

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-55720; File No. SR-NYSEArca-2007-22)

May 7, 2007

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Listing and Annual Fees for Derivative Securities Products and Closed-End Funds

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 February 27, 2007, NYSE Arca, Inc. (“NYSE Arca” or the “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 May 1, 2007, NYSEArca filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On May 3, 2007, NYSEArca filed Amendment No. 2 to 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

NYSE Arca, through its wholly owned subsidiary NYSE Arca Equities, Inc. (“NYSE Arca Equities”), is proposing to amend its Schedule of Fees and Charges (“Fee Schedule”) to revise the listing fees applicable to Derivative Securities Products, Closed-End Funds and Structured Products listed on NYSE Arca, L.L.C. (“NYSE Arca Marketplace”), the equities

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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> Amendment No. 1 replaces and supersedes the original filing in its entirety.

<sup>4</sup> Amendment No. 2 conforms a single category in the annual fee chart for Derivative Securities Products in the purpose section with the Fee Schedule; and amends the purpose section to reflect that an additional issuer listed a series of Investment Company Units on the Exchange on March 28, 2007.

facility of NYSE Arca Equities. The Exchange also proposes related modifications to the Fee Schedule. The text of the proposed rule change is available at NYSE Arca, the Commission's Public Reference Room, and [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, 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

NYSE Arca has determined to revise the listing fees specifically applicable to Derivative Securities Products (or "Products"), Closed-End Funds and Structured Products,<sup>5</sup> as follows:

- (1) Eliminate the Application Processing Fee for Derivative Securities Products, Closed-End Funds and Structured Products;

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<sup>5</sup> For purposes of this proposal, Derivative Securities Products include securities qualified for listing and trading on NYSE Arca under the following NYSE Arca Equities Rules: Rule 5.2(j)(3) (Investment Company Units), 5.2(j)(5) (Equity Gold Shares), 8.100 (Portfolio Depositary Receipts), 8.200 (Trust Issued Receipts), 8.201 (Commodity-Based Trust Shares), 8.202 (Currency Trust Shares), 8.300 (Partnership Units), and 8.400 (Paired Trust Securities), as these rules may be amended from time to time.

Closed-End Funds are a type of investment company registered under the Investment Company Act of 1940 that offer a fixed number of shares. Their assets are professionally managed in accordance with the Closed-End Fund's investment objectives and policies, and may be invested in stocks, fixed income securities or a combination of both.

- (2) Impose an original listing fee of \$5,000 per Derivative Securities Product;
- (3) Reduce, for some Derivative Securities Products, the Annual Fee; and
- (4) Establish a listing and annual fee schedule for Closed-End Funds based on New York Stock Exchange LLC (“NYSE”) fees for Closed-End Funds as set forth in Section 902.04 of the NYSE Listed Company Manual.

This filing also proposes a number of related modifications to the Fee Schedule. The proposed revisions will apply as of January 1, 2007 (with the exception of listing fees for Closed-End Funds).

#### Summary of Current and Proposed Fees

1. Application Processing Fee

Currently, NYSE Arca levies a non-refundable application processing fee of \$500 for all applications to list “Funds” (which term currently encompasses Exchange-Traded Funds and Closed-End Funds) submitted at the same time by a Fund issuer or “family” regardless of the number of Funds to be listed. This fee is currently credited towards the applicable initial Listing Fee if the application is approved, or if the Fund issuer or “family” is not subject to an initial Listing Fee, towards the applicable Annual Fee. With this filing, NYSE Arca proposes to eliminate such Application Processing Fee and will impose no such fee for Derivative Securities Products, Closed-End Funds or Structured Products.

2. Listing Fee

Currently, NYSE Arca charges a one-time Listing Fee of \$20,000 for the first Fund listed by a Fund issuer or Fund “family,” but does not currently charge a Listing Fee for subsequent additional listings of Funds from the same Fund issuer or “family,” regardless of whether one or

more previously listed Funds remains listed on NYSE Arca.<sup>6</sup> Further, this Listing Fee applies regardless of whether the Fund(s) lists in conjunction with an initial public offering, transfers from another marketplace, or concurrently lists or is already listed on another exchange or market.

a. Derivative Securities Products

With this filing, NYSE Arca proposes separate Listing Fees for Derivative Securities Products and Closed-End Funds. For Derivative Securities Products, NYSE Arca Equities proposes a Listing Fee fixed at \$5,000 per Derivative Securities Product. The proposed Listing Fee applies regardless of whether the Product lists in conjunction with an initial public offering, transfers from another marketplace, or concurrently lists or is already listed on another exchange or market.

b. Closed-End Funds<sup>7</sup>

When a Closed-End Fund lists a class of common stock, or first lists a class of preferred stock in a case where common stock is not already listed, NYSE Arca Equities proposes Listing Fees as follows:

| Number of Securities Issued                    | Total Listing Fee |
|--|-------------------|
| Up to and including 10 million                 | \$20,000          |
| Over 10 million up to and including 20 million | \$30,000          |
| Over 20 million                                | \$40,000          |

<sup>6</sup> Footnote 1 to the Exchange’s current Fee Schedule states that Fund “families” are those with a common investment advisor or investment advisors, which are “affiliated persons” as defined in the securities laws.

<sup>7</sup> These fees are substantially identical to the fees charged by the NYSE for Closed-End Funds. See NYSE Listed Company Manual, Section 902.04.

(1) Listing Additional Securities by a Closed-End Fund

In the case of the following types of additional listings, Listing Fees are calculated on a per share basis for each class according to the Listing Fee schedule below:

- At the time it first lists, a Closed-End Fund lists one or more classes of preferred stock or warrants in addition to a primary class of common stock or preferred stock;
- Once listed, a Closed-End Fund lists additional shares of a class of previously listed securities; or
- Once listed, a Closed-End Fund lists a new class of preferred stock or warrants.

To the extent that an issuer lists more than one class of the same type of security, the class with the greatest number of shares issued will be deemed the primary class.

When determining Listing Fees, calculations are made at each level of the schedule up to the last level applicable to the number of securities being listed. The total Listing Fee equals the sum of the amounts calculated at each level of the schedule. (Examples are provided below, under “Calculating Listing Fees.”)

| Number of Securities Issued                    | Fee Per Share |
|--|---------------|
| Up to and including 2 million                  | \$0.01475     |
| Over 2 million up to and including 4 million   | \$0.0074      |
| Over 4 million up to and including 300 million | \$0.0035      |
| Over 300 million                               | \$0.0019      |

## (2) Limitations on Closed-End Fund Listing Fees

**Fund Family Discount.** If two or more closed-end funds from the same fund family list at approximately the same time, the Exchange will cap the collective Listing Fee for those funds at \$75,000. The Exchange will consider funds from the same fund family to be listing at approximately the same time if an issuer provides notice that such funds will be listed as part of the same transaction. A fund family consists of closed-end funds with a common investment adviser or investment advisers who are "affiliated persons" as defined in Section 2(a)(3) of the Investment Company Act of 1940, as amended.

**Limitation on Listing Fees for Additional Class of Common Shares.** A Closed-End Fund that applies to list a new class of common shares in addition to its primary class will be charged a fixed Listing Fee of \$5,000 in lieu of the per share schedule.

**Minimum Listing Fee for Subsequent Listing of Additional Securities.** NYSE Arca will impose a minimum application fee for a subsequent listing of additional securities of \$2,500. When listing additional securities, an issuer is billed Listing Fees in an amount equal to the greater of the \$2,500 minimum supplemental listing application fee and the fee calculated on a per share basis. This applies to the listing of additional shares of an already listed equity security or to the listing of an additional class of equity security (other than a new class of common shares).

**Fee for Certain Changes.** NYSE Arca will charge a \$2,500 fee for changes that involve modifications to Exchange records, for example, changes of name, par value, title of security or designation.

**Application Fee for Technical Original Listings and Reverse Stock Splits.** NYSE Arca will apply a \$5,000 application fee for a Technical Original Listing if the change in the issuer's

status is technical in nature and the shareholders of the original issuer receive or retain a share-for-share interest in the new issuer without any change in their equity position or rights. For example, a change in a Closed-End Fund's state of incorporation or a reincorporation or formation of a holding company that replaces a listed Closed-End Fund would be considered a Technical Original Listing. The \$5,000 application fee also will apply to a reverse stock split.

**Maximum Listing Fee for Stock Splits and Stock Dividends.** Listing fees on shares issued in conjunction with stock splits and stock dividends will be capped at \$150,000 per split or issuance.

**Maximum Listing Fee for Issuance of Additional Shares of a Listed Class.** Listing Fees on the issuance of additional shares of an already listed class of stock are capped at \$500,000 per transaction, for example, in the case where shares are issued in conjunction with a merger or consolidation where a listed company survives, subsequent public offerings of a listed security and conversions of convertible securities into a listed security.

**Discounts on Listing Fees.** In the case of transactions such as a consolidation between two or more listed issuers that result in the formation of a new issuer, or a merger or consolidation between a listed issuer and an unlisted issuer that results in the unlisted issuer surviving or the creation of a new issuer, where at the conclusion of the transaction a previously unlisted issuer immediately lists, Listing Fees for that new issuer are calculated at a rate of 25% of total Listing Fees for each class of securities being listed (to the extent that the total calculated listing fee for a class of common stock would be greater than \$250,000, the calculation would be 25% of the \$250,000 maximum for a new listing of common stock).

No discount will be applied where a listed issuer survives the merger or consolidation, or in the case of a backdoor listing (i.e., resulting from a merger, acquisition or consolidation which has the effect of circumventing the standards for original listing).

Listing Fees for Pre-emptive Rights. Preemptive rights representing equity securities are not subject to a separate Listing Fee. As of the date that preemptive rights are exercised, Listing Fees will accrue on the securities issued and the issuer will be billed for those Listing Fees at the beginning of the following year.

### (3) Calculating Listing Fees

Treasury stock, restricted stock and shares issued in conjunction with the exercise of an over-allotment option, if applicable, are included in the number of shares a Closed-End Fund is billed for at the time a security is first listed.

The following are examples of how Listing Fees would be calculated by a closed-end fund in the case of an original listing and a subsequent additional issuance of common stock:

Example A: A closed-end fund listing 50 million common shares in the context of an initial public offering or transfer from another market would pay total Listing Fees of \$40,000.

Example B: The same closed-end fund subsequently applies to list an additional 5 million shares of common stock that are immediately issued. The closed-end fund will pay total Listing Fees of \$17,500 for the subsequent listing. Since the closed-end fund already has 50 million shares outstanding, the Listing Fee for the additional 5 million shares is calculated at a rate of \$0.0035 per share.

c. Structured Products

The Fee Schedule is being amended to specify that the \$20,000 Listing Fee, in addition to Initial Public Offerings, applies to an initial listing (e.g., a listing transfer to NYSE Arca from another exchange).

3. Annual Fees

Currently, NYSE Arca charges Annual Fees specifically for Exchange-Traded Funds and Closed-End Funds based on the aggregate total shares outstanding of such Funds listed by the same Fund issuer or Fund “family,” as follows:

| Aggregate Total Shares Outstanding   | Annual Fee |
|--------------------------------------|------------|
| Less than 10 million                 | \$5,000    |
| 10 million to less than 30 million   | \$10,000   |
| 30 million to less than 50 million   | \$15,000   |
| 50 million to less than 100 million  | \$20,000   |
| 100 million to less than 250 million | \$30,000   |
| 250 million to less than 500 million | \$40,000   |
| 500 million to less than 750 million | \$50,000   |
| 750 million to less than one billion | \$60,000   |
| Greater than one billion             | \$80,000   |

Annual Fees are assessed beginning in the first full calendar year following the year of listing. The aggregate total shares outstanding is calculated based on the total shares outstanding as reported by the Fund issuer or Fund “family” in its most recent periodic filing with the Commission or other publicly available information. Annual Fees are not pro-rated or reduced

for Funds that delist for any reason. Annual Fees apply regardless of whether any of these Funds is listed elsewhere.

a. Derivative Securities Products

NYSE Arca Equities proposes revised Annual Fees for Derivative Securities Products based on total shares outstanding for each issue, as follows:

| Aggregate Total Shares Outstanding (each issue) | Annual Fee |
|---|------------|
| Less than 25 million                            | \$2,000    |
| 25 million up to 49,999,999                     | \$4,000    |
| 50 million up to 99,999,999                     | \$8,000    |
| 100 million up to 249,999,999                   | \$15,000   |
| 250 million up to 499,999,999                   | \$20,000   |
| 500 million and over                            | \$25,000   |

The revised Annual Fee for Derivative Securities Products will be billed quarterly in arrears effective as of January 1, 2007. As such, billing for the first calendar quarter of 2007, for example, will be based on the number of shares outstanding for an issue on March 30, 2007. For example, for an issue with 45 million shares outstanding on March 30, 2007, the Annual Fee payable for the quarter would be \$1,000 (\$4,000 Annual Fee divided by 4). If, at the end of the second calendar quarter of 2007, the number of shares outstanding for such issue increased to 55 million, the Annual Fee payable for such quarter would be \$2,000 (\$8,000 Annual Fee divided by 4). The Exchange believes it is appropriate to apply the revised Annual Fees to issuers of the specified securities as of January 1, 2007 to permit the Exchange to apply the fee in the same manner to all such issuers listed on the Exchange, including those listed in the first quarter of

2007. The revised Annual Fee is expected to be lower for some issuers than the current Annual Fee.

b. Closed-End Funds

(1) Annual Fee Schedule for Primary Listed Security

NYSE Arca Equities proposes the following Annual Fee Schedule for a Closed-End Fund's primary class of listed security (common stock, or preferred stock if no common stock is listed) and will be equal to the greater of the minimum fee or the fee calculated on a per share basis:

|                |                     |
|----------------|---------------------|
| Per Share Rate | \$0.00093 per share |
| Minimum Fee    | \$25,000            |

The Annual Fee for Closed-End Funds is payable in January each year, and issuers are subject to Annual Fees in the year of listing, pro-rated based on days listed that calendar year.

(2) Additional Classes of Listed Equity Issues

The Annual Fee for equity issues other than the primary class of security listed will be the greater of the minimum or the fee calculated on a per share basis:

|                |                     |
|----------------|---------------------|
| Per Share Rate | \$0.00093 per share |
| Minimum Fee    | \$5,000             |

(3) Limitations on Annual Fees

Fund families that list between 3 and 14 Closed-End Funds will receive a 5% discount off the calculated Annual Fee for each fund listed, and those with 15 or more listed Closed-End Funds will receive a discount of 15%. No fund family shall pay aggregate Annual Fees in excess of \$1,000,000 in any given year.

In the case of transactions involving listed issuers (such as a consolidation between two or more listed issuers that results in the formation of a new issuer, or a merger or consolidation between a listed issuer and an unlisted issuer that results in the unlisted issuer surviving or the creation of a new issuer), where at the conclusion of the transaction a previously unlisted issuer immediately lists, Annual Fees will not be charged to that new issuer for the year in which it lists to the extent that the transaction concludes after March 31. To the extent that the transaction concludes on or before March 31 in any calendar year, however, the newly listing issuer will be charged pro rata Annual Fees from the date of listing to the end of the year.

In addition, to the extent that a listed issuer is involved in a consolidation between two or more listed issuers that results in the formation of a new issuer, or a merger or consolidation between a listed issuer and an unlisted issuer that results in the unlisted issuer surviving or the creation of a new issuer, or a merger between two listed issuers where one listed issuer survives, and the transaction concludes on or before March 31 in any calendar year, the non-surviving listed issuer(s) will only be subject to pro rata Annual Fees for that year through the date of the conclusion of the transaction. To the extent that the transaction concludes after March 31, the non-surviving listed issuer(s) will be subject to full Annual Fees for that year.

#### 4. Implementation

NYSE Arca proposes to implement these revised fees, as applicable, to all issuers of Derivative Securities Products, Closed-End Funds and Structured Products as of January 1, 2007 with the exception of listing fees for Closed-End Funds, which will take effect as of the date of Commission approval of the proposed rule change. The Exchange believes such implementation date is appropriate under the circumstances described below. NYSE Arca believes this proposal will streamline and clarify the fees applicable to Derivative Securities Products and Closed-End

Funds, making them easier to understand and apply while continuing to provide for adequate support of the ongoing costs of issuer services, including regulatory oversight and product and service offerings. Further, this proposal aligns NYSE Arca listing and annual fees for Derivative Securities Products and Closed-End Funds with the fees charged by the NYSE, further simplifying the Fee Schedule and helping NYSE Arca to compete more effectively for listings.

For Derivative Securities Products, the proposed Listing Fees provide an alternative fee structure and will in certain circumstances be lower for issuers than the previous Fee Schedule. The Exchange believes it is appropriate to apply these potential cost savings to issuers as of January 2007.<sup>8</sup>

As discussed above, the revised Annual Fee for Derivative Securities Products will be billed quarterly in arrears, beginning after the first calendar quarter in 2007, effective as of January 1, 2007. The Annual Fee is expected to be lower for some Derivative Securities Products issuers than the current Annual Fee, but may be higher in some cases depending on the number of funds listed by the same issuer and the shares outstanding for each fund.<sup>9</sup> The

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<sup>8</sup> The Exchange notes that, with one exception discussed below, the only Derivative Securities Products currently listed on the Exchange are Investment Company Units (Exchange-Traded Funds) of one issuer of two separate trusts, which were listed on the Exchange in 2006. Because these listings were transfers from another national securities exchange, the issuer incurred no listing fee, in accordance with Commentary .04 to the Exchange's Fee Schedule (which will cease to have effect on December 31, 2007). The Exchange has advised the issuer of the proposed changes to the Listing and Annual Fees. These two trusts listed six and 13 funds, respectively. Except for Commentary .04, the listing fee for each trust would have been \$20,000. For new Derivative Securities Product issues, an issuer listing five or more issues would incur a higher listing fee under the proposed schedule than under the current schedule (e.g., an issuer listing six funds would pay \$30,000, and \$5,000 for each subsequent fund listed.) An additional issuer listed a series of Investment Company Units on the Exchange on March 28, 2007, and the issuer would incur an initial listing fee of \$20,000 under the current fee schedule and \$5,000 under the proposed schedule.

<sup>9</sup> Taking the example of the two trusts discussed above (see preceding footnote), the two trusts would have incurred Annual Fees of \$30,000 and \$50,000, respectively, based on

proposed Annual Fee for Closed-End Funds will apply as of January 1, 2007, and, for issuers listed in calendar year 2007, will be pro-rated based on days listed in 2007.<sup>10</sup>

2. Statutory Basis

NYSE Arca believes that the proposal is consistent with Section 6(b)<sup>11</sup> of the Act, in general, and Section 6(b)(4)<sup>12</sup> of the Act, in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its issuers and other persons using its facilities.

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

NYSE Arca has neither solicited nor received written comments on the proposed modifications to its fee schedule.

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the total aggregate shares of each trust outstanding at year-end 2006 (assuming the funds of each trust had been listed the entire year and the shares outstanding remained constant throughout the year). Under the proposed fee schedule, Annual Fees will be based on total shares outstanding of each fund. Accordingly, under the same circumstances described above, the trusts would incur an Annual Fee of \$20,000 and \$81,000, respectively, based on shares outstanding of each of their funds.

<sup>10</sup> The Exchange notes that application of the proposed Annual Fee as of January 1, 2007 for Closed-End Funds will potentially impact only a few issuers. Following discussions, beginning in 2006, with Closed-End Fund issuers about changes to the Annual Fee, eight of these funds delisted from the Exchange. The Exchange dually lists three Closed-End Funds, one of which is pending delisting.

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

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

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 Exchange 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](mailto:rule-comments@sec.gov). Please include File No. SR-NYSEArca-2007-22 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-2007-22. 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 available publicly. All submissions should refer to File Number SR-NYSEArca-2007-22 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).