

## SECURITIES AND EXCHANGE COMMISSION

Release No. 34-58397; File No. SR-NYSEArca-2008-83]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Schedule of Fees and Charges for Exchange Services To Add a Credit That Applies to Indications of Interest That Result in Routed and Executed Orders

August 20, 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 August 4, 2008, NYSE Arca, Inc. (the “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 prepared by the Exchange. The Exchange has designated this proposal as one establishing or changing a due, fee, credit, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act<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

The Exchange, through its wholly-owned subsidiary NYSE Arca Equities, proposes to add a new credit to the Schedule of Fees and Charges for Exchange Services (the “Schedule”) that applies to indications of interest (“IOIs”) submitted by ETP Holders<sup>5</sup> that result in routed and executed orders. While changes to the Schedule pursuant to this proposal will be effective upon filing, the credit will be applied retroactively to August 1, 2008. The text of the proposed rule change is available on the Exchange’s Web site at [www.nyse.com](http://www.nyse.com), at the Exchange’s Office of the Corporate Secretary, and at the Commission.

<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)(ii).

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

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

#### 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 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

In an effort to enhance participation on the Exchange and to offer increased liquidity to its Users,<sup>6</sup> the Exchange proposes to add a new credit to the Schedule concerning orders routed and executed based on the Exchange’s receipt of IOIs. The proposal establishes two volume-based tiers. Tier 1 offers ETP Holders a credit of \$0.10 per 100 shares where: (1) The ETP Holder submits an IOI to the Exchange; (2) the Exchange routes an order to access the ETP Holder’s un-displayed liquidity in response to the IOI; and (3) those routed orders are executed by the ETP Holder with an average daily IOI-related share volume per month greater than 5 million shares. Tier 2 offers ETP Holders a credit of \$0.05 per 100 shares where: (1) The ETP Holder submits an IOI to the Exchange; (2) the Exchange routes an order to access the ETP Holder’s un-displayed liquidity in response to the IOI; and (3) those routed orders are executed by the ETP Holder with an average daily IOI-related share volume per month between 2.5 million and 5 million shares. The proposed IOI tiers and credits apply to volume aggregated across Tape A, Tape B, and Tape C securities.<sup>7</sup>

IOIs are non-displayed indications of symbol, size and side, which do not interact with the NYSE Arca Book.<sup>8</sup> At

<sup>6</sup> See NYSE Arca Equities Rule 1.1(yy).

<sup>7</sup> Trade activity on days when the market closes early does not count toward volume tiers.

<sup>8</sup> Regarding IOIs, the Commission notes its previous statement that, “the term ‘order’ is defined as ‘any firm indication of a willingness to buy or sell a security. \* \* \* Whether or not an indication of interest is ‘firm’ will depend on what actually takes place between the buyer and seller. The label put on an order—‘firm’ or ‘not firm’—is not dispositive. For example, a system claiming it displays only ‘indications of interest’ that are not orders, may be [displaying orders] if these

their discretion, participating ETP Holders may send an IOI to the Exchange, which in turn will consider the IOI when determining potential destinations for outbound routes. IOIs offer Exchange customers access to pools of liquidity that were previously inaccessible, thereby reducing market fragmentation. By introducing this tiered credit, the Exchange is enhancing the incentive to participate in the Exchange’s IOI program and provide additional liquidity to the marketplace.

While changes to the Schedule pursuant to this proposal will be effective upon filing, the credit will be applied retroactively to August 1, 2008.

###### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of Act,<sup>9</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>10</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 credit is reasonable. The proposed rates are part of the Exchange’s effort to attract and enhance participation on the Exchange, by offering volume-based incentives. The Exchange also believes that the proposed changes to the Schedule are equitable in that they apply uniformly to our Users.

##### 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

The foregoing proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(2)<sup>12</sup> thereunder

indications are, in fact, firm in practice. Securities Exchange Act Release No. 40780 (December 8, 1998), 63 FR 70844, 70850 (December 22, 1998) (quoting 17 CFR 240.3b-16(c)).

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(4).

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 19b-4(f)(2).

because it establishes or changes a due, fee, or other charge 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
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-NYSEArca-2008-83 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 No. SR-NYSEArca-2008-83. 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices 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-2008-83 and should be submitted on or before September 16, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58399; File No. SR-NYSEArca-2008-88]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Rule Change by NYSE Arca, Inc. To Eliminate the Requirement That Orders Sent Via the InterMarket Linkage System and Broker Dealer Orders Receive the Same Billing Treatment

August 20, 2008.

Pursuant to section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on August 13, 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, II, and III below, which Items have been prepared by the self-regulatory organization. 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 revise certain requirements pertaining to Broker Dealer Transaction Fees.

#### 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 those 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 parts of such statements.

#### A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

Presently, executions on NYSE Arca resulting from Linkage Orders are subject to the same billing treatment as other Broker Dealer orders. Assessing the same fees for both Broker Dealer orders sent directly to the Exchange and Linkage Orders stems from prior approval orders that established the pilot program for Linkage Fees.<sup>4</sup> The Exchange proposes to eliminate this requirement that Linkage Orders and Broker Dealer orders receive the same billing treatment. In doing so, the Exchange will have greater flexibility in designing and implementing fees within its Post/Take pricing model. By this filing, the Exchange is not otherwise amending or revising its schedule of fees. Any future amendment to the Exchange's schedule of fees will be, of course, subject to a filing with the Commission.<sup>5</sup>

##### 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 Section 6(b)(4) of the Act,<sup>7</sup> 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.

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

The Exchange does not believe that the proposed rule change will impose

<sup>4</sup> See Securities Exchange Act Release No. 47560 (March 21, 2003), 68 FR 15257 (March 28, 2003) (notice of filing of SR-PCX-2003-08). As approved by the Commission, the Exchange's proposal to establish a pilot program for Linkage Fees noted that executions resulting from linkage orders will be subject to the same billing treatment as other broker-dealer executions. See Securities Exchange Act Release Nos. 47786 (May 2, 2003), 68 FR 24779 (May 8, 2003) (order approving proposal in SR-PCX-2003-08 to establish pilot program for Linkage Fees); 56133 (July 25, 2008 [sic]), 72 FR 42210 (August 1, 2007) (SR-NYSEArca-2007-66) (order approving extension of Linkage Fee pilot program through July 31, 2008); 58056 (June 30, 2008), 73 FR 38482 (July 7, 2008) (SR-NYSEArca-2008-67) (order approving extension of Linkage Fee pilot program through July 31, 2009).

<sup>5</sup> While changes to the Exchange's schedule of fees that apply to Exchange members may be submitted pursuant to section 19(b)(3)(A) of the Act and subparagraph (f)(2) of Rule 19b-4 thereunder, proposed changes that involve the pilot program for Linkage Fees must be submitted pursuant to section 19(b)(2) of the Act.

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

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

<sup>13</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.