November 23, 2012

Ms. Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

RE: Release No. 34-68174; File No. SR-NYSEArca-2012-118 Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Increase the Options Regulatory Fee and to Revise the Circumstances Under Which NYSE Arca, Inc. Will Collect the Options Regulatory Fee

Dear Ms. Murphy,

Thank you for the opportunity to comment on the NYSE ARCA's request to increase its ORF to 0.005. While the NYSE ARCA cites rising regulatory costs as the impetus necessitating a higher fee, the NYSE ARCA did not persuasively demonstrate a need for a higher ORF. The ORF is currently structured in a way that unintentionally discourages competition and inadvertently promotes collusion, all while pouring ten of millions of dollars into the various participating exchanges. Based on the merits of these issues, the NYSE ARCA's request to increase its ORF should be denied.

If rising costs of regulation are increasing financial burden to the exchanges, all parties should help defray the cost. Customers only represent 38% of options trading and are already disproportionately paying the regulatory costs of exchanges. The ORF is only charged to customer orders; regulation revenue can be more proportionally allocated by increasing execution fees rather than increasing the ORF. Increasing execution fees on customer transactions was once difficult because customers traded for free; however, today the NYSE AMEX exchange is the one remaining exchange that allows customers to trade for free. With nearly all exchanges adopting customer fees, the exchanges should seek to set execution fees that include the cost of regulation. Future regulation increases should be placed in the execution fees (not taxed to customer transactions as additional cost) as executions fees should include ALL cost associated with the contract. There is no identifiable rationale for singling out regulation as an individual aspect of options trading. If energy costs were to rise, we would certainly not expect a corresponding "options energy fee" tacked on to the customer's cost to trade. The exchanges should seek to set prices that include all options cost from servers to employees to innovation and including

regulation. This is not a novel concept as many exchanges already charge substantially higher fees for executions in proprietary products. By placing fees back into execution, exchanges will be forced to be more competitive and more efficient.

Allowing an exchange to establish (and adjust) its ORF does not incentivize that exchange to be cost efficient in its regulation policies and it does not promote business acumen from a net income standpoint. The NYSE ARCA asserted that lower exchange volume did not lead to lower regulatory expenses. If decreased activity in your core business did not result in lower costs, then what factors would lead to declining costs? A regulatory model that is not based on option activity seems flawed in its premise. It is not an unreasonable assumption that regulatory costs would decline given a considerable decrease in volume. Moreover, the NYSE ARCA compares 2012 option volume with 2011 option volume to assert that regulatory revenue is lower this year (hence the need for an increase). During 2011, option volume exploded to record heights. Building an argument off of the anomaly of 2011 volume instead of basing it on historical trends of rising volume is inequitable. If the NYSE ARCA and NYSE AMEX are examined, one would note that these sister exchanges share the same parent company, website, and underlying technology, but they seemingly do NOT share regulatory operations as each assesses its own ORF and both are simultaneously seeking to increase its respective ORF. The ORF should not be the dominant source of regulatory revenue, adjustable to offset exchange expenses (thus increasing net income). Regulation is an expense of any company; it is a cost of doing business. The ORF is a direct contributor to an exchange's bottom line, and the exchanges should not have unfettered access to increase regulatory fees that contribute to their company's financial performance.

The design of the ORF is inherently noncompetitive which lends itself to collusion among exchanges. The ORF promises an exchange general revenue regardless of the exchange's respective relevance in the options industry. The resulting gross disparities between market share and ORF share is evidenced by the C2 exchange's receipt of 5% of ORF funds although the C2 represents only 1.25% of options volume. The BOX exchange received 10% of ORF revenue though it only comprised 3.8% of options volume. Such obvious disproportionality implores that the fees be issued in a more distributive and competitive fashion. Also, the design lets brokers off the hook. Brokerage fees are already in excess of execution cost, with many major brokerages charging $0.75 per contract to trade (this is above actual fees that the exchanges are charging). By moving regulation cost outside of executions to the ORF, brokerage firms are not forced to compete for customer order flow. Would a brokerage firm increase its fees by $0.03 or absorb the fee and continue to charge $0.75 in an attempt to remain competitive? Increased competition at the brokerage level is great for the options industry as commissions continue to serve as a barrier to entry for single leg and especially complex options orders. Structurally, competition is a concern, but collusion is also a concern based on the structure of the ORF. If all

exchanges seek to add this fee citing the competitive disadvantage of not charging the ORF, this fee will balloon from 0.0292 ($90 million annually) to 0.0438 ($135 million annually)[1]. The ORF will continue to grow without bounds as each exchange begins to request higher fees based on another exchange's fee being higher than theirs. This is evidenced in the statement from the NYSE ARCA that its proposed ORF increase is fair based on the CBOE's rate of 0.0065. While the NYSE ARCA suggests approval based on the CBOE's fee, absent from the NYSE ARCA proposal are the facts that the NYSE ARCA and NYSE AMEX's collective market share (approx. 24.3%) is less than the CBOE's market share (approx. 29.3%). The two exchanges collectively already charge a 23% higher ORF than the CBOE and the proposed increase would result in a fee that is collectively 53% higher than the CBOE's ORF. The NYSE ARCA does not offer evidence to substantiate why a higher fee would be warranted for an exchange that has lesser volume; it only offers a statement that seems to substantiate the theory that "what's good for the gander is good for the goose".

The SEC should be wary of asking customers to fund a cost which has no oversight, a cost void of freedom of choice that competition breeds. This fee is designed to force a customer to pay the NYSE ARCA even if that customer chooses not to transact business with that exchange. Without competition, there is no motivation for exchanges to keep fees low and there is no incentive to be cost efficient in performing regulatory duties. As it stands, regulatory costs seem unidirectional, consistently rising year over year. The decrease in 2012 volume did not result in reduced regulatory costs; it led to the exchange requesting a 25% ORF increase to offset a 10% reduction in option volume. If 2013 volume declines, should we expect another rise in ORF? With two new option exchanges on the horizon (taking the total to 12), customers should not be asked to make substantial investments in these exchanges (given via the ORF) without any guarantee of return. If an exchange represents itself to the SEC as an innovator in leverage technology and experience but does not leverage regulation, the SEC should carefully consider adding new options exchanges as new exchanges will only add to the ever-increasing ORF. The OCC expects to clear more than 3 billion customer contracts in 2012 which represents approximately $90 million in ORF collected from customers. The exchanges are asking to raise the fee to roughly $96 million annually. With such substantial revenue at stake, perhaps it is better to centralize this process rather than distribute the fees and responsibility piecemeal across the different exchanges. The precedent of exchanges unilaterally increasing their ORF has already been established. The SEC should deny this request to set the precedent that the ORF will not serve as a tappable resource for increased profit margin. If the SEC approves the exchange's request to raise the ORF, this regulatory fee will increase to a rate (0.032) more costly than the OCC clearing

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[1] Based on the projected growth to 12 exchanges and the current average ORF of 0.00365.

fee (0.03). At this point, it will cost more to regulate the industry than it costs to clear every options contract traded within the industry. Moreover the OCC refunded half of its 2011 collected fees due to operating efficiency. It is not unreasonable to require exchanges to perform more efficiently in executing their regulatory duties. Any notion that the exchanges will be less regulated if fees are not increased is nonsensical. There are currently some exchanges that do not charge the ORF and this fee was not even in existence four years ago. Requiring customers to pay a regulation fee in addition to an execution fee is confusing and nontransparent. The SEC should deny this request and future requests to increase the ORF and should seek to disband this fee before it becomes a revenue stream that exchanges argue they cannot exist without.

The options industry has experienced a tenfold increase in trading volume over the last 14 years. This increase in popularity is not due to any one exchange being great but is due to the fact that options are great! Options have been progressively enhanced through innovative concepts such as dollar strikes, weekly options, maker-taker, penny pricing, and proprietary products. The attraction of order flow is and should remain the sole reward for this innovation, not non-competitive taxes on the customers who enjoy the flexibility and creativity that options provide.

Sincerely,

Sterling E. Huntley