

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59518; File No. SR-NYSEArca-2009-01)

March 5, 2009

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving Proposed Rule Change Relating to the Reduction of the Annual Fee for Certain Issues Listed Under Rule 5.2(j)(6)

I. Introduction

On January 6, 2009, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”) 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 Annual Fees applicable to securities listed in calendar year 2009 under Rule 5.2(j)(6) on NYSE Arca, LLC (“NYSE Arca Marketplace”), the equities facility of NYSE Arca Equities. The proposed rule change was published for comment in the Federal Register on February 2, 2009.³ 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

NYSE Arca proposes amending the Exchange’s Fee Schedule to revise the Annual Fee applicable to securities listed on the NYSE Arca Marketplace in calendar year 2009 under Rule 5.2(j)(6) (Equity Index-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities and Multifactor Indexed-Linked Securities). Specifically, the Exchange

¹ 15 U.S.C.78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 59270 (Jan. 21, 2009), 74 FR 5880.

proposes to add new footnote 10 to the Fee Schedule to state that, during 2009, the Annual Fee for an issue of securities listed under Rule 5.2(j)(6) of up to 500,000 shares outstanding would be \$5,000, pro-rated based on days remaining in 2009. For example, under the proposed rule change, if an Equity Index-Linked Security lists on the NYSE Arca Marketplace on July 1, 2009 with 500,000 shares outstanding, such security would pay a pro-rated Annual Fee for 2009 of \$2,500 (1/2 x \$5,000).⁴ The proposed reduced Annual Fee of \$5,000 or less would apply for calendar year 2009 to issues newly listed on the NYSE Arca Marketplace beginning as of January 1, 2009, and would not apply to issues listed prior to or after calendar year 2009.

III. Discussion and Commission's Findings

The Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act⁵ and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposal is consistent with Section 6(b)(4)⁶ of the Act, which requires that an exchange have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.⁷ The Commission notes that the proposed fee reduction of \$5,000 or more would only apply to certain

⁴ Under the current Fee Schedule for Structured Products, which include securities listed under Rule 5.2(j)(6), the Annual Fee ranges from \$10,000 to \$55,000, based on the total number of securities outstanding per listed issue. The current Annual Fee for issues with up to 6 million shares outstanding is \$10,000.

⁵ 15 U.S.C. 78(f).

⁶ 15 U.S.C. 78f(b)(4).

⁷ In approving the proposed rule change, the Commission notes that it has considered the proposed rules' impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

securities with up to 500,000 shares outstanding, which is far less than the 6 million shares outstanding to which the current Annual Fee of \$10,000 applies. Moreover, the Commission notes that the fee reduction would only be temporary and that the Exchange hopes that the temporary reduction in the Annual Fee for certain products may provide an incentive for issuers to introduce and list more of such products on the NYSE Arca marketplace and thereby, increase competition among such products.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule change (SR-NYSEArca-2009-01) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Florence E. Harmon
Deputy Secretary

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).