

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-54430; File No. SR-NYSEArca-2006-20)

September 12, 2006

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval to Amendment No. 4 to a Proposed Rule Change Relating to the Exchange's Schedule of Fees and Charges

I. Introduction

On May 17, 2006, NYSE Arca, Inc. (NYSE Arca' or 'Exchange') filed with the Securities and Exchange Commission ('Commission') 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> the proposed rule change to amend the Trade Related Charges portion of its Schedule of Fees and Charges ('Schedule'). On May 26, 2006, the Exchange filed Amendment No. 1 to the proposed rule change. On June 30, 2006, the Exchange filed Amendment No. 2 to the proposed rule change. On July 7, 2006, the Exchange filed Amendment No. 3 to the proposed rule change.<sup>3</sup> The proposed rule change, as amended, was published for comment in the Federal Register on July 20, 2006.<sup>4</sup> Two comment letters were submitted in connection with this filing.<sup>5</sup>

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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> See Form 19b-4 dated July 7, 2006 ('Amendment No. 3'). Amendment No. 3 replaced and superseded the original filing and Amendments No. 1 and 2 in their entirety.

<sup>4</sup> See Securities Exchange Act Release No. 54130 (July 11, 2006), 71 FR 41305.

<sup>5</sup> See letter from Arthur J. Gross, Arthur J. Gross SP, dated August 9, 2006, and letter from Gennaro J. Lettera, dated August 9, 2006. The Exchange believes that these commenters intended to address a separate proposed rule change, SR-NYSE-2006-46, not the instant proposed rule change. See email from Janet Angstadt, Acting General Counsel, NYSE Arca, to Timothy Fox, Special

On August 31, 2006, the Exchange filed Amendment No. 4.<sup>6</sup> This order grants accelerated approval of Amendment No. 4, and solicits comments from interested persons on Amendment No. 4.

II. Description of the Proposal

A. Fees for Manually Executed Linkage Orders

NYSE Arca proposes to combine two existing fees associated with certain Linkage Orders.<sup>7</sup> Presently, the Exchange assesses on Linkage Orders a \$0.21 transaction fee and a \$0.05 comparison fee.<sup>8</sup> To simplify the Schedule, the Exchange proposes combining these fees into one transaction fee of \$0.26 for Linkage Orders executed manually. This fee is equal to the fee for manually executed orders from broker-dealers.

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Counsel, Division of Market Regulation, Commission, dated August 16, 2006. The Commission believes that the commenters' concerns do not relate to the instant proposed rule change and, as such, these letters are not addressed in this order.

<sup>6</sup> Amendment No. 4 was filed to reconcile the original filing, as amended, with the subsequent immediately effective rule filing, as discussed infra note 9 and accompanying text. Amendment No. 4 replaces and supersedes the original filing and subsequent amendments in their entirety.

<sup>7</sup> "Linkage Orders" are immediate or cancel orders containing certain information that are routed through the Intermarket Linkage System ("Linkage"). See Section 2(16) of the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage ("Linkage Plan"). As used in this approval order, the term, "Linkage Orders," refers only to Principal Acting as Agent Orders and Principal Orders. See Sections 2(16)(a) and 2(16)(b) of the Linkage Plan.

<sup>8</sup> These fees are applicable through an Exchange Pilot Program due to expire on July 31, 2007. See Securities Exchange Act Release No. 54230 (July 27, 2006), 71 FR 44757 (August 7, 2006) (SR-NYSEArca-2006-41).

## B. Fees for Electronically Executed Linkage Orders

Under the current NYSE Arca Schedule, electronically executed orders from broker-dealers are charged \$0.50 per contract ('BD Electronic Transaction Fee'). The BD Electronic Transaction Fee was recently revised to combine a previously assessed transaction fee of \$0.26 and a BD Surcharge of \$0.25.<sup>9</sup> The current \$0.50 BD Electronic Transaction Fee represents a \$0.01 reduction in the total fee for electronic executions of orders from broker-dealers. In Amendment No. 4, the Exchange proposes to modify its Schedule to make clear that electronically executed Linkage Orders also will be charged \$0.50 per contract.

The Exchange acknowledges that the Exchange's previous version of its Schedule did not reflect that the BD Surcharge was imposed on electronically executed Linkage Orders.<sup>10</sup> In Amendment No. 4, the Exchange proposes to modify the Schedule to make clear that the BD Surcharge will be included as a component of the \$0.50 fee assessed for electronically executed Linkage Orders.

## III. Discussion and Commission Findings

The Commission has reviewed carefully the proposed rule change, as amended, and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>11</sup> In particular, the

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<sup>9</sup> See Securities Exchange Act Release No. 54309 (August 11, 2006), 71 FR 48571 (August 21, 2006) (SR-NYSEArca-2006-25).

<sup>10</sup> The Schedule set forth the Transaction and Comparison fees assessed on Linkage Orders.

<sup>11</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Commission believes that the proposal is consistent with Section 6(b)(4) of the Act,<sup>12</sup> which requires that the rules of an exchange provide an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. Under the current NYSE Arca Schedule, manually executed BD orders are charged \$0.26 per contract and electronically executed orders from broker-dealers are charged \$0.50 per contract. The Exchange proposed that manually executed Linkage Orders be charged \$0.26 per contract and electronically executed Linkage Orders be charged \$0.50 per contract. Accordingly, the Commission believes that the Exchange's proposed Schedule clearly sets forth the fees imposed on Linkage Orders.

As discussed above, the Exchange acknowledges, in Amendment No. 4, that prior versions of its Schedule did not represent that the \$0.25 BD Surcharge was applied to electronically executed Linkage Orders. Because the Exchange assessed the BD Surcharge on Linkage Orders prior to this approval and, therefore, without authority, parties assessed the BD Surcharge for Linkage Orders prior to the approval of this proposed rule change may seek reimbursement.

The Commission finds good cause for approving proposed Amendment No. 4 before the 30th day after the date of publication of notice of filing thereof in the Federal Register pursuant to Section 19(b)(2) of the Act.<sup>13</sup> The Exchange filed Amendment No. 4 to reconcile the proposed rules in the original filing, as amended, with the Exchange's current rules, which reflect an immediately effective proposed rule change filed after this

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<sup>12</sup> 15 U.S.C. 78f(b)(4).

<sup>13</sup> 15 U.S.C. 78s(b)(2).

proposed rule change was published for comment.<sup>14</sup> The Commission believes that in Amendment No. 4, the Exchange proposes no significant changes to the fees proposed in the original filing. Therefore, the Commission finds good cause exists to accelerate approval of Amendment No. 4, pursuant to Section 19(b)(2) of the Act.<sup>15</sup>

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 4, including whether Amendment No. 4 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-NYSEArca-2006-20 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 Amendment No. 4 to SR-NYSEArca-2006-20. 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

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<sup>14</sup> See supra note 9.

<sup>15</sup> 15 U.S.C. 78s(b)(2).

(<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 offices 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 Amendment No. 4 to SR-NYSEArca-2006-20 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>16</sup> that Amendment No. 4 to the proposed rule change (SR-NYSEArca-2006-20) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>17</sup>

Nancy M. Morris  
Secretary

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<sup>16</sup> 15 U.S.C. 78s(b)(2).

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