

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-63649; File No. SR-NYSEArca-2010-122)

January 5, 2011

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on December 28, 2010, 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 and II below, which Items have been prepared by the self-regulatory organization. NYSE Arca filed the proposal pursuant to Section 19(b)(3)(A)<sup>4</sup> of the Act and Rule 19b-4(f)(2)<sup>5</sup> 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 NYSE Arca Equities Schedule of Fees and Charges for Exchange Services (the “Schedule”) to modify the fees that it charges for routing orders to the New York Stock Exchange LLC and NYSE Amex LLC for execution on those markets. The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and [www.nyse.com](http://www.nyse.com).

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 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

Effective January 1, 2011, the Exchange proposes to amend the Schedule to modify the fees that it charges for routing orders to the New York Stock Exchange LLC ("NYSE") and NYSE Amex LLC ("NYSE Amex") for execution on those markets. In two recent rule filings,<sup>6</sup> both NYSE and NYSE Amex have modified their fee structures for equities transactions, including changes to the rates for taking liquidity and adding liquidity, to become effective at the beginning of January 2011. The Exchange's current fees for routing orders to those exchanges are closely related to those exchanges' fees for taking and adding liquidity, and the Exchange is proposing an adjustment to its routing fees to maintain the existing relationship to the new fees in place at the NYSE and NYSE Amex.

The NYSE Fee Filing increased the NYSE's charge for execution of customer orders that take liquidity from the NYSE from \$0.0021 per share to \$0.0023 per share, and increased the rebate for execution of customer orders that add liquidity to the NYSE from \$0.0013 per share to \$0.0015 per share. Currently, for NYSE Arca Tier 1 and Tier 2 customers, the fee for routing

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<sup>6</sup> See SR-NYSE-2010-87 (the "NYSE Fee Filing") and SR-NYSEAmex-2010-125 (the "NYSE Amex Fee Filing").

orders in Tape A securities to the NYSE outside the book is equal to the NYSE “take” rate of \$0.0021 per share, and the fee for routing such orders to the NYSE for non-tier customers is slightly higher at \$0.0023 per share. Consequently, the Exchange is proposing to increase each of those fees by \$0.0002 to \$0.0023 per share and \$0.0025 per share, respectively, in line with the \$0.0002 increase in the NYSE “take” rate.

In addition, the Exchange currently charges \$0.0019 per share for Primary Sweep Orders in Tape A securities that are routed outside the book to the NYSE for execution. This charge applies to Tier 1, Tier 2 and non-tier customers. In order to maintain the existing relationship to the other Exchange routing fees that are being adjusted upward, the Exchange is also proposing to increase this fee by \$0.0002 to both tier and non-tier customers, to a level of \$0.0021 per share.

Finally, for Primary Only Plus (“PO+”) orders, the current Exchange fee for orders routed to the NYSE that remove liquidity from the NYSE is \$0.0021 per share, which is equal to the current NYSE “take” rate, and the Exchange credit for such orders routed to the NYSE that provide liquidity to the NYSE is \$0.0013 per share, which is equal to the current NYSE rebate for execution of customer orders that add liquidity to the NYSE. Consequently, the Exchange is proposing to increase its fees (credits) for routing PO+ orders to the NYSE by the same amount (\$0.0002) as the increase in the corresponding NYSE fees (credits). The proposed new fee for PO+ orders routed to the NYSE that remove liquidity is \$0.0023 per share, and the proposed new credit for such orders routed to the NYSE that provide liquidity is \$0.0015 per share. These changes would maintain the current relationship with NYSE rates.

The NYSE Amex Fee Filing increased NYSE Amex’s charge for execution of customer orders that take liquidity from NYSE Amex from \$0.0025 per share to \$0.0028 per share, and

increased the rebate for execution of customer orders that add liquidity to NYSE Amex from \$0.0015 per share to \$0.0016 per share. Currently, the Exchange fee is \$0.0025 per share for PO and PO+ orders routed to NYSE Amex that remove liquidity from NYSE Amex, which is equal to the current NYSE Amex “take” rate, and the Exchange credit for such orders routed to NYSE Amex that provide liquidity to NYSE Amex is \$0.0015, which is equal to the current NYSE Amex rebate for execution of customer orders that add liquidity to NYSE Amex. Consequently, the Exchange is proposing to increase its fees (credits) for routing PO and PO+ orders to NYSE Amex by the same amounts as the increase in the corresponding NYSE fees (credits). The proposed new fee for PO and PO+ orders routed to NYSE Amex that remove liquidity is \$0.0028 per share, and the proposed new credit for such orders routed to NYSE Amex that provide liquidity is \$0.0016 per share. These changes would maintain the current relationship with NYSE Amex rates.

Finally, the Exchange is adding a sentence in the introduction of the Tier 1 and Tier 2 volume levels to clarify that the calculation of US Average Daily Consolidated Share Volume does not include trades on days when the market closes early.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934 (the “Act”),<sup>7</sup> in general, and Section 6(b)(4) of the Act,<sup>8</sup> 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 Exchange believes that the proposal does not constitute an inequitable allocation of fees, as all similarly situated member organizations and other market participants will be subject to the same

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<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(4).

fee structure, and access to the Exchange's market is offered on fair and non-discriminatory terms.

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)<sup>9</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>10</sup> 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 summarily may temporarily suspend 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.

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<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2010-122 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-2010-122. 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 Web site viewing and printing 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.<sup>11</sup> 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-2010-122 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.<sup>12</sup>

Elizabeth M. Murphy  
Secretary

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<sup>11</sup> The text of the proposed rule change is available on the Commission's website at [www.sec.gov](http://www.sec.gov).

<sup>12</sup> 17 CFR 200.30-3(a)(12).