

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-54309; File No. SR-NYSEArca-2006-25)

August 11, 2006

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

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 August 1, 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 prepared by the Exchange. NYSE Arca filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,³ 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 from interested persons.

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

The Exchange is proposing to amend its Schedule of Fees and Charges for Exchange Services (“Schedule”) in order make changes to transaction charges, dues, and fees. The Exchange also proposes the elimination of certain obsolete fees and the implementation of certain new fees. The changes to the Schedule pursuant to this proposal became effective on August 1, 2006. The text of the proposed rule change is available on NYSE Arca’s Web site at www.nysearca.com, at the principal office of NYSE Arca, and at the Commission’s Public

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).

Reference Room.⁵

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

In its filing with the Commission, NYSE Arca 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 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

As part of its ongoing effort to improve competitiveness through technology and new rules, NYSE Arca is proposing changes to its Schedule in conjunction with the implementation of its new OX trading platform.⁶ The new rate Schedule will eliminate all application fees, enhance Option Trading Permit ("OTP") fees and cut transaction charges. A new per issue fee conveying Lead Market Maker ("LMM") rights will also be implemented that assesses monthly fees based on the average daily trading volume of an LMM's allocations. Under the proposal, the Cancellation fee will be phased out, as it will only apply to issues trading on PCX Plus. The 5% invoice surcharge that the Exchange presently assesses will be terminated. NYSE Arca also

⁵ The Exchange effected certain technical changes to the proposed Schedule via telephone. Conversation between Janet Angstadt, Acting General Counsel, NYSE Arca and Tim Fox, Special Counsel, Commission, on August 9, 2006.

⁶ OX, the Exchange's new electronic trading platform for options will be replacing PCX Plus, the Exchange's existing electronic trading system. OX is being introduced as a part of a phased-in rollout in August 2006. See Securities Exchange Act Release No. 54238 (July 28, 2006), 71 FR 44758 (August 7, 2006) (SR-NYSEArca-2006-13).

proposes to update any reference to the name of the Exchange contained in the Schedule to reflect its recent name change.⁷ In order to offer a more user-friendly format, the Schedule has also been reformatted with all footnotes being replaced, as needed, with endnotes contained in an easy to read summary at the end of the Schedule. What follows details the exact nature of the changes in the Schedule.

Application Fees

All application fees will be eliminated. These include the Application fee, Reapplication fee, OTP Activation fees and the Joint Account Application fee. The OTP Intra Firm Transfer fees are also being eliminated.

OTP Fees

OTP Trading Participant Rights will replace the existing OTP Fee of \$750 per month, which has been applicable to Floor Brokers, Market Makers and off floor firms. OTP Trading Participation Rights for Floor Brokers and Office Firms will now be \$1,000 per month per OTP. Under the proposal, neither group will pay for an access fee. The existing Access fee of \$130 will only be assessed on registered floor personnel that do not pay an OTP fee. The \$5,000 per month fee cap on Access fees will be eliminated. The existing \$500 per month Floor Broker fee will no longer apply.

⁷ The Exchange recently amended its rules to reflect these name changes: from Pacific Exchange, Inc. to NYSE Arca, Inc.; from PCX Equities, Inc. to NYSE Arca Equities, Inc.; from PCX Holdings, Inc., to NYSE Arca Holdings, Inc.; and from the Archipelago Exchange, L.L.C. to NYSE Arca, L.L.C. See Securities and Exchange Act Release No. 53615 (April 7, 2006), 71 FR 19226 (April 13, 2006) (SR-PCX-2006-24).

OTP Trading Participant Rights for NYSE Arca Market Makers will be \$4,000 fee per OTP. Participation Rights for NYSE Arca Market Makers will be subject to a monthly cap of \$16,000 per Market Maker. Under the proposed changes, Market Makers will no longer pay the existing \$1,500 Market Maker fee or the \$130 Access fee. Although the direct expense associated with a single OTP will increase, the Exchange believes that restructuring of fixed fees relative to transaction fees will encourage trading on the Exchange by market makers. In addition, the maximum cost for a market making firm to stream quotes and transact business in all issues on the Exchange has been significantly reduced, from \$33,280 per month to \$16,000 per month.

Lead Market Maker Rights

OTP Firms acting as LMMs will be assessed a fee for LMM Rights on a per issue basis in addition to the OTP Trade Participant Rights. The LMM Rights, assessed on every issue that an LMM has been allocated, will be based on the average daily volume (“ADV”) of customer contracts traded in that issue. The ADV will be calculated using customer volume figures as reported by the Options Clearing Corporation.⁸

For issues with an ADV of between 0-2,000 contracts, the LMM Rights fee will be \$150 per stock. For issues with an ADV of between 2,001 and 5,000 contracts, the LMM Rights fee will be \$400 per stock. For issues with an ADV of between 5,001-15,000 contracts, the LMM Rights fee will be \$750 per stock. For issues with an ADV of between 15,001 and 100,000

⁸ The Exchange notes that a number of institutional and large size transactions sometimes skew average daily volumes. These trades usually clear under firm and market maker clearance accounts. To ensure that LMMs are not disadvantaged by these levels of activity, customer volumes are therefore being used in the calculation of the LMM Rights Fee. For the purposes of calculating this fee, the ADV will be based on a trailing 3-month average.

contracts, the LMM Rights fee will be \$1,500 per stock and for issues that trade with an ADV in excess of 100,000 contracts per month the LMM Rights fee will be \$3,000 per stock. This fee will help offset the costs incurred to provide technology and other infrastructure to support firms operating on the trading platform of the Exchange. This fee will be assessed at the end of each month on each issue that an LMM holds in its LMM appointment. In the event that an LMM has voluntarily delisted an issue prior to the end of the month, the full monthly rate will still apply. LMMs will not incur LMM fees on issues that they trade that are not included in their LMM appointment. An Interim LMM,⁹ that is temporarily allocated an issue(s) by the Exchange will not be assessed an LMM rights fee for those issues. This fee will not apply in the event an issue has been designated for “closing transactions only” and is subject to delisting by the Exchange.

Per Contract Charges

Options per contract transaction charges will reflect the following rate schedule:

<u>Order Type</u>	<u>Rate Per Contract</u>
LMM	\$0.09
NYSE Arca Market Maker	\$0.16
Broker Dealer Electronic	\$0.50
Broker Dealer Manual	\$0.26
Customer Electronic	\$0.00
Customer Manual	\$0.00

⁹ If an LMM has been relieved of an appointment or resigns or if the allocation otherwise becomes vacant, the Exchange may designate an interim LMM or a Market Maker trading crowd pending the conclusion of a new LMM selection process. The designation of an interim LMM is not a prejudgment of the new LMM selection process. See NYSE Arca Rule 6.82(b)(4) (Interim LMMs).

Firm \$0.15

NYSE Arca Market Maker charges will be reduced from \$0.26 per contract to \$0.16 per contract. A new \$0.09 per contract fee will now apply to LMMs on all trades that they transact in issues in which they are the appointed LMM. Previously, LMMs were charged the \$0.26 Market Maker rate on all transactions. Certain LMM transactions previously qualified for the Firm transaction fee. Going forward, in the event of the LMM fee conflicts with the Firm transaction fee, the lower rate will always apply. The Exchange will continue to rebate LMM transaction fees for executions that result from the LMM sending Linkage Orders¹⁰ executed on other exchanges. In addition to the aforementioned rebate, the Exchange will continue to credit Market Makers \$0.26 per contract for executions that result from the LMM sending Linkage Orders to other exchanges.

Manual broker dealer (“BD”) executions, presently \$0.26 per contract, will remain unchanged. Electronic BD executions will now be assessed a transaction fee of \$0.50 per contract (instead of \$0.51 total charge that was comprised of the \$0.26 transaction fee and \$0.25 surcharge). BD fees are not assessed on NYSE Arca Market Makers. The BD Surcharge is being eliminated to provide for simplification of rates. Specifically, the old rate schedule required the addition of the Transaction charge and the Surcharge to come up with the total cost; the new rate schedule rolls it up into one category.

In the descriptive language associated with Limit of Fees on Strategy Executions under the Trade Related Charges section of the Schedule, a reference to the “on line comparison fee”

¹⁰ “Linkage Orders” are Immediate or Cancel orders routed through the Intermarket Option Linkage containing certain information prescribed in the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (“Linkage Plan”). See Section 2(16) of the Linkage Plan. See also NYSE Arca Rule 6.92(a)(12).

has been deleted. The on line comparison fee as it applied to these trades was eliminated from the Schedule in a recent filing with the Commission.¹¹ A reference to the fee was inadvertently left in this section. This change is for housekeeping purposes and makes no substantive change.

Cancellation Fees

The order cancellation fee will be phased out, as it will only be assessed on issues trading on PCX Plus. This fee has been typically assessed by most options exchanges to help mitigate congestion caused by trading participants that have excessive cancellations. NYSE Arca believes its new OX trading platform will be robust enough to handle this traffic, and therefore a fee designed to mitigate incoming order flow is no longer necessary.

The 5% Surcharge Fee

NYSE Arca will no longer assess a 5% Surcharge Fee on an OTP Holder's and OTP Firm's monthly invoice. Eliminating this fee will assist NYSE Arca in being more price competitive with other Exchanges.

Other Changes

Booth Fees on the Options Floor will be consolidated into one rate: \$350 per month per booth, regardless of the size or location of the booth. The ACTANT server fee of \$100 per month will be eliminated. A \$175 Electronic Order Capture ("EOC") fee will replace the Floor Broker Hand Held device fee. The EOC system will now encompass all order handling

¹¹ The Exchange amended the Schedule in order to combine a \$0.21 transaction fee and a \$0.05 comparison fees into one \$0.26 transaction fee for Market Maker, Firm and Broker Dealer executions. See Securities Exchange Act Release No. 53485 (March 14, 2006), 71 FR 14564 (March 22, 2006) (SR-PCX-2006-15).

functions previously done on the Floor Brokers Hand Held. The \$175 fee will apply to each EOC device.

NYSE Arca Equities Regulatory Fees are being removed from the NYSE Arca Options Schedule. These fees were incorporated into the NYSE Arca Equities Fee Schedule as part of a separate filing.¹²

Various other charges that have become obsolete over time will be eliminated. Trade Match tables are no longer used; therefore, the fee associated with them will be deleted. The Exchange will no longer have an Agency Stock Execution Fee nor assess a Market Maker give-up charge, as these fees are no longer applicable in today's marketplace. POETS Workstations, which are used in OTP floor booths, will now include other applications, and will now be called "Booth Workstations." The Standard Report Package is a printed report that the Exchange previously produced for OTP Holders. The information contained in the report is now available electronically and can be accessed free of charge. Therefore, the fee will be eliminated.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,¹³ in general, and with Section 6(b)(4) of the Act,¹⁴ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among OTP Holders, OTP Firms.¹⁵

¹² SR-NYSEArca-06-43, filed with the Commission on June 30, 2006, was effective upon filing.

¹³ 15 U.S.C. 78f.

¹⁴ 15 U.S.C. 78f(b)(4).

¹⁵ The Exchange removed a reference in the Statutory Basis Section of the filing relating to the applicability of the fees to "other market participants trading options contracts on

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

NYSE Arca does not believe that the proposed rule change will result in 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 were neither solicited nor received.

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

The foregoing rule change is subject to Section 19(b)(3)(A)(ii) of the Act¹⁶ and subparagraph (f)(2) of Rule 19b-4 thereunder¹⁷ because it establishes or changes a due, fee, or other charge applicable only to a member imposed by the self-regulatory organization.

Accordingly, the proposal is effective upon Commission receipt of the filing. At any time within 60 days of the filing of the 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:

certain ETFs" via telephone. Conversation between Pete Armstrong, NYSE Arca and Tim Fox, Special Counsel, Commission, on August 10, 2006.

¹⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁷ 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. Please include File No. SR-NYSEArca-2006-25 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 No. SR-NYSEArca-2006-25. 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 will also be available for inspection and copying at the principal office of the 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 No. SR-NYSEArca-2006-25 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.¹⁸

Nancy M. Morris
Secretary

¹⁸ 17 CFR 200.30-3(a)(12).