

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57624; File No. SR-NYSEArca-2008-38)

April 4, 2008

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto to Amend the Schedule of Fees and Charges for Exchange Services that Apply to Orders Submitted by ETP Holders

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that, on March 31, 2008, NYSE Arca, Inc. (“Exchange”), through its wholly-owned subsidiary NYSE Arca Equities, Inc. (“NYSE Arca Equities”), 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 prepared substantially by the Exchange. On April 2, 2008, the Exchange filed Amendment No. 1. The Exchange has designated this proposal as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposed rule change 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

The Exchange proposes to amend the section of its Schedule of Fees and Charges for Exchange Services (“Fee Schedule”) that applies to orders submitted by ETP Holders.⁵ While

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ See NYSE Arca Equities Rule 1.1(n).

changes to the Fee Schedule pursuant to this proposal will be effective upon filing, the changes will become operative on April 1, 2008. The text of the proposed rule change is available on the Exchange's Web site at www.nyse.com, the Exchange's Office of the Corporate Secretary, and 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, 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

As part of its continuing efforts to enhance participation on the Exchange, NYSE Arca Equities proposes to amend the relevant sections of its Fee Schedule that apply to rebates provided to ETP Holders that submit orders which provide liquidity on NYSE Arca Equities for equity securities listed on the NASDAQ Stock Market LLC ("Nasdaq"), commonly referred to as Tape C securities, or equity securities listed on the New York Stock Exchange LLC ("NYSE"), commonly referred to as Tape A securities. Primarily, these changes will increase the rebate (or credit) earned by ETP Holders for providing significant liquidity in either Tape A or Tape C securities. Specifically, the Exchange proposes amending its existing volume tier structure and

creating new volume-based tiers in order to offer increased rebates for orders that provide liquidity and decreased fees for orders that take liquidity, if certain volume thresholds are met.

Tape C

Credits

Currently, the credit for round lot orders of Tape C securities that provide liquidity is \$0.002 per share, unless certain volume thresholds are met, in which case the rebate increases to \$0.0024 per share. With this filing, the Exchange proposes to increase the present, tier 1, volume threshold rebate from \$0.0024 per share to \$0.0025 where an ETP Holder (i) transacts an average daily share volume per month greater than 30 million shares (including transactions that take liquidity, provide liquidity, or route to away market centers) and also (ii) provides liquidity an average daily share volume per month greater than 15 million shares. The Exchange also proposes to offer, for Tape C securities, a \$0.0026 per share credit if certain additional, tier 2, volume thresholds are met. Specifically, if an ETP Holder (i) transacts an average daily share volume per month greater than 60 million shares (including transactions that take liquidity, provide liquidity, or route to away market centers) and also (ii) provides liquidity an average daily share volume per month greater than 30 million, then the ETP Holder will earn a credit of \$0.0026 per share. The \$0.0026 per share credit will apply for an ETP Holder's orders that provide liquidity up to 75 million average daily shares. All volume in excess of 75 million average daily shares per month will earn a per share credit of \$0.0025.

Fees

Currently, the per share charge for inbound orders executed against orders residing in the Book is \$0.0025. The Exchange hereby proposes increasing this fee to \$0.0026.

Also, where ETP Holders satisfy the new, tier 2, volume thresholds, the Exchange proposes to offer a reduced per share charge of \$.00245 for inbound orders in Tape C securities executed against orders residing in the Book.

Finally, where ETP Holders meet both the revised tier 1 volume thresholds and the new tier 2 volume thresholds, the Exchange will offer a reduced per share charge of \$.0026 for orders in Tape C securities routed away and executed by another market center or participant compared to the standard \$.0035 per share.

Tape A

Credits

Currently, ETP Holders receive a \$.0025 credit for round lot orders of Tape A securities that provide liquidity to the Book for which they are registered as the ETP Holder. The Exchange hereby proposes to implement a new Tape A rebate tier by offering an increased per share credit of \$.0028 when certain volume thresholds are met. Specifically, if an ETP Holder provides liquidity an average daily share volume per month greater than 30 million shares, then the ETP Holder will earn a credit of \$.0028 per share for its orders that provide liquidity. This \$.0028 per share credit will apply for an ETP Holder's orders that provide liquidity up to 100 million average daily shares. All volume in excess of 100 million average daily shares per month will earn the standard per share credit of \$.0025.

In addition, the Exchange proposes to charge a routing fee in connection with Primary Sweep Orders ("PSOs") that are routed to NYSE. Currently, PSOs for NYSE-listed securities are exempt from the \$.001 per share routing fee charged for orders in NYSE-listed securities routed to the NYSE. The Exchange now proposes to charge ETP Holders \$.0006 per share for

PSOs in NYSE-listed securities for such orders that are routed outside the Book to the NYSE.

The Exchange proposes this nominal fee as a reasonable means to balance its attempt to offer an attractive fee structure to its Users⁶ while ensuring that this order type is not open to abuse by Users attempting to gain free access to certain away market centers, such as the NYSE.

The Exchange will also renumber certain footnotes contained within the Fee Schedule.

While changes to the Fee Schedule pursuant to this proposal will be effective upon filing, the changes will become operative on April 1, 2008.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Section 6(b)(4),⁸ in particular, in 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. The Exchange believes that the proposed fees and credits are reasonable. The proposed rates are part of the Exchange's effort to attract and enhance participation on the Exchange, by offering increased credits and decreased fees where certain volume thresholds are satisfied. The Exchange also believes that the proposed changes to the Fee Schedule are equitable in that they apply uniformly to our Users. Finally, the Exchange believes that the proposed routing fee for PSOs is also both reasonable and equitable, in that it is a reasonable means to balance the Exchange's attempt to offer an attractive fee structure to its Users while ensuring that this order type is not open to abuse by Users attempting to gain free access to certain away market centers, such as the NYSE.

⁶ See NYSE Arca Equities Rule 1.1(yy).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4).

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 has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act⁹ and Rule 19b-4(f)(2)¹⁰ thereunder 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 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. Please include File Number SR-NYSEArca-2008-38 on the subject line.

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(2).

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-2008-38. 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 a.m. and 3:00 p.m. 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 publicly available. All submissions should refer to File Number SR-NYSEArca-2008-38 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Florence E. Harmon
Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).