

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-58006; File No. SR-NYSEArca-2008-64)

June 23, 2008

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending its 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 June 19, 2008, 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. 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 it 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, Inc. (“NYSE Arca Equities”), proposes to amend the section of its Schedule of Fees and Charges for Exchange Services (the “Schedule”) that applies to orders submitted by ETP Holders and Market Makers.<sup>5</sup> The changes to the Schedule pursuant to this proposal are effective upon filing; however the changes will become operative on July 1, 2008. The text of the proposed rule change is available

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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) and (u).

on the Exchange's Web site at [www.nyse.com](http://www.nyse.com), at the Exchange's Office of the Secretary and at 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, 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 the Schedule and introduce unified volume tiers for NYSE Arca equities pricing in Tape A, B, and C securities. Currently, ETP Holders and Market Makers must meet volume tiers independently in each Tape to qualify for a volume discount. Pursuant to this proposal, an ETP Holder's and Market Maker's volume in each Tape will be aggregated for purposes of attaining the applicable fee or credit associated with the tier attained. The Exchange believes these integrated volume tiers offer highly attractive volume-based incentives with the best rate combinations in NYSE-listed and Nasdaq-listed securities among major liquidity venues.

The Exchange proposes to amend the Schedule as it applies to ETP Holders and Market Makers as follows:

Tier 1:

For customers who transact average daily share volume per month greater than 90 million shares in total Tape A, B, and C volume, including adding liquidity of more than 45 million shares, the rates are as follows:

- For Tape A and C securities, a \$0.0028 per share credit for orders that add liquidity and a fee of \$0.0027 per share for orders that remove liquidity.
- For Tape B securities, a \$0.0023 per share credit for orders that add liquidity and a fee of \$0.0028 for orders that remove liquidity.
- For Tape A, B, or C securities, a routing fee of \$0.0029 per share for orders routed to and executed by another market center or participant, except on the NYSE, where the routing fee is \$0.0008 or \$0.0006 for customers using the Primary Sweep Order.

Tier 2:

For customers who transact average daily share volume per month greater than 60 million shares in total Tape A, B, and C volume, including adding liquidity of more than 30 million shares, the rates are as follows:

- For Tape A and C securities, a \$0.0027 per share credit for orders that add liquidity and a fee of \$0.0029 per share for orders that remove liquidity
- For Tape B securities, a \$0.0022 per share credit for orders that add liquidity and a fee of \$0.0028 per share for orders that remove liquidity.
- For Tape A, B, and C securities, a routing fee of \$0.0029 per share for orders routed to and executed by another market center or participant, except on the

NYSE, where the routing fee is \$0.0008 or \$0.0006 for customers using the Primary Sweep Order.

As described above, these two tiers replace the previously applicable, but non-unified tiers for Tape A and C securities as well as the only available tier for Tape B securities. In addition, these changes will further the Exchange's objective to narrow the margins between fees received and credits paid. In comparison to the present model, for example, the pricing for the new top tier offers ETP Holders and Market Makers (i) reduced take and routing fees for Tape A securities, (ii) an increased rebate for Tape B and C securities, and (iii) an increased take fee for Tape C securities. Also, in comparison to the present model, the pricing for the new lowest tier offers ETP Holders and Market Makers (i) reduced take and routing fees for Tape A securities, (ii) an increased rebate for Tape C securities, and (iii) an increased take fee for Tape C securities.

Take Tier:

For customers who transact average daily share volume per month greater than 85 million shares in removed and routed Tape A, B, and C volume, including routed volume of more than 2 million shares, the rates are as follows:

- For Tape A and C securities, a \$0.0023 per share credit for orders that add liquidity and a fee of \$0.0029 per share for orders that remove liquidity.
- For Tape B securities, a \$0.0022 per share credit for orders that add liquidity and a fee of \$0.0029 per share for orders that remove liquidity.
- For Tape A, B, and C securities, a routing fee of \$0.00285 per share for orders routed to and executed by any away market center or participant, except on the NYSE, where the routing fee is \$0.0008 or \$0.0006 for customers using the Primary Sweep Order.

The Exchange introduces this Take Tier as a means of offering an attractive volume-based incentive to ETP Holders and Market Makers who participate on our market primarily as liquidity takers. Currently, the Exchange does not offer a Take Tier and believes that by doing so, ETP Holders and Market Makers will be motivated to participate on our market for purposes of accessing our liquidity.

Basic Rates:

For ETP Holders or Market Makers who do not attain any of the available tiers, the rates are as follows:

- For Tape A and C securities, a \$0.0023 per share credit for orders that add liquidity and a fee of \$0.0029 per share for orders that remove liquidity.
- For Tape B securities, a \$0.0022 per share credit for orders that add liquidity and a fee of \$0.0030 per share for orders that remove liquidity.
- For Tape A securities, a routing fee of \$0.0030 per share for orders routed to and executed by any away market center or participant, except on the NYSE where the routing fee is \$0.0010 or \$0.0006 for customers using the Primary Sweep Order.
- For Tape B and C securities, a routing fee of \$0.0035 per share for orders routed to and executed by any away market center or participant.

These basic rates shall replace the previously applicable basic rates for Tape A, B, and C securities. In comparison to the present model, the amended basic rates offer ETP Holders and Market Makers (i) a reduced rebate and take fee for Tape A securities, (ii) an increased rebate for Tape B securities, and (iii) an increased rebate and take fee for Tape C securities.

Market Data Revenue Sharing:

Presently, the Exchange offers its ETP Holders various market data revenue sharing credits in Tape A, B, and C securities. According to this proposal, the Exchange is eliminating the Liquidity Provider Credit and Directed Order credit offered to ETP Holders for purposes of market data revenue sharing in Tape B securities.<sup>6</sup> Instead, as described above, the Exchange is now offering ETP Holders increased rebates for transactions in Tape B securities, from the basic rate of \$0.0020 to \$0.0022 and the volume-based tier rate of \$0.0020 to \$0.0023.

Format Changes and Clarifying Text:

In conjunction with this proposed rate change, the Exchange is also reformatting the schedule to make it clearer and more user-friendly. The newly integrated tiers represent a significant change in how the Exchange applies its fees and credits compared to the Tape specific thresholds presently in place. By reformatting the Schedule, the Exchange will be able to clearly present the new, unified volume tiers and the applicable “add/remove” rate combinations. The proposed reformatting also allows the Exchange to remove previously redundant entries that in the past only confused customers and required multiple changes to the Schedule per each amendment.

For example, the Exchange proposes to eliminate a significant portion of the Schedule identifying fees and credits applicable to Market Makers. Under both the current Schedule and the amended Schedule, the fees and credits applicable to Market Makers conducting round lot transactions are the same as those that apply to ETP Holders generally. As such, there is no need to include a separate section detailing Market Maker round lot transactions. Accordingly, the section titled “Round Lots” under the heading “Market Maker Transactions Fees and Credits” is

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<sup>6</sup> The Exchange will continue to offer the Cross Order credit in Tapes A, B, and C securities.

hereby deleted. Eliminating this duplicative section will eliminate any confusion as well as the need for multiple changes per amendment to the Schedule. To further clarify this point, the Exchange is adding the term Market Maker to the revised ETP Holder section of the Schedule. The new section will be titled: “Exchange Transactions, ETP Holders And Market Makers.”

The Exchange is also eliminating the section titled “ETP Holder Transaction Credit” under the heading “Other Fees and Charges.” This section is generally duplicative and unnecessary in that all ETP transaction credits are now described in the “Trade Related Charges” section of the revised Schedule under the revised heading “Exchange Transactions, ETP Holders And Market Makers.” Deleting this wholly duplicative section will eliminate any confusion as well as the need for repetitive changes for every single amendment to the Schedule.

In addition, for purposes of odd lot fees and credits, the Exchange proposes to add clarifying language where necessary to make it clear that the designated odd lot fees and credits are applicable to transactions in shares priced above \$1.00 as opposed to fees and credits currently identified as applicable to transactions in shares priced below \$1.00.

Further, the Exchange will amend footnote 1 within the Schedule to explain that trade activity that occurs on days when the market closes early will not count towards volume tiers. In this manner, the Exchange will not unintentionally penalize an ETP Holder when it calculates its average daily volume by including a singularly low total stemming from a short trading day.

The Exchange will also renumber the footnotes within the Schedule where necessary.<sup>7</sup>

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

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<sup>7</sup> As part of the reformatting, the Exchange is also proposing to add grid lines to the Schedule for ease of review.

## 2. Statutory Basis

The Exchange believes 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),<sup>9</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 and credits are reasonable. The proposed rates are part of the Exchange's effort to attract and enhance participation on the Exchange, by offering volume-based incentives. The Exchange also believes that the proposed changes to the Schedule are equitable in that they apply uniformly to their customers.

### 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>10</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder 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

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

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

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

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.<sup>11</sup>

#### 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-2008-64 on the subject line.

##### 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-2008-64. 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

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

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-2008-64 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>12</sup>

Florence E. Harmon  
Acting Secretary

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