

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-57912; File No. SR-NYSEArca-2008-53)

June 3, 2008

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Schedule of Fees and Charges for Exchange Services

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 May 30, 2008, NYSE Arca, Inc. (“NYSE Arca” or “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 substantially prepared by the Exchange. NYSE Arca has filed the proposal 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 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.<sup>5</sup> The Exchange will introduce a new pricing tier for Tape B securities of \$0.0028 per share (applicable to inbound orders executed against orders residing in the Book) and a new routing pricing tier of \$0.0029 if the ETP Holder (i) transacts an average daily share volume per month greater than 20

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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).

million shares (including transactions that take liquidity, provide liquidity, or route to away market centers) and (ii) provides liquidity an average daily share volume per month greater than 5 million shares. While changes to the Fee Schedule pursuant to this proposal will be effective upon filing, the changes will become operative on June 1, 2008. The text of the proposed rule change is available at NYSE Arca, the Commission's Public Reference Room, and [www.nyse.com](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 Exchange currently charges a fee of \$0.003 per share with respect to all inbound orders in Tape B securities (i.e., securities not listed on the New York Stock Exchange or Nasdaq) executed against orders residing in the Book. The Exchange now intends to introduce a new pricing tier for Tape B securities of \$0.0028 per share (applicable to inbound orders executed against orders residing in the Book) if the ETP Holder (i) transacts an average daily share volume per month greater than 20 million shares (including transactions that take liquidity, provide liquidity, or route to away market centers) and (ii) provides liquidity an average daily share volume per month greater than 5 million shares.

In addition, the Exchange currently charges a fee of \$0.0035 per share with respect to all Tape B securities routed away and executed by another market center or participant. The Exchange now intends to introduce a new routing pricing tier for Tape B securities of \$0.0029 per share if the ETP holder (i) transacts an average daily share volume per month greater than 20 million shares (including transactions that take liquidity, provide liquidity, or route to away market centers) and (ii) provides liquidity an average daily share volume per month greater than 5 million shares.

The Exchange will also clarify certain language contained in the Fee Schedule. While changes to the Fee Schedule pursuant to this proposal will be effective upon filing, the changes will become operative on June 1, 2008.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>6</sup> in general, and with Section 6(b)(4) of the Act,<sup>7</sup> 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 are reasonable. The proposed rates are part of the Exchange's effort to attract and enhance participation on the Exchange, by offering 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.

### 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.

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<sup>6</sup> 15 U.S.C. 78f.

<sup>7</sup> 15 U.S.C. 78f(b)(4).

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 rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>8</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder<sup>9</sup> because it establishes or changes a due, fee, or other charge applicable only to a member imposed by the 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 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-2008-53 on the subject line.

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2008-53. 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 the 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-2008-53 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.<sup>10</sup>

Florence E. Harmon  
Acting Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).