

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53951; File No. SR-NYSEArca-2006-23)

June 7, 2006

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to a Pilot Program for NYSE Arca BBO Data

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 May 23, 2006, the NYSE Arca, Inc. (“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 proposed rule change from interested persons.

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

The Exchange, through its wholly owned subsidiary, NYSE Arca Equities, Inc. (“NYSE Arca”), proposes to establish as a six-month pilot program market data fees for the receipt and use of market data relating to the Exchange’s best bids and offers. The text of the proposed rule change is available on the Exchange’s Web site (<http://www.archipelago.com>), at the Exchange’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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

(a) The Service. Through NYSE Arca, L.L.C., the equities trading facility of NYSE Arca, the Exchange makes ArcaBookSM, a compilation of all limit orders resident in the NYSE Arca limit order book, available on a real-time basis. The Exchange proposes to permit vendors to cull best bids and offers from its ArcaBookSM product to create an NYSE Arca Best-Bid-and-Offer service for distribution to its professional and nonprofessional subscribers (a “BBO Service”).³

(b) Proposed Fees. Contemporaneously with the proposed rule change, the Exchange has submitted another proposed rule change that proposes to establish market data fees and a Market Data Fee Schedule for the receipt and use of certain of the Exchange’s market data services, including ArcaBook (“ArcaBook Fee Filing”).⁴ The ArcaBook fees include access fees and professional and nonprofessional device fees.

³ The Exchange notes that it makes available to vendors the best bids and offers that are included in ArcaBook data no earlier than it makes those best bids and offers available to the processors under the Consolidated Quotation System Plan (“CQ Plan”) and the Reporting Plan for Nasdaq/National Market System Securities Traded on an Exchange on an Unlisted or Listed Basis (“UTP Plan”).

The Commission made minor clarifications to the description of the service contained in this paragraph pursuant to telephone conversations between Janet Angstadt, Acting General Counsel, NYSE Arca, Inc. and Kelly Riley, Assistant Director, Commission, on June 6, 2006.

⁴ See Securities Act Release No. 34-53952, June 7, 2006.

With the proposed rule change, the Exchange proposes as a six-month pilot program to supplement those fees and that fee schedule with the addition of device fees for the Exchange's BBO Service. The Exchange is proposing to set the device fee for professional subscribers who receive BBO Services for both "CTA Plan⁵ and ETF Securities" and "UTP Plan Securities" (but no other bids and offers that are included in ArcaBook) at \$15, rather than the combined fee of \$30 that would otherwise apply to the receipt of ArcaBook data for both CTA Plan and ETF Securities and UTP Plan Securities.

The combined monthly professional subscriber device fee of \$15 compares favorably with comparable device fees in the industry for similar products. For instance, the 14-tier rate schedule under the CTA Plan imposes device fees ranging from \$127.25 for a professional subscriber using one device to \$18.75 for a professional subscriber using more than 10,000 devices. Under the UTP Plan, the comparable fee is \$20.

Similarly, the Exchange is proposing to set the device fee for nonprofessional subscribers who receive both BBO Services (but no other bids and offers that are included in ArcaBook) at \$5, rather than the combined fee of \$10 that would otherwise apply. In differentiating between professional and nonprofessional subscribers, the Exchange proposes to apply the same criteria for qualification as a nonprofessional subscriber as the CTA and CQ Plan Participants use, as described in the proposed ArcaBook Fee Filing. The \$5 nonprofessional subscriber fee is higher than the nonprofessional subscriber fees that are payable under the CQ and UTP Plans in recognition of the fact that NYSE Arca provides the data to vendors simultaneously with its delivery of the data to the processors under the CQ and UTP Plans. This

⁵ Consolidated Tape Association Plan ("CTA Plan").

allows vendors to receive the best bids and offers, and to distribute that data to their subscribers, more quickly than under the CQ and UTP Plans because it eliminates the processing time of the Plans' processors.

The ArcaBook Fee Filing establishes a monthly maximum amount of device fees payable by any broker-dealer in respect of certain subscribers that maintain brokerage accounts with the broker-dealer. The Exchange proposes to subject BBO Service fees payable by any broker-dealer in respect of those same subscribers to that monthly maximum.

NYSE Arca believes that the proposed BBO Service fees would reflect an equitable allocation of its overall costs to users of its facilities.

(c) Free Trial Period. As an incentive to prospective subscribers, the Exchange proposes to offer subscribers the right to receive BBO Services free of charge for the duration of the calendar month in which the subscriber first becomes authorized to receive the data. For example, if a subscriber (whether professional or nonprofessional) becomes authorized to receive the NYSE Arca BBO Services on May 10, the device fees set forth in the proposed rule change will not apply during that month of May.

2. Statutory Basis

The basis under the Act for the proposed rule change are the requirement under Section 6(b)(4)⁶ 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 and the requirements under Section 6(b)(5)⁷ that the rules of an exchange be designed to promote just

⁶ 15 U.S.C. 78f(b)(4).

⁷ 15 U.S.C. 78f(b)(5).

and equitable principles of trade and not to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed fee change will not impose any burden on competition that is not necessary or appropriate in the 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 not solicited, and does not intend to solicit, comments regarding the proposed rule change. The Exchange has not received any unsolicited written comments from Exchange participants or other interested parties.

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 such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the NYSE 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-2006-23 on the subject line.

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 Number SR-NYSEArca-2006-23. 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

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 publicly available. All submissions should refer to File Number SR-NYSEArca-2006-23 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.⁸

Jill M. Peterson
Assistant Secretary

⁸ 17 CFR 200.30-3(a)(12).