

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 the 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-NYSEALTR-2008-19 and should be submitted on or before January 27, 2009.

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

Florence E. Harmon,
Acting Secretary.

[FR Doc. E8-31350 Filed 1-5-09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59161; File No. SR-NYSEArca-2008-118]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving Proposed Rule Change Amending Its Schedule of Fees and Charges for Exchange Services

December 24, 2008.

I. Introduction

On November 3, 2008, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") 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 Schedule of Fees and Charges for Exchange Services

("Schedule of Fees"). The proposed rule change was published for comment in the **Federal Register** on November 24, 2008.³ The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange has proposed to amend its Schedule of Fees to charge the same amount for Principal Orders ("P Orders") and Principal Acting As Agent Orders ("P/A Orders") (collectively, "Linkage Orders") in foreign currency options ("FCO") as they currently charge for Linkage orders in issues included in the Penny Pilot. The Exchange recently amended its rules to enable the Exchange to list and trade FCOs.⁴ These rules permit FCOs to be quoted and traded in one cent increments. Presently, the Exchange charges \$0.45 for all electronically executed Linkage Orders in Penny Pilot issues.⁵ The Exchange is proposing to similarly charge \$0.45 for all electronically executed Linkage Orders in FCOs.

III. Discussion and Commission's Findings

After careful review, the Commission finds that NYSE Arca's proposal to amend its Schedule of Fees and Charges for Exchange Services is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.⁶ In particular, the Commission finds that the proposal is consistent with Section 6(b)(4) of the Act,⁷ which requires that an exchange have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

Under the current Schedule of Fees, NYSE Arca charges electronically executed FCO orders the fee rate of \$.50 for Linkage Orders submitted through the Options Linkage. The Exchange proposed to lower the charge to \$.45 for all electronically executed Linkage Orders in FCOs.

³ See Securities Exchange Act Release No. 58945 (November 13, 2008), 73 FR 71072.

⁴ See Securities Exchange Act Release No. 58800 (October 16, 2008), 73 FR 63539 (October 24, 2008) (SR-NYSEArca-2008-109).

⁵ The Exchange may trade option contracts in one cent increments in certain approved issues as part of the Penny Pilot, through March 27, 2009. See Securities Exchange Act Release No. 56568 (September 27, 2007), 72 FR 56422 (October 3, 2007).

⁶ 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).

⁷ 15 U.S.C. 78f(b)(4).

The Commission notes that the \$.45 fee rate for electronically executed FCOs orders that take liquidity has been in place in the non-Linkage context since October 2008.⁸ In addition, the Commission notes that the Options Linkage fees are assessed pursuant to a pilot scheduled to end on July 31, 2009 and that the Commission is continuing to evaluate whether such fees are appropriate.

For the foregoing reasons, the Commission believes that the proposal to amend the fees the Exchange charges for Linkage Orders in FCOs is consistent with the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁹ that the proposed rule change (SR-NYSEArca-2008-118) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Florence E. Harmon,
Acting Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59167; File No. SR-NYSEArca-2008-141]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Rule Change by NYSE Arca, Inc. Implementing Fee Change

December 29, 2008.

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 December 22, 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.

⁸ See Securities Exchange Act Release No. 58875 (October 29, 2008), 73 FR 65916 (November 5, 2008) (SR-NYSEArca-2008-117).

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).

¹¹ 15 U.S.C. 78s(b)(1).

¹² 15 U.S.C. 78a.

¹³ 17 CFR 240.19b-4.

¹ 17 CFR 200.30-3(a)(12).

² 15 U.S.C. 78s(b)(1).

³ 17 CFR 240.19b-4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to reduce the Options Orientation Fee. The text of the proposed rule change is attached to the proposed rule change as Exhibit 5. A copy of this filing 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

The Exchange currently charges an Options Orientation Fee of \$1,000 to each applicant seeking to become a Market Maker Authorized Trader⁴ ("MMAT") or Floor Broker⁵ ("FB") on the Exchange. The Exchange proposes to reduce the Options Orientation Fee from \$1,000 to \$500.

Pursuant to Exchange rules, each MMAT and FB must be approved by the Exchange. The approval process requires each applicant to file a Form U-4 and fingerprint cards in Web CRD. The Exchange then performs a full background investigation and disclosure review of each applicant. Each applicant must also demonstrate their qualification for registration by successfully completing the Series 44 or Series 45 examination. The Options Orientation Fee is designed to cover the cost of processing each application, including the background investigation, disclosure review, fingerprinting fees, and the administration and maintenance costs associated with the Series 44 and Series 45 exams.

NYSE Arca has recently been able to reduce the fixed costs associated with administering and maintaining the

Series 44 and Series 45 exams. The Exchange believes it is appropriate to pass along those savings to applicants taking either of the two exams. As such, the Exchange proposes reducing the Options Orientation Fee from \$1,000 to \$500. In doing so the Exchange also believes it can attract additional market makers and floor brokers, thereby increasing participation and liquidity on the Exchange.

The new Options Orientation Fee would become effective on January 1, 2009.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of section 6 of the Act,⁶ in general, and section 6(b)(4) of the Act,⁷ 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 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

The foregoing rule change is effective upon filing pursuant to section 19(b)(3)(A)⁸ of the Act and subparagraph (f)(2) of Rule 19b-4⁹ thereunder, because it establishes a due, fee, or other charge imposed by NYSE Arca.

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. Please include File Number SR-NYSEArca-2008-141 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 Number SR-NYSEArca-2008-141. 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 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-2008-141 and should be submitted on or before January 27, 2009.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Florence E. Harmon,
Acting Secretary.

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⁴ See NYSE Arca Rule 6.1A(9).

⁵ See NYSE Arca Rule 6.43.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4).

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(2).

¹⁰ 17 CFR 200.30-3(a)(12).