

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-55917; File No. SR-NYSEArca-2007-22)

June 15, 2007

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving Proposed Rule Change As Amended By Amendments No. 1, 2, and 3 Thereto Relating to Listing and Annual Fees for Derivative Securities Products, Closed-End Funds and Structured Products

I. Introduction

On February 27, 2007, the NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”), through its wholly owned subsidiary, NYSE Arca Equities, Inc., 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> a proposal to restructure and amend its Schedule of Fees and Charges (“Fee Schedule”) to revise fees applicable to Derivative Securities Products, Closed-End Funds, and Structured Products listed on NYSE Arca, L.L.C., the equities facility of NYSE Arca Equities. NYSE Arca filed Amendment No. 1 to the proposed rule change on May 1, 2007 and filed Amendment No. 2 to the proposed rule change on May 3, 2007. The proposed rule change was published for comment in the Federal Register on May 14, 2007.<sup>3</sup> On June 12, 2007, NYSE Arca filed Amendment No. 3 to the proposed rule change.<sup>4</sup> The Commission received no comments regarding the proposal. This order approves the proposed rule change, as amended.

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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 Securities Exchange Act Release No. 55720 (May 7, 2007), 72 FR 27160 (“Notice”).

<sup>4</sup> For a description of Amendment No. 3, see Description of the Proposal, infra. Amendment No. 3 is a technical amendment, therefore it is not subject to notice and comment.

## II. Description of the Proposal

NYSE Arca proposes to substantially revise its Fee Schedule. In particular, as detailed in its proposal,<sup>5</sup> NYSE Arca proposes to (1) eliminate the Application Processing Fee for Derivative Securities Products,<sup>6</sup> Closed-End Funds,<sup>7</sup> and Structured Products; (2) impose an original listing fee of \$5,000 per Derivative Securities Product; (3) amend the annual fee for some Derivative Securities Products; and (4) establish a separate listing and annual fees for Closed-End Funds. NYSE Arca also proposes a number of related modifications to the Fee Schedule, including fee discounts, limitations, minimums and caps for Closed-End Funds.<sup>8</sup>

NYSE Arca proposes to implement these revised fees, as applicable, to all issuers of Derivative Securities Products, Closed-End Funds, and Structured Products retroactively as of January 1, 2007 with the exception of listing fees for Closed-End Funds, which would take effect as of the date of Commission approval of the proposed rule change.

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<sup>5</sup> See Notice, supra note 3.

<sup>6</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.

<sup>7</sup> 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.

<sup>8</sup> In addition, NYSE Arca proposed to amend the Fee Schedule to specify that for other structured products the \$20,000 Listing Fee applies to an initial listing (e.g., a listing transfer to NYSE Arca from another exchange) in addition to Initial Public Offerings.

### Amendment No. 3

In Amendment No. 3, NYSE Arca proposes minor revisions to the Fee Schedule to correct the grammar in certain sections of the rule text and to conform the rule text to proposed rule changes that were recently approved by the Commission. Amendment No. 3 does not change the proposal substantively. Specifically, NYSE Arca amended the rule text to clarify the three examples in which the listing fee cap for Closed-End Funds would apply, in particular: (1) when shares are issued in conjunction with a merger or consolidation where a listed company survives; (2) subsequent public offerings of a listed security; or (3) where there are conversions of convertible securities into a listed security. Amendment No. 3 also clarified that when listing additional Closed-End Funds, the issuer will be billed a listing fee that is the greater of \$2,500 or the fee calculated on a per share basis.

### III. Discussion

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange<sup>9</sup> and, in particular, the requirements of Section 6 of the Act.<sup>10</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>11</sup> which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and

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<sup>9</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>10</sup> 15 U.S.C. 78f.

<sup>11</sup> 15 U.S.C. 78f(b)(5).

open market and a national market system, and, in general, to protect investors and the public interest. The Commission also finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>12</sup> which requires that the rules of the exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

NYSE Arca's proposal specifies the listing fees and annual fees applicable to Derivative Securities Products, Closed-End Funds, and Structured Products. Numerical examples on how fees are calculated provide appropriate clarification, where necessary.<sup>13</sup> The Commission notes that the amended Fee Schedule will in some cases reduce and in some cases increase the applicable listing fees and annual fees owed by issuers, depending on various factors including the number of funds listed by the same issuer, the shares outstanding for each fund, and with respect to Closed End Funds, the applicability of fee discounts, limitations, minimums and caps.

The Commission notes that the revised Annual Fee for Derivative Securities Products would be billed quarterly in arrears, beginning after the first calendar quarter in 2007, effective as of January 1, 2007.<sup>14</sup> The proposed Annual Fee for Closed-End Funds

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

<sup>13</sup> For example, the Fee Schedule specifies that 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.

<sup>14</sup> 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). For the list of revised annual fees, see Notice, supra note 3.

would apply as of January 1, 2007, and, for issuers listed in calendar year 2007, will be pro-rated based on days listed in 2007. The proposed listing fees for Derivative Securities Products would also be effective as of January 1, 2007 while the listing fees for Closed-End Funds will be effective as of the date of this approval order. NYSE Arca represented that the retroactive fees would affect only a few issuers, specifically two issuers of Investment Company Units (Derivative Securities Products)<sup>15</sup> and three Closed-End Funds, all of which are aware of the proposed listing and annual fees.

The Commission believes the Fee Schedule overall is consistent with the Act. The Commission notes that the proposed annual and listing fees are identical to the fee schedule for Closed-End Funds and Derivative Securities Products of the New York Stock Exchange LLC (“NYSE”) as set forth in Sections 902.04 and 902.07 of the NYSE Listed Company Manual. The Commission notes that applying sections of the amended Fee Schedule, effective as of January 1, 2007, will enable the Exchange to apply its Fee Schedule uniformly to all affected issuers listed on the Exchange, including those listed in the first quarter of 2007, who may benefit from cost savings resulting from the revised Fee Schedule.

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<sup>15</sup> NYSE Arca represented that the retroactive fees would not affect the Derivative Securities Products currently listed on the Exchange. The Investment Company Units of one issuer with two separate trusts was a transfer from another national securities exchange and not subject to a listing fee in accordance with Commentary .04 to the Exchange’s Fee Schedule (which will cease to have effect on December 31, 2007). An additional issuer, which listed a series of Investment Company Units on the Exchange on March 28, 2007, would incur \$5,000 under the proposed fee schedule, rather than the current \$20,000 initial listing fee and, thus, benefit from this proposal.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>16</sup> that the proposed rule change, as amended, (SR-NYSEArca-2007-22) is hereby approved.

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

Florence E. Harmon  
Deputy 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).