

the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings also will be available for inspection and copying at the principal office of FINRA. 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-FINRA-2007-035 and should be submitted on or before May 30, 2008.

#### IV. Commission Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.<sup>9</sup> In particular, the Commission believes that the proposed rule change would help to better integrate the supervisory and compliance functions of a firm's public customer options activities into the firm's overall supervisory and compliance functions, thereby eliminating any uncertainty about where supervisory responsibility lies. Therefore, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,<sup>10</sup> which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

The Commission also finds good cause to approve the proposed rule change prior to the thirtieth day after the date of publication of notice of filing of the amendment in the **Federal Register**. The proposed rule change is substantially similar to recent CBOE rule amendments concerning options supervision, which were approved by the Commission.<sup>11</sup> The Commission believes that approving the proposed rule change will simplify firms' compliance, and is consistent with the public interest and the investor protection goals of the Act. Finally, the Commission finds that it is in the public interest to approve the proposed rule

change as soon as possible to expedite its implementation.

Accordingly, the Commission believes good cause exists, consistent with Sections 15A(b)(6) and 19(b) of the Act,<sup>12</sup> to approve the proposed rule change on an accelerated basis.

#### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change (File No. SR-FINRA-2007-035), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57777; File No. SR-ISE-2008-25]

#### Self-Regulatory Organizations; International Securities Exchange, LLC; Order Approving Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Rescission of the "No MPM" Order Type

May 5, 2008.

On March 5, 2008, the International Securities Exchange, LLC ("ISE") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to amend its rules governing ISE Stock Exchange to rescind the "No MPM" order type. On March 17, 2008, ISE filed Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on April 1, 2008.<sup>3</sup> The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change, as modified by Amendment No. 1.

The best bids and offers on the ISE Stock Exchange are displayed to the marketplace on a continuous basis. In addition, the ISE offers incoming orders

an opportunity to receive price improvement at the midpoint of the National Best Bid or Offer ("NBBO") through its MidPoint Match ("MPM") process. Specifically, before executing incoming orders against the ISE's displayed bid or offer, the system checks MPM to see if there is contra-side interest that can provide price improvement. However, under ISE's current rules, Equity Electronic Access Members may specify on orders that they do not want the orders to execute against MPM interest, thereby denying such orders the opportunity for price improvement.

The Exchange proposes to amend Rules 2104 and 2106 to eliminate the "No MPM" order type, and to clarify in Rule 2107 that all inbound orders will be exposed to MPM interest and be afforded price improvement, when available, before executing against the ISE's displayed quotations. The Exchange also proposes to amend Rule 2129 to clarify that MPM is a process by which ISE members may receive an execution price that is at the midpoint of the NBBO.

After careful review, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>4</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5)<sup>5</sup> of the Act, which requires that, among other things, the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission believes that exposing all inbound orders to MPM interest should afford such orders an opportunity for price improvement by providing customers the opportunity to interact with an additional source of liquidity.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-ISE-2008-25), as modified by Amendment No. 1, be, and it hereby is, approved.

<sup>9</sup> In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>10</sup> 15 U.S.C. 78o-3(b)(6).

<sup>11</sup> See Securities Exchange Act Release No. 56971 (December 14, 2007), 72 FR 72804 (December 21, 2007) (Approval Order for File No. SR-CBOE-2007-106).

<sup>12</sup> 15 U.S.C. 78o-3(b)(6), and 78s(b).

<sup>13</sup> 15 U.S.C. 78s(b)(2).

<sup>14</sup> 17 CFR 200.30-3(a)(12).

<sup>15</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 57557 (March 26, 2008), 73 FR 17386.

<sup>4</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>5</sup> 15 U.S.C. 78(f)(b)(5).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>6</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57776; File No. SR-NYSEArca-2008-43]

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

May 5, 2008.

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 April 22, 2008, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”), through its wholly owned subsidiary NYSE Arca Equities, Inc. (“NYSE Arca Equities”), 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. NYSE Arca has filed the proposal pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> 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 proposes to amend the section of its Schedule of Fees and Charges for Exchange Services (“Fee Schedule”) that applies to orders submitted by ETP Holders.<sup>5</sup> While changes to the Fee Schedule pursuant to this proposal will be effective upon filing, the changes will become operative on May 1, 2008. The text of the proposed rule change is available at NYSE Arca, the Commission’s Public Reference Room, and <http://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 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 proposes to amend the Fee Schedule as it applies to ETP Holders as follows:

*Rebates on non-displayed Mid-Point Passive Liquidity Orders (“MPLs”).* All customers will receive a rebate of \$0.0010 per share for MPLs in securities listed on the New York Stock Exchange LLC (“NYSE”) posted to the Book. Customers that provide more than 30 million average daily share volume per month in NYSE-listed securities will receive a rebate of \$0.0015 per share for MPLs posted to the Book. The MPL is an undisplayed limit order that offers price improvement to customers by executing at the mid-point of the National Best Bid and Offer.

*New price tier in NYSE-listed securities.* Customers who provide 40 million average daily share volume per month will be charged a take fee of \$0.0029 per share in NYSE-listed securities. This is a reduction from the take fee of \$0.003 currently charged when taking NYSE-listed shares from the Book. Customers who provide 30 million average daily share volume per month will be charged a routing fee of \$0.0008 per share for orders routed to NYSE (a reduction from the \$0.001 per share otherwise charged for orders routed to NYSE) and will continue to pay \$0.0030 per share for orders routed to other exchanges.

*Elimination of rebate cap.* To reward active liquidity providers, the Exchange will eliminate the current rebate cap of 100 million daily average shares per month in NYSE-listed securities and 75 million daily average shares per month in securities listed on The NASDAQ Stock Market LLC (“Nasdaq”).

*Increased routing fees in Nasdaq-listed securities.* In response to recent fee increases by Nasdaq, the Exchange

will increase its routing fee in Nasdaq-listed securities from \$0.0026 to \$0.0029 per share for: (i) Customers who transact an average daily share volume per month greater than 60 million shares (including transactions that take liquidity, provide liquidity, or route to away market centers) and provide liquidity an average daily share volume per month greater than 30 million shares, and (ii) customers who transact an average daily share volume per month greater than 30 million shares (including transactions that take liquidity, provide liquidity, or route to away market centers) and provide liquidity an average daily share volume per month greater than 15 million shares.

The Exchange will also renumber certain footnotes contained within the Fee Schedule. While changes to the Fee Schedule pursuant to this proposal will be effective upon filing, the changes will become operative on May 1, 2008.

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>6</sup> in general, and with Section 6(b)(4) of the Act,<sup>7</sup> in particular, in that it is intended 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 are part of the Exchange’s effort to attract and enhance participation on the Exchange, by offering increased credits and decreased fees where certain volume thresholds are satisfied. The Exchange also believes that the proposed changes to the Fee Schedule are equitable in that they apply uniformly to our Users. The increased routing fee in Nasdaq-listed securities seeks to recoup increased routing expenses resulting from Nasdaq fee increases.

##### 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.

<sup>6</sup> 17 CFR 200.30-3(a)(12).

<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).

<sup>5</sup> See NYSE Arca Equities Rule 1.1(n).

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

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