

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55679; File No. SR-NYSEArca-2007-35]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Exchange Fees and Charges

April 27, 2007.

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 April 3, 2007, 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 and II below, which Items have been prepared by Exchange. The Exchange has filed this proposal pursuant to Section 19(b)(3)(A) of the Act<sup>4</sup> and Rule 19b-4(f)(2) thereunder,<sup>5</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

NYSE Arca is proposing to amend its Schedule of Fees and Charges for Exchange Services ("Schedule"). The text of the proposed rule change is available at <http://www.nysearca.com>, at the Exchange's Office of the Secretary, 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 Exchange included statements concerning the purpose of and basis for the proposed rule changes and

discussed any comments it received regarding the proposal. 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 purpose of this filing is to amend the existing NYSE Arca Rate Schedule by revising or eliminating certain fees and adding clarifying language to either footnotes or explanatory text, associated with certain fees. The Exchange also proposes making minor technical changes to the Schedule. A brief description of each proposed change is shown below.

##### OTP Trading Participant Rights

NYSE Arca Market Makers pay a fee of \$4,000 per month for each Options Trading Permit (OTP) used. The fee is presently capped at \$16,000 per month, which represents four OTPs. Pursuant to NYSEArca Rule 6.35(d)(4), a Market Maker with four OTPs is permitted to trade all issues on the Exchange. Because of this provision, there would never be an occasion for a Market Maker to need more than four OTPs, thereby negating any need for a fee cap. As a result, the Exchange proposes to eliminate the \$16,000 fee cap from the Schedule.

##### LMM Options Issue Relinquishment Fee

This fee was initially implemented to help offset the costs incurred by the Exchange when a Lead Market Maker ("LMM") relinquished an allocated option issue. Previously, the relinquishment process involved administrative and technological changes, both of which were mostly manual processes. Much of the process has now been automated and the associated cost has been significantly reduced. Accordingly, the Exchange proposes eliminating the Issue Relinquishment Fee in its entirety.

##### DEA Fee

The Exchange charges a one time \$75 registration fee, for new applicants, when the Exchange also acts as the Designated Examining Authority. This fee helps to offset administrative expenses involved in processing new applications. Much of the processing is now done over the NASD Central Registration Depository ("CRD"). Included in the fees that NASD collects

on behalf of the Exchange, is a \$55 assessment for new applicants. The Exchange believes that these fees are duplicitious and as such, will eliminate the \$75 one time registration fee.

##### Weekly Bulletin Subscription Fee

NYSE Arca distributes a Weekly Bulletin ("Bulletin") to OTP Holders and OTP Firms in order to provide them with regulatory bulletins, rule adoption notices, and other official communications. The Bulletin has been available either electronically or via U.S. Mail. To offset the cost of postage and handling, the Exchange charges a \$200 per year subscription fee to anyone electing to receive the Bulletin via regular mail.

NYSE Arca Rule 2.25 requires that Each OTP Holder and OTP Firm must maintain with NYSE Arca an electronic mail account for communication with the NYSE Arca. Presently, all OTP Holders and OTP Firms receive the Bulletin via e-mail subscriptions. As a result, the Exchange will no longer offer the option of receiving the Bulletin via regular mail. Therefore, the Exchange proposes eliminating the Subscription Fee.

##### Transaction Fees

The Exchange proposes making minor changes to the Order Types included in the Transaction Fee section of the Schedule.

Orders executed on behalf of registered Broker Dealers ("BD"), or Broker Dealer Firms, are presently assessed the "BD rate." In order to avoid any misunderstanding and to clarify that the "BD rate" is applicable to the BD Firms as well as the BDs, the BD Electronic rate and BD Manual rate will now read "Broker Dealer & Firm Electronic" and "Broker Dealer & Firm Manual."

Presently, the "Firm rate" applies to any transaction involving a proprietary trading account of an OTP Firm that has a customer of that OTP Firm on the contra side of the transaction. This explanation presently appears on the Schedule as a footnote to the Firm fee. This practice is generally referred to as "facilitating" an order. In order to better explain that the "Firm rate" is only applicable when a firm facilitates their customer's order, the Schedule will now read "Firm Facilitation."

##### Marketing Charge—QQQQ

The Exchange assesses Market Makers a Marketing Charge on certain transactions. The Standard and Poor's Depository Receipts (QQQQ) carry a \$1.00 per contract charge. Marketing Charges are not assessed on issues that

<sup>10</sup> 17 CFR 200.30-3(a)(12).

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

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

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

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(2).

trade as part of the Penny Pilot. QQQQ has now been included in the Penny Pilot and therefore the Exchange will no longer assess a Marketing Charge on any trades in this issue. The Exchange also proposes making minor technical changes to this section of the Schedule with this filing.

#### Royalty Fees

In an effort to reduce costs associated with trading on NYSE Arca, the Exchange proposes to eliminate certain Royalty Fees. The Exchange proposes to eliminate the \$0.10 per contract Royalty Fee for options traded on the following ETFs; the Financial Select Sector SPDR (XLF), the Technology Select Sector SPDR (XLK), and the Healthcare Select Sector SPDR (XLV). By eliminating these fees, the Exchange hopes to attract additional order flow and encourage more trading by market participants.

#### Vendor Equipment Room Usage Fee

This fee covers the use of server cabinets in the vendor equipment room located adjacent to the trading floor. This fee will now be called the Vendor Equipment Room Cabinet Fee, and the footnote associate with the fee will now be moved into the body of the Schedule. These minor changes simply serve to offer clarity as to how this fee is assessed, and makes no change to the fee itself.

#### Technical and Formatting Changes

The Exchange proposes making minor changes to the schedule in order correct certain typographical and grammatical errors and to make certain formatting changes. These changes will have no effect on existing fees or the application of the existing fees.

#### 2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b)<sup>6</sup> of the Act, in general, and Section 6(b)(4),<sup>7</sup> in particular, in that it provides for the equitable allocation of dues, fees and other charges among its members.

#### *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 purpose 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 rule change is subject to Section 19(b)(3)(A)(ii) of the Act<sup>8</sup> and Rule 19b-4(f)(2) thereunder<sup>9</sup> because it establishes or changes a due, fee, or other charge applicable only to a member imposed by the self-regulatory organization. Accordingly, the proposal is effective upon Commission receipt of the filing. 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2007-35 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.
- All submissions should refer to file Number SR-NYSEArca-2007-35. 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. Copies of such filings 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 number SR-NYSEArca-2007-35 and should be submitted by May 29, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-55686; File No. SR-OCC-2006-21]

### **Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to Membership Requirements**

May 1, 2007.

#### **I. Introduction**

On November 15, 2006, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934<sup>1</sup> and Rule 19b-4 thereunder<sup>2</sup> a proposed rule change to modify certain OCC By-Laws and Rules relating to membership requirements. The proposed rule change was published for comment in the **Federal Register** on January 12, 2007.<sup>3</sup> No comment letters were received. This order approves the proposal.

<sup>10</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> Securities Exchange Act Release No. 55047 (Jan. 5, 2007), 72 FR 1571.

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

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

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).