

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-57221; File No. SR-NYSEArca-2008-11)

January 29, 2008

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Fees Applicable to Certain Exchange Traded Funds and Rebates for Tape B Securities

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 16, 2008, NYSE Arca, Inc. ("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 the Exchange. The Exchange filed the proposed rule change 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 from interested persons.

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

The Exchange, through its wholly-owned subsidiary NYSE Arca Equities, proposes to amend the section of its Schedule of Fees and Charges for Exchange Services (the "Fee Schedule") that applies to: (1) orders submitted to the Exchange by ETP Holders<sup>5</sup> for (i) equity securities listed on the American Stock Exchange, LLC or any regional securities exchange ("Tape B Securities") or (ii) Exchange Traded Funds ("ETFs") listed on the New York Stock Exchange, LLC ("NYSE"); and (2) fees assessed by the Exchange for certain connectivity

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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).

<sup>5</sup> See NYSE Arca Equities Rule 1.1(n).

applications. While changes to the Fee Schedule pursuant to this proposal are effective upon filing, this filing applies the changes retroactively to January 1, 2008. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and on the Exchange's Internet Web site at <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, the Exchange 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. 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 purpose of this proposed rule change is to amend the relevant section of its Fee Schedule that applies to rebates provided to ETP Holders that submit orders which provide liquidity on NYSE Arca Equities for equity securities listed on the American Stock Exchange, LLC, or any regional stock exchange, commonly referred to as Tape B Securities. Currently, ETP Holders must qualify to receive the rebates for Tape B Securities by meeting criteria specified within the Fee Schedule. These criteria, based on trade volume submitted to NYSE Arca Equities in Tape B securities by an ETP Holder, designate initial and ongoing requirements in order for the ETP Holder to meet and maintain their eligibility to receive the rebates. Paid

monthly,<sup>6</sup> the rebate represents an estimated fifty percent (50%) of the tape revenue credit received from the Consolidated Tape Association (“CTA”) by the Exchange for the eligible transactions<sup>7</sup> of Tape B securities executed by the ETP Holder. Tape revenue received by the Exchange for transactions submitted by ETP Holders that do not meet the eligibility criteria for the Tape B rebates is not shared with such ETP Holders.

As NYSE Arca Equities no longer believes such criteria, or limiting the eligibility for such rebates, to be appropriate, the Exchange proposes to remove the criteria in their entirety and provide fifty percent (50%) of the estimated tape revenue credit to all ETP Holders which submit limit orders for Tape B securities that provide liquidity for the NYSE Arca Equities Book. Payment of the rebates will continue on a monthly basis. While changes to the Fee Schedule pursuant to this proposal will be effective upon filing, the changes will be implemented retroactively to January 1, 2008 for billing purposes of the Exchange.

With this filing, the Exchange also makes clarifying amendments to the Fee Schedule to reflect the transfer of all ETFs previously listed on the NYSE to NYSE Arca Equities. The transfer, announced by the NYSE in 2007, was completed by its deadline of December 31, 2007. Therefore, references to fees, credits or rebates specific to ETFs listed on the NYSE are obsolete.

Additionally, the current charge of \$300 listed for subscription of the RealTick® financial software, operated by Townsend Analytics (“TAL”) and offered to ETP Holders by the Exchange is not appropriate in light of the various options that ETP Holders may select to

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<sup>6</sup> Although the rebates for Tape B securities are paid by the Exchange to ETP Holders on a monthly basis, these revenues are received by the Exchange from the CTA quarterly. As a result, the Exchange provides an estimated monthly payment to ETP Holders for eligible transactions submitted for Tape B securities based on information available and/or previous monies received from the CTA.

<sup>7</sup> Rebates for Tape B securities are applicable to limit orders submitted by ETP Holders that are residing in the NYSE Arca Equities Book and that execute against inbound marketable orders.

receive. Depending on the RealTick® package an ETP Holder elects to receive, the charge may be greater or lesser than the current listed charge of \$300. For this reason, NYSE Arca Equities proposes to clarify that all fees assessed to an ETP Holder for each RealTick® workstation to which they subscribe shall be fees incurred by the Exchange from TAL, for providing such services, and passed through to the ETP Holder. There will be no change to the fees payable by ETP Holders for the use of the RealTick® software as a result of this amendment.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act,<sup>9</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange 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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change is effective upon filing pursuant to Section

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<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(4).

19(b)(3)(A)(ii)<sup>10</sup> of the Act and Rule 19b-4(f)(2)<sup>11</sup> thereunder because it establishes or changes a due, fee, or other charge applicable only to a member imposed by the Exchange. 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.

#### 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-2008-11 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-2008-11. 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

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>11</sup> 17 CFR 240.19b-4(f)(2).

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 on official business days between the hours of 10:00 am and 3:00 pm. Copies of such filing will also 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 No. SR-NYSEArca-2008-11 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 Trading and Markets, pursuant to delegated authority.<sup>12</sup>

Florence E. Harmon  
Deputy Secretary

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