

rule change in a *Regulatory Notice* to be published no later than 90 days following Commission approval.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>15</sup> which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change would further the purposes of the Act because, as part of the Consolidated FINRA Rulebook, the proposed rule change will protect investors and the public interest by addressing the forwarding of proxy and other issuer-related materials.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

FINRA does not believe that the proposed rule change will result in 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 were neither solicited nor received.

## 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](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2009-066 on the subject line.

### *Paper Comments*

- Send paper comments in triplicate to Florence E. Harmon, Deputy Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2009-066. 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 FINRA. 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-FINRA-2009-066 and should be submitted on or before November 12, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

[FR Doc. E9-25427 Filed 10-21-09; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60834; File No. SR-NYSEArca-2009-88]

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

October 16, 2009.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on September 30, 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 self-regulatory organization. NYSE Arca filed the proposal pursuant to Section 19(b)(3)(A)<sup>4</sup> of the Act and Rule 19b-4(f)(2)<sup>5</sup> thereunder. 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 the section of its Schedule of Fees and Charges for Exchange Services (the "Schedule"). While changes to the Schedule pursuant to this proposal will be effective upon filing, the changes will become operative on October 1, 2009. 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,

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(2).

<sup>15</sup> 15 U.S.C. 78o-3(b)(6).

<sup>16</sup> 17 CFR 200.30-3(a)(12).

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 proposes to make changes to its Schedule that will take effect on October 1, 2009. A more detailed description of the proposed changes follows.

PO and PO+ Orders routed to Amex:

The Exchange proposes to add a new rate for PO and PO+ orders (collectively "PO Orders") routed to Amex in Tape B securities. The Exchange will pay a \$0.0030 per share credit for PO Orders routed to Amex that provide liquidity to the NYSE Amex Book. The Exchange will also charge a fee of \$0.0025 per share for PO Orders routed to Amex that remove liquidity from the NYSE Amex Book. These fees will mirror the inverted pricing available on Amex, also scheduled to become effective on October 1, 2009.

Auction Orders:

The Exchange also proposes to charge \$0.0007 for Market-On-Close ("MOC") and Limit-On-Close ("LOC") orders executed in the Closing Auction in all Tape A and Tape C securities. The proposed rate is applicable to all tiers and basic rate pricing. This brings the rate in line with the current rate charged for MOC/LOC orders executed in Tape C ETF and ETNs. The Exchange also proposes to charge \$0.0007 for PO Orders routed to the New York Stock Exchange ("NYSE") and NYSE Amex that execute in the opening auction. This brings the rate in line with the current rate charged for PO Orders routed to the NYSE or NYSE Amex that execute in the closing auction, and is applicable to all tiered and basic rate pricing levels. The Exchange further proposes to charge \$0.0007 per share for orders executed in the Opening or Market Order Auction in NYSE Arca primary listed securities. This brings the rate in line with the current rate charged for MOC and LOC orders executed in the Closing Auction in NYSE Arca primary listed securities, and is applicable to all tiered and basic rate pricing levels.

Finally, the Exchange proposes to clarify that the rebate paid to Lead Market Makers for orders that provide liquidity to the Book will only apply to displayed liquidity. This is consistent with the current practice and simply adds clarity to the Schedule.

The Exchange believes the proposed fees are reasonable and equitable in that

they apply uniformly to all ETP Holders. The proposed changes will become operative on October 1, 2009.

**2. Statutory Basis**

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934 (the "Act"),<sup>6</sup> in general, and Section 6(b)(4) of the Act,<sup>7</sup> 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. The proposed rates are part of the Exchange's continued effort to attract and enhance participation on the Exchange, by offering attractive rebates for liquidity providers and volume-based incentives. The Exchange believes that the proposed changes to the Schedule are equitable in that they apply uniformly to our Users.

*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)<sup>8</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>9</sup> thereunder, because it establishes a due, fee, or other charge imposed by NYSE Arca on 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. 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-2009-88 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-2009-88. 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-2009-88 and should be submitted on or before November 12, 2009.

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

**Florence E. Harmon,**  
Deputy Secretary.

[FR Doc. E9-25429 Filed 10-21-09; 8:45 am]

**BILLING CODE 8011-01-P**

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

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

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

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

<sup>10</sup> 17 CFR 200.30-3(a)(12).