

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-55099; File No. SR-NYSEArca-2006-91)

January 12, 2007

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Exchange Fees and Charges

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 22, 2006, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. NYSE Arca has designated this proposal as one establishing or changing a due, fee, or other charge imposed by NYSE Arca under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. 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

NYSE Arca is proposing to amend its Schedule of Fees and Charges for Exchange Services (“Schedule”) in order to revise certain Royalty Fees assessed on options contracts traded on certain Exchange Traded Funds (“ETFs”), and to revise the Marketing Charge related to Market Maker transactions.

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

<sup>2</sup> 17 CFR 240.19b-4.

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

<sup>4</sup> 17 CFR 240.19b-4(f)(2).

Below is the text of the proposed rule change. Proposed new language is underlined; deleted language is in [brackets].

NYSE Arca OPTIONS: TRADE-RELATED CHARGES

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MARKETING CHARGE For Nasdaq-100 Tracking Stock Options (QQQQ) \$0.95 per contract side on all Market Maker transactions (excluding Market Maker to Market Maker transactions) and for Standard and Poor's Depository Receipts (SPY) \$1.00 per contract side on all Market Maker transactions (excluding Market Maker to Market Maker transactions).

For all other NYSE Arca Equity Options: [~~\$0.45~~] \$0.65 per contract side on transactions of Lead Market Makers and Market Makers against all public customer orders.

ROYALTY FEES <sup>9</sup> [ For] Nasdaq Fidelity Composite Index ETF (ONEQ): \$0.12[ per contract side]

Financial Select Sector SPRD (XLF) \$0.10<sup>5</sup>

Technology Select Sector SPDR (XLK) \$0.10

Healthcare Select Sector SPDR (XLV) \$0.10

Russell 2000 Index (RUT) \$0.15

Royalty Fees will be assessed on a per-contract basis for firm, broker/dealer, and Market Maker transactions. [For

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<sup>5</sup> The Exchange inadvertently failed to designate the phrase “.10” in this line as proposed new text. For clarity, the new text has been underlined herein.

IWB, IWD ,IWM, IWN, IWO, IWR: \$0.10 per contract  
for firm, broker/dealer, and Market Maker transactions.]

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<sup>9</sup> [This] These fees will not be assessed on the customer side of transactions. Please refer to “Limit of Fees on Options Strategy Executions” section of this schedule for information regarding [r]Royalty [f]Fees associated with Options Strategy Executions

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 Exchange 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 these statements may be examined at the places specified in Item IV below. NYSE Arca has substantially prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

NYSE Arca is proposing to amend its Schedule in order to make the following changes to certain fees and charges that are assessed to OTP Holders and OTP Firms. The Exchange also proposes making minor technical changes to the Schedule at this time.

Royalty Fees

The Exchange proposes to eliminate the \$0.10 per contract Royalty Fee on options traded on the following ETFs: the Russell 1000 Index Fund (IWB); the Russell 1000 Value Index Fund (IWD); the Russell 2000 Index Fund (IWM); the Russell 2000 Value Index Fund (IWN); the Russell 2000 Growth Fund (IWO); and the Russell Midcap Index fund (IWR). As of January 1,

2007, the Exchange will no longer assess the \$0.10 per contract on any transactions involving the aforementioned ETFs.

The Exchange proposes to begin assessing a \$0.10 per contract Royalty Fee on options traded on the following ETFs: the Financial Select Sector SPDR (XLF); the Technology Select Sector SPDR (XLK); and the Healthcare Select Sector SPDR (XLV). The Exchange also proposes a \$0.15 per contract Royalty Fee on options traded on the Russell 2000 Index (RUT). The Exchange will begin assessing these fees on transactions in the aforementioned ETFs as of January 1, 2007.

### Marketing Fees

The Exchange presently assesses Market Makers<sup>6</sup> a per contract Marketing Fee on all transactions involving public customer orders. For orders in the NASDAQ-100 Tracking Stock (QQQQ), the Exchange charges Market Makers \$0.95 per contract; in the Standard and Poor's Depository Receipts (SPY), the Exchange charges \$1.00 per contract. In all other issues, the Exchange charges Market Makers \$0.45 per contract. The Exchange now proposes to amend the fee it charges on non-QQQQ and non-SPY transactions to \$0.65 cents per contract. The fee on QQQQ and SPY orders will remain the same. The increased Marketing Fee will be used to attract additional order flow to the Exchange, thereby allowing NYSE Arca to remain competitive with other options exchanges that charge similar fees.

While this proposed rule change will become effective upon filing with the Commission, NYSE Arca plans to implement the fee change on January 1, 2007.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of

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<sup>6</sup> Market Maker, as defined in NYSE Arca Rule 6.1(b)(29) and NYSE Arca Rule 6.1A(a)(4).

the Act,<sup>7</sup> in general, and Section 6(b)(4) of the Act,<sup>8</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members.

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

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>9</sup> and Rule 19b-4(f)(2)<sup>10</sup> thereunder, because it establishes or changes a due, fee, or other charge imposed by the Exchange. Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of such 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.

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:

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

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

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

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

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-2006-91 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NYSEArca-2006-91. 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. Copies of such filing also will be available for inspection and copying at the principal office of NYSE Arca. 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-2006-91 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).