

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58473; File No. SR-NYSEArca-2008-97)

September 8, 2008

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Rule Change by NYSE Arca, Inc. Amending its Schedule of Fees and Charges for Exchange Services In Order to Establish a New Fee for Electronically Executed Complex Orders

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on September 5, 2008, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) 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 prepared by the self-regulatory organization. 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 its Schedule of Fees and Charges for Exchange Services (“Schedule”) in order to establish certain Transaction Fees.

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 self-regulatory organization 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 those 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 parts of such statements.

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend the existing Schedule in order to create a new fee structure covering electronically executed Complex Orders.⁴

Pursuant to a recent rule filing⁵ the Exchange will be introducing automated complex order trading for all market participants on NYSE Arca. In conjunction with this new functionality, the Exchange proposes to introduce two new transaction fees specific to Complex Order executions. Pursuant to this proposal, electronically entered and executed Complex Orders when executed against similar contra-side Complex Orders will be subject to a reduced transaction fee.

Complex Orders that are executed against other similar Complex Orders will be subject to a transaction fee of \$0.10 per contract. For example, if a Complex Order, comprised of two legs, executes against a similar two-legged Complex Order, each market participant will be charged \$0.20 (\$0.10 per contract). To expand on this example, if the same strategy is executed a total of ten (10) times, each participant would be charged \$2.00. If a Complex Order comprised of three legs executes against a similar three-legged Complex Order, then each participant would be charged \$0.30 for the transaction. To expand on this example, if the same three-legged Complex Order is executed a total of ten (10) times, each participant would be charged \$3.00.

⁴ NYSE Arca Rule 6.62(e) defines a “Complex Order” as any order involving the simultaneous purchase and/or sale of two or more different option series in the same underlying security, for the same account, in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00) and for the purpose of executing a particular investment strategy.

⁵ See Securities Exchange Act Release No. 58174 (July 16, 2008), 73 FR 42640 (July 22, 2008) (order approving SR-NYSEArca-2008-54, establishing rules pertaining to automated electronic trading of Complex Orders).

All electronically executed Complex Orders, regardless of whether they are entered by Market Makers, Brokers Dealers, or OTP Firms representing Public Customers, will be billed this same rate when their order is executed against another Complex Order.

The Exchange proposes a separate fee for electronically executed Complex Orders when the same member firm represents both sides of the transaction. Complex Orders, entered by a firm that trade against a similar Complex Order represented by the same firm, will be subject to a transaction fee of \$0.05 per contract. For example, if a Complex Order comprised of two legs is entered by Firm A and executes against a similar two-legged Complex Order also for Firm A, the firm will be charged a total of \$0.20 (four contracts at \$.05 per contract) for each time the complex order strategy is executed. To expand on this example, if the same two-legged Complex Order is executed a total of ten (10) times, the transaction would be subject to a \$1.00 fee per Complex Order, and since the same firm is a party to both sides of the transaction, they would be charged a total of \$2.00. If a Complex Order entered by Firm A, which is comprised of three legs, executes against a similar three-legged Complex Order entered by Firm A, then the firm would be charged a total of \$0.30 for each time the three-legged Complex Order is executed. To expand on this example, if the same three-legged Complex Order is executed a total of ten (10) times, the transaction would be subject to a \$1.50 fee per Complex Order, and since the firm represents both sides of the transaction, they would be charged a total of \$3.00.

There may be occasions where a Complex Order will not execute against a similar contra-side Complex Order, but instead will execute against the individual leg markets represented by quotes and/or orders in the Consolidated Book. This scenario will occur when the best price for the Complex Order strategy is actually represented by a combination of individual quotes and/or orders, resting in the Consolidated Book. In situations where Complex Orders are

executed utilizing two or more individual quotes or orders from the Consolidated Book, standard transaction fees, as shown on the Schedule, will apply to all participants on the trade. For Complex Order transactions in Penny Pilot issues, when the Complex Order is executed against individual quotes and/or orders represented in the Consolidated Book, the Complex Order will be deemed to be taking liquidity from the Consolidated Book and therefore will be subject to the “Take Liquidity” rates, as shown on the Schedule.

NYSE Arca plans to implement these fees in conjunction with the planned introduction of the initial phase of automated electronic Complex Order trading on September 15, 2008.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁶ in general, and Section 6(b)(4) of the Act,⁷ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other market participants on NYSE Arca. [sic] The Exchange believes that the proposed rates are reasonable. The proposed rate structure is part of the Exchange’s efforts to attract and enhance participation on the Exchange, with respect to the implementation of electronic complex order trading. The Exchange also believes that the proposed changes to the Fee Schedule are equitable in that they apply uniformly to all market participants on NYSE Arca.

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.

⁶ 15 U.S.C. 78f.

⁷ 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

No written comments were solicited or received with respect to the proposed rule change.

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

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)⁸ of the Act and subparagraph (f)(2) of Rule 19b-4⁹ thereunder, because it establishes a due, fee, or other charge imposed by NYSE Arca.

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-2008-97 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.

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(2).

All submissions should refer to File Number SR-NYSEArca-2008-97. 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 the filing will also be available for inspection and copying at the principal office of the self-regulatory organization. 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-2008-97 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.¹⁰

Florence E. Harmon
Acting Secretary

¹⁰ 17 CFR 200.30-3(a)(12).