

default swap that is submitted (or offered, purchased, or sold on terms providing for submission) to ICE Trust, that is offered only to, purchased only by, and sold only to eligible contract participants (as defined in Section 1a(12) of the Commodity Exchange Act as in effect on the date of this Order (other than a person that is an eligible contract participant under paragraph (C) of that section)), and in which:

(i) The reference entity, the issuer of the reference security, or the reference security is one of the following:

(A) an entity reporting under the Exchange Act, providing Securities Act Rule 144A(d)(4) information, or about which financial information is otherwise publicly available;

(B) a foreign private issuer whose securities are listed outside the United States and that has its principal trading market outside the United States;

(C) a foreign sovereign debt security;

(D) an asset-backed security, as defined in Regulation AB, issued in a registered transaction with publicly available distribution reports; or

(E) an asset-backed security issued or guaranteed by Fannie Mae, Freddie Mac or Ginnie Mae; or

(ii) the reference index is an index in which 80 percent or more of the index's weighting is comprised of the entities or securities described in subparagraph (1).

(2) For purposes of this Order, the term "Affiliated Person of the Clearing Member" shall mean any person who directly or indirectly controls a clearing member or any person who is directly or indirectly controlled by or under common control with the clearing member. Ownership of 10 percent or more of the common stock of the relevant entity will be deemed *prima facie* control of that entity.

December 4, 2009.

By the Securities and Exchange Commission.

**Florence E. Harmon,**  
*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-61104; File No. SR-NYSEArca-2009-106]

**Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NYSE Arca, Inc. Relating to the Listing Fee and Annual Fee Applicable to Derivative Securities Products**

December 3, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the

"Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on November 24, 2009, 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 Exchange. 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, 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 and Annual Fees applicable to Derivative Securities Products listed on NYSE Arca, LLC ("NYSE Arca Marketplace"), the equities facility of NYSE Arca Equities. The revised portions of the Fee Schedule are attached to the filing as Exhibit 5. A copy of this filing is available on the Exchange's Web site at <http://www.nyx.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 Schedule of Fees and Charges for Exchange Services to revise the Listing Fee and Annual Fee applicable to Derivative Securities Products ("DSPs") listed on the NYSE Arca Marketplace.<sup>3</sup> Specifically, the

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

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

<sup>3</sup> As specified in footnote 3 to the Fee Schedule, for the purposes of the Fee Schedule, the term

Exchange proposes to increase the Listing Fee for each issue of DSPs, with the exception of Managed Fund Shares listed under NYSE Arca Equities Rule 8.600, and Managed Trust Securities listed under NYSE Arca Equities Rule 8.700, from \$5,000 to \$7,500. For Managed Fund Shares and Managed Trust Securities, the Listing Fee will be \$10,000.

In addition, the Exchange proposes to amend the Annual Fee applicable to DSPs. For DSPs, with the exception of Managed Fund Shares and Managed Trust Securities, the Exchange proposes to increase the Annual Fee to \$5,000 for each such issue with fewer than 25 million shares outstanding; \$7,500 for each such issue with 25 million to 49,999,999 shares outstanding; and \$10,000 for each such issue with 50 million to 99,999,999 shares outstanding. The current Annual Fee for all DSP issues is \$2,000 for an issue with less than 25 million shares outstanding; \$4,000 for an issue with 25 million to 49,999,999 shares outstanding; and \$8,000 for an issue with 50 million to 99,999,999 shares outstanding. For DSP issues, except for Managed Fund Shares and Managed Trust Securities, that have 100 million shares or more outstanding, the Annual Fee will remain unchanged.

For Managed Fund Shares and Managed Trust Securities, the Exchange proposes to impose an Annual Fee for each such issue as follows:

Shares outstanding (each issue)	Annual fee
Less than 25 million .....	\$7,500
25 million up to 49,999,999 .....	10,000
50 million up to 99,999,999 .....	12,500
100 million up to 249,999,999 .....	20,000
250 million up to 499,999,999 .....	30,000
500 million and over .....	40,000

The Exchange believes that the proposed increases in the Listing Fee and, for certain DSPs, in the Annual Fee, are reasonable and appropriate in view of the increased costs incurred by the Exchange to support the rule making process, listing administration process, issuer services, and consultative legal services provided to issuers in support of new product development as the industry evolves with innovative product lines for investors.

"Derivative Securities Products" includes securities described in NYSE Arca Equities 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); 8.600 (Managed Fund Shares), and 8.700 (Managed Trust Securities).

The Exchange believes that a higher Listing Fee and Annual Fee for Managed Fund Shares and Managed Trust Securities, compared to other DSPs, is appropriate in that the Exchange generally expends greater resources to provide services in connection with the listing and administration of such securities than for other DSPs.

The Exchange notes further that the proposed Listing Fee and Annual Fee for DSPs are substantially lower than such fees for listing of common and preferred stock on the Exchange. The Listing Fee for common and preferred stock ranges from \$100,000 to \$150,000, and the Annual Fee ranges from \$30,000 to \$85,000.

The Listing Fee and Annual Fee as proposed to be amended will take effect as of January 1, 2010.

## 2. Statutory Basis

NYSE Arca believes that the proposal is consistent with Section 6(b)<sup>4</sup> of the Securities Exchange Act of 1934 (the "Act"), in general, and Section 6(b)(4)<sup>5</sup> 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 proposed Listing Fee and, for certain DSPs, Annual Fee increases are reasonable and appropriate in view of costs incurred for administrative and regulatory services provided by the Exchange with respect to such DSP issues.

### 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 rule 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.

## 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-2009-106 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 No. SR-NYSEArca-2009-106. 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,<sup>6</sup> 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 such filing also will be available for inspection and copying at the principal office of NYSE Arca. 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-2009-106 and should be submitted on or before December 31, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61112; File No. SR-BX-2009-077]

### Self-Regulatory Organizations; NASDAQ OMX BX; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Offer Several Market Data Products

December 4, 2009.

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 December 1, 2009, NASDAQ OMX BX ("Exchange" or "BX") 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. BX has designated the proposed rule change as constituting a rule change under Rule 19b-4(f)(6) under the Act,<sup>3</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 offer several market data products substantially similar to market data products previously approved by the Commission for The NASDAQ Stock Market LLC ("Nasdaq"). The Exchange does not expect that the proposed rule change will have any direct effect, or significant indirect effect, on any other Exchange rule in effect at the time of this filing. The text of the proposed rule

<sup>6</sup> The text of the proposed rule change is available on NYSE Arca's Web site at <http://www.nyx.com>, on the Commission's Web site at <http://www.sec.gov>, at NYSE Arca, and at the Commission's Public Reference Room.

<sup>7</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> 17 CFR 240.19b-4(f)(6).

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

<sup>5</sup> 15 U.S.C. 78f(b)(4).