

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60468; File No. SR-NYSEArca-2009-52)

August 10, 2009

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

I. Introduction

On June 10, 2009, 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”), 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 amending its Schedule of Fees and Charges for Exchange Services (“Fee Schedule”) to revise the Listing Fees applicable to Derivative Securities Products. The proposed rule change was published in the Federal Register on July 7, 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 amending its Fee Schedule to revise the Listing Fees applicable to Derivative Securities Products listed under NYSE Arca Rules 5.2(j)(3) (Investment Company Units), 8.100 (Portfolio Depository Receipts), 8.200 (Trust Issued Receipts), 8.201 (Commodity-Based Trust Shares), 8.202 (Currency Trust Shares), 8.203 (Commodity Index Trust Shares), 8.204 (Commodity Futures Trust Shares), 8.300 (Partnership Units), 8.500 (Trust Units), and 8.600 (Managed Fund Shares) on NYSE Arca, LLC, the equities facility of NYSE Arca Equities.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 60184 (June 29, 2009), 74 FR 32209 (July 7, 2009) (hereinafter referred to as “Notice”).

Specifically, the Exchange proposes to add a new provision to the Fee Schedule which states that in the case where a sponsor, managing owner, general partner or equivalent (collectively, the “Sponsor”) is listing a new Derivative Securities Product on the Exchange for the first time, the Sponsor will be charged a one time consultation fee in the amount of \$20,000.

The proposed consulting charge would apply to all new Sponsors listing a new Derivative Securities Product for the first time on the Exchange. Therefore, under the proposal Sponsors who have previously issued a new Derivative Securities Product would not be charged the proposed consulting fee. Moreover, the current Listing and Annual Fees applicable to Derivative Securities Products would remain unchanged and be applicable to all Sponsors of Derivative Securities Products.

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 Sections 6(b)(4) and (b)(5) of the Act,⁴ which require, among other things, that the rules of an exchange (i) provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities, and (ii) are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

According to the Exchange, the imposition of the proposed one-time consulting charge to new Sponsors of new Derivative Securities Products is necessary to adequately compensate the Exchange for all of the additional resources dedicated to such new Sponsors, such as the additional legal and business resources required to properly advise novice Sponsors through the

⁴ 15 U.S.C. 78f(b)(4) and (b)(5).

listing process.⁵ The Exchange believes that the proposed consulting fee would enable the Exchange to continue to provide new issuers with the level of service necessary to successfully navigate an initial launch of a Derivative Securities Product. Moreover, the Exchange has represented that the proposed new Sponsor Fee is substantially below the initial listing fee for issuers of traditional equity securities, e.g., common stock.⁶

Accordingly, the Commission believes that the Exchange's proposed rule change provides for the equitable allocation of reasonable dues, fees, and other charges among issuers and further, does not unfairly discriminate between issuers given the additional time and resources dedicated to new Sponsors of Derivative Securities Products and given that the listing fees, including the one-time consulting fee, for Derivative Securities Products is substantially below the listing fee for traditional equity securities.⁷ Further, the Commission believes that the proposed one time consulting fee is equitable in that it applies uniformly to all new issuers of Derivative Securities Products. For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act.⁸

⁵ See Notice, supra note 3.

⁶ Id.

⁷ The Commission notes that the current listing fee for Derivative Securities Products is \$5,000, while the lowest listing fee for common stock is \$100,000. See NYSE Arca Equities, Inc. Schedule of Fees and Charges for Exchange Services.

⁸ 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,⁹ that the proposed rule change (SR-NYSEArca-2009-52) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Florence E. Harmon
Deputy Secretary

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).