

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-54664; File No. SR-NYSEArca-2006-72)

October 27, 2006

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Revision of Certain Equity Transaction and Market Data Revenue Sharing Credits

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> notice is hereby given that on October 5, 2006, NYSE Arca, Inc. (“Exchange”), through its wholly owned subsidiary NYSE Arca Equities, Inc. (“NYSE Arca Equities”), filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On October 26, 2006, the Exchange filed Amendment No. 1. The Exchange has designated this proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to amend the section of its Schedule of Fees and Charges for Exchange Services (“Fee Schedule”) that applies to certain ETP Holder<sup>5</sup> transaction credits and

---

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

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

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

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

<sup>5</sup> See NYSE Arca Equities Rule 1.1(n).

market data revenue sharing credits. While changes to the Fee Schedule pursuant to this proposed rule change are effective upon filing with the Commission, the new rates will become operative on October 9, 2006. The text of the proposed rule change is available on the Exchange's Web site at [www.nysearca.com](http://www.nysearca.com), at the Exchange's Office of the Secretary, and in 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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change, as amended. The text of these 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 aspects of such statements.

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

1. Purpose

The Exchange proposes to amend the section of the Fee Schedule that applies to certain ETP Holder transaction credits and market data revenue sharing credits in order to incorporate the Exchange's recently approved new order type, the Passive Liquidity Order,<sup>6</sup> into the Fee Schedule in the same manner as Tracking Orders. While changes to the Fee Schedule pursuant to this proposed rule change are effective upon filing with the Commission, the new rates will become operative on October 9, 2006.

---

<sup>6</sup> The Commission recently approved the use of Passive Liquidity Orders on the NYSE Arca Marketplace. See Securities Exchange Act Release No. 54511 (September 26, 2006), 71 FR 58460 (October 3, 2006)(SR-PCX-2005-53).

The Fee Schedule currently provides in footnote 5 that Tracking Orders will not be eligible for ETP Holder transaction credits. The Exchange proposes to amend footnote 5 to the Fee Schedule to provide that Passive Liquidity Orders also will not be eligible for ETP Holder transaction credits.

The Fee Schedule currently provides in footnote 6 that an ETP Holder that submits a Tracking Order instruction that subsequently matches against an inbound marketable order will not be entitled to receive the Liquidity Provider Credit. The Exchange proposes to amend footnote 6 to the Fee Schedule to provide that an ETP Holder submitting a Passive Liquidity Order instruction also will not be entitled to receive the Liquidity Provider Credit.

The Exchange is not providing credits to ETP Holders entering Passive Liquidity Orders because it has no reason at this time to create incentives for the entry of such orders.<sup>7</sup>

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act,<sup>9</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

### 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> Amendment No. 1.

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

<sup>9</sup> 15 U.S.C. 78f(b)(4).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

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

The foregoing proposed rule change has become effective pursuant to section Section 19(b)(3)(A)(ii) of the Act<sup>10</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder<sup>11</sup> because it establishes or changes a member due, fee, or other charge imposed by the self-regulatory organization. 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.<sup>12</sup>

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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 No. SR-NYSEArca-2006-72 on the subject line.

---

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>11</sup> 17 CFR 240.19b-4(f)(2).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(C). For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposal, the Commission considers the period to have commenced on October 26, 2006, the date on which the Exchange filed Amendment No. 1.

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File No. SR-NYSEArca-2006-72. 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. Copies of such filing will also 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 No. SR-NYSEArca-2006-72 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

Nancy M. Morris  
Secretary

---

<sup>13</sup> 17 CFR 200.30-3(a)(12).