

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the 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 other CBOE 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](mailto:rule-comments@sec.gov). Please include File No. SR-CBOE-2007-76 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-CBOE-2007-76. 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

classes selected for the Pilot Program; (3) an assessment of the impact of the Pilot Program on the capacity of the Exchange, OPRA, and market data vendors (to the extent data from market data vendors is available); (4) any capacity problems or other problems that arose during the operation of the Pilot Program and how the Exchange addressed such problems; (5) any complaints that the Exchange received during the operation of the Pilot Program and how the Exchange addressed them; and (6) any additional information that would assist in assessing the operation of the Pilot Program. The report must be submitted to the Commission at least sixty (60) days prior to the expiration date of the Pilot Program. See Securities Exchange Act Release No. 51172 (February 9, 2005), 70 FR 7979 (February 16, 2005) (File No. SR-CBOE-2004-63).

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-CBOE-2007-76 and should be submitted on or before August 8, 2007.<sup>15</sup>

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

**J. Lynn Taylor,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56054; File No. SR-NYSEArca-2007-52]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change as Modified by Amendment No. 2 Thereto Relating to Exchange Fees and Charges

July 12, 2007.

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 June 1, 2007, NYSE Arca, Inc. ("NYSE Arca" or "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 substantially prepared by the Exchange. On June 12, 2007, NYSE Arca filed Amendment No. 1 to the proposed rule change. On June 29, 2007, the Exchange withdrew Amendment No. 1 and submitted Amendment No. 2 to the proposed rule change.<sup>3</sup> This order provides notice of the proposed rule change, as modified by Amendment No. 2, and approves the proposed rule

<sup>15</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> Amendment No. 2 replaced the original filing in its entirety.

change, as amended, on an accelerated basis.

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

The Exchange proposes to amend its Schedule of Fees and Charges for Exchange Services ("Schedule") by charging Royalty Fees to all Intermarket Options Linkage orders ("Linkage Orders") except Satisfaction Orders. 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 Exchange 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 III 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 proposed rule change is to allow the Exchange to assess Royalty Fees (aka Surcharge Fees or Licensing Fees) on Principal orders ("P Orders") and Principal Acting as Agent orders ("P/A Orders")<sup>4</sup> sent to the Exchange via the Intermarket Linkage System ("Linkage"). The Exchange proposes to add language to the footnote associated with Royalty Fees and also include a reference to said footnote, in the Linkage Fees section of the Schedule. These changes will explain that Royalty Fees will now be applicable to orders executed via Linkage, except for Satisfaction Orders.<sup>5</sup>

Certain classes of options listed on NYSE Arca have as their underlying security licensed products that require the Exchange to pay a Royalty Fee to the licensing entity for every contract traded in that particular class of options.

<sup>4</sup> See Section 2(16)(a) and (b) of the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage ("Linkage Plan") for definitions of "P Orders" and "P/A Orders."

<sup>5</sup> See Section 2(16)(c) of the Linkage Plan for definition of "Satisfaction Order."

Royalty Fees are assessed to the Exchange by a licensing entity through an agreement which allows the Exchange to trade options on certain proprietary products. Royalty Fees are not Exchange transaction fees. A list of all Royalty Fees in place at NYSE Arca is published in the Schedule and available on the company Web site at [www.nyse.com](http://www.nyse.com). Presently, Royalty Fees that are charged to the Exchange are passed on to trade participants on all Firm, Broker-Dealer and Market Maker transactions in issues that carry a Royalty Fee.

Linkage Orders (except for Satisfaction Orders) executed on NYSE Arca are subject to the same fees as other Broker-Dealer orders.<sup>6</sup> Accordingly, the Exchange now proposes to pass on any Royalty Fees to options exchanges sending P Orders and P/A Orders through Linkage. Assessing Royalty Fees on Linkage Orders is consistent with billing practices presently in place at the Chicago Board Options Exchange, the American Stock Exchange and the International Securities Exchange.

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act, in general,<sup>7</sup> and Section 6(b)(4) in particular,<sup>8</sup> in that it provides 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

The Exchange has neither solicited nor received written comments on the proposed rule change.

## III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule

<sup>6</sup> Fees imposed on Linkage Orders are subject to an Exchange Pilot Program and will expire July 31, 2007. On July 10, 2007, the Exchange filed a proposed rule change with the Commission to extend the pilot until July 31, 2008. See SR-NYSEArca-2007-66.

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

<sup>8</sup> *Id.*

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 Number SR-NYSEArca-2007-52 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-2007-52. 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 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-2007-52 and should be submitted on or before August 8, 2007.

## IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to

a national securities exchange.<sup>9</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>10</sup> which requires that the rules of an exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

The Commission also finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of the notice of filing thereof in the **Federal Register**. The Commission notes that NYSE Arca's proposal to apply fees to P Orders and P/A Orders is consistent with the practices of other options exchanges.<sup>11</sup> The Commission also believes that NYSE Arca's proposal does not raise any novel regulatory issues. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,<sup>12</sup> to approve the proposed rule change on an accelerated basis.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change (SR-NYSEArca-2007-52), as modified by Amendment No. 2, be and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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<sup>9</sup> In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>10</sup> 15 U.S.C. 78f(b)(4).

<sup>11</sup> See, e.g., Securities Exchange Act Release Nos. 51351 (March 9, 2005), 70 FR 12917 (March 16, 2005) (SR-CBOE-2005-14) (applying license fees to P Orders and P/A Orders on MNX and NDX Indexes) and 51858 (June 16, 2005), 70 FR 36218 (June 22, 2005) (applying license fees to P Orders and P/A Orders on RUI, RUT and RMN indexes) (SR-ISE-2005-26).

<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>13</sup> *Id.*

<sup>14</sup> 17 CFR 200.30-3(a)(12).