

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-56595; File No. SR-NYSEArca-2007-93)

October 1, 2007

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change as Modified by Amendment No. 2 Thereto Relating to Exchange Fees and Charges

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 18, 2007, 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. On September 28, 2007, the NYSE Arca submitted Amendment No. 1 to the proposed rule change. On September 28, 2007, NYSE Arca withdrew Amendment No. 1 and filed Amendment No. 2. 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 Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

NYSE Arca proposes to amend its Schedule of Fees and Charges for Exchange Services (“Rate Schedule”). The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and www.nysearca.com.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 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 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 states that the purpose of this filing is to amend the existing NYSE Arca Rate Schedule by establishing a pilot program under which the Exchange will cap, on a monthly basis, the Firm Facilitation Fee ("Pilot Program"). The Exchange also proposes to apply the Firm Facilitation Fee when non-OTP Firm⁵ accounts, as well as OTP Firm accounts, are used to facilitate customer orders. The Exchange also proposes adding language to the Rate Schedule, to clarify that the Firm Facilitation Fee is applicable to manually executed orders only. Although effective upon filing, the Exchange intends this fee change to become operative on October 1, 2007.

NYSE Arca presently charges OTP Holders a Firm Facilitation Fee of \$0.15 per contract. The Firm Facilitation Fee is applicable when a proprietary trading account of an OTP Firm is used to facilitate an order for a customer of the OTP Firm. As part of this filing, the Exchange is now proposing to apply the Firm Facilitation Fee to any transaction in which a firm proprietary

⁵ A non-OTP Firm is a broker dealer whose proprietary trades clear as Firm (clearance symbol F) with the Options Clearing Corporation ("OCC") and is not an NYSE Arca OTP Holder.

account, of either an OTP Firm or non-OTP Firm, is used to facilitate an order for a customer of that same firm.⁶ Presently, OTP Firms are charged the Broker Dealer & Firm Manual rate of \$0.26 for facilitation trades they execute on behalf of non-OTP firms. According to the proposal, the Exchange will now apply the Firm Facilitation rate of \$0.15 to such trades.

The Exchange proposes to establish a pilot program, under which OTP Firms will be eligible for a monthly cap of \$50,000 on Firm Facilitation Fees. The \$50,000 cap will be applicable to each firm account that is used for facilitating orders of customers of that same firm. Examples of how the Firm Facilitation Fee cap will be applied are shown below.

Example 1

OTP Firm A carries accounts for customers of the firm, for which the firm may, on occasion, facilitate certain option orders. During a given calendar month, the firm facilitates a number of orders for their customers, for which the firm incurs Firm Facilitation Fees totaling \$60,000. Under the Pilot Program, the fee cap would have been met, and the Firm would be billed only \$50,000.

Example 2

OTP Firm B carries accounts of public customers, as well as accounts of non-OTP Firms, who themselves may wish to facilitate orders for their own customers. During a given calendar month, OTP Firm B represents facilitation orders for a non-OTP Firm for which it incurs Firm Facilitation Fees totaling \$60,000. During the same month, OTP Firm B also represents facilitation orders for another non-OTP Firm for which they incur Facilitation Fees totaling \$60,000. While OTP Firm B itself has incurred \$120,000 in total Facilitation Fees for the month,

⁶ In both instances the Firm Facilitation Fee will be applied to trades that have an OCC clearance account “F” on the trade side and an OCC clearance account “C” on the contra side of the transaction. Both sides of the trade will clear under the same clearing firm symbol.

the entire amount is not eligible for the fee cap. Orders on behalf of the first non-OTP Firm, which amounted to \$60,000, are capped at \$50,000, while orders on behalf of the second non-OTP Firm, which amounted to \$60,000, are also capped at \$50,000. In this example, OTP Firm B has incurred Facilitation Fees totaling \$120,000, but because the fees are eligible for the fee cap under the Pilot Program, OTP Firm B will be billed only \$100,000.

Example 3

OTP Firm C carries accounts of public customers, as well as accounts of non-OTP Firms, who themselves may wish to facilitate orders for their own customers. During a given calendar month, OTP Firm C facilitates orders for their customers, for which the firm incurs Firm Facilitation Fees totaling \$60,000. During the same calendar month, OTP Firm C represents facilitation orders for a non-OTP Firm for which it incurs Facilitation Fees totaling \$60,000. During the same month, OTP Firm C also represents facilitation orders for another non-OTP Firm for which the firm incurs Facilitation Fees totaling \$40,000. While OTP Firm C itself has incurred \$160,000 in total Firm Facilitation Fees for the month, the entire amount is not eligible for the fee cap. Facilitated orders, executed on behalf of OTP Firm C's customer, which amounted to \$60,000, are capped at \$50,000. Facilitated orders executed on behalf of the first non-OTP Firm, which amounted to \$60,000, are also capped at \$50,000, but facilitated orders executed on behalf of the second non-OTP Firm, which amounted to \$40,000, are not subject to the fee cap. In this example, OTP Firm C has incurred Firm Facilitation Fees totaling \$160,000, but because of the fee cap under the Pilot Program, OTP Firm C will be billed only \$140,000.

OTP Firms wishing to take advantage of the fee cap must register for the Pilot Program with the NYSE Arca Finance Department, prior to the end of a calendar month, to ensure that the fee cap is applied correctly for billing purposes, for that month. The enrollment process will

require that an OTP Firm supply the Exchange with information concerning the clearing and firm symbols of the OTP Firm's designated clearing account that may be used to facilitate customer orders, and/or the clearing and firm symbols of any non-OTP Firm customers of the OTP Firm that may facilitate their own customer's orders. Enrollment forms will be available from the NYSE Arca Finance Department. The enrollment information can be provided by the initiating firm, clearing firm or executing broker associated with these trades.

Certain classes of options listed on the NYSE Arca have as their underlying security, licensed products that carry a Royalty Fee (or license fee), on every contract traded. Royalty Fees that are incurred by the Exchange are passed-on to the actual participants executing the trade. These passed-through fees are assessed by the issuing agency, and are not Exchange Transaction Fees. The Exchange will not include Royalty Fees, which are passed-on to trade participants in connection with Firm Facilitation trades, when calculating the \$50,000 per month fee cap.

By capping this Firm Facilitation Fee, the Exchange states that it hopes to garner additional order flow from market participants that are attracted to the competitive fee structure. The Exchange plans to offer this fee cap on a pilot basis until December 31, 2007. Thirty days prior to the conclusion of the Pilot Program, the Exchange will analyze the effectiveness of the fee cap and will propose, through a subsequent Rule 19b4 filing, to either terminate or extend the Pilot Program, or to make the fee cap permanent.

Facilitation trades, governed by NYSE Arca Rule 6.47, are Crossing Orders, and are manually executed by Floor Brokers. Until such time that the Exchange's electronic trading system's automated crossing mechanism is functional, all Crossing Orders are executed

manually. Therefore the Firm Facilitation Fee is only applicable to manual executions. The Exchange proposes at this time to add language to the Rate Schedule to clarify this.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act⁷ in general, and furthers the objectives of Section 6(b)(4) of the Act⁸ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among NYSE Arca members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not 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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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 Act⁹ and Rule 19b-4(f)(2)¹⁰ thereunder, because it establishes or changes a due, fee, or other charge imposed on members 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

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4).

⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁰ 17 CFR 240.19b-4(f)(2).

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.¹¹

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-2007-93 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-2007-93. 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

¹¹ For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, the Commission considers the period to commence on September 28, 2007, the date on which the Exchange filed Amendment No. 2. See 15 U.S.C. 78s(b)(3)(C).

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 am and 3:00 pm. Copies of such 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-2007-93 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.¹²

Nancy M. Morris
Secretary

¹² 17 CFR 200.30-3(a)(12).