

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61330; File No. SR-NYSEArca-2009-106)

January 12, 2010

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving Proposed Rule Change
Relating to the Listing Fee and Annual Fee Applicable to Derivative Securities Products

On November 24, 2009, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b-4 thereunder,² a proposal to amend its Schedule of Fees and Charges for Exchange Services (“Fee Schedule”) to revise the listing and annual fees applicable to Derivative Securities Products (“DSPs”) listed on NYSE Arca, LLC (“NYSE Arca Marketplace”), the equities facility of NYSE Arca Equities. The proposed rule change was published for comment in the Federal Register on December 10, 2009.³ The Commission received no comments regarding the proposal. This order approves the proposed rule change.

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 and, in particular, the requirements of Section 6 of the Act.⁴ Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,⁵ which requires that the rules of the exchange provide for the equitable allocation of reasonable dues, fees, and other

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 61104 (December 3, 2009), 74 FR 65568.

⁴ 15 U.S.C. 78f. In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁵ 15 U.S.C. 78f(b)(4).

charges among its members and issuers and other persons using its facilities. The Commission also finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁶ which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

NYSE Arca proposes to revise its listing fee and annual fee applicable to DSPs listed on the NYSE Arca Marketplace.⁷ Specifically, NYSE Arca proposes to increase the listing fee for each issue of DSPs from current \$5,000 to \$7,500, except Managed Fund Shares listed under NYSE Arca Equities Rule 8.600 and Managed Trust Securities listed under NYSE Arca Equities Rule 8.700. For Managed Fund Shares and Managed Trust Securities, the Exchange proposes to increase the listing fee from current \$5,000 to \$10,000.

The Exchange also proposes to amend the annual fee applicable to DSPs. Except Managed Fund Shares and Managed Trust Securities, the Exchange proposes to increase the annual fee for DSPs from current \$2,000 to \$5,000 for each issue with fewer than 25 million shares outstanding; from current \$4,000 to \$7,500 for each issue with 25 million to 49,999,999 shares outstanding; and from current \$8,000 to \$10,000 for each such issue with 50 million to 99,999,999 shares outstanding. For DSP issues that have 100 million shares or more outstanding, except Managed Fund Shares and Managed Trust Securities, the annual fee would

⁶ 15 U.S.C. 78f(b)(5).

⁷ As specified in footnote 3 to the Fee Schedule, for the purposes of the Fee Schedule, the term “Derivative Securities Products” includes securities described in NYSE Arca Equities Rules 5.2(j)(3) (Investment Company Units); 8.100 (Portfolio Depositary 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); 8.600 (Managed Fund Shares), and 8.700 (Managed Trust Securities).

remain unchanged.

For Managed Fund Shares and Managed Trust Securities, the Exchange proposes to impose an annual fee for each such issue as follows:

Shares Outstanding (each issue)	Annual Fee
Less than 25 million	\$7,500
25 million up to 49,999,999	\$10,000
50 million up to 99,999,999	\$12,500
100 million up to 249,999,999	\$20,000
250 million up to 499,999,999	\$30,000
500 million and over	\$40,000

The Exchange represents that, as the industry evolves with innovative product lines for investors, the proposed increases in the listing fee and the annual fee support the increased costs incurred by the Exchange for the rule making process, listing administration process, issuer services, and consultative legal services provided to issuers. Additionally, the Exchange states that a higher listing fee and annual fee for Managed Fund Shares and Managed Trust Securities reflect the greater resources the Exchange generally expends to provide services in connection with the listing and administration of these securities. The Commission finds that the proposed rule change is designed to equitably allocate reasonable dues, fees, and other charges among issuers of DSPs, and is consistent with the requirements of the Act.⁸

⁸ 15 U.S.C. 78f.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁹ that the proposed rule change (SR-NYSEArca-2009-106), be, and 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).