

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-59161; File No. SR-NYSEArca-2008-118)

December 24, 2008

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving Proposed Rule Change Amending its Schedule of Fees and Charges for Exchange Services

I. Introduction

On November 3, 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”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend its Schedule of Fees and Charges for Exchange Services (“Schedule of Fees”). The proposed rule change was published for comment in the Federal Register on November 24, 2008.<sup>3</sup> 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

The Exchange has proposed to amend its Schedule of Fees to charge the same amount for Principal Orders (“P Orders”) and Principal Acting As Agent Orders (“P/A Orders”) (collectively, “Linkage Orders”) in foreign currency options (“FCO”) as they currently charge for Linkage orders in issues included in the Penny Pilot. The Exchange recently amended its rules to enable the Exchange to list and trade FCOs.<sup>4</sup> These rules permit FCOs to be quoted and traded in one cent increments. Presently, the Exchange charges \$0.45 for all electronically

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 58945 (November 13, 2008), 73 FR 71072.

<sup>4</sup> See Securities Exchange Act Release No. 58800 (October 16, 2008), 73 FR 63539 (October 24, 2008) (SR-NYSEArca-2008-109).

executed Linkage Orders in Penny Pilot issues.<sup>5</sup> The Exchange is proposing to similarly charge \$0.45 for all electronically executed Linkage Orders in FCOs.

### III. Discussion and Commission's Findings

After careful review, the Commission finds that NYSE Arca's proposal to amend its Schedule of Fees and Charges for Exchange Services is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>6</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b)(4) of the Act,<sup>7</sup> which requires that an exchange have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

Under the current Schedule of Fees, NYSE Arca charges electronically executed FCO orders the fee rate of \$.50 for Linkage Orders submitted through the Options Linkage. The Exchange proposed to lower the charge to \$.45 for all electronically executed Linkage Orders in FCOs.

The Commission notes that the \$.45 fee rate for electronically executed FCOs orders that take liquidity has been in place in the non-Linkage context since October 2008.<sup>8</sup> In addition, the Commission notes that the Options Linkage fees are assessed pursuant to a pilot scheduled to end on July 31, 2009 and that the Commission is continuing to evaluate whether such fees are appropriate.

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<sup>5</sup> The Exchange may trade option contracts in one cent increments in certain approved issues as part of the Penny Pilot, through March 27, 2009. See Securities Exchange Act Release No. 56568 (September 27, 2007), 72 FR 56422 (October 3, 2007).

<sup>6</sup> 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).

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> See Securities Exchange Act Release No. 58875 (October 29, 2008), 73 FR 65916 (November 5, 2008) (SR-NYSEArca-2008-117).

For the foregoing reasons, the Commission believes that the proposal to amend the fees the Exchange charges for Linkage Orders in FCOs is consistent with the Act.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (SR-NYSEArca-2008-118) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

Florence E. Harmon  
Acting Secretary

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<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</sup> 17 CFR 200.30-3(a)(12).