

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-58109; File No. SR-NYSEArca-2008-47)

July 7, 2008

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change to Waive Retroactively as of June 24, 2008, Certain Initial Listing Fees for Companies Transferring the Listing of Their Securities From Any Other National Securities Exchange

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 24, 2008, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposal 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 waive initial listing fees for companies transferring the listing of their equity securities from any other national securities exchange. The proposed fee waiver would be applied retroactively to any companies that apply to list after the date of initial submission of this filing. The text of the proposed rule change is available at the Exchange’s principal office, 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, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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 proposes to waive initial listing fees for companies transferring the listing of their securities from any other national securities exchange. The waiver will apply to all classes of securities. The Exchange had previously waived initial listing fees in these circumstances for all companies that transferred from the New York Stock Exchange ("NYSE") at any time or from Nasdaq Stock Market ("Nasdaq") or the American Stock Exchange prior to December 31, 2007, or had applied to list prior to that date.<sup>3</sup> The proposed amendment brings the Exchange's fee policy in line with those of the NYSE and Nasdaq,<sup>4</sup> both of which currently provide fee waivers to companies transferring from the other national securities exchanges. The proposed fee waiver would be applied retroactively to any companies that apply to list after the date of initial submission of this filing.

Issuers of securities that qualify for the proposed waiver of initial listing fees will be subject to the same level of annual fees and listing of additional shares fees as other NYSE Arca issuers. The proposed rule change will not affect the Exchange's commitment of resources to its regulatory oversight of the listing process or its regulatory programs. Specifically, companies that benefit from the waiver will be reviewed for compliance with the Exchange initial and

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<sup>3</sup> See Securities Exchange Act Release No. 54007 (June 16, 2006), 71 FR 36155 (June 23, 2006) (SR-PCX-2006-16).

<sup>4</sup> See Section 902.02 of the NYSE Listed Company Manual and Nasdaq Marketplace Rule IM-4500-4.

continued listing standards in the same manner as any other company that applies to be listed on the Exchange. The Exchange will conduct a full and independent review of each issuer's compliance with the Exchange's initial listing standards.

The Exchange believes that the elimination of such fees in the case of securities transferring from other national securities exchanges is justified on several grounds. An issuer that already paid initial listing fees to another national securities exchange when it became a publicly traded company is reluctant to pay a second initial listing fee to another listing venue, even if it concludes that the Exchange offers the issuer and its investors superior services and market quality. Even if an issuer concludes that the Exchange would provide a superior market for its stock, the benefits of the transfer must currently be weighed against the cost of initial inclusion. Since the expected benefits of the transfer would be diffused among the issuers' investors and realized over time, but the initial listing fees must be paid by the issuer immediately, the Exchange is concerned that issuers that stand to benefit may nevertheless opt to forgo a transfer. As such, the Exchange believes that assessing the initial fees against issuers that have already paid fees to list on another market imposes a burden on the competition between exchange markets and markets other than exchange markets, a competition that the Exchange believes is one of the central goals of the national market system. This concern is particularly great in light of the fact that the Commission has approved the waiver of initial listing fees by Nasdaq with respect to the listing of any security being transferred from another national securities exchange.<sup>5</sup>

The Exchange understands that the effect of this proposed rule change will be to impose a lower level of listing fees on issuers that transfer from another national securities exchange than

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<sup>5</sup> See Securities Exchange Act Release No. 51004 (January 10, 2005), 70 FR 2917 (January 18, 2005) (SR-NASD-2004-140).

on some other issuers. In light of the fact that the Exchange will collect the same level of annual fees and listing of additional shares fees from such issuers, however, the Exchange believes that the difference does not constitute an inequitable allocation of fees. In light of a transferring issuer's prior payment to another market and the generally lower burdens associated with reviewing a transferring issuer's eligibility, the Exchange believes that eliminating initial fees for transferring issuers is entirely consistent with an equitable allocation of listing fees. The Exchange will maintain a rigorous regulatory review process with respect to the initial listing qualification of listing applicants transferring from other markets.

The Exchange does not expect the financial impact of this proposed rule change to be material, either in terms of increased levels of annual fees from transferring issuers or in terms of diminished initial listing fee revenues. Quite simply, even with the proposed rule change in place, the Exchange understands that a change in listing venue is a major step for an issuer, and therefore the Exchange does not expect that the number of issuers that transfer to NYSE Arca in a given time frame will be sufficient to have a material effect on financial resources.

The Exchange will apply the proposed fee waiver retroactively as of the date of initial submission of this rule filing. The Exchange believes that this retroactive effect is necessary and justified because Nasdaq currently operates such a waiver and the Exchange is therefore at a competitive disadvantage vis-à-vis Nasdaq until the Exchange has such a waiver in place. Giving the waiver retroactive effect will therefore have the immediate effect of promoting competition between the Exchange and Nasdaq and alleviating the Exchange's current competitive disadvantage.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,<sup>6</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>7</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments, and to perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest. In light of a transferring issuer's prior payment to another market, the Exchange believes that the proposed fee waiver does not render the allocation of its listing fees inequitable or unfairly discriminatory. The Exchange believes that the fee waiver will increase competition among listing markets and will remove a competitive disadvantage the Exchange currently has vis-à-vis the other national securities exchanges, and it is therefore designed to perfect the mechanism of a free and open market.

### 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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds

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

<sup>7</sup> 15 U.S.C. 78f(b)(5).

such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

#### 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-2008-47 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-2008-47. 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 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 Number SR-NYSEArca-2008-47 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>8</sup>

Florence E. Harmon  
Acting Secretary

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<sup>8</sup> 17 CFR 200.30-3(a)(12).