

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-59525; File No. SR-NYSEArca-2009-16)

March 6, 2009

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Schedule of Fees and Charges Applicable to the Option Strategy Executions Pilot Program

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 February 27, 2009, 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 self-regulatory organization. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

NYSE Arca is proposing to amend its Schedule of Fees and Charges in order to extend the pilot program that applies to Option Strategy Executions (“Pilot Program”) until March 1, 2010. The text of the proposed rule change is attached as Exhibit 5.<sup>5</sup> A copy of this filing is

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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> 15 U.S.C. 78s(b)(3)(A).

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

<sup>5</sup> The Commission notes that while provided in Exhibit 5 to the filing, the text of the proposed rule change is not attached to this notice but is available at NYSE Arca, the Commission’s Public Reference Room, and at [www.nyse.com](http://www.nyse.com).

available on the Exchange's Web site at [www.nyse.com](http://www.nyse.com), at the Exchange's principal office and at 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 self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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 purpose of this proposed rule change is to extend the Pilot Program that applies to Option Strategy Executions until March 1, 2010. The transactions included as part of the Pilot Program include reversals and conversions,<sup>6</sup> dividend spreads,<sup>7</sup> box spreads,<sup>8</sup> short stock interest

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<sup>6</sup> Reversals and conversions are transactions that employ calls, puts and the underlying stock to lock in a nearly risk free profit. Reversals are established by combining a short stock position with a short put and a long call position that shares the same strike and expiration. Conversions employ long positions in the underlying stock that accompany long puts and short calls sharing the same strike and expiration.

<sup>7</sup> Dividend spreads are trades involving deep in the money options that exploit pricing differences arising around the time a stock goes ex-dividend.

<sup>8</sup> Box Spreads is a strategy that synthesizes long and short stock positions to create a profit. Specifically, a long call and short put at one strike is combined with a short call and long put at a different strike to create synthetic long and synthetic short stock positions, respectively.

spreads,<sup>9</sup> and merger spreads.<sup>10</sup> Because the referenced Options Strategy Transactions are generally executed by professionals whose profit margins are generally narrow, the Pilot Program caps the transaction fees associated with such executions at \$750 per strategy execution that are executed on the same trading day in the same option class. In addition, there is also a monthly cap of \$25,000 per initiating firm for all strategy executions. The Exchange believes that by keeping fees low, the Exchange is able to attract liquidity by accommodating these transactions. Extending the Pilot Program until March 1, 2010 will allow the Exchange to keep these fees low and thus continue to attract liquidity.

OTP Holders and OTP Firms who wish to benefit from the fee cap will be required to submit to the Exchange forms with supporting documentation (e.g., clearing firm transaction data) to qualify for the cap.

## 2. Statutory Basis

The proposal is consistent with Section 6(b)<sup>11</sup> of the Act, in general, and Section 6(b)(4)<sup>12</sup>, in particular, in that it provides for the equitable allocation of dues, fees and other charges among its members. The Exchange believes that, as proposed, the cap on transaction fees for Strategy Executions applies equally to each member (ETP holder) of the Exchange. The Exchange further believes that by keeping fees low with the proposed cap, the Exchange is able to attract liquidity by accommodating these transactions.

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<sup>9</sup> A short stock interest spread is a spread that uses two deep in the money put options of the same class followed by the exercise of the resulting long position in order to establish a short stock interest arbitrage position.

<sup>10</sup> A merger spread is a transaction executed pursuant to a strategy involving the simultaneous purchase and sale of options of the same class and expiration date, but with different strike prices followed by the exercise of the resulting long option position.

<sup>11</sup> 15 U.S.C. §78f(b).

<sup>12</sup> 15 U.S.C. §78f(b)(4).

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.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

The foregoing proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act<sup>13</sup> and Rule 19b-4(f)(2)<sup>14</sup> thereunder because it establishes or changes a due, fee, or other charge imposed by the Exchange. 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.

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:

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<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 19b-4(f)(2).

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 Number SR-NYSEArca-2009-16 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2009-16. 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-2009-16 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.<sup>15</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(12).