ACES were modified in a manner that caused it to be deemed an exchange facility or if ACES fees were tied to fees for, or usage of, exchange services.

III. Discussion

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[4] In particular, the Commission finds that the proposal is consistent with Section 6(b) of the Act,[5] because the ACES system is not a ''facility'' of the Exchange as that term is defined in section 3 of the Act.[6]

Sections 6(b)[7] and 19(b)(1)[8] of the Act and Rule 19b–4 thereunder[9] require a national securities exchange to file its rules with the Commission. Section 3(a)(27) of the Act[10] and Rule 19b–4 define the ''rules'' of an exchange with reference to its ''facilities.'' In particular, a rule of an exchange includes ''any material aspect of the operation of the facilities'' of the exchange or any statement with respect to ''the rights, obligations or privileges'' of exchange members or persons having or seeking access to the facilities of the exchange.[11] Section 3(a)(2) of the Act defines ''facility,'' when used with respect to an exchange, to include:

> Its premises, tangible or intangible property whether on the premises or not, any right to the use of such premises or property or any services thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange), and any right of the exchange to the use of any property or service.[12]

The Commission agrees with the Exchange's conclusion that ACES, as currently operated, is not a facility of the Exchange. The Exchange has represented that ACES is a ''pure router'' that allows one subscriber (the ''routing subscriber'') to send an order from a Nasdaq workstation directly to the order management system of another ACES subscriber (the ''receiving subscriber''). Moreover, the Exchange has represented that the ACES system is not linked with the Exchange's core systems, including the Nasdaq Market Center, the Exchange's automated system for order execution and trade reporting. It is not possible for an order to be routed to the Nasdaq Market Center via the ACES system.

Once an order has been routed through ACES, the receiving subscriber may execute the order in any manner it determines to be consistent with its duty of best execution and other applicable regulatory obligations. The receiving subscriber is not required to route the order to, or execute the order on, the Nasdaq Market Center. Because the ACES system does not route orders to the Exchange, the Commission agrees with the Exchange's conclusion that ACES does not have the ''purpose of effecting * * * a transaction on an exchange.''[13]

The Exchange has also represented that ACES does not report executed trades. Rather, the receiving subscriber is responsible for ensuring that the execution of each order sent through ACES is reported in accordance with the applicable rules of the market center where the order was executed.[14] Thus, the Commission similarly agrees with the Exchange's conclusion that ACES does not have the ''purpose of * * * reporting a transaction on an exchange.''[15]

A consequence of deleting the ACES rules from the Exchange's rule book is that the Exchange will be able to change its ACES rules without providing public notice via filing of proposed changes with the Commission under section 19(b) of the Act. However, the Commission notes that if the Exchange seeks to modify the operations of the ACES system in a manner that would cause the system to fit within the definition of an exchange facility, the Exchange would be required to file a proposed rule change with the Commission pursuant to section 19(b) of the Act. For example, if the Exchange were to tie ACES fees in any way to fees for, or usage of, any Exchange services (for example, by offering a discount in ACES fees as an incentive for use of Exchange services, or vice versa), the Commission would consider such fees to be Exchange fees that must be filed with the Commission pursuant to section 19(b) of the Act.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[16] that the proposed rule change (File No. SR–NASDAQ–2007–043), as modified by Amendments No. 1 and 2, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–16090 Filed 8–15–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56232; File No. SR–NYSEArca–2007–69]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to Adoption of Revised Initial and Continued Listing Standards for the Pilot Program Expiring on November 30, 2007

August 9, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 23, 2007, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comment 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 Commission approved the current NYSE Arca initial and continued listings standards for the listing of common stock of operating companies as a six-month pilot program (''Pilot Program'').[3] The Pilot Program was subsequently extended for an additional six months, until November 30, 2007.[4] NYSE Arca is now proposing to amend the Pilot Program. The

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[4] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b).

[6] *See* 15 U.S.C. 78c(a)(2).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78s(b)(1).

[9] 17 CFR 240.19b–4.

[10] 15 U.S.C. 78c(a)(27).

[11] 17 CFR 240.19b–4.

[12] 15 U.S.C. 78c(a)(2).

[13] *See* 15 U.S.C. 78c(a)(2).

[14] The ACES rules require the receiving subscriber to send an execution message to ACES so that ACES may notify the routing subscriber of the terms of the execution, *see* Nasdaq Rule 6250, but this does not constitute the ''reporting'' of the transaction.

[15] *See* 15 U.S.C. 78c(a)(2).

[16] *Id.*

[17] 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. 54796 (November 20, 2006), 71 FR 69166 (November 29, 2006) (SR–NYSEArca–2006–85).

[4] *See* Securities Exchange Act Release No. 55838 (May 31, 2007), 72 FR 31642 (June 7, 2007) (SR–NYSEArca–2007–51).

proposed amended initial listing standard will exclude from qualification some companies that currently qualify to list but whose size or financial performance is not consistent with that of the kind of issuer NYSE Arca intends to list on the NYSE Arca Marketplace. The amendments to the continued listing standards will increase certain of the numerical requirements of common stock Continued Listing Standard One to set the continued listing requirements at a level that is more consistent with the proposed higher initial listing requirements. The text of the proposed rule change is available on the Exchange's Web site at *www.nysearca.com*, at the Exchange's Office of the Secretary, and at the Commission.

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 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

The Commission approved the current NYSE Arca initial and continued listings standards for the listing of common stock of operating companies as a six-month Pilot Program. NYSE Arca subsequently extended the Pilot Program for an additional six months until November 30, 2007 and now proposes to amend the Pilot Program. Based on its experience in the initial six-month period, NYSE Arca has concluded that the listing standards adopted under the Pilot Program would qualify many companies for listing that are much smaller than the minimum size it wishes to include in its target market. The proposed amended initial listing standard will exclude from qualification some companies that currently qualify to list but whose size or financial performance is not consistent with that of the kind of issuer NYSE Arca intends to list on the NYSE Arca Marketplace. The amendments to the continued listing standards will increase certain of the numerical requirements of common stock Continued Listing Standard One to set the continued listing requirements at a level that is more consistent with the proposed higher initial listing requirements.

The current NYSE Arca listings standards require for initial listing that, at the time of initial listing, the listed class of common stock shall have: [5]

- At least 1.1 million publicly held shares.
- A closing price per share of $5 or more.
- A minimum of 400 round lot shareholders.

In addition, the requirements of one of Standards One, Two or Three below must be met:

Standard One

- The issuer of the security had annual income from continuing operations before income taxes of at least $1 million in the most recently completed fiscal year or in two of the last three most recently completed fiscal years.
- The market value of publicly held shares is at least $8 million.
- The issuer of the security has stockholders' equity of at least $15 million.

Standard Two

- The issuer of the security has stockholders' equity of at least $30 million.
- The market value of publicly held shares is at least $18 million.
- The issuer has a two-year operating history.

Standard Three

- The market value of publicly held shares is at least $20 million.
- The issuer has:
  - A market value of listed securities of at least $75 million (currently traded issuers must meet this requirement and the $5 closing price requirement for 90 consecutive trading days prior to applying for listing); or
  - Total assets and total revenue of at least $75 million each for the most recently completed fiscal year or in each of two of the last three most recently completed fiscal years.

NYSE Arca proposes to eliminate Standards One and Two and require all issuers to qualify under an amended version of existing Standard Three. The market value of publicly held shares requirement of Standard Three will be raised from $20 million to $45 million. All issuers will be required to meet the market value of listed shares alternative of Standard Three, which will be raised from $75 million to $150 million. In addition, the issuer of the security will be required to meet two of the following four conditions:

- Total assets of at least $75 million.
- Total revenues of at least $50 million for the most recently completed fiscal year.
- Stockholders' equity of at least $50 million.
- Positive pre-tax earnings in the most recently completed fiscal year.

The other existing requirements of Standard Three will continue to be applied in their current form.

NYSE Arca also proposes to amend Rule 5.5(b) to increase the numerical requirements of common stock Continued Listing Standard One as follows:

- The publicly held shares requirement is raised from 750,000 to 1.1 million shares.
- The market value of publicly held shares requirement is raised from $5 million to $15 million.

In addition, the stockholders' equity continued listing requirement will be raised from $10 million to $15 million.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(5) of the Act,[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

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.

[5] *See* NYSE Arca Equities Rule 5.2(c).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

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 such 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.* Please include File Number SR–NYSEArca–2007–69 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–2007–69. 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 such filing also will 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–2007–69 and should be submitted on or before September 6, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–16161 Filed 8–15–07; 8:45 am]

BILLING CODE 8010–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2007–0057]

Demonstration Project on Direct Payment of Fees to Non-Attorney Representatives

AGENCY: Social Security Administration (SSA).

ACTION: Notice.

SUMMARY: In prior notices published in the **Federal Register**, we provided guidance on the requirements for participation in the Non-Attorney Direct Payment Demonstration Project mandated by Section 303 of the Social Security Protection Act of 2004 (SSPA). In this notice, we are announcing that we are revising our earlier guidance in two respects. First, we have decided to replace the requirement that insurance policies must be underwritten by a firm that is licensed to provide insurance in the State where the individual practices with a requirement that the underwriting firm be legally permitted to provide insurance in that State. This change will allow us to accept insurance policies offered by ''surplus lines carriers.'' Second, we are changing the manner in which we will make open-book reference materials available to test-takers.

FOR FURTHER INFORMATION CONTACT: Marg Handel, Social Security Administration, Office of Income Security Programs, 252 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–4639.

SUPPLEMENTARY INFORMATION:

[8] 17 CFR 200.30–3(a)(12).

Liability Insurance Requirements

Section 303(b)(3) of the SSPA requires non-attorney representatives who want to participate in the direct payment demonstration project to secure and maintain ''professional liability insurance, or equivalent insurance, which the Commissioner has determined to be adequate to protect claimants in the event of malpractice by the representative.'' In a notice published in the **Federal Register** on January 13, 2005, we announced that to satisfy this requirement the insurance policy must be underwritten by a firm that is licensed to provide insurance in the State in which the non-attorney representative conducts business (70 FR 2447, 2449). At the time, we believed this requirement was needed to ensure legitimacy of the insurance policy and provide protection for the claimants in the event of the carrier's insolvency.

In the 2007 application period, several applicants relied on insurance policies obtained from so-called ''surplus lines'' insurers or ''non-admitted'' carriers. These carriers provide insurance for unusual or unique situations where coverage is unavailable from authorized or traditional insurers. Though some of those carriers may be licensed to provide insurance in the particular State where the policyholder conducts business, more often they are not. Therefore, under the guidance set out in our January 13, 2005 notice, policies underwritten by such ''surplus lines'' insurers or ''non-admitted'' carriers generally would not satisfy the insurance prerequisite for participation in the direct payment demonstration project.

Upon further examination, we have decided that insurance provided by surplus lines insurers or non-admitted carriers can be adequate to protect claimants in the event of malpractice by the representative. Surplus lines insurance policies are legally valid contracts. As with traditional professional liability insurance policies, the quality, type and scope of the professional liability protection afforded by the ''surplus'' policy depends exclusively on the provisions of the policy itself and has no relationship to whether the policy was issued by an admitted/licensed carrier (conventional policies) or a ''surplus lines'' carrier. Our earlier guidance that the policy ''must be underwritten by a firm that is licensed to provide insurance in the State in which the non-attorney representative conducts business'' unintentionally excluded such policies from consideration. Accordingly, we have decided to revise our earlier