

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60379; File No. SR-NYSEArca-2009-62]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Amending the Schedule of Fees and Charges for Exchange Services

July 23, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 1, 2009, 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 Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal 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

The Exchange proposes to the section of its Schedule of Fees and Charges for Exchange Services (the "Schedule"). Changes to the Schedule pursuant to this proposal will be effective and operative upon filing. The amended section of the Schedule is included as Exhibit 5 hereto. 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 Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The purpose of this proposed rule filing is to amend the Schedule to reflect new transaction pricing. The Exchange proposes to eliminate the facilitation fee charged to firms who facilitate their customer order flow. Currently, the Firm Facilitation Fee is \$0.15. The Firm Facilitation Fee applies to any transaction involving a firm's proprietary trading account, which has a customer of that same firm on the contra side of the transaction. The Exchange also proposes to reduce the Broker Dealer and Firm Manual fee from \$0.26 to \$0.25.

The proposed fees are part of the Exchange's ongoing effort to offer attractive transaction rates, and will become operative on July 1, 2009.

##### 2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act, in general, and Section 6(b)(4), in particular, in that it provides for the equitable allocation of dues, fees and other charges among its members and other market participants that use the trading facilities of NYSE Arca.

The Exchange believes the reduced Firm Facilitation Fee is equitable because it applies uniformly to all similarly situated users, specifically firms facilitating customer order flow. Reduction of the fee to zero also follows precedent currently in place on other exchanges that have established fee caps.<sup>5</sup> The Exchange believes this proposal is in fact more equitable than fee caps attainable only by large broker dealer firms. For example, certain large broker dealers are capable of reaching the fee cap at certain options exchanges on the first day of trading in a given month, making their transaction fees equal to zero for the remainder of the month. This treatment favors larger

firms capable of reaching the established fee cap. In comparison to fee caps, this proposed change creates a level playing field for all similarly situated participants, by charging a Firm Facilitation Fee of \$0.00 to all firms executing facilitation trades regardless of the firm's volume.

The fee reduction is also consistent with the current fee schedule and industry precedent that allows for different rates to be charged for different order types originated by dissimilarly classified market participants. The Exchange, along with other options exchanges, currently applies different rates to firms facilitating their own customer order flow as opposed to solicited orders. The degree of difference between the rates charged for different order types is the result of competitive forces in the marketplace and reflects certain competitive differences amongst market participants. For example, under the Exchange's current fee schedule, the customer side of a firm facilitation trade is \$0.00, while the facilitation side is currently \$0.15. The current \$0.15 Facilitation Fee is \$0.11 less than the \$0.26 charged for manual broker dealer executions and \$0.02 less than the market maker non-directed fee of \$0.17. These differences exist, in part, because customers have historically been at a competitive disadvantage in the options markets as compared to firms actively engaged in the market, thus firms are appropriately incentivized to facilitate customer order flow. The Exchange believes that reducing the Firm Facilitation Fee to zero follows existing precedent for rate differentials and further encourages firms to facilitate customer order flow, thereby assisting customers in their attempt to transact in the options markets.

#### 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

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

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

<sup>5</sup> See Securities Exchange Act Release No. 59393 (February 11, 2009), 74 FR 7721 (February 19, 2009) (SR-Phlx-2009-12) (increasing the Firm-Related Equity Option and Index Option Cap to \$75,000 and exclude JBO participants).

19(b)(3)(A)<sup>6</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>7</sup> thereunder, because it establishes a due, fee, or other charge imposed by NYSE Arca only upon its members.

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. In addition, the Commission seeks comment generally on whether the proposed elimination of the firm facilitation fee is equitable as that term is used in Section 6(b)(4) of the Act. Specifically:

1. Do you agree with the Exchange's claim that the proposed rule change "creates a level playing field for all similarly situated participants, by charging a Firm Facilitation Fee of \$0.00 to all firms executing facilitation trades regardless of the firm's volume"?

2. The Exchange further argues that "this proposal is in fact more equitable than fee caps only by large broker dealer firms. For example, certain large broker dealers are capable of reaching the fee cap at certain options exchanges on the first day of trading in a given month, making their transaction fees equal to zero for the remainder of the month." Do you believe that the Exchange's argument is valid, given that the fee caps applied by other options exchanges apply to firm proprietary orders generally, while the Exchange is proposing to eliminate fees only for one particular type of proprietary order (firm facilitation orders)?

3. The Exchange notes that, under its current fee schedule and industry practice, different types of market participants are often assessed different transaction fees. The Exchange has proposed to widen the differential between the fees charged to firms for facilitation transactions and the fees charged to other market participants (besides customers, who pay zero) to participate in the same transactions. Is widening the differential in this manner equitable as that term is used in Section 6(b)(4) of the Act? At what point would

the differential become so large as to be inequitable?

4. Does it impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act and prohibited under Section 6(b)(4) of the Act to charge firms facilitating a customer order no fees and charge other non-customer members? If so, please explain how.

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-2009-62 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2009-62. 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 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-NYSEArca-2009-62 and should be submitted on or before August 21, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60378; File No. SR-NYSEAmex-2009-38]

### Self-Regulatory Organizations; NYSE Amex, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Implementing the Schedule of Fees and Charges for Exchange Services

July 23, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 1, 2009, NYSE Amex, LLC ("NYSE Amex" 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 Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

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

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

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(f)(2).