

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59289; File No. SR-NYSEArca-2009-06)

January 23, 2009

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Introduce a Pilot Program for NYSE Arca Trades

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 January 21, 2009, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by NYSE Arca. NYSE Arca has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b-4(f)(6) under the Act,³ 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

NYSE Arca proposes to establish a pilot program to introduce its NYSE Arca Trades service at no charge. NYSE Arca Trades is a new NYSE Arca-only market data service that allows a vendor to redistribute on a real-time basis the same last sale information that NYSE Arca reports to the Consolidated Tape Association (“CTA”) for inclusion in CTA’s consolidated data stream and certain other related data elements (“NYSE Arca Last Sale Information”).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

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 self-regulatory organization 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 self-regulatory organization 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 Service. The Exchange proposes to establish a pilot program to introduce NYSE Arca Trades, a new service pursuant to which it will allow vendors, broker-dealers and others (“NYSE Arca-Only Vendors”) to make available NYSE Arca Last Sale Information on a real-time basis.⁴ The Exchange will not impose any fees for the receipt and use of NYSE Arca Trades, whether on vendors or subscribers, during the pilot period.

Contemporaneously with the proposed rule change, the Exchange submitted a proposed rule change that seeks to establish a \$750 per month access fee for the receipt and redistribution of the NYSE Arca Trades datafeed(s) and device fees for the end-use of NYSE Arca Trades’ NYSE Arca Last Sale Information (the “NYSE Arca Trades Fee Filing”) as follows:

- i. \$5 per month per display device for the receipt and use of NYSE Arca Last Sale Information relating to Network A and Network B Eligible Securities (as the CTA Plan uses those terms); and

⁴ The Exchange notes that it will make the NYSE Arca Last Sale Information available to vendors no earlier than it makes its last sale information available to the processor under the CTA Plan.

- ii. \$5 per month per display device for the receipt and use of NYSE Arca Last Sale Information relating to securities listed on Nasdaq.

The Exchange would not commence to impose those fees until the later of Commission approval of the NYSE Arca Trades Fee Filing and the end of the pilot period.

NYSE Arca Last Sale Information would include last sale information for all securities that are traded on the Exchange.

The Exchange will make NYSE Arca Last Sale Information available through its new NYSE Arca Trades service at the same time as it provides last sale information to the processor under the CTA Plan. In addition to the information that the Exchange provides to CTA, NYSE Arca Last Sale Information will also include a unique sequence number that the Exchange assigns to each trade and that allows an investor to track the context of the trade through such other Exchange market data products as ArcaBook[®].

The Exchange developed NYSE Arca Trades primarily at the request of traders who are very latency sensitive. The latency difference between accessing last sales through the NYSE Arca datafeed or through the CTA datafeed can be measured in tens of milliseconds. The Exchange anticipates that demand for the product will derive primarily from investors and broker-dealers who desire to use NYSE Arca Trades to power certain trading algorithms or smart order routers. The free access to NYSE Arca Trades during the pilot period will enable investors to determine whether NYSE Arca Trades provides value to their business models and will enable the Exchange to make the service available during the time required to obtain approval for the fees.

b. Administrative Requirements. During the pilot period, the Exchange will require NYSE Arca-Only Vendors to enter into the form of "vendor" agreement

into which the CTA Plan requires recipients of the Network A last sale prices information datafeeds to enter (the “Network A Vendor Form”). The Network A Vendor Form will authorize the NYSE Arca-Only Vendor to provide the NYSE Arca Trades service to its subscribers and customers.

The Network A Participants drafted the Network A Vendor Form as a one-size-fits-all form to capture most categories of market data dissemination. It is sufficiently generic to accommodate NYSE Arca Trades. The Network A Vendor Form has been in use in substantially the same form since 1990.⁵

Similarly, the Exchange will require professional and non-professional subscribers to NYSE Arca Trades to undertake to comply with the same contract, reporting, payment, and other administrative requirements as to which the Network A Participants subject them in respect of Network A last sale information under the CTA Plan.

c. Duration of Pilot Program. The Exchange proposes to commence the pilot program shortly after submitting the proposed rule change to the Commission. The Exchange proposes to conduct the pilot test for 90 days from its commencement date.

If, at the end of the pilot period, the Commission has not yet acted on the NYSE Arca Trades Fee Filing, the Exchange will assess its experience with NYSE Arca Trades and determine whether to extend or modify the pilot program.

2. Statutory Basis

The bases under the Act for the proposed rule change are the requirements under Section 6(b)(5) that the rules of an exchange be designed to promote just and equitable principles of trade and not to permit unfair discrimination between customers, issuers, brokers or dealers.

⁵ See Release Nos. 34-28407 (September 10, 1990), and 34-49185 (February 4, 2004).

The pilot program would benefit investors by providing a free alternative to the last sale price information that they receive under the CTA Plan.

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

The Exchange 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

The Exchange has discussed the pilot program with those entities that the Exchange believes would be the most likely to take advantage of the proposed NYSE Arca Last Sale Information service by becoming NYSE Arca-Only Vendors. While those entities have not submitted formal, written comments on the proposal, the Exchange has incorporated some of their ideas into the proposal and the proposed rule change reflects their input. The Exchange has not received any unsolicited written comments from members or other interested parties.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁶ and Rule 19b-4(f)(6) thereunder.⁷

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. NYSE Arca has satisfied this requirement.

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act⁸ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)⁹ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. NYSE Arca requests that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay¹⁰ is consistent with the protection of investors and the public interest because such waiver will allow the Exchange to immediately provide additional information to investors at no cost. Therefore, the Commission designates the proposal operative upon 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:

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-2009-06 on the subject line.

⁸ 17 CFR 240.19b-4(f)(6).

⁹ 17 CFR 240.19b-4(f)(6).

¹⁰ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2009-06. 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 a.m. and 3:00 p.m. 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-2009-06 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Florence E. Harmon
Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).