

agents, are required by the By-Laws to give due regard to the preservation of the independence of each self-regulatory subsidiary of NASDAQ OMX, not to take any actions that would interfere with each self-regulatory subsidiary's regulatory functions, to cooperate with the Commission, to consent to U.S. jurisdiction, and to consent in writing to the applicability of these provisions. As more fully described in the Notice, the proposed rule change would conform Article XII of the By-Laws more closely to corresponding provisions in the NYSE Euronext By-Laws, which the Commission previously approved.¹³

III. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁴ that the proposed rule change (SR-NASDAQ-2009-039) be, and it hereby is, approved.

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

Elizabeth M. Murphy,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60184; File No. SR-NYSEArca-2009-52]

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

June 29, 2009.

Pursuant to Section 19(b)(1) ¹ of the Securities Exchange Act of 1934 (the "Act") ² and Rule 19b-4 thereunder,³ notice is hereby given that, on June 10, 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, 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

NYSE Arca, Inc. ("NYSE Arca" or "Exchange") [sic], through its wholly owned subsidiary NYSE Arca Equities, Inc. ("NYSE Arca Equities"), is proposing to amend its Schedule of Fees and Charges for Exchange Services ("Fee Schedule") to revise the Listing Fees applicable to Derivative Securities Products under NYSE Arca Rules 5.2(j)(3), 8.100, 8.200, 8.201, 8.202, 8.203, 8.204, 8.300, 8.500 and 8.600 on NYSE Arca, LLC ("NYSE Arca Marketplace"), the equities facility of NYSE Arca Equities. The revised Fee Schedule is attached as Exhibit 5 [sic]. The text of the proposed rule change is available on the Exchange's Web site at <http://www.nyse.com>, at the Exchange's principal office and at the Commission's Public Reference Room.

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

NYSE Arca has determined to amend the Exchange's Fee Schedule to revise the Listing Fee applicable to Derivative Securities Products listed on the NYSE Arca Marketplace under Rules 5.2(j)(3) (Investment Company Units), 8.100 (Portfolio Depositary Receipts), 8.200 (Trust Issued Receipts), 8.201 (Commodity-Based Trust Shares), 8.202 (Currency Trust Shares), 8.203 (Commodity Index Trust Shares), 8.204 (Commodity Futures Trust Shares), 8.300 (Partnership Units), 8.500 (Trust Units), and 8.600 (Managed Fund Shares). Specifically, the Exchange proposes to add a new provision to the Fee Schedule which states that in the case where a sponsor, managing owner, general partner or equivalent

(collectively, the "Sponsor") is listing a new Derivative Securities Product on the Exchange for the first time, the Sponsor will be charged a one time consultation fee in the amount of \$20,000.

Under the current Fee Schedule for Derivative Securities Products, the Listing Fee is \$5,000 and the Annual Fees range between \$2,000 and \$25,000 depending on the number of shares outstanding for each issue. The current Listing and Annual Fees applicable to Derivative Securities Products will remain unchanged and be applicable to all Sponsors of Derivative Securities Products. The proposed consulting charge would apply to all new Sponsors listing for the first time, a new Derivative Securities Product. Therefore, existing issuers, issuing a new Derivative Securities Product would not be charged the proposed consulting fee.

The Exchange believes that the imposition of this proposed one time consulting charge to new Sponsors of new Derivative Securities Products is necessary in order to adequately compensate the Exchange for all of the additional Exchange resources dedicated to such new Sponsors, such as the additional legal and business resources required to properly advise novice Sponsors through the listing process. The Exchange dedicates extensive time and resources to new Sponsors in the way of conference calls, meetings, correspondences, *etc.*, to educate such new Sponsors about the listing and approval process, a process that veteran Sponsors are already familiar with. The Exchange notes that the proposed new Sponsor Fee is substantially below the initial listing fee for issuers of traditional equity securities, *e.g.*, common stock. The Exchange further believes that the proposed consulting fee will enable the Exchange to continue to provide new issuers with the level of service necessary to successfully navigate an initial launch of a Derivative Securities Product.

2. Statutory Basis

NYSE Arca believes that the proposal is consistent with Section 6(b) ⁴ of the Securities Exchange Act of 1934 (the "Act") [sic], in general, and Section 6(b)(4) ⁵ of the Act, in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its issuers and other persons using its facilities. The Exchange believes that the proposal is

¹³ See NYSE Euronext Bylaws, Article III, Section 9.3; NYSE Euronext Bylaws, Article VII, Section 7.1. See also Securities Exchange Act Release No. 55293 (February 14, 2007), 72 FR 8033 (February 22, 2007) (SR-NYSE-2006-120).

¹⁴ 15 U.S.C. 78s(b)(2).

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(4).

consistent with Section 6(b)(5)⁶ of the Act, in particular, in that it does not unfairly discriminate against new Sponsors given the additional Exchange resources dedicated to such new Sponsors, such as the additional extensive time, legal and business resources required to properly advise novice Sponsors through the listing and approval process.⁷ The Exchange believes that the proposed consulting fee is reasonable, given the amount of resources dedicated by the Exchange to new issuers of new Derivative Securities Products. The Exchange believes that the proposed changes to the Fee Schedule are equitable in that they apply uniformly to all new issuers of new Derivative Securities Products.

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

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

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

⁶ 15 U.S.C. 78f(b)(5).

⁷ The Commission notes that the Exchange has represented that the proposed rule change does not unfairly discriminate against new Sponsors vis-à-vis Sponsors who have previously listed Derivative Securities Products or other first time issuers of other securities listed on the Exchange because of the additional extensive time, legal and business resources dedicated to new Sponsors. Telephone call between Sharon Lawson, Senior Special Counsel, and Terri Evans, Division of Trading and Markets, Commission, and Sudhir Bhattacharyya, Vice President, NYSE Euronext and Laura Morrison, Vice President, NYSE Euronext, June 18, 2009.

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-2009-52 on the subject line.

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-2009-52. 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 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at NYSE Arca's principal office and on its Internet Web site at <http://www.nyse.com>. 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-2009-52 and should be submitted on or before July 28, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸

Elizabeth M. Murphy,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60185; File No. SR-CBOE-2009-028]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval of Proposed Rule Change Relating to Rebating Member Dues for Certain Members

June 29, 2009.

I. Introduction

On May 6, 2009, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend its Fee Schedule to rebate member dues for certain members. The proposed rule change was published for comment in the **Federal Register** on May 26, 2009.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

CBOE assesses dues with respect to every membership (unless a member is assessed the Hybrid Electronic Quoting Fee, in which case the member does not pay member dues).⁴ Under CBOE Rule 3.17(c), the membership lease agreement between a lessor member and a lessee member designates who is responsible for Exchange dues, fees and other charges. The Exchange represents that, typically, leases provide that the lessee is responsible for dues and therefore lessors do not have to pay dues.

Under the lessor compensation component of the Interim Trading Permit ("ITP") program, the Exchange compensates a lessor for an "open lease" while the ITP program is active

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 59935 (May 18, 2009), 74 FR 24888 ("Notice").

⁴ Member dues are \$450 per month. See CBOE Fees Schedule, Section 10.