

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-56295; File No. SR-NYSEArca-2007-82)

August 21, 2007

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Amending Fees for the Entry of Mid-Point Passive Liquidity or Primary Sweep Orders

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 August 3, 2007, 2007, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”), through its wholly owned subsidiary NYSE Arca Equities, Inc. (“NYSE Arca Equities”), filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. On August 20, 2007, the Exchange submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>4</sup> and Rule 19b-4(f)(2) thereunder,<sup>5</sup> which renders it 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.

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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 Amendment No. 1 replaced and superseded the original filing in its entirety.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(2).

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

The Exchange proposes to amend the section of its Schedule of Fees and Charges for Exchange Services (the “Fee Schedule”) as it applies to orders submitted by Users<sup>6</sup> designated as a (1) Mid-Point Passive Liquidity Order (“MPL Order”)<sup>7</sup> or (2) Primary Sweep Order (“PSO”).<sup>8</sup> The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and <http://www.nyse.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 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 its Fee Schedule as it applies to Users submitting any order that is designated as either an MPL Order or PSO.

First, with the adoption of the MPL Order and the changes to the Fee Schedule proposed herein, any order designated as an MPL Order shall not be eligible for a per share credit, if such order executes against an incoming marketable order, regardless of

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<sup>6</sup> See NYSE Arca Rule 1.1(yy) for the definition of “User.”

<sup>7</sup> See NYSE Arca Equities Rule 7.31(h)(5). See also Securities Exchange Act Release No. 56072 (July 13, 2007), 72 FR 39867 (July 20, 2007) (SR-NYSEArca-2007-61).

<sup>8</sup> See NYSE Arca Equities Rule 7.31(kk). See also Securities Exchange Act Release No. 55896 (June 11, 2007), 72 FR 33795 (June 19, 2007) (SR-NYSEArca-2007-50)

order type. According to the proposal, MPL Orders will be exempted from credits that currently appear in the following sections of the Exchange's Fee Schedule: NYSE ARCA MARKETPLACE: TRADE RELATED CHARGES, NYSE ARCA MARKETPLACE: MARKET MAKER FEES AND CHARGES, and the ETP Holder Transaction Credit and Market Data Revenue Sharing Credit under NYSE ARCA MARKETPLACE: OTHER FEES AND CHARGES. Consistent with the proposal to exempt MPL Orders from any credits, the Exchange will not assess fees to ETP Holders submitting MPL Orders for execution, as such orders shall not be viewed as removing liquidity from the NYSE Arca book.

Secondly, consistent with the proposal to exempt Users submitting MPL Orders from any credits, the Exchange will not assess fees to Users submitting MPL Orders for execution, as such orders shall not be viewed as removing liquidity from the NYSE Arca book. Accordingly, MPL Orders will be exempted from fees that currently appear in the following sections of the Exchange's Fee Schedule: NYSE ARCA MARKETPLACE: TRADE RELATED CHARGES and NYSE ARCA MARKETPLACE: MARKET MAKER FEES AND CHARGES.

Finally, the Exchange proposes to amend the Fee Schedule to exempt Users from the \$0.001 per share fee for any order routed to the New York Stock Exchange, L.L.C. ("NYSE") if such order is for a security listed on the NYSE and is designated as a PSO. Accordingly, PSOs will be exempted from the \$0.001 per share fee for orders routed outside the book to the NYSE that currently appears in the following section of the Exchange's Fee Schedule: NYSE ARCA MARKETPLACE: TRADE RELATED CHARGES.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act<sup>9</sup> in general and furthers the objectives of Section 6(b)(4)<sup>10</sup> in particular that it is intended to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

### 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>11</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder<sup>12</sup> because it establishes or changes a due, fee, or other charge applicable only to a member imposed by a 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

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

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

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>12</sup> 17 CFR 240.19b-4(f)(2).

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.

#### 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-2007-82 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-2007-82. 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, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. 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 Number SR-NYSEArca-2007-82 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>13</sup>

Florence E. Harmon  
Deputy Secretary

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