

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-69078; File No. SR-NYSEArca-2013-19)

March 8, 2013

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Options Schedule of Fees and Charges for Exchange Services to Reduce the Floor Broker Rebate for Qualified Contingent Cross Transactions

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 March 1, 2013, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) 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. 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Options Schedule of Fees and Charges for Exchange Services (“Fee Schedule”) to (i) reduce the Floor Broker rebate for Qualified Contingent Cross (“QCC”) transactions and (ii) remove an outdated reference. The Exchange proposes to implement the changes on March 1, 2013. The text of the proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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<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.

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, of the most significant parts 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 the Fee Schedule to (i) reduce the Floor Broker rebate for QCC transactions and (ii) remove an outdated reference. The Exchange proposes to implement the changes on March 1, 2013.

Currently, Floor Brokers that execute QCC transactions receive a rebate of \$0.05 per contract side. The Exchange proposes reducing that rebate to \$.035 per contract side. When the Exchange originally adopted the Floor Broker rebate, the Exchange noted that OTP Holders have two primary means of bringing a QCC order to the Exchange for possible execution: (1) they can configure their systems to deliver the QCC order to the Exchange matching engines for validation and execution; or (2) they can utilize the services of another OTP Holder acting as a Floor Broker.<sup>4</sup> With the latter means, a Floor Broker who is in receipt of such a QCC order can enter the order through an Exchange-provided system to be delivered to the Exchange matching engines for validation and potential execution.

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<sup>4</sup> See Securities Exchange Act Release No. 65730 (November 10, 2011), 76 FR 71410 (November 17, 2011) (SR-NYSEArca-2011-79) ("Approval Order").

Because the Exchange does not offer a front-end for order entry, unlike some competing exchanges,<sup>5</sup> the Exchange believed that it was necessary from a competitive standpoint to offer this rebate to the executing Floor Broker on a QCC order. In doing so, the Exchange expected that the rebate would allow Floor Brokers to price their services at a level that would enable them to attract QCC order flow from participants who would otherwise utilize the front-end order entry mechanism offered by the Exchange's competitors instead of incurring the cost in time and money to develop their own internal systems to deliver QCC orders directly to the Exchange system. The Exchange believed that to the extent Floor Brokers were able to attract QCC orders, they would gain important information that would allow them to solicit the parties to the QCC orders for participation in other trades.<sup>6</sup> The Exchange further believed that this would, in turn, benefit other Exchange participants through the additional liquidity that would occur as a result.

Although the rebate has not incented additional liquidity and price discovery as expected, the Exchange believes that it is still necessary to keep the rebate, albeit in a lower amount, in order for Floor Brokers to competitively price their services and for the Exchange to remain competitive with other exchanges that offer a similar rebate.<sup>7</sup>

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<sup>5</sup> The International Securities Exchange offers PRECISE TRADE as a means for users to enter orders and Chicago Board Options Exchange has a similar front-end order entry system called PULSE. Such systems do not require users to develop their own internal front-end order entry systems and may provide savings to users in terms of development time and costs.

<sup>6</sup> See Approval Order, *supra* note 4; see also Securities Exchange Act Release No. 65797 (November 21, 2011), 76 FR 72988 (November 28, 2011) (SR-NYSEArca-2011-83) (clarifying amendments to the description of the QCC rebate amount).

<sup>7</sup> See Securities Exchange Act Release No. 65472 (October 3, 2011), 76 FR 62887 (October 11, 2011) (SR-NYSEAmex-2011-72) and the NASDAQ OMX PHLX fee schedule (describing a rebate program for QCC orders that can range as high as \$0.11 per contract), available at <http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLXTools/PlatformViewer.as>

The Exchange also proposes to eliminate an obsolete reference in the Fee Schedule concerning the Options Regulatory Fee. Specifically, prior to December 1, 2012, the Options Regulatory Fee was \$0.004 per contract. As reflected in the current Fee Schedule, the fee rose to \$0.005 per contract on December 1, 2012. The Exchange proposes to remove the outdated reference to the \$0.004 per contract fee in order to make clearer that the current Options Regulatory Fee is \$0.005 per contract.

The proposed change is not otherwise intended to address any other problem, and the Exchange is not aware of any significant problem that the affected market participants would have in complying with the proposed change.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>9</sup> in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that reducing the Floor Broker rebate for QCC transactions is reasonable. Specifically, although the rebate has not incented additional liquidity and price discovery as expected, the Exchange believes that it is still necessary to keep the rebate, albeit at a lower amount, in order for Floor Brokers to competitively price their services and for the Exchange to remain competitive with other exchanges that offer a similar rebate. The Exchange

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<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(4) and (5).

believes the proposed rebate is equitable and not unfairly discriminatory because it would uniformly apply to all QCC orders entered by a Floor Broker for validation by the system and potential execution. The rebate is not unfairly discriminatory to firms that enter QCC orders directly into the Exchange's system through an electronic connection because the fee for the QCC order is the same whether it is entered electronically or through a Floor Broker. In addition, under Commentary .01 to NYSE Arca Options Rule 6.90, only Floor Brokers may enter a QCC order from the Floor; therefore, providing the rebate to Floor Brokers does not discriminate against other QCC orders entered into the Exchange's system. Furthermore, any participant will be able to engage a rebate-receiving Floor Broker in a discussion surrounding the appropriate level of fees that they may be charged for entrusting the entry of the QCC order to the Floor Broker into the Exchange systems for validation and execution. In addition, the Exchange believes that removing the outdated reference concerning the Options Regulatory Fee will make the Fee Schedule more user-friendly for Exchange participants.

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. In particular, reducing the rebate for QCC transactions will not impose a burden on competition because the rebate has not encouraged liquidity and price discovery as originally intended. Instead, reducing the rebate for QCC transactions will promote competition because, while the rebate has not incented additional liquidity and price discovery as expected, the Exchange believes that it is still necessary to keep the rebate, albeit at a lower amount, in order for Floor Brokers to competitively price their services and for the Exchange to remain competitive with other exchanges that offer a similar rebate. The Exchange does not believe that Exchange

participants will be adversely affected by the reduced rebate because they were not availing themselves of it in the manner intended by the Exchange. Moreover, eliminating the obsolete reference to the Options Regulatory Fee will not have an effect on competition because the amendment is technical in nature.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed change reflects this competitive environment.

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>10</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>11</sup> thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend 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. If the Commission takes such action, the

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(2).

Commission shall institute proceedings under Section 19(b)(2)(B)<sup>12</sup> of the Act to determine whether the proposed rule change should be approved or 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-NYSEArca-2013-19 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-2013-19. 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 website viewing and printing in the Commission's Public Reference Room, 100 F

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<sup>12</sup> 15 U.S.C. 78s(b)(2)(B).

Street, NE, Washington, DC 20549-1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such 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-2013-19, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).