

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60944; File No. SR-NYSEArca-2009-99)

November 5, 2009

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending its Fee Schedule

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 October 29, 2009, 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. NYSE Arca filed the proposal pursuant to Section 19(b)(3)(A)⁴ of the Act and Rule 19b-4(f)(2)⁵ thereunder. 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 the section of its Schedule of Fees and Charges for Exchange Services (the “Schedule”). While changes to the Schedule pursuant to this proposal will be effective upon filing, the changes will become operative on November 2, 2009. A copy of this filing is available on the Exchange’s Web site at www.nyse.com, at the Exchange’s principal office and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ 15 U.S.C. 78s(b)(3)(A).

⁵ 17 CFR 240.19b-4(f)(2).

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.

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

1. Purpose

In an effort to enhance participation on the Exchange and to offer increased liquidity to its Users,⁶ the Exchange proposes to add new transaction credits stemming from the use of Tracking Orders. The Exchange also proposes to cap monthly payments stemming from the use of Self Trade Prevention modifiers. These changes will be effective November 2, 2009. A more detailed description of the proposal follows.

Currently, there are no rates specifically related to the use of Tracking Orders.⁷ In order to incentivize the use of this order type and attract liquidity to NYSE Arca, the Exchange proposes to introduce three volume-based tiers, offering credits to all ETP Holdings who use Tracking Orders that result in executions on the Exchange.

Tracking Order Tier 1 offers ETP Holders a credit of \$0.12 per 100 shares where their Tracking Orders result in executions on the Exchange with an average daily share volume ("ADV") per month greater than or equal to 5 million shares. In addition, the Exchange will

⁶ See NYSE Arca Equities Rule 1.1(yy).

⁷ See NYSE Arca Equities Rule 7.31(f). Tracking Orders are un-displayed limit orders eligible for execution at the NBBO in the Tracking Order Process.

offer ETP Holders a credit of \$0.15 per 100 shares for each Tracking Order that results in an execution in excess of 15 million shares.⁸

Tracking Order Tier 2 offers ETP Holders a credit of \$0.10 per 100 shares where their Tracking Orders result in executions on the Exchange with an average daily share volume per month between 2.5 million shares and 4,999,999 shares.

Tracking Order Tier 3 offers ETP Holders a credit of \$0.05 per 100 shares where their Tracking Orders result in executions on the Exchange with an average daily share volume per month between 1 million shares and 2,499,999 shares.

In addition, the Exchange is proposing to cap the net payment of credits and fees stemming from an ETP Holder's use of Self Trade Prevention Modifiers⁹ at a net total of \$25,000 per month. This cap will apply uniformly to all ETP Holders.

The proposed changes to the Schedule are part of the Exchange's continued effort to attract and enhance participation on the Exchange, by offering attractive rates and rebates with volume-based incentives. By introducing these tiered credits, the Exchange is enhancing the incentive to participate on the Exchange through the use of Tracking Orders, as well as provide additional liquidity to the marketplace. The Exchange believes the proposed fees are reasonable and equitable in that they apply uniformly to all ETP Holders. The proposed changes will become operative on November 2, 2009.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of

⁸ This incremental credit rebates ETP Holders \$.0012 for each share up to and including 15 million ADV, and \$.0015 for each share in excess of 15 million ADV.

⁹ See NYSE Arca Equities Rule 7.31(qq).

Section 6 [sic] of the Securities Exchange Act of 1934 (the “Act”),¹⁰ in general, and Section 6(b)(4) of the Act,¹¹ 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. The proposed changes to the Schedule are part of the Exchange’s continued effort to attract and enhance participation on the Exchange, by offering attractive rates and rebates with volume-based incentives. The Exchange believes that the proposed changes to the Schedule are equitable in that they apply uniformly to all Users.

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

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)¹² of the Act and subparagraph (f)(2) of Rule 19b-4¹³ thereunder, because it establishes a due, fee, or other charge imposed by NYSE Arca on its members.

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.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4).

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(2).

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-2009-99 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2009-99. 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 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-2009-99 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.¹⁴

Florence E. Harmon
Deputy Secretary

¹⁴ 17 CFR 200.30-3(a)(12).