

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-54966; File No. SR-NYSEArca-2006-89)

December 19, 2006

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Exchange Fees and Charges

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 December 1, 2006, 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 substantially prepared by NYSE Arca. On December 15, 2006, the Exchange submitted Amendment No. 1 to the proposed rule change. NYSE Arca has 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> which renders the proposal effective upon filing with the Commission. 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

NYSE Arca proposes to amend its Schedule of Fees and Charges For Exchange Services (“Schedule”) to make a minor change to the Firm Transaction Fee, eliminate certain obsolete fees, and make a non-substantive formatting change to the Schedule. The text of the proposed rule change is available on NYSE Arca’s Web site at <http://www.nysearca.com>, at the principal office of NYSE Arca, and at the Commission’s Public Reference Room.

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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).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NYSE Arca 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. NYSE Arca 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 its Schedule in order to make a minor change to the Firm Transaction Fee, eliminate certain obsolete fees, and make a non-substantive formatting change.

Changes to the Firm Transaction Fee

NYSE Arca charges transaction fees associated with all option contracts that are executed on the Exchange. The current Firm Transaction Fee applies to OTP Firm<sup>5</sup> proprietary trades that have a customer of that firm on the contra side of the transaction. The Exchange offers this rate as an incentive to OTP Firms to direct their customer orders to NYSE Arca for execution. NYSE Arca applies the Firm Transaction Fee to all trades between an OTP Firm and a customer of the same OTP Firm, whenever a proprietary account of the firm is used. This includes market makers that trade against orders that their affiliated firm represents for customers. The Firm Transaction Fee became applicable for certain market maker transactions upon the filing of a

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<sup>5</sup> See NYSE Arca Rule 1(r).

proposed rule change with the Commission.<sup>6</sup> At that time the Market Maker Transaction Fee was \$0.26 per contract and the Firm Transaction Fee was \$0.15 per contract. As stated above, the cost savings was offered as an incentive for Firms to send addition customer orders to NYSE Arca. As part of a more recent proposed rule change,<sup>7</sup> the Market Maker Transaction Fee was lowered to \$0.16 per contract, representing a savings of almost 40% over the previous fee. Because of the reduction in the Market Maker Transaction Fee, the additional savings afforded by the application of the Firm Transaction Fee in certain instances, is no longer significant. In order to simplify the billing process, all market maker transactions will now be billed the same the fee of \$0.16 per contract. While this change represents a modest \$0.01 increase in certain cases, the Exchange believes that it is more than compensated for by the previous reduction in the Market Maker Transaction Fee.

The change to this fee will be reflected in the footnote associated with the Firm Transaction Fee on the Schedule.

#### Elimination of Obsolete Fees

Due to changes in the market structure at NYSE Arca certain fees have become outdate and obsolete. The Exchange proposes to eliminate these fees from the Schedule.

- Order Cancellation Fee – This fee was applied to orders that were cancelled on the PCX Plus automated trading system. This system is no longer in use and accordingly the fee no longer applies.

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<sup>6</sup> See Securities Exchange Act Release No. 53165 (January 22, 2006), 71 FR 4955 (January 30, 2006) (SR-PCX-2005-136).

<sup>7</sup> See Securities Exchange Act Release No. 54309 (August 11, 2006), 71 FR 48571 (August 21, 2006) (SR-NYSEArca-2006-25).

- Booth WorkStation Fee – This fee was assessed to OTP Firms operating on the floor of the Exchange that used certain Exchange provided workstations. These workstations have been replaced by firm proprietary systems; therefore the fee no longer applies.
- Printer Fee – Prior to the introduction of the OX system,<sup>8</sup> the Exchange provided printers that would generate order tickets in certain cases where orders were not electronically executed or represented. OX is a fully automated system and does not need to print order tickets. The printers are no longer in use and therefore the user fee no longer applies.
- Market Maker Hand Held Fees – Market Makers on the floor of the Exchange now use proprietary trading systems to interface with the OX system. The Market Maker Hand Held system is no longer in use on NYSE Arca; accordingly the fees associated with it no longer apply.

#### Administrative Changes

The Exchange also proposes a change to the formatting of the Schedule. Presently, the Schedule shows a list of explanatory end notes on the last page of the Schedule. With the new format, the end notes will be moved to the appropriate page that shows the corresponding fee or charge. Except where previously noted, the language in the reference notes will remain the same, just the formatting of the reference note will change. The Exchange believes that by having the reference notes on the same page as the corresponding charge or fee, the Schedule will be more user friendly and easier to read.

#### 2. Statutory Basis

The Exchange believes that the proposal is consistent with the provisions of Section 6 of

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<sup>8</sup> See Securities Exchange Act Release No. 54238 (July 28, 2006), 71 FR 44758 (August 7, 2006) (SR-NYSEArca-2006-13).

the Act,<sup>9</sup> in general, and with Section 6(b)(4) of the Act,<sup>10</sup> in particular, in that the proposal provides for the equitable allocation of reasonable dues, fees, and other charges among its OTP Holders<sup>11</sup> and OTP Firms trading option contracts on NYSE Arca.

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

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 is subject to Section 19(b)(3)(A)(ii) of the Act<sup>12</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder<sup>13</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 Commission receipt of the filing. 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.<sup>14</sup>

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<sup>9</sup> 15 U.S.C. 78f.

<sup>10</sup> 15 U.S.C. 78f(b)(4).

<sup>11</sup> See NYSE Arca Rule 1(q).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>13</sup> 17 CFR 240.19b-4(f)(2).

<sup>14</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 December 15, 2006, the date on which the Exchange submitted Amendment No. 1.

#### 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-NYSEArca-2006-89 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.

All submissions should refer to File Number SR-NYSEArca-2006-89. 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 the filing also will be available for inspection and copying at the principal office of NYSE Arca. 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-2006-89 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>15</sup>

Florence E. Harmon  
Deputy Secretary

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