

Dated: June 4, 2008.

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8-12949 Filed 6-9-08; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold an Open Meeting on June 11, 2008 at 10 a.m., in the Auditorium, Room L-002.

The subject matter of the Open Meeting will be: The Commission will consider whether to propose rules relating to Nationally Recognized Statistical Rating Organizations and credit ratings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 551-5400.

Dated: June 4, 2008.

**Florence E. Harmon,**

*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57917]

### Notice of Proposed Order Approving Proposal by NYSE Arca, Inc. To Establish Fees for Certain Market Data and Request for Comment

June 4, 2008.

#### I. Introduction

On May 23, 2006, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change ("Proposal") to establish fees for the receipt and use of certain market data that the Exchange makes available. We are publishing this notice and a proposed order approving the Proposal ("Draft Order")<sup>3</sup> to provide

interested persons with further opportunity to comment.

The Proposal was published for comment in the **Federal Register** on June 9, 2006.<sup>4</sup> The Commission received 6 comment letters regarding the Proposal. On October 12, 2006, the Commission issued an order, by delegated authority, approving the Proposal.<sup>5</sup> On November 6, 2006, NetCoalition ("Petitioner") submitted a notice, pursuant to Rule 430 of the Commission's Rules of Practice, indicating its intention to file a petition requesting that the Commission review and set aside the Delegated Order.<sup>6</sup> On November 8, 2006, the Exchange submitted a response to the Petitioner's Notice.<sup>7</sup> On November 15, 2006, Petitioner submitted its petition requesting that the Commission review and set aside the Delegated Order.<sup>8</sup> On December 27, 2006, the Commission issued an order: (1) Granting Petitioner's request for the Commission to review the Delegated Order; (2) allowing any party or other person to file a statement in support of or in opposition to the action made by delegated authority; and (3) continuing the effectiveness of the automatic stay provided in Rule 431(e) of the Commission's Rules of Practice.<sup>9</sup>

The Commission received 32 comments regarding the Petition. These comment letters,<sup>10</sup> along with other materials the Commission has placed in the comment file, are available on our Web site. The Commission has considered the Petition and the comments submitted on the Petition, as well as the comments submitted on the Proposal. Although not required by section 19(b) of the Exchange Act, in the context of the Proposal we nonetheless are affording the public an additional opportunity to provide comment by publishing the Draft Order.

<sup>4</sup> Securities Exchange Act Release No. 53952 (June 7, 2006), 71 FR 33496 (June 9, 2006).

<sup>5</sup> Securities Exchange Act Release No. 54597 (October 12, 2006), 71 FR 62029 (October 20, 2006) ("Delegated Order").

<sup>6</sup> Letter from Markham C. Erikson, Executive Director and General Counsel, NetCoalition, to the Honorable Christopher Cox, Chairman, SEC, dated November 6, 2006 ("Notice").

<sup>7</sup> Letter from Mary Yeager, Corporate Secretary, NYSE Arca Inc., to the Honorable Christopher Cox, Chairman, SEC, dated November 8, 2006 ("NYSE ARCA Petition Response").

<sup>8</sup> Petition for Commission Review submitted by Petitioner, dated November 14, 2006 ("Petition").

<sup>9</sup> Securities Exchange Act Release No. 55011 (December 27, 2006).

<sup>10</sup> While the comment period on the Petition closed on January 17, 2007, we have included in the public comment file on the Petition all comment letters received after the close of the comment period.

#### II. Brief Overview of the Proposal and Draft Order

Under Section 19 of the Exchange Act, the Commission must approve a proposed rule change related to setting fees for market data if it finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules thereunder. The attached Draft Order describes the relevant Exchange Act provisions and rules.

The Proposal involves assessing fees for non-core market data. Core data is the best-priced quotations and comprehensive last sale reports of all markets that the Commission requires a central processor to consolidate and distribute to the public pursuant to joint-SRO plans. In contrast, individual exchanges and other market participants distribute non-core data voluntarily. The Commission believes it is able to incorporate the existence of competitive forces in its determination of whether an exchange's proposal to distribute non-core data meets the standards of the Exchange Act provisions and rules. This approach follows the clear intent of Congress in adopting section 11A of the Exchange Act that, whenever possible, competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.

This market-based approach to non-core data has two parts. The first is to ask whether the exchange was subject to significant competitive forces in setting the terms of its proposal for non-core data, including the level of any fees. If an exchange was subject to significant competitive forces in setting the terms of a proposal, the Commission would approve the proposal unless it determines that there is a substantial countervailing basis to find that the terms nevertheless fail to meet an applicable requirement of the Exchange Act or the rules thereunder. If, however, the exchange was not subject to significant competitive forces in setting the terms of a proposal for non-core data, the Commission would require the exchange to provide a substantial basis, other than competitive forces, in its proposed rule change demonstrating that the terms of the proposal are equitable, fair, reasonable, and not unreasonably discriminatory.

The Commission believes that, when possible, reliance on competitive forces is the most appropriate and effective means to assess whether terms for the distribution of non-core data are equitable, fair and reasonable, and not unreasonably discriminatory. If competitive forces are operative, the self-interest of the exchanges themselves

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

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

<sup>3</sup> The Draft Order is included as Appendix A.