

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-54727; File No. SR-NYSE-2006-79)

November 8, 2006

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a Fee on Orders in Equities and Exchange Traded Funds Routed From the Exchange and Executed in Another Market Pursuant to the Linkage Plan.

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 September 29, 2006, the New York Stock Exchange LLC (“NYSE” 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 Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder<sup>4</sup> which renders the proposal effective upon filing with the Commission. 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

The Exchange is proposing to charge a fee (“Linkage Order Fee”) to its member organizations in connection with orders in equities and Exchange Traded Funds (“ETFs”) routed from the Exchange and executed in another market pursuant to the “Plan for the Purpose of Creating and Operating an Intermarket Communications Linkage” (“Linkage Plan”).

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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).

The text of the proposed rule change is available on the NYSE's Web site (<http://www.nyse.com>), at the NYSE's Office of the Secretary, 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 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. The text of these statements may be examined at the places specified in Item IV below. The NYSE 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The NYSE proposes to charge a Linkage Order Fee to its member organizations in connection with orders in equities and ETFs routed from the Exchange and executed in another market pursuant to the Linkage Plan.<sup>5</sup> The "Linkage Order Fee" would be paid on such orders in the amount of \$0.00025 per share and, for ETFs, in the amount of \$0.0030 per share. The Linkage Order Fee is proposed to take effect on October 1, 2006 and to extend until the scheduled termination of the Linkage Plan on June 30, 2007.

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<sup>5</sup> The Linkage Plan was filed with the Commission pursuant to Rule 608 of Regulation NMS under the Act. The purpose of the Linkage Plan is to enable the Plan Participants to act jointly in planning, developing, operating and regulating the NMS Linkage System electronically linking the Plan Participant Markets to one another, as described in the Linkage Plan. Following approval by the Commission, the Plan became operative on October 1, 2006. The Plan would terminate on June 30, 2007; however, Participants that wished to extend the term could agree to do so, subject to Commission approval. See Securities Exchange Act Release No. 54551 (Sept. 29, 2006), 71 FR 59148 (Oct. 6, 2006) (approving the Linkage Plan).

The Linkage Plan provides that orders be sent to a Participant market through the auspices of a member of that Participant (“Sponsoring Member”).<sup>6</sup> The Exchange has identified Archipelago Securities LLC (“Arca Securities”) as the Exchange’s Sponsoring Member for orders executed in a destination market. Arca Securities would be billed by the destination markets for orders entered on the Exchange by Entering Firms but routed to other markets for execution. The Exchange would assume responsibility for fees paid by Arca Securities to Participant markets in its capacity as the Exchange’s Sponsoring Member. The Exchange proposes to bill each Entering Firm the Linkage Order Fee in order to recover these expenses.

Each Entering Firm would be billed the Linkage Order Fee for equities each month with respect to the number of shares that such firm has executed pursuant to the Linkage Plan. Such fee would be subject to the monthly fee cap per Entering Firm of \$750,000, but it would not be subject to the cap of \$80 per transaction in the 2006 Exchange Price List.

The Exchange also would impose a Linkage Order Fee for ETFs of \$0.0030 per share, to be billed monthly. While this is the same as the Broker/Dealer per share fee currently imposed, the Linkage Order Fee would apply both to ETFs listed on the Exchange and to those traded on the Exchange pursuant to unlisted trading privileges (“UTP”). (ETFs traded pursuant to UTP are currently subject to a transaction fee moratorium.) In addition, the Linkage Order Fee would apply to System Orders under 5,100 shares and would not be subject to the cap of \$100 per trade for ETFs.

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<sup>6</sup> The Participants in the Linkage Plan are the American Stock Exchange LLC, the Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the Chicago Stock Exchange, Inc., the Nasdaq Stock Market LLC, the National Stock Exchange, the New York Stock Exchange LLC, the NYSE Arca, Inc., and the Philadelphia Stock Exchange, Inc.

The Exchange is also proposing to make a minor change to the ETF transaction fee schedule to specify that the fee is \$0.0030 per share rather than \$0.30 per round lot, consistent with the form of the transaction fee schedule for equities.

The Exchange also proposes to amend the 2006 Price List to clarify that transactions by members acting as specialist for the specialist's own account are not subject to transaction fees on ETF transactions.<sup>7</sup>

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,<sup>8</sup> in general, and Section 6(b)(4) of the Act,<sup>9</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among the Exchange's members and other persons using its facilities. The fee is intended to permit the Exchange to recover fees billed to Arca Securities, as a Sponsoring Member, by other markets for orders executed pursuant to the Linkage Plan. In addition, with the exception of the per trade or per month fee caps applicable to non-Linkage orders, the billing rate is the same for Linkage and non-Linkage orders.

### 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.

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<sup>7</sup> The Exchange's transaction fee schedule was most recently amended in Securities Exchange Act Release No. 54142 (July 13, 2006), 71 FR 41493 (July 21, 2006) (SR-NYSE-2006-46).

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

<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

No written comments were solicited or received with respect to the proposed rule change.

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

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>10</sup> and subparagraph (f)(2) of Rule 19b-4<sup>11</sup> thereunder, because it involves a member due, fee or other charge. At any time within sixty (60) days of the filing of such 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:

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-NYSE-2006-79 on the subject line.

Paper comments:

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

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

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

All submissions should refer to File Number SR-NYSE-2006-79. 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 also will be available for inspection and copying at the principal office of the NYSE. 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-NYSE-2006-79 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>12</sup>

Nancy M. Morris  
Secretary

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