

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58770; File No. SR-NYSEArca-2008-103)

October 10, 2008

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending its Schedule of Fees and Charges for Exchange Services that Apply to the Primary Only Plus Order

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 September 29, 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 substantially prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ 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

NYSE Arca proposes to add new fees to the Schedule of Fees and Charges for Exchange Services (the “Schedule”) that apply to the new Primary Only Plus (“PO+”) Order type. The text of the proposed rule change is available at NYSE Arca, the Commission’s Public Reference Room, and www.nyse.com.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 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, 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

The Exchange recently filed for approval by the Commission a new order type known as the PO+ Order.⁵ The PO+ Order is an enhanced version of the Primary Only (“PO”) Order, which is a market or limit order that is routed to the primary, listing market, without sweeping the NYSE Arca book.⁶ PO Orders are a form of directed order, and are only eligible for participation in the primary listing market’s opening. The PO+ Order allows Equity Trading Permit (“ETP”) Holders to route an order to the primary listing market at any time during the primary market’s trading session. The PO+ Order is intended to provide additional flexibility and increased system functionality for NYSE Arca Users⁷ by modifying the operability and eligibility of PO Orders.

⁵ See Securities Exchange Act Release No. 58431 (August 27, 2008), 73 FR 51681 (September 4, 2008) (notice of filing for SR-NYSEArca-2008-90).

⁶ See NYSE Arca Equities Rule 7.31(x).

⁷ See NYSE Arca Equities Rule 1.1(yy) for the definition of “User.” Under Rule 1.1(yy), the term User means any ETP Holder or Sponsored Participant who is authorized to obtain access to the NYSE Marketplace pursuant to NYSE Arca Equities Rule 7.29. PO Orders, similar to all other order types offered by the Exchange, are available only to authorized Users.

In anticipation of the approval of the PO Plus Order type filing by the Commission, the Exchange proposes to add new fees to the Schedule. The proposal establishes a fee of \$0.0008 for PO+ Orders routed to the NYSE during the core trading session that remove liquidity from the NYSE Order Book. No fee will be charged for Primary Only (“PO”) and PO+ Orders routed to the NYSE for participation in the opening. Additionally, there will be no fee charged for PO+ Orders routed to the NYSE that provide liquidity the NYSE Order Book. The Exchange proposes a \$0.0004 per share fee for PO+ Market-On-Close and Limit-On-Close Orders routed to the NYSE. Finally, the Exchange proposes a \$0.0004 per share fee for odd-lots and partial odd-lots in PO Orders and PO+ Orders routed to the NYSE.

The Exchange believes that the proposed fees will foster additional flexibility and increased system functionality for NYSE Arca Users. The Exchange further believes that the proposed fees and credits are reasonable and that the proposed changes to the Schedule are equitable in that they apply uniformly to our Users.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b) of the Act,⁸ in general, and Section 6(b)(4) of the Act,⁹ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange believes that the proposed fees and credits are reasonable. The proposed rates further the objectives of Regulation NMS by promoting competition and granting fair and equal access to all exchange participants. The Exchange also believes that the proposed changes to the Schedule are equitable in that they apply uniformly to our Users.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4).

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

NYSE Arca 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

No written comments were solicited or received with respect to the proposed rule change.

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

The foregoing proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act¹⁰ and Rule 19b-4(f)(2) thereunder,¹¹ because it establishes or changes a due, fee, or other charge applicable only to a member imposed by the Exchange. 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

¹⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

¹¹ 17 CFR 240.19b-4(f)(2).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2008-103 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-NYSEArca-2008-103. 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, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also 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-2008-103 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.¹²

Florence E. Harmon
Acting Secretary

¹² 17 CFR 200.30-3(a)(12).