

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-54438; File No. SR-NYSEArca-2006-43)

September 13, 2006

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Fees for Tracking Orders Submitted and Executed on NYSE Arca, Inc., Regulatory Filing and Registration Fees for Equity Trading Permit Holders, and Drop Copy Processing Fees for Certain Trades in Listed and Nasdaq Securities

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 June 30, 2006, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”), through its wholly owned subsidiary NYSE Arca Equities, Inc. (“NYSE Arca Equities”), filed with the Securities and Exchange Commission (“Commission” or “SEC”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by NYSE Arca Equities. On August 16, 2006, the Exchange amended the proposed rule change.<sup>3</sup> On September 8, 2006, the Exchange again amended the proposed rule change.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to amend NYSE Arca Equities Schedule of Fees and Charges (“Equities Schedule”) to (i) clarify the description of the Equity Trading Permit (“ETP”) Holder transaction credit applicable to round lots in Nasdaq securities; (ii) remove rebates applicable to Tracking Orders; (iii) move regulatory fees from NYSE Arca’s Schedule of Fees and Charges to

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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 Amendment No. 1.

<sup>4</sup> See Amendment No. 2.

the Equities Schedule; and (iv) remove drop copy processing fees. The text of the proposed rule change is available at the Commission's Public Reference Room, at the Exchange, and on the Exchange's Web site at [www.nysearca.com](http://www.nysearca.com).

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, as amended. The text of these statements may be examined at the places specified 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

The Exchange proposes to amend the Schedule, effective July 1, 2006, to reflect (i) clarification of the description of the ETP Holder transaction credit applicable to round lots in Nasdaq securities; (ii) removal of the current eligible rebates for Tracking Orders; (iii) addition of the regulatory fees applicable to Equity Trading Permit ("ETP") Holders and their registered representatives currently only listed within NYSE Arca's Schedule of Fees and Charges; and (iv) removal of the processing fee listed for drop copies for transactions of off-board trades in listed and Nasdaq securities.

ETP Holder Transaction Credits and Tracking Order Rebates

The Exchange proposes to amend the description of the ETP Holder transaction credit applicable to round lots in Nasdaq securities so that the description is consistent with the

description of the credit applicable to round lots in listed securities (except NYSE non-ETF listed securities). Specifically, the Exchange wishes to amend the Schedule to clarify that the credit for round lots in Nasdaq securities applies to limit orders residing in the Book that execute against inbound marketable orders. Such language was inadvertently omitted from the Schedule.<sup>5</sup>

Currently, Tracking Orders (in addition to all limit orders that provide liquidity for the NYSE Arca Equities Book as noted above), are eligible for this ETP Holder transaction credit applicable to round lots. Because the Exchange no longer wishes to provide an incentive to attract Tracking Orders to the Exchange, the Exchange has amended the Schedule so that the Exchange no longer provides this ETP Holder transaction credit to Tracking Orders.

In addition, the Exchange has amended the Schedule to state that Tracking Orders will no longer be eligible for a type of market data revenue sharing credit referred to as the liquidity provider credit. Specifically, the Exchange has amended the Schedule to eliminate the liquidity provider credit for Tracking Orders in over-the-counter securities on Tape B (previously only exchange-listed securities were ineligible to receive the liquidity provider credit).

#### Regulatory Fees for ETP Holders

Regulatory fees that are applicable to both Options and Equity Permit holders have been listed on NYSE Arca's Schedule of Fees and Charges. To more clearly identify all regulatory fees that are assessed to ETP Firms in one place, the Exchange is adding the list of regulatory fees applicable to ETPs that was formerly listed in the NYSE Arca Schedule of Fees and Charges to the NYSE Arca Equities' Schedule.

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<sup>5</sup> This is the only change made to the Schedule in Amendment No. 1 as compared to the Exchange's original proposed rule change.

In so doing, the Exchange changed the term “Registered Options Principal” to “Registered Principal” to make clear that all Registered Principals, not just Registered Options Principals, are subject to the registration fees listed on the Schedule. Such change is proposed in order to make the Schedule consistent with the general registration requirements of NYSE Arca Equities Rules.

#### Drop Copy Processing Fee

Currently, the Schedule identifies a “Drop Copy Processing Fee” of \$0.001 per share, applicable to off-board trades in listed and Nasdaq securities. The Exchange believes that such fees were introduced years ago as a means to cover any additional costs associated in providing drop copies. The Exchange’s practice over the years, however, has been to supply drop copies to those ETP Holders that request them without assessing any fees. Therefore, in order to make the Schedule consistent with Exchange practice, the Exchange is amending the Schedule to eliminate this fee.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>6</sup> in general, and Section 6(b)(4) of the Act,<sup>7</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its ETP Holders, issuers, and other persons using its facilities.

### B. Self-Regulatory Organization’s Statement on Burden on Competition

Nasdaq 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>6</sup> 15 U.S.C. 78f(b).

<sup>7</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

Written comments on the proposed rule change were neither solicited nor received.

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

The foregoing proposed rule change, as amended, has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>8</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder<sup>9</sup> because it establishes or changes a due, fee, or other charge applicable only to a member imposed by the self-regulatory organization. Accordingly, the proposal is effective upon receipt of the filing by the Commission. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the 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.<sup>10</sup>

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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 No. SR-NYSEArca-

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(C). For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposal, the Commission considers the period to commence on September 8, 2006, the date on which the Exchange filed Amendment No. 2.

2006-43 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 No. SR-NYSEArca-2006-43. 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 will also 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 No. SR-NYSEArca-2006-43 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>11</sup>

Nancy M. Morris  
Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).