt of such written statement, the Exchange will approve BCI as a successor entity to LBI's registration as a Market Maker on the Exchange.

As proposed, if BCI does not apply for and be approved as a new NYSE Arca OTP Holder pursuant to Exchange rules within 60 days of the effective date of this filing, BCI's provisional status as an approved NYSE Arca OTP Holder will no longer be effective.

## 2. Statutory Basis

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

### 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.

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

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

*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**

Because the foregoing proposed rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup>

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.

NYSE Arca has requested the Commission to waive the 30-day operative delay. The Commission hereby grants NYSE Arca's request.<sup>11</sup> The Commission notes that the Exchange is proposing that certain of its rules relating to membership requirements be temporarily suspended so that BCI can be provisionally approved as an NYSE Arca OTP Holder. The proposed relief does not exempt BCI from Exchange rule requirements governing member organizations. BCI would have a 60-day grace period within which to apply for and be approved under relevant Exchange rules. Moreover, the Commission believes that immediate effectiveness is appropriate to ensure a smooth transition of the LBI businesses to another entity. In particular, with respect to BCI, time is of the essence as it has been announced that BCI may succeed to LBI's assets as early as September 19, 2008. Therefore, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and designates the

proposed rule change as operative upon filing.

**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-NYSEArca-2008-101 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-2008-101. 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 between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at NYSE Arca's principal office and on its Internet Web site at <http://www.nyse.com>. 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-2008-101 and should be submitted on or before October 16, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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BILLING CODE 8010-01-P

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-58586; File No. SR-OCC-2008-16]

**Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to the Cash Dividend Threshold**

September 18, 2008.

**I. Introduction**

On July 24, 2008, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-OCC-2008-16 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> Notice of the proposal was published in the **Federal Register** on August 19, 2008.<sup>2</sup> No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

**II. Description**

The purpose of the proposed rule change is to mitigate inconsistencies that may result under the current policy for adjusting stock option contracts. In February 2007, the Commission approved rule change SR-OCC-2006-01, which amended Section 11A of Article VI of the OCC By-Laws governing adjustments to options as a result of cash dividends or distributions.<sup>3</sup> Under the new adjustment policy, cash dividends paid by a company other than pursuant to a policy or practice of paying dividends on a quarterly or other regular basis would be deemed "special" and would normally trigger a contract adjustment provided the value of the adjustment is at least \$12.50 per option contract. This new adjustment policy will become effective for cash dividends announced on or after February 1, 2009.

However, certain inconsistencies may result when the threshold of "\$12.50 per option contract" is applied to all

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

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

<sup>11</sup> For purposes of waiving the 30-day operative delay, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

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

<sup>2</sup> Securities Exchange Act Release No. 58353 (August 13, 2008), 73 FR 48423.

<sup>3</sup> Securities Exchange Act Release No. 55258 (February 8, 2007), 72 FR 7701 (February 16, 2007).