

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57588; File No. SR-NYSEArca-2008-37)

March 31, 2008

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1, Amending the Linkage Fees Portion of the 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 March 28, 2008, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. On March 31, 2008, the Exchange filed Amendment No. 1 to the proposed rule change. 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 is proposing to amend the Linkage Fees portion of the Schedule of Fees and Charges for Exchange Services (“Schedule”). The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and www.nyse.com.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

in Item III 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

The purpose of this filing is to amend the existing Schedule in order to revise the Linkage Fees portion of the Schedule, so as to conform with fee changes the Exchange has proposed for certain Broker Dealer executions. The Exchange plans to implement the revised Broker Dealer fees on April 1, 2008.

Executions on NYSE Arca resulting from orders sent via the Intermarket Option Linkage ("Linkage Orders") are subject to the same billing treatment as other Broker Dealer orders.³ Presently, the Exchange charges \$0.50 for all electronically executed Linkage Orders. The Exchange assesses this rate for Linkage Order executions in all issues, including those that trade as part of the Penny Pilot.⁴

³ As stated in the proposal to establish a pilot program for Linkage Fees:

"[i]n connection with the launch of the options intermarket linkage, the Exchange seeks to include in its Schedule of Fees and Charges For Exchange Services a provision that applies to linkage fees stating that executions resulting from Linkage Orders will be subject to the same billing treatment as other broker-dealer executions."

See Securities Exchange Act Release No. 47560 (March 21, 2003), 68 FR 15257 (March 28, 2003) (SR-PCX-2003-08). See also Securities Exchange Act Release Nos. 47786 (May 2, 2003), 68 FR 24779 (May 8, 2003) (order approving SR-PCX-2003-08) and 56133 (July 25, 2007), 72 FR 42210 (August 1, 2007) (SR-NYSEArca-2007-66) (order approving extension of Linkage Fee pilot program through July 31, 2008).

⁴ 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) (SR-NYSEArca-2007-88).

Options that overlay issues that trade as part of the Penny Pilot are subject to a Post/Take pricing model.⁵ On March 28, 2008, NYSE Arca filed with the Commission a proposal that lowers the “Take Liquidity” fee for electronically executed Broker Dealer orders in issues that trade as part of the Penny Pilot from \$0.50 to \$0.45.⁶ Linkage Orders that are executed in Penny Pilot issues are assessed the same rate as other Broker Dealer orders that take liquidity, because Linkage Orders “take” liquidity that is resting in the NYSE Arca Consolidated Book as opposed to “posting” liquidity. In conjunction with the change to the Take Liquidity fee that the Exchange has previously proposed, NYSE Arca is now proposing to create a new fee for electronically executed Linkage Orders in Penny Pilot issues. Such orders that were previously charged a \$0.50 fee will now be assessed a reduced fee of \$0.45. Linkage Fees for non-Penny Pilot issues remain the same. This change will keep Linkage Fees consistent with other fees charged for Broker Dealer executions.

The Exchange plans to implement this new, lower Linkage Fee in conjunction with the implementation of the revised Take Liquidity fee on April 1, 2008, pending Commission approval.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,⁷ in general, and Section 6(b)(4),⁸ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities

⁵ A detailed description of the Post/Take pricing model is shown in the Trade Related Charges section of the Schedule.

⁶ See SR-NYSEArca-2008-36. Fee changes made pursuant to SR-NYSEArca-2008-36, which was effective upon filing, are reflected in the Schedule.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4).

for the purpose of executing Linkage Orders that are routed to the Exchange from other market centers.

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. 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-2008-37 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-2008-37. 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 Number SR-NYSEArca-2008-37 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange⁹ and, in particular, with the requirements of Section 6(b) of the Act.¹⁰ In particular, the Commission finds that the Exchange's proposal is consistent with Section 6(b)(4) of the Act,¹¹ which requires that the rules of the Exchange provide for the equitable allocation or reasonable dues, fees, and other charges among its members and other persons using its facilities. The Commission notes that proposal conforms Linkage Fees with those fees charged on other Broker Dealer executions.

⁹ In approving this rule, the Commission notes that it has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4).

The Commission finds good cause, pursuant to Section 19(b)(2)(B) of the Act,¹² for approving the proposed rule change prior to the 30th day after the date of publication of the notice of the filing thereof in the Federal Register. An accelerated approval will not only permit the Exchange to comply with the terms of the Linkage Fee pilot program¹³ but will also allow the Exchange to immediately implement a lower fee for market participants executing Linkage Orders on NYSE Arca.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act¹⁴ that the proposed rule change (SR-NYSEArca-2008-37), as modified by Amendment No. 1, is hereby approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Florence E. Harmon
Deputy Secretary

¹² 15 U.S.C. 78s(b)(2)(B).

¹³ See note 3 supra.

¹⁴ 15 U.S.C. 78s(b)(2).

¹⁵ 17 CFR 200.30-3(a)(12).