

Proposed Rule Change by NYSE Arca  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial <input checked="" type="checkbox"/>	Amendment <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) <input checked="" type="checkbox"/>	Section 19(b)(3)(A) <input type="checkbox"/>	Section 19(b)(3)(B) <input type="checkbox"/>
Pilot <input type="checkbox"/>			Rule		
Extension of Time Period for Commission Action <input type="checkbox"/>		Date Expires <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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**Description**  
Provide a brief description of the proposed rule change (limit 250 characters).

Proposal to waive listing fees for companies listing upon emergence from bankruptcy or whose common stock is registered but not listed on a national securities exchange.

**Contact Information**  
Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name  Last Name   
 Title   
 E-mail   
 Telephone  Fax

**Signature**  
Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date   
 By  Corporate Secretary  
 (Name)  (Title)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

**Form 19b-4 Information**

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change**

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

- (a) NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”), through its wholly-owned subsidiary NYSE Arca Equities, Inc. (“NYSE Arca Equities” or the “Corporation”), proposes to amend its rules governing NYSE Arca, LLC (also referred to as the “NYSE Arca Marketplace”), which is the equities trading facility of NYSE Arca Equities. The Exchange proposes to amend its listing fees to provide that there shall be no initial listing fee applicable to (i) any company listing upon emergence from bankruptcy or (ii) any company listing its primary class of common stock that is not listed on a national securities exchange but is registered under the Securities Exchange Act of 1934 (the “Exchange Act”).<sup>1</sup> If approved by the Commission, the amendments contained in this proposal will be applied retroactively as of the date of this filing. The amended section of the Exchange’s price schedule is attached as Exhibit 5.
- (b) The Exchange does not believe that the proposed rule change will have any direct effect, or any significant indirect effect, on any other Exchange rule in effect at the time of this filing.
- (c) Not applicable.

2. Procedures of the Self-Regulatory Organization

- (a) The proposed rule change is being submitted to the Securities and Exchange Commission (the “Commission”) by Exchange staff pursuant to authority delegated by the Exchange’s Board of Directors and the NYSE Arca Equities Board of Directors.
- (b) Questions and comments regarding the proposed rule change may be directed to the following:

John Carey, Assistant General Counsel  
Office of the General Counsel, NYSE Group, Inc.  
(212) 656-5640

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

(a) Purpose

The Exchange proposes to amend its listing fee schedule to provide that there shall be no initial listing fee applicable to:

- any company listing upon emergence from bankruptcy; or

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<sup>1</sup> 15 U.S.C. 78a.

- any company listing its primary class of common stock that is not listed on a national securities exchange but is registered under the Exchange Act.

If approved by the Commission, the amendments contained in this proposal will be applied retroactively as of the date of this filing.

The proposed rule change will not affect the Exchange's commitment of resources to its regulatory oversight of the listing process or its regulatory programs. Specifically, companies that benefit from the waiver will be reviewed for compliance with Exchange listing standards in the same manner as any other company that applies to be listed on the Exchange. The Exchange will conduct a full and independent review of each issuer's compliance with the Exchange's listing standards.

In the case of companies listing upon emergence from bankruptcy, the Exchange believes that the initial listing fee waiver is justified by such companies' unique circumstances. Companies emerging from bankruptcy are typically not raising any new capital at the time of listing, so the payment of initial listing fees is more burdensome than for companies that are listing upon an initial public offering. Also, because of the desire in bankruptcy proceedings to ensure that creditors are paid as much as possible, such companies are much more sensitive to the costs associated with listing. It is frequently difficult for such companies to assess what those costs are going to be until quite close to their emergence from bankruptcy, as the number of shares that will be issued (and therefore the related listing fees) are a significant variable in the negotiation of the bankruptcy settlement. As bankrupt companies face unique challenges in the listing process and the number of companies that will avail of the fee waiver will be very limited, the Exchange does not believe that the treatment this proposal would afford to bankrupt companies constitutes an inequitable or unfairly discriminatory allocation of fees.

The Exchange anticipates that a significant percentage of potential listings of companies that have a registered class of common stock but which are not currently listed on a national securities exchange will relate to formerly listed companies that were delisted as a result of a failure to timely file annual reports with the Commission. These are companies that were otherwise in good standing with a national securities exchange, but fell behind on their Exchange Act reporting because their auditors or the Commission required restatements of their financial statements. These companies will relist as soon as their filings are up to date. The Exchange believes it is appropriate to waive initial listing fees for these companies and does not constitute an inequitable or unfairly discriminatory allocation of fees, as such companies had previously paid initial listing fees to a national securities exchange and to make them pay these fees again would further penalize them unnecessarily. The Exchange may also list certain companies that are trading in the over-the-counter market that have not previously been listed on a national securities exchange. However, the Exchange believes that there will not be many of these companies that will be able to meet its quantitative initial

listing standards and does not believe that waiving initial listing fees with respect to such companies will have any meaningful effect on the Exchange's revenue or constitute an inequitable or unfairly discriminatory allocation of fees.

The Exchange does not expect the financial impact of this proposed rule change to be material, either in terms of increased levels of annual fees from transferring issuers or in terms of diminished initial listing fee revenues. A very limited number of companies are qualified and seek to list on the Exchange that are either emerging from bankruptcy or have a registered class of common stock but are not currently listed on another market. Accordingly, the proposed rule change will not impact the Exchange's resource commitment to its regulatory oversight of the listing process or its regulatory programs.

(b) Statutory Basis

The proposed rule change is consistent with the requirement under Section 6(b)(4)<sup>2</sup> of the Exchange Act that an exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities and the requirement under Section 6(b)(5)<sup>3</sup> of the Exchange Act that an exchange have rules that are designed to remove impediments to and perfect the mechanism of a free and open market and a national market system and are not designed to permit unfair discrimination between issuers. In light of the unique circumstances of companies emerging from bankruptcy and the likelihood that many companies listing that have a registered class of common stock but are not listed on another market will be previously listed companies delisted as late filers, the Exchange believes that the proposed fee waiver does not render the allocation of its listing fees inequitable or unfairly discriminatory.

4. 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 Exchange Act.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

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<sup>2</sup> 15 U.S.C. 78f(b)(4).

<sup>3</sup> 15 U.S.C. 78f(b)(5).

6. Extension of Time Period for Commission Action

NYSE Arca does not consent to an extension of the time period specified in Section 19(b)(2)<sup>4</sup> of the Exchange Act.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Exhibits

Exhibit 1 – Form of Notice of Proposed Rule Change for Federal Register.

Exhibit 5 – Proposed Rule Change.

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<sup>4</sup> 15 U.S.C. 78s(b)(2).

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-NYSEArca-2007-24)

[Date]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NYSE Arca, Inc. to Waive Listing Fees for Companies Emerging from Bankruptcy or Whose Common Stock was Registered Prior to Listing but not Listed on a National Securities Exchange.

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 February 28, 2007, NYSE Arca, Inc. ("NYSE Arca" or "Exchange"), through its wholly owned subsidiary, NYSE Arca Equities, Inc. ("NYSE Arca Equities"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice and order to solicit comments on the proposal 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 listing fees to provide that there shall be no initial listing fee applicable to (i) any company listing upon emergence from bankruptcy or (ii) any company listing its primary class of common stock that is not listed on a national securities exchange but is registered under the Act.

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

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

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

received on the proposed rule change. The text of these statements may be examined at the places specified in Item III 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 Exchange proposes to amend its listing fee schedule to provide that there shall be no initial listing fee applicable to:

- any company listing upon emergence from bankruptcy; or
- any company listing its primary class of common stock that is not listed on a national securities exchange but is registered under the Act.

If approved by the Commission, the amendments contained in this proposal will be applied retroactively as of the date of initial filing of the proposal by the Exchange.

The proposed rule change will not affect the Exchange's commitment of resources to its regulatory oversight of the listing process or its regulatory programs. Specifically, companies that benefit from the waiver will be reviewed for compliance with Exchange listing standards in the same manner as any other company that applies to be listed on the Exchange. The Exchange will conduct a full and independent review of each issuer's compliance with the Exchange's listing standards.

In the case of companies listing upon emergence from bankruptcy, the Exchange believes that the initial listing fee waiver is justified by such companies' unique circumstances. Companies emerging from bankruptcy are typically not raising any new capital at the time of listing, so the payment of initial listing fees is more burdensome than for companies that are listing upon an initial public offering. Also, because of the

desire in bankruptcy proceedings to ensure that creditors are paid as much as possible, such companies are much more sensitive to the costs associated with listing. It is frequently difficult for such companies to assess what those costs are going to be until quite close to their emergence from bankruptcy, as the number of shares that will be issued (and therefore the related listing fees) are a significant variable in the negotiation of the bankruptcy settlement. As bankrupt companies face unique challenges in the listing process and the number of companies that will avail of the fee waiver will be very limited, the Exchange does not believe that the treatment this proposal would afford to bankrupt companies constitutes an inequitable or unfairly discriminatory allocation of fees.

The Exchange anticipates that a significant percentage of potential listings of companies that have a registered class of common stock but which are not currently listed on a national securities exchange will relate to formerly listed companies that were delisted as a result of a failure to timely file annual reports with the Commission. These are companies that were otherwise in good standing with a national securities exchange, but fell behind on their Exchange Act reporting because their auditors or the Commission required restatements of their financial statements. These companies will relist as soon as their filings are up to date. The Exchange believes it is appropriate to waive initial listing fees for these companies and does not constitute an inequitable or unfairly discriminatory allocation of fees, as such companies had previously paid initial listing fees to a national securities exchange and to make them pay these fees again would further penalize them unnecessarily. The Exchange may also list certain companies that are trading in the over-the-counter market that have not previously been listed on a national securities exchange.

However, the Exchange believes that there will not be many of these companies that will be able to meet its quantitative initial listing standards and does not believe that waiving initial listing fees with respect to such companies will have any meaningful effect on the Exchange's revenue or constitute an inequitable or unfairly discriminatory allocation of fees.

The Exchange does not expect the financial impact of this proposed rule change to be material, either in terms of increased levels of annual fees from transferring issuers or in terms of diminished initial listing fee revenues. A very limited number of companies are qualified and seek to list on the Exchange that are either emerging from bankruptcy or have a registered class of common stock but are not currently listed on another market. Accordingly, the proposed rule change will not impact the Exchange's resource commitment to its regulatory oversight of the listing process or its regulatory programs.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6<sup>3</sup> of the Act in general and furthers the objectives of Section 6(b)(5)<sup>4</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments, 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.

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.

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

<sup>4</sup> 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments on the proposed rule change 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 the 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, as amended, is consistent with the Exchange 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2007-24 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-NYSEArca-2007-24. 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 website (<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. Copies of such filing also will be available for inspection and copying at the principal offices 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-2007-24 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Nancy M. Morris  
Secretary

New text underlined.

### **Additional Commentary on NYSE Arca listing fees**

- *Foreign Private Issuers.* Annual Fees also apply to foreign private issuers, but only to the extent securities are issued and outstanding in the United States. NYSE Arca will calculate the Annual Fee for foreign private issuers based on a four-quarter average of the securities issued and outstanding in the United States during the preceding year. The purpose of utilizing a four-quarter average is to recognize the possibility of flow-back and flow-in of securities to and from the home country market and more reasonably reflect the number of securities in the United States over the course of the year. To the extent that an issuer that is billed by NYSE Arca as a foreign private issuer has a change in status that requires the issuer to commence filing U.S. periodic and annual reports with the SEC during the course of a year, NYSE Arca will bill that issuer Listing and Annual Fees as a domestic issuer at the beginning of the first calendar year following the issuer's change in status. An issuer that changes its status is not subject to new Listing Fees for worldwide securities already issued and outstanding.
- *Stock Splits and Stock Dividends.* Listing Fees on shares issued in conjunction with stock splits and stock dividends are capped at \$150,000 per split or issuance, subject to the \$250,000 maximum on total fees paid each year by an issuer.
- *Mergers and Consolidations.* In the case of transactions such as a consolidation between two or more listed issuers that result in the formation of a new issuer that immediately lists upon consummation of the consolidation, or a merger between a listed issuer and an unlisted issuer that results in the unlisted issuer surviving or the creation of a new issuer (which lists within 12 months from the consummation of the transaction), Listing Fees for that newly listed issuer will be 25% of the Listing Fee for each class of securities being listed, up to 25% of the maximum applicable to the issue(s) listed. No discount will be applied, however, where a listed issuer survives the merger or consolidation, or in the case of a backdoor (or "reverse") merger.
- *Transfer Listings.* For the period through December 31, 2007, all issuers that transfer their listings from Nasdaq or the American Stock Exchange, or apply to list during that time, will not be subject to Listing Fees upon initial listing. Such issuers, however, will be subject to Annual Fees and Fees for Subsequent Listing of Additional Securities. Issuers that transfer their listing from NYSE to NYSE Arca, or from NYSE Arca to the NYSE, will not be subject to Listing Fees upon initial listing.

- Companies Listing Upon Emergence from Bankruptcy or that are Publicly-Traded but not Listed. Companies that list upon emergence from bankruptcy, or whose primary class of common stock is registered under the Exchange Act but not listed on a national securities exchange, will not be subject to Listing Fees upon initial listing.