

11.1(b) would be eligible for MRP disposition.

#### Rule 11.18—Supervision

The current language of Rule 11.18(b) provides that only OTP Holders and firms for whom the Exchange is the Designated Examining Authority (“DEA”) are subject to its supervisory requirements. The Exchange proposed to amend Rule 11.18 to provide that all OTP Holders and firms, regardless of DEA, are subject to the Exchange’s supervisory requirements. The Exchange also proposed to make violations of Rule 11.18 eligible for MRP disposition.

#### Rule 10.12—Minor Rule Plan

The Exchange proposed to make several modifications to its MRP, including to:

- Make several trading and recordkeeping rules eligible for MRP disposition.<sup>5</sup>
- Modify the Recommended Fine Schedule in Rule 10.12(k) so that MRP fines are based not on the number of violations but on the number of times the Exchange has imposed one or more MRP fines upon an OTP Holder or firm for the violation of a particular rule.
- Enable the Exchange to require that violators of Rules 6.94(a) and (c)<sup>6</sup> not only pay the MRP fines for their violations, but also disgorge any quantifiable monetary gains attributable to these violations;
- Allow Exchange enforcement staff, as part of an MRP disposition of certain supervisory-related offenses, not only to impose a monetary fine, but also to require the violator to make specified changes to its supervisory or other compliance procedures; and
- Enable the Exchange to require violators of Rule 2.23 (Registration) to remit all the fees that they should have paid in connection with registration, in addition to any MRP fines.

### III. Discussion

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>7</sup> In particular, the Commission believes that the proposed rule change relating to both the MRP

<sup>5</sup> See Notice, 73 FR at 30180, for a detailed description of these additions.

<sup>6</sup> Rules 6.94(a) and (c) require OTP Holders to avoid violations of its trade-through rules and, where such violation is unavoidable, to provide satisfaction orders.

<sup>7</sup> In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

and the related underlying rules is consistent with Section 6(b)(5) of the Act,<sup>8</sup> which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission further believes that the proposed changes to the Exchange’s MRP are consistent with Sections 6(b)(1) and 6(b)(6) of the Act,<sup>9</sup> which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of Commission and Exchange rules. In addition, because the MRP provides procedural rights to contest the fine and permits disciplinary proceedings on the matter, the Commission believes that the MRP, as amended by this proposal, provides a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d)(1) of the Act.<sup>10</sup> Finally, the Commission finds that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d–1(c)(2) under the Act,<sup>11</sup> which governs minor rule violation plans. The Commission believes that the proposed rule change would strengthen the Exchange’s ability to carry out its oversight and enforcement responsibilities as a self-regulatory organization in cases where full disciplinary proceedings are unsuitable in view of the minor nature of the particular violation.

In approving this proposed rule change, the Commission in no way minimizes the importance of compliance with NYSE Arca rules and all other rules subject to the imposition of fines under the MRP. The Commission believes that the violation of any self-regulatory organization’s rules, as well as Commission rules, is a serious matter. However, the Exchange provides a reasonable means of addressing rule violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Commission expects that the Exchange would continue to conduct surveillance with due diligence and make a determination based on its findings, on a case-by-case basis, whether a fine of more or less

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78f(b)(1) and 78f(b)(6).

<sup>10</sup> 15 U.S.C. 78f(b)(7) and 78f(d)(1).

<sup>11</sup> 17 CFR 240.19d–1(c)(2).

than the recommended amount is appropriate for MRP disposition or whether a violation requires formal disciplinary action.

### III. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act<sup>12</sup> and Rule 19d–1(c)(2) under the Act<sup>13</sup> that the proposed rule change (SR–NYSEArca–2008–49) be, and it hereby is, approved and declared effective.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58056; File No. SR–NYSEArca–2008–67]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Schedule of Fees and Charges for Exchange Services in Order To Extend the Current Pilot Program Regarding Transaction Fees Charged for Trades Executed Through the Intermarket Options Linkage

June 30, 2008.

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 24, 2008, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) 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 substantially 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

The Exchange proposes to amend its Schedule of Fees and Charges for Exchange Services in order to extend until July 31, 2009 the current pilot program regarding transaction fees

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

<sup>13</sup> 17 CFR 240.19d–1(c)(2).

<sup>14</sup> 17 CFR 200.30–3(a)(12) and 17 CFR 200.30–3(a)(44).

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

<sup>2</sup> 17 CFR 240.19b–4.

charged for trades executed through the intermarket options linkage ("Linkage"). The text of the proposed rule change is available at <http://www.nyse.com>, the Exchange, and 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 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 proposed rule change is to extend for one year the pilot program establishing a NYSE Arca fee for Principal ("P") Orders and Principal Acting as Agent ("P/A") Orders executed through Linkage. The fee currently is effective for a pilot program set to expire on July 31, 2008, and this filing would extend the fee through July 31, 2009. The fee that NYSE Arca charges for P and P/A orders is the basic execution fee for trading on NYSE Arca. This is the same fee that all NYSE Arca Option Trading Permit Holders pay for non-customer transactions executed on the Exchange. The Exchange does not charge for the execution of Satisfaction Orders sent through Linkage and is not proposing to charge for such orders. The Exchange is making no substantive changes to the operation of the pilot program, other than extending the pilot program through July 31, 2009.

#### 2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,<sup>3</sup> in general, and Section 6(b)(4),<sup>4</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities for the purpose of executing P and P/A orders through Linkage.

<sup>3</sup> 15 U.S.C. 78f(b).

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

### 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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>5</sup> and Rule 19b-4(f)(6) thereunder.<sup>6</sup> Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>7</sup> and Rule 19b-4(f)(6)<sup>8</sup> thereunder. 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:

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

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

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the pre-filing requirement.

### 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-2008-67 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-2008-67. 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 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-2008-67 and should be submitted on or before July 28, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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<sup>9</sup> 17 CFR 200.30-3(a)(12).