

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58297; File No. SR-NYSEArca-2008-78)

August 4, 2008

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To Waive Annual Fees for Securities Transferring to NYSE Arca from NYSE Alternext US

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that, on July 23, 2008, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) 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. The Commission is publishing this notice to solicit comments on the proposal from interested persons.

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

The Exchange proposes to amend its rules governing NYSE Arca, LLC (also referred to as the “NYSE Arca Marketplace”), which is the equities trading facility of NYSE Arca Equities. The Exchange proposes that securities transferring to NYSE Arca from NYSE Alternext US³ after the closing of the purchase of the American Stock Exchange LLC by NYSE Euronext (the “Merger”) will not be charged any prorated Annual Fee for the remainder of the year in which the Merger takes place. The fee waiver in the preceding sentence will be of no further effect if the closing of the Merger does not take place by March 31, 2009.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ After the closing of the Merger, the Amex will be renamed NYSE Alternext US LLC.

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 that securities transferring to NYSE Arca from NYSE Alternext US after the closing of the Merger will not be charged any prorated Annual Fee for the remainder of the year in which the Merger takes place. The fee waiver in the preceding sentence will be of no further effect if the closing of the Merger does not take place by March 31, 2009.

NYSE Euronext, the ultimate parent company of the Exchange, has agreed to acquire the Amex pursuant to an Agreement and Plan of Merger, dated as of January 17, 2008. It is currently anticipated that the acquisition will be consummated during the third quarter of 2008.⁴ In connection with the acquisition, the Exchange anticipates that some issuers of NYSE Alternext US-listed securities that qualify for listing on the Exchange may choose to transfer their listing to the Exchange. Consequently, the Exchange proposes to grant issuers transferring the listing of their securities to the Exchange from NYSE Alternext US during the calendar year in which the Merger is consummated a waiver of the prorated annual listing fee that would

⁴ The members of the Amex voted to approve the transaction on June 17, 2008. No vote of the NYSE Euronext shareholders is required. The sole remaining condition to the consummation of the transaction is the approval by the Division of Trading and Markets of certain rule filings the NYSE and Amex expect to submit in the near future.

normally be payable in connection with the first partial calendar year of listing on the Exchange. The Exchange believes this is appropriate as issuers transferring to the Exchange from NYSE Alternext US will already have paid annual continued listing fees to the Amex for the calendar year in which they transfer. The proposed fee waiver will have no further effect if the Merger is not consummated by March 31, 2009.

The Exchange believes this proposed fee waiver does not render the allocation of its listing fees inequitable or unfairly discriminatory, in particular because, after the Merger, NYSE Regulation, Inc. (“NYSE Regulation”) will perform listed company regulation for both the Exchange and NYSE Alternext US, including a substantial review of companies upon original listing. Many of the regulatory staff who currently perform initial and continued listing reviews at the Amex will become employees of NYSE Regulation at the time of the Merger and will continue to perform the same duties with respect to NYSE Alternext US securities after the Merger. Securities transferring from NYSE Alternext US will be subjected to the same rigorous regulatory review as any other securities with respect to which an application for listing is made to the Exchange. However, the Exchange expects that, on average, the review of securities transferring from NYSE Alternext US to the Exchange will be less costly than the review of a transfer from an unaffiliated market, as the Amex listing regulatory staff that will have been absorbed by NYSE Regulation will already have performed a substantial review of any NYSE Alternext US-listed issuer, and NYSE Regulation will be able to rely on that prior work as a baseline in qualifying the issuer for listing on the Exchange and in conducting ongoing compliance activities with respect to any such issuer.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(4)⁵ 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. The Exchange believes that the proposed fee waiver does not render the allocation of its listing fees inequitable or unfairly discriminatory because it is simply a recognition of the fact that issuers transferring the listing of securities from NYSE Alternext US will already have paid fees to another exchange which will at that time be under the same ownership as the Exchange. The Exchange believes that the fee waiver is appropriate because the same regulatory staff will review securities on both markets and the Exchange will therefore benefit from regulatory efficiencies arising out of NYSE Regulation's prior examination of any issuers that transfer their securities.

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 Exchange Act.

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds

⁵ 15 U.S.C. 78f(b)(4).

such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

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. Please include File Number SR-NYSEArca-2008-78 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-2008-78. 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, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. Copies of such filing also will 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 Number SR-NYSEArca-2008-78 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶

Florence E. Harmon
Acting Secretary

⁶ 17 CFR 200.30-3(a)(12).