SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60002; File No. SR-NYSEArca-2009-32)

May 29, 2009

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving the Proposed Rule Change
Implementing NYSE Arca Realtime Reference Prices Service on a Permanent Basis

I.   Introduction

On April 15, 2009, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the

Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the

Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to

establish the NYSE Arca Realtime Reference Prices service on a permanent basis and to

establish a flat monthly fee for that service. The proposed rule change was published for

comment in the Federal Register on April 24, 2009.[3] The Commission received no comment

letters on the proposal. This order approves the proposed rule change.

II.   Description of the Proposal

The Exchange proposes to establish the NYSE Arca Realtime Reference Prices service

on a permanent basis and to establish a flat monthly fee for that service. The Exchange currently

provides this service pursuant to a pilot program.[4] The service allows a vendor to redistribute,

on a real-time basis last sale prices of transactions that take place on the Exchange ("NYSE Arca

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[1]   15 U.S.C. 78s(b)(1).

[2]   17 CFR 240.19b-4.

[3]   See Securities Exchange Act Release No. 59790 (April 20, 2009), 74 FR 18758.

[4]   See Securities Exchange Act Release No. 58444 (August 29, 2008), 73 FR 51872
        (September 5, 2008) (SR-NYSEArca-2008-96). The Commission has approved three
        extensions of the end date for the pilot program, which expires on June 30, 2009. See
        Securities Exchange Act Release Nos. 58895 (October 31, 2008), 73 FR 66956
        (November 12, 2008) (SR-NYSEArca-2008-122); 59184 (December 30, 2008), 74 FR
        755 (January 7, 2009) (SR-NYSEArca-2008-143); and 59662 (March 31, 2009), 74 FR
        15571 (April 6, 2009) (SR-NYSEArca-2009-25).

Realtime Reference Prices"). The Exchange has found that the pilot program provides a low-cost service that makes real-time prices widely available to casual investors, provides vendors with a useful real-time substitute for delayed prices, and relieves vendors of administrative burdens. The product is intended to be used for reference purposes, rather than as a basis for making trading decisions.

The Service

The NYSE Arca Realtime Reference Prices service allows internet service providers, traditional market data vendors, and others (collectively, "NYSE Arca-Only Vendors") to make available NYSE Arca Realtime Reference Prices on a real-time basis.[5] The NYSE Arca Realtime Reference Price information includes last sale prices for all securities that trade on the Exchange. The product includes only prices, and does not include the size of each trade or bid/asked quotations.

As with the pilot program, under the permanent service the Exchange will not permit NYSE Arca-Only Vendors to provide NYSE Arca Realtime Reference Prices in a context in which a trading or order-routing decision can be implemented unless the NYSE Arca-Only Vendor also provides consolidated displays of Network A last sale prices available in an equivalent manner, as required by Rule 603(c)(1) of Regulation NMS.

Also, as with the pilot program, the permanent service is intended to eliminate certain administrative burdens associated with the distribution of real-time CTA prices. Specifically, the permanent service would feature the same flat, fixed monthly vendor fee, no user-based fees, no vendor reporting requirements, and no professional or non-professional subscriber agreements.

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[5]   The Exchange notes that it will make the NYSE Arca Realtime Reference Prices available to vendors no earlier than it makes those prices available to the processor under the CTA Plan.

<u>The Fee</u>

The Exchange proposes to retain the current $30,000 monthly flat access fee for the NYSE Arca Realtime Reference Prices service. For that fee, the NYSE Arca-Only Vendor may provide unlimited NYSE Arca Realtime Reference Prices to an unlimited number of the NYSE Arca-Only Vendor's subscribers and customers. The pilot program does not impose any device or end-user fee for the NYSE Arca-Only Vendors' distribution of NYSE Arca Realtime Reference Prices and the Exchange is not proposing to add any new fees for the permanent service.

As with the pilot program, the Exchange proposes to require the NYSE Arca-Only Vendor to identify the NYSE Arca trade price by placing the text "NYSE Arca Data" in close proximity to the display of each NYSE Arca Realtime Reference Price or series of NYSE Arca Realtime Reference Prices, or by complying with such other identification requirement as to which NYSE Arca may agree. The NYSE Arca-Only Vendor may make NYSE Arca Realtime Reference Prices available without having to differentiate between professional subscribers and nonprofessional subscribers, without having to account for the extent of access to the data, and without having to report the number of users.

<u>Contracts</u>

As with the pilot program, NYSE Arca proposes to allow NYSE Arca-Only Vendors to provide NYSE Arca Realtime Reference Prices without requiring the end-users to enter into contracts for the benefit of the Exchange. Instead, the Exchange proposes to require NYSE Arca-Only Vendors to provide a readily visible hyperlink that will send the end-user to a warning notice about the end-user's receipt and use of market data. The notice would be similar to the notice that vendors provide today when providing CTA delayed data services.

The Exchange will require NYSE Arca-Only Vendors to enter into the form of "vendor" agreement into which the CTA and CQ Plans require recipients of the Network A datafeeds to enter (the "Network A Vendor Form"). The Network A Vendor Form will authorize the NYSE-Arca Only Vendor to provide the NYSE Arca Realtime Reference Prices service to its subscribers and customers. The Exchange will supplement the Network A Vendor Form with an Exhibit C that will provide terms and conditions that are unique to the NYSE Arca Realtime Reference Prices service.

III.   Discussion and Commission Findings

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.[6] In particular, it is consistent with Section 6(b)(4) of the Act,[7] which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other parties using its facilities, and Section 6(b)(5) of the Act,[8] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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[6]   In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

[7]   15 U.S.C. 78f(b)(4).

[8]   15 U.S.C. 78f(b)(5).

The Commission also finds that the proposed rule change is consistent with the

provisions of Section 6(b)(8) of the Act,[9] which requires that the rules of an exchange not

impose any burden on competition not necessary or appropriate in furtherance of the purposes of

the Act. Finally, the Commission finds that the proposed rule change is consistent with Rule

603(a) of Regulation NMS,[10] adopted under Section 11A(c)(1) of the Act, which requires an

exclusive processor that distributes information with respect to quotations for or transactions in

an NMS stock to do so on terms that are fair and reasonable and that are not unreasonably

discriminatory.[11]

This proposal would make permanent the NYSE Arca Realtime Reference Prices service

and make permanent the $30,000 flat monthly fee for that service.[12] The Commission has

reviewed the proposal using the approach set forth in the NYSE Arca Order for non-core market

data fees.[13] There are a variety of alternative sources of information that impose significant

competitive pressures on NYSE Arca in setting the terms for distributing the NYSE Arca

Realtime Reference Prices service. The Commission believes that the availability of those

alternatives, as well as NYSE Arca's compelling need to attract order flow, imposed significant

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[9]   15 U.S.C. 78f(b)(8).

[10]   17 CFR 242.603(a).

[11]   NYSE Arca is an exclusive processor of the NYSE Arca Realtime Reference Prices
        service under Section 3(a)(22)(B) of the Act, 15 U.S.C. 78c(a)(22)(B), which defines an
        exclusive processor as, among other things, an exchange that distributes information with
        respect to quotations or transactions on an exclusive basis on its own behalf.

[12]   See supra note 4.

[13]   See Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770
        (December 9, 2008) (SR-NYSEArca-2006-21) ("NYSE Arca Order"). In the NYSE
        Arca Order, the Commission describes the competitive factors that apply to non-core
        market data products. The Commission hereby incorporates by reference the data and
        analysis from the NYSE Arca Order into this order.

competitive pressure on NYSE Arca to act equitably, fairly, and reasonably in setting the terms of its proposal.

Because NYSE Arca was subject to significant competitive forces in setting the terms of the proposal, the Commission will approve the proposal in the absence of a substantial countervailing basis to find that its terms nevertheless fail to meet an applicable requirement of the Act or the rules thereunder. An analysis of the proposal does not provide such a basis.

IV.   Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR-NYSEArca-2009-32), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

                                          Florence E. Harmon
                                          Deputy Secretary

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[14]   15 U.S.C. 78s(b)(2).

[15]   17 CFR 200.30-3(a)(12).