SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59597; File No. SR-NYSEArca-2009-03)

March 18, 2009

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving Proposed Rule Change to Establish a Technical Original Listing Fee Specific to Derivative Securities Products and Structured Products

I. Introduction

On January 23, 2009, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend its rules governing NYSE Arca, LLC, which is the equities trading facility of NYSE Arca Equities, to adopt a technical original listing fee applicable specifically to Derivative Securities Products and Structured Products. Additionally, the Exchange is removing from the NYSE Arca Schedule of Fees and Charges, a reference to a fee waiver that was applicable only in 2007. The proposed rule change was published in the Federal Register on February 11, 2009.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes adopting a technical original listing fee of $2,500 specifically for Derivative Securities Products and Structured Products.[4] Derivative Securities Products and

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 See Securities Exchange Act Release No. 59364 (February 5, 2009), 74 FR 6941 (hereinafter referred to as "Notice").

4 The $2,500 fee may include multiple issues of securities from the same issuer on the same application.

Structured Products[5] are currently subject to the Exchange's existing technical original listing fee of $5,000, which is applicable to all listed securities, except for closed-end funds. A technical original listing would occur as a result of a change in state of incorporation, reincorporation under the laws of the same state, reverse split stocks, recapitalization, creation of a holding company or new company by operation of law or through an exchange offer, or similar events affecting the nature of a listed security. The fee applies if the change in the company's status is technical in nature and the shareholders of the original company receive or retain a share-for-share interest in the new company without any change in their position in the issuer's capital structure or rights.

The Exchange further proposes a non-substantive change by removing Footnote 8 to the NYSE Arca Schedule of Fees and Charges, waiving a fee that was applicable only in 2007 and thus no longer relevant.

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposal is consistent with Section 6(b)(4) of the Act,[6] which requires, among other things, that the rules of an exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The Commission also finds that the

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[5] Derivative Securities Products and Structured Products are defined in the NYSE Arca Schedule of Fees and Charges at notes 3 and 4. See also Notice, supra note 3. The definitions include all Derivative Securities Products and Structured Products traded on NYSE Arca Equities.

[6] 15 U.S.C. 78f (b) (4).

proposal is consistent with Section 6(b)(5) of the Act,[7] that an exchange have rules that are designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and are not designed to permit unfair discrimination between issuers.

According to the Exchange, the existing $5,000 fee is unsuitable for Derivative Securities Products and Structured Products, because it is disproportionate in relation to the initial and continued listing fees for those securities.[8] According to the Exchange, a $2,500 fee is more consistent with the pricing expectations of issuers for those securities. Accordingly, the Commission believes that the Exchange's proposed fee is reasonable, given that it will be applied consistently to all listed securities in those classes and is consistent with the Exchange's overall approach to pricing for Derivative Securities Products and Structured Products.

Moreover, the Commission believes that charging a one time $2,500 application fee for multiple issues of securities on a single application is appropriate in light of the general fee structure for such products. The Commission notes that the single fee for multiple issues of securities applies equally to all Derivative Securities Products and Structured Products. Finally, the Commission also believes that it is appropriate to delete an obsolete reference to a fee waiver that expired in 2007.

For the foregoing reasons, the Commission agrees that the proposed rule change does not constitute an inequitable allocation of reasonable dues, fees and other charges and does not permit unfair discrimination between issuers, and is generally consistent with the Act.[9]

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7 15 U.S.C. 78f(b)(5).

8 See Notice, supra note 3.

9 15 U.S.C. 78f(b)(4). In approving the proposed rule change, the Commission has considered the proposed rule's impact in efficiency, competition and capital formation. See 15 U.S.C. 78c(f).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR-NYSEArca-2009-03) be, and it hereby is, approved.

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

Florence E. Harmon
Deputy Secretary

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[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30-3(a)(12).