

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-57585; File No. SR-NYSEArca-2008-36)

March 31, 2008

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Certain Transaction Fees and to Establish a New Fee, the Market Maker Post Liquidity Incentive Credit

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 March 28, 2008, 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 substantially by the Exchange. NYSE Arca has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A),<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposed rule change 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 proposes to amend its Schedule of Fees and Charges for Exchange Services (“Schedule”) in order to revise certain Transaction Fees and establish a new fee, the Market Maker Post Liquidity Incentive Credit. The text of the proposed rule change is available on the Exchange’s Web site (<http://www.nysearca.com>), at NYSE Arca’s principal office, and at the Commission’s Public Reference Room.

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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).

<sup>4</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, NYSE Arca included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposal. 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

The purpose of this filing is to amend the existing Schedule in order to: (i) make changes to Transaction Fees assessed on certain executions in issues that trade as part of the Penny Pilot,<sup>5</sup> and (ii) introduce a new fee to be called the Market Maker Post Liquidity Incentive Credit ("Incentive Credit"). The Exchange plans to implement these fees on April 1, 2008. A description of each proposed change is explained below.

Transaction Fees

NYSE Arca offers market participants a Post/Take pricing model for electronically executed transactions in issues that are included in the Penny Pilot. Under the present rate schedule, all electronic orders that "take" liquidity from the Consolidated Book (incoming electronic quotes and orders that are executed upon receipt) are charged a fee of \$0.50 per contract. As part of its ongoing effort to provide competitive rates, the Exchange now proposes to offer reduced pricing for certain Post/Take transactions in issues that are included in the Penny

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<sup>5</sup> The Exchange may trade option contracts in one cent increments in certain approved issues as part of the Penny Pilot, through March 27, 2009. See Securities Exchange Act Release No. 56568 (September 27, 2007), 72 FR 56422 (October 3, 2007) (approval order for SR-NYSEArca-2007-88).

Pilot. Specifically the Exchange will lower the Take Liquidity rate from \$0.50 to \$0.45 per contract for all market participants.

Market Maker Post Liquidity Incentive Credit

NYSE Arca proposes to add a new fee credit, which will be available to Market Makers and Lead Market Makers (“LMMs”) who reach a certain level of monthly contact volume in Penny Pilot Issues. Market Makers and LMMs that achieve specific posting volume thresholds for quotes and orders in Penny Pilot issues will receive additional credits as follows:

Post Liquidity Incentive Thresholds	Credit
> 1,000,000 posting contracts/month	\$.01/contract
> 5,000,000 posting contracts/month	\$.05/contract

The incentive credit is incremental and will apply to the posting volumes executed within each tier, and this credit is earned in addition to the standard Post Liquidity fee credit. For example, if a Market Maker trades 6,000,000 contracts in one month, the Post Liquidity fee credit would be \$0.30 for the first 1 million contracts, for contracts 1,000,001 to 5,000,000 the credit would be \$0.30 plus a one-cent incentive credit for a marginal credit rate of \$0.31, and for contracts 5,000,001 to 6,000,000, the credit would be \$0.30 plus a five-cent incentive credit for a marginal credit rate of \$0.35.

The Incentive Credit will be calculated on a monthly basis, and will be reflected on OTP Holders’ bills on a quarterly basis.

By offering the Market Maker Post Liquidity Incentive Credit, NYSE Arca hopes to attract additional Market Makers and LMM quotes and orders to the Exchange, which in turn should lead to tighter spreads and deeper liquidity, which will benefit all market participants.

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act,<sup>7</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

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and subparagraph (f)(2) of Rule 19b-4<sup>9</sup> thereunder. 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:

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<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</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-2008-36 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-2008-36. 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, 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 No. SR-NYSEArca-2008-36 and should be submitted on or before [insert date 21 days from date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).