

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53952; File No. SR-NYSEArca-2006-21)

June 7, 2006

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to Approval of Market Data Fees for NYSE Arca Data

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 May 23, 2006, the NYSE Arca, Inc. (“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 prepared by the Exchange. 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, through its wholly owned subsidiary, NYSE Arca Equities, Inc. (“NYSE Arca Equities”), proposes to establish market data fees for the receipt and use of market data that the Exchange makes available. The text of the proposed rule change is available below.

Proposed new language is underlined.

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Schedule of NYSE Arca Market Data Fees

1. Monthly Access Fees.

A. Direct Access: \$750 per set of four Logons

B. Indirect Access: \$750

2. Monthly Device Fees

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

A. Professional Subscribers

i. For ArcaBook information relating to Exchange-Traded Funds and CTA

Plan Securities:

\$15.00

ii. For ArcaBook information relating to UTP Plan Securities (other than Exchange-Traded Funds):

\$15.00

iii. For limit order information and last sale price information relating to bonds that are traded through NYSE Arca facilities:

No charge.

B. Nonprofessional Subscribers

i. For ArcaBook information relating to Exchange-Traded Funds and CTA

Plan Securities:

\$5.00

ii. For ArcaBook information relating to UTP Plan Securities (other than Exchange-Traded Funds):

\$5.00

iii. For limit order information and last sale price information relating to bonds that are traded through NYSE Arca facilities:

No charge.

C. Maximum Monthly Device Fee Payments. An entity that is registered as a broker-dealer under the Securities Exchange Act of 1934 is not required to pay more than the

monthly broker-dealer “Maximum Amount” for device fees payable in respect of services that it provides to:

- (i) Nonprofessional Subscribers that maintain brokerage accounts with the broker-dealer; and
- (ii) Professional Subscribers that are not affiliated with the broker-dealer or any affiliate of the broker-dealer (either as an officer, partner or employee or otherwise) and that maintain brokerage accounts directly with the broker-dealer (that is, with the broker-dealer rather than with a correspondent firm of the broker dealer);

provided, however, that Nonprofessional Subscribers must comprise no less than 90 percent of the pool of subscribers as to which the monthly Maximum Amount applies. The “Maximum Amount” for any month in calendar year 2006 shall equal \$20,000. The “Maximum Amount” for the months falling in a subsequent calendar year shall increase by the percentage increase (if any) in the annual composite share volume for the calendar year preceding that subsequent calendar year, subject to a maximum annual increase of five percent.

For example, if the annual composite share volume for calendar year 2006 increases by three percent over the annual composite share volume for calendar year 2005, then the monthly Maximum Amount for months falling in calendar year 2007 would increase by three percent to \$20,600.

D. Free Trial Period - No device fees apply in respect of the receipt of NYSE Arca Market Data by a Professional Subscriber or Nonprofessional Subscriber in the calendar month in which the subscriber first becomes authorized to receive the data. For example, if a subscriber

becomes authorized to receive NYSE Arca Market Data on May 10, the device fees will not apply during that month of May.

For the purposes of this Market Data Fee Schedule, the following definitions shall apply:

1. “CTA Plan” means the plan pursuant to which national securities exchanges disseminate last sale prices of transactions in CTA Plan Securities in compliance with Rule 601 under Regulation NMS. The CTA Plan can be found at <http://www.nysedata.com/nysedata/Default.aspx?tabid=227>.

2. “CTA Plan Security” means a security (a) that is listed for trading on one or more national securities exchanges, other than those listed on the Nasdaq Stock Market, Inc., and (b) trades in which are reported pursuant to the CTA Plan

3. “Direct Access” means access to NYSE Arca market data by means of a direct connection or linkage to NYSE Arca facilities. “Indirect Access” means access to NYSE Arca Data through an intermediary.

4. “Exchange-Traded Fund” means exchange-listed securities representing interests in open end unit investment trusts or open-end management investment companies that hold securities based on an index or a portfolio of securities.

5. “Logon” means a single means of access to one instance of an NYSE Arca datafeed. For example, if an access recipient gains access to NYSE Arca Data during a month by means of one logon to receive ArcaBook, a second logon to receive NYSE Arca bond information, a third logon to receive NYSE Arca back-up access to ArcaBook and a fourth logon to receive back-up access to NYSE Arca bond information, that recipient would have enjoyed four Logons during the month.

6. “Nonprofessional Subscriber” means an authorized end-user of NYSE Arca Data who is a natural person and who is neither:

- (a) registered or qualified with the Securities and Exchange Commission (the “Commission”), the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association;
- (b) engaged as an "investment advisor" as that term is defined in Section 202(a)(11) of the Investment Advisers Act of 1940 (whether or not registered or qualified under that act); nor
- (c) employed by a bank or other organization exempt from registration under Federal and/or state securities laws to perform functions that would require him/her to be so registered or qualified if he/she were to perform such functions for an organization not so exempt.

7. “Professional Subscriber” means an authorized end-user of NYSE Arca Data that has not qualified as a Nonprofessional Subscriber.

8. “UTP Plan” means the “Reporting Plan for Nasdaq/National Market System Securities Traded on an Exchange on an Unlisted or Listed Basis” pursuant to which national securities exchanges disseminate last sale prices of transactions in UTP Plan Securities in compliance with Rule 601 under Regulation NMS. The UTP Plan can be found at <http://www.utpdata.com>.

9. “UTP Plan Security” means a security that is listed for trading on the Nasdaq Stock Market, Inc. and (a) as to which unlisted trading privileges have been granted pursuant to

Section 12(f) of the Exchange Act or which become eligible for such trading by order of the Commission or (b) which is also listed on another national securities exchange.

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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. The Exchange has 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

a. The Services. Through NYSE Arca, L.L.C. (“NYSE Arca”), the equities trading facility of NYSE Arca Equities, the Exchange makes ArcaBookSM, a compilation of all limit orders resident in the NYSE Arca limit order book, available on a real-time basis.³ In addition, the Exchange makes available real-time information relating to transactions and limit orders in debt securities that are traded through the Exchange’s facilities.

The Exchange makes ArcaBook and the bond trade and limit order information (collectively, “NYSE Arca Data”) available to market data vendors, broker-dealers, private

³ The Exchange notes that it makes available to vendors the best bids and offers that are included in ArcaBook data no earlier than it makes those best bids and offers available to the processors under the Consolidated Quotation System Plan (“CQ Plan”) and the “Reporting Plan for Nasdaq/National Market System Securities Traded on an Exchange on an Unlisted or Listed Basis” (“UTP Plan”).

network providers and other entities by means of data feeds. By making NYSE Arca Data available, ArcaBook enhances market transparency and fosters competition among orders and markets.

b. Fees. The Exchange proposes to establish the Market Data Fee Schedule to the proposed rule change for the receipt and use of NYSE Arca Data. As the Market Data Fee Schedule details, the Exchange is proposing to assess access fees and professional and nonprofessional device fees, categories of fees that are consistent with the fees that the New York Stock Exchange (“NYSE”) and the Nasdaq Stock Market (“Nasdaq”), and the Participants in the Consolidated Tape Association (“CTA”), CQ, UTP and Options Pricing Reporting Authority (“OPRA”) Plans, charge for the receipt and use of their market data.

i. Access Fees. The Exchange proposes to impose a monthly \$750 fee for a data recipient to gain direct access to the datafeeds through which the Exchange makes NYSE Arca Data available. This fee would entitle the datafeed recipient to gain access to NYSE Arca Data for a set of up to four “Logons.” A “Logon” is activation of a means of direct access to any of the NYSE Arca datafeeds. For instance, if a datafeed recipient gains access to NYSE Arca Data one or more times during a month using an Exchange-provided and approved logon that provides access to the ArcaBook datafeed, that would constitute a “Logon.” If, during that month, the datafeed recipient uses a different logon name that allows for access to a server that provides access to the ArcaBook datafeed, that would constitute a second “Logon.”

The Exchange proposes to impose a monthly \$750 fee for a data recipient to gain indirect access to the datafeeds through which the Exchange makes NYSE Arca Data available for any number of Logons. “Indirect access” refers to access to a NYSE Arca Datafeed indirectly

through one or more intermediaries, rather than by means of a direct connection or linkage with the Exchange's facilities.

ii. Device Fees. The Exchange proposes to establish device fees for professional and nonprofessional subscribers for the display of ArcaBook. In differentiating between professional and nonprofessional subscribers, the Exchange proposes to apply the same criteria for qualification as a nonprofessional subscriber as the CTA and CQ Plan Participants use.

a. For Professional Subscribers. For professional subscribers, the Exchange is proposing to establish (i) a monthly fee of \$15 per device for the receipt of ArcaBook data relating to Exchange-Traded Funds and those equity securities for which reporting is governed by the CTA Plan ("CTA Plan and ETF Securities") and (ii) a monthly fee of \$15 per device for the receipt of ArcaBook data relating to those equity securities for which reporting is governed by the UTP Plan (excluding Exchange-Traded Funds; "UTP Plan Securities").

The combined monthly professional subscriber device fee of \$30 (i.e., for receipt of Arca data relating to CTA Plan and ETF Securities and to UTP Plan Securities) compares favorably with comparable fees charged by other exchanges for similar services. For instance, for professional subscribers, Nasdaq charges \$76 for its combined TotalView⁴ and OpenView⁵

⁴ Through TotalView, Nasdaq provides information relating to the displayed quotes and orders of Nasdaq participants in UTP Plan Securities. TotalView displays quotes and orders at multiple prices and is similar to ArcaBook.

⁵ Through OpenView, Nasdaq provides information relating to the displayed quotes and orders of Nasdaq participants in CTA Plan Securities. OpenView displays quotes and orders at multiple prices and is similar to ArcaBook.

products and NYSE charges \$60 for NYSE OpenBook.⁶

b. For Nonprofessional subscribers. For nonprofessional subscribers, the Exchange is proposing to reduce those monthly fees to \$5 per device for the receipt of ArcaBook data relating to CTA Plan and ETF Securities and \$5 per device for the receipt of ArcaBook data relating to UTP Plan Securities (i.e., a combined fee of \$10 for both CTA Plan and ETF Securities and UTP Plan Securities).

The Exchange proposes to limit for any one month the maximum amount of device fees payable by any broker-dealers in respect of nonprofessional subscribers that maintain brokerage accounts with the broker-dealer. Professional subscribers may be included in the calculation of the monthly maximum amount, so long as:

- (1) nonprofessional subscribers comprise no less than 90 percent of the pool of subscribers that are included in the calculation;
- (2) each professional subscriber that is included in the calculation is not affiliated with the broker-dealer or any of its affiliates (either as an officer, partner or employee or otherwise); and
- (3) each such professional subscriber maintains a brokerage account directly with the broker-dealer (that is, with the broker-dealer rather than with a correspondent firm of the broker dealer).

For 2006, the maximum amount for any calendar month shall equal \$20,000. For the months falling in a subsequent calendar year, the maximum monthly payment shall increase (but

⁶ Through NYSE OpenBook, NYSE provides information relating to limit orders.

not decrease) by the percentage increase (if any) in the annual composite share volume⁷ for the calendar year preceding that subsequent calendar year, subject to a maximum annual increase of five percent.⁸ For example, if the annual composite share volume for calendar year 2006 increases by three percent over the annual composite share volume for calendar year 2005, then the monthly “Maximum Amount” for months falling in calendar year 2007 would increase by three percent to \$20,600.

The Maximum Amount compares favorably with monthly maximums payable to Nasdaq and to the CTA Plan Participants. Nasdaq set the maximum at \$25,000 per month for nonprofessional subscribers’ receipt of TotalView, though it does not apply to OpenView or to Level 1 or NQDS services. The CTA Plan Participants currently set the maximum at \$630,000 per month for internal distribution within a broker-dealer’s organization and for the broker-dealer’s distribution to nonprofessional subscribers that maintain brokerage accounts (the “CTA Monthly Maximum”).

The Exchange notes that these device fees are lower than the fees that NYSE and Nasdaq charge for their limit order data services.

The Exchange does not presently propose to impose device fees for the display of limit order, quotation and last sale price information relating to bonds that are traded through the Exchange’s facilities. The Exchange will not establish device fees for that information without

⁷ “Composite share volume” for a calendar year refers to the aggregate number of shares in all securities that trade over NYSE Arca facilities for that calendar year.

⁸ This is the same annual increase calculation that the Commission approved for the CTA Monthly Maximum. See Securities Act Release No. 34-41977 (October 5, 1999) (File No. SR-CTA/CQ-99-01).

first filing with the Commission a proposed rule change on Form 19b-4 and receiving Commission approval.

iii. Free Trial Period. As an incentive to prospective subscribers, the Exchange proposes to offer subscribers the right to receive NYSE Arca Data free of charge for the duration of the billable month in which the subscriber first gains access to the data. For example, if a subscriber (whether professional or nonprofessional) is billed on a calendar-month basis and first gains access to NYSE Arca Data on May 10, the device fees set forth in the proposed rule change will not apply during that month of May.

iv. Justification of fees. NYSE Arca believes that the proposed market data fees would reflect an equitable allocation of its overall costs to users of its facilities. The Exchange believes that the fees are fair and reasonable because they compare favorably to fees that other markets charge for similar products.

For instance, the combined monthly professional subscriber device fee of \$30 (i.e., for receipt of NYSE Arca data relating to CTA Plan and ETF Securities and to UTP Plan Securities) compares favorably with the \$76 that Nasdaq charges professional subscribers for its combined TotalView and OpenView products and the \$60 that NYSE charges professional subscribers for NYSE OpenBook.

For nonprofessional subscribers, Nasdaq charges \$14 per month for its TotalView product and does not offer a nonprofessional subscriber rate for OpenView. Similarly, NYSE does not offer a nonprofessional subscriber rate for its OpenBook product. NYSE Arca proposes to charge nonprofessional subscribers \$10 per month for NYSE Arca data relating to CTA Plan and ETF Securities and to UTP Plan Securities.

For direct access, NYSE Arca proposes to charge \$750 per month for a set of up to four logons and, for indirect access, NYSE Arca proposes to charge \$750 per month for any number of logons. In contrast, NYSE charges \$5000 per month for direct or indirect access to OpenBook and Nasdaq charges \$2500 per month for access to TotalView and another \$2500 per month for access to the OpenView datafeed.

c. Contracts. The Exchange will require each recipient of a datafeed containing NYSE Arca Data to enter into the form of "vendor" agreement into which the CTA and CQ Plans require recipients of the Network A datafeeds to enter. That agreement will authorize the datafeed recipient to provide NYSE Arca Data services to its customers or to distribute the data internally.

In addition, the Exchange will require each professional end-user that receives NYSE Arca Data displays from a vendor or broker-dealer to enter into the form of professional subscriber agreement into which the CTA and CQ Plans require end users of Network A data to enter and to require vendors and broker-dealers to subject nonprofessional subscribers to the same contract requirements as the CTA and CQ Plan Participants require of Network A nonprofessional subscribers.

The Network A Participants drafted the vendor and Network A professional subscriber agreements as one-size-fits-all forms to capture most categories of market data dissemination. They are sufficiently generic to accommodate NYSE Arca Data. The Commission has approved the vendor form and the professional subscriber form.⁹

⁹ See Securities Exchange Act Release Nos. 34-22851 (January 31, 1986), 51 FR 5135 (February 11, 1986); 34-28407 (September 6, 1990), 55 FR 37276 (September 10, 1990); and 34-49185 (February 4, 2004), 69 FR 6704 (February 11, 2004).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act¹⁰ in general, and furthers the objectives of Section 6(b)(4) of the Act¹¹ in particular, in that it provides for the equitable allocation of reasonable fees, dues, and other charges among Exchange participants, issuers and other persons using its facilities.

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

The Exchange believes that the proposed fee change will not impose any burden on competition that is not necessary or appropriate in the 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 not solicited, and does not intend to solicit, comments regarding the proposed rule change. The Exchange has not received any unsolicited written comments from Exchange participants or other interested parties.

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4).

- A. by order approve such proposed rule change; or
- B. institute proceedings to determine whether the proposed rule change should be disapproved.

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-2006-21 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NYSEArca-2006-21. 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 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 publicly available. All submissions should refer to File Number SR-NYSEArca-2006-21 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

Jill M. Peterson
Assistant Secretary

¹² 17 CFR 200.30-3(a)(12).