

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59063; File No. SR-NYSEArca-2008-114)

December 5, 2008

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving Proposed Rule Change to Revise the Listing and Annual Fees Applicable to Paired Trust Shares

I. Introduction

On October 22, 2008, NYSE Arca, Inc. (“Exchange” or “NYSE Arca”) 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 its Schedule of Fees and Charges for Exchange Services (“Fee Schedule”) to revise the listing and annual fees applicable to Paired Trust Shares listed on NYSE Arca, LLC (“NYSE Arca Marketplace”), the equities facility of NYSE Arca Equities, Inc. (“NYSE Arca Equities”). The proposed rule change was published for comment in the Federal Register on November 5, 2008.³ The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

Under the current Fee Schedule, Paired Trust Shares (listed under NYSE Arca Equities Rule 8.400) are classified as “Derivative Securities Products.” NYSE Arca proposes to reclassify Paired Trust Shares as “Structured Products” for purposes of the Fee Schedule. Specifically, the Exchange proposes to delete the term Paired Trust Shares from footnote 3 of the Fee Schedule (defining “Derivative Securities Products”) and to add such term to footnote 4 of the Fee Schedule (defining “Structured Products”).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 58878 (October 29, 2008), 73 FR 65912.

As a result of the proposed rule change, the Listing and Annual Fees for Paired Trust Shares would change accordingly. Under the current Fee Schedule, the Listing Fee for Paired Trust Shares (classified as Derivative Securities Products) is \$5,000 per issue, and the Annual Fee for such securities, which is based on the number of shares outstanding per issue, ranges from \$2,000 to \$25,000 per issue. Under the proposal, the Listing Fee for Paired Trust Shares (reclassified as Structured Products), which is based on the number of shares outstanding per issue, would range from \$5,000 to \$45,000 per issue, and the Annual Fee for such securities, which also is based on the number of shares outstanding per issue, would range from \$10,000 to \$55,000 per issue.

In addition, the Exchange proposes to make non-substantive changes to footnote 4 of the Fee Schedule, including updating the title of NYSE Arca Equities Rule 5.2(j)(6) to include Fixed Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities.

III. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act⁴ and the rules and regulations thereunder applicable to a national securities exchange.⁵ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,⁶ which requires that the rules of the Exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

⁴ 15 U.S.C. 78f.

⁵ 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).

⁶ 15 U.S.C. 78f(b)(4).

The Commission believes that the proposal to reclassify Paired Trust Shares as Structured Products for purposes of the Fee Schedule reasonably reflects the similarity of this type of product to other Structured Products, the issuers of which do not hold underlying securities, commodities, futures, or other financial instruments (other than U.S. Treasuries and repurchase agreements on U.S. Treasuries to secure specified obligations), unlike issuers of Derivative Securities Products. The Commission notes that, except for the shares of the MacroShares \$100 Oil Up Trust and the MacroShares \$100 Oil Down Trust, for which annual and listing fees for 2008 have been waived,⁷ no issue of Paired Trust Shares is currently listed on the Exchange.⁸ As such, the proposed amendment to the Fee Schedule and the new fee rates for issues of Paired Trust Shares would equally apply to all future issues of Paired Trust Shares listed on the Exchange under NYSE Arca Equities Rule 8.400.⁹ The Commission believes that the proposal is designed to equitably allocate reasonable dues, fees, and other charges among issuers of Paired Trust Shares, consistent with the requirements of Section 6(b)(4) of the Act.¹⁰ The Commission

⁷ See e-mail from Michael Cavalier, Associate General Counsel, NYSE Euronext, to Edward Cho, Special Counsel, Division of Trading and Markets, Commission, dated November 24, 2008 at 12:25 p.m. (“Nov. 24 E-Mail”); see also Securities Exchange Act Release No. 58598 (September 19, 2008), 73 FR 55888 (September 26, 2008) (SR-NYSEArca-2008-78) (approving the waiver of all Annual Fees for securities delisted from Amex and listed on the Exchange in connection with the closing of the purchase of Amex by NYSE Euronext).

⁸ See Nov. 24 E-Mail, supra note 7

⁹ The Commission notes that, generally, under the Fee Schedule, issues of both Derivative Securities Products and Structured Products are subject to Annual Fees in the year of listing, pro-rated based on days listed that calendar year. The Annual Fees for such products are billed in January for the forthcoming year. See Footnote 8 of the Fee Schedule. The Exchange states that the 2009 Annual Fees for the MacroShares \$100 Oil Up Trust and the MacroShares \$100 Oil Down Trust will be billed in January 2009 based on the then current Fee Schedule. See Nov. 24 E-Mail, supra note 7.

¹⁰ 15 U.S.C. 78f(b)(4).

also believes that the additional, non-substantive changes to the Fee Schedule further clarify the format and application of the fees related to Structured Products.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹¹ that the proposed rule change (SR-NYSEArca-2008-114) be, and it hereby is, approved.

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

Florence E. Harmon
Acting Secretary

¹¹ 15 U.S.C. 78s(b)(2).

¹² 17 CFR 200.30-3(a)(12).