

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-55223; File No. SR-NYSEArca-2007-07)

February 1, 2007

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 2 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 January 22, 2007, 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 January 29, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. On January 31, 2007, NYSE Arca withdrew Amendment No. 1 and filed Amendment No. 2 to the proposed rule change. The Exchange has designated this proposal as one establishing or changing a due, fee or other charge imposed by the Exchange under Section 19(b)(3)(A)<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 Services (“Schedule”) in order to revise certain Transaction Fees and to eliminate Marketing Fees for

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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).

issues that trade as part of the Penny Pilot Program (“Pilot” or “Penny Pilot Program”).<sup>5</sup> The text of the proposed rule change is available at <http://www.nysearca.com/regulation/filings.asp>, at the Exchange, 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, NYSE Arca included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposal. 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 purpose of the proposed rule change is to revise the existing NYSE Arca Schedule in conjunction with the introduction of the Penny Pilot Program. The Exchange plans to include the following issues as part of the Penny Pilot Program. Agilent Technologies: (A), Advanced Micro Devices (AMD), Caterpillar (CAT), Flextronics International (FLEX), General Electric (GE), Intel (INTC), iShares Russell 2000 Index fund (IWM), Microsoft (MSFT), Nasdaq-100 Index Tracking Stock (QQQQ), Semiconductor Holders Trust (SMH), Sun Microsystems (SUNW), Texas Instruments (TXN), and Whole Foods Markets (WFMI). NYSE Arca is

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<sup>5</sup> See Securities Exchange Act Release No. 55156 (January 23, 2007) 72 FR 4759 (February 1, 2007) (SR-NYSEArca-2006-73).

proposing to amend its Schedule in order to make the following changes to certain fees and charges that are assessed to OTP Holders and OTP Firms<sup>6</sup> in the above listed issues.

#### Transaction Fees

NYSE Arca is proposing to implement a Post/Take pricing model for electronically executed transactions in issues that are part of the Penny Pilot Program. Under the proposed rate schedule, all electronic orders that add or “post” liquidity to the Consolidated Book (resting orders and resting quotes) will receive a transaction credit upon execution. Registered Market Makers<sup>7</sup> will receive a credit of \$0.30 per contract. All other trade participants, including but not limited to Brokers-Dealers and OTP Firms representing both Firm and Public Customer orders, will receive a credit of \$0.25 contract.

The Transaction Fee for all trade participants that “take” liquidity from the Consolidated Book (incoming electronic quotes and orders that are executed upon receipt) will be \$0.50 per contract. This fee will be applied to all trade participants, including Market Makers, Broker-Dealers and OTP Firms executing orders on behalf of Public Customers.

Electronically entered Contingency Orders, such as All or None (“AON”) and Immediate or Cancel (“IOC”) are deemed to be taking liquidity and therefore will be assessed the \$0.50 per contract fee.

Orders that take place as part of an Opening Auction are deemed to neither take nor post liquidity. For this reason, in issues that trade as part of the Penny Pilot Program, executions that take place as part of an Opening Auction will neither be assessed nor credited the Transaction Fee.

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<sup>6</sup> The terms OTP Holders and OTP Firms are defined in NYSE Arca Rules 1.1(q) and 1.1(r), respectively. OTP Holders and OTP Firms have the status of a “member” of NYSE Arca as that term is defined in Section 3 of the Act.

<sup>7</sup> The term Market Maker is defined in NYSE Arca Rules 6.1(c) and 6.1A(a)(8).

### Linkage Fees

Linkage Orders executed at NYSE Arca are subject to the same billing treatment as other Broker Dealer orders.<sup>8</sup> Since Linkage Orders that are sent to and executed on NYSE Arca will be taking liquidity, these orders will be assessed a \$0.50 per contract fee. This fee remains unchanged from the present fee. Linkage Orders that are not executed upon receipt are rejected back to the sender and are never posted in the Consolidated Book. Therefore, a Linkage Order would never be eligible to receive a credit of the Transaction Fee.

### Royalty Fees

For electronic executions in issues included in the Penny Pilot Program, where the Exchange pays a Royalty Fee to a licensed underwriter, the Royalty Fee will be passed through to the trading participant on the “take” side of the transaction. Royalty fees will not be assessed on executions occurring during the Opening Auction in Pilot issues. Open Outcry executions in Pilot issues and all executions in non-Pilot issues will be subject to the current billing treatment covering Royalty Fees.

The above rates apply only to electronically executed transactions in Penny Pilot issues mentioned above, effective upon the date that they rollout as part of the Pilot. Initial plans for the Penny Pilot Program do not include any issues that have Royalty Fees associated with them. In the event that the Exchange was to propose the inclusion of a Royalty Fee issue in the Penny Pilot Program, it would do so through a rule filing with the Commission pursuant to Rule 19b-4.

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<sup>8</sup> Fees imposed on Linkage Orders are subject to an Exchange pilot program and will expire on July 31, 2007.

## Marketing Fees

The Exchange presently assesses Market Makers<sup>9</sup> a \$0.65 per contract Marketing Fee on all transactions involving public customer orders. For orders in the NASDAQ-100 Tracking Stock (QQQQ), the Exchange charges Market Makers \$0.95 per contract; in the Standard and Poor's Depository Receipts (SPY), the Exchange charges \$1.00 per contract. Market Makers are assessed Marketing Fees on both public customer orders and Broker Dealer orders in the QQQQ and the SPY. Market Maker to Market Maker orders are never assessed a Marketing Fee.

As part of the Penny Pilot Program, NYSE Arca will be quoting and trading a limited number of issues in one cent increments. For transactions in issues which are included as part of the Penny Pilot Program, the Exchange will no longer collect a Marketing Fee. All other aspects of the Marketing Fee will remain the same.

## Rollout of the Pilot

The Penny Pilot Program commenced on January 26, 2007.<sup>10</sup> Initially, as mention above, only a limited number of issues will be included in the Pilot. It is anticipated that the rollout of all issues will be completed over a three week period. The above rate changes apply only to transactions in Pilot issues, effective upon the date that they rollout as part of the Penny Pilot Program.

### 2. Statutory Basis

NYSE Arca believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>11</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act,<sup>12</sup> in particular, in that

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<sup>9</sup> See supra, note 7.

<sup>10</sup> See supra, note 5.

<sup>11</sup> 15 U.S.C. 78f(b).

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

it is designed to provide for the equitable allocation of dues, fees and other charges among its members.

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

NYSE Arca 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

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 foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>13</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder<sup>14</sup> because it establishes or changes a due, fee or other charge imposed by the Exchange. At any time within 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 the 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:

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<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(2).

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-2007-07 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-2007-07. 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 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 No. SR-NYSEArca-2007-07 and should be submitted on or before [insert date 21 days from date of publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

Nancy M. Morris  
Secretary

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