

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-69690; File No. SR-NYSEArca-2013-55)

June 4, 2013

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Options Fee Schedule to Change the Monthly Fees for Option Trading Permits and Raise the Fee Cap that Applies to Certain Firm and Broker Dealer Open Outcry Executions

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 May 21, 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 Substance of the Proposed Rule Change

The Exchange proposes to amending [sic] the NYSE Arca Options Fee Schedule (“Fee Schedule”) to change the monthly fees for Option Trading Permits (“OTPs”) and raise the fee cap that applies to certain Firm and Broker Dealer open outcry executions. The Exchange proposes to make the fee changes operative on June 1, 2013 [sic] 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.

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

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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.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule to change the monthly fees for OTPs and raise the fee cap that applies to certain Firm and Broker Dealer open outcry executions. The Exchange proposes to make the fee changes operative on June 1, 2013.

The Exchange requires that a Market Maker have an OTP in order to operate on the Exchange. For electronic Market Making, a Market Maker must have four OTPs in order to submit electronic quotations in every class on the Exchange. These four Market Maker OTPs also permit the firm to have at least one trader on the Floor of the Exchange as a Floor-based open outcry Market Maker. However, the manner in which those OTPs are assigned to individual traders may reduce the permissible number of issues in which electronic quotes are assigned. For instance, two associated Market Makers may assign OTP 1, 2, and 3 to trader A, while the fourth is assigned to trader B. Trader A may now only stream quotes electronically in 750 issues, while trader B may submit quotes electronically in 100 issues. To retain the appointment in more than 750 issues, all four OTPs must be in the same name, and to have an additional individual Market Maker on the Floor, a fifth OTP must be acquired.

To tailor the recovery of costs more closely to the basic costs for administration of an OTP Holder or OTP Firm, the Exchange is proposing to introduce a new tiered pricing model for

Market Maker OTPs. The Exchange currently charges \$4,000 per OTP per month for a Market Maker firm that has between one and four Market Maker OTPs and \$1,000 per month for each additional Market Maker OTP. The Exchange proposes to charge \$6,000 per month for the first Market Maker OTP, \$5,000 per month for the second Market Maker OTP, \$4,000 per month for the third Market Maker OTP, and \$3,000 per month for the fourth Market Maker OTP. The Exchange would continue to charge \$1,000 per month for each additional Market Maker OTP. Thus, under the proposed change, a firm would pay \$2,000 more for the first OTP, \$1,000 more for the second OTP, the same for the third OTP, \$1,000 less for the fourth OTP, and the same for each additional OTP thereafter. In order to have the ability to make electronic markets in every class on the Exchange, a Market Maker firm would pay \$18,000 per month for four Market Maker OTPs and \$1,000 per month for each additional trader on the Floor of the Exchange operating as an open outcry Market Maker. This would be an increase of \$2,000 over the current Fee Schedule. The Exchange is proposing the tiered pricing model because the level of support the Exchange must provide each Market Maker firm per Market Maker OTP decreases as the number of Market Maker OTPs increases (i.e., the first Market Maker OTP requires the most support from the Exchange), and the tiered model is consistent with the pricing practices of other exchanges, as described below.

The Exchange also proposes to raise the fee cap that applies to certain Firm and Broker Dealer open outcry executions. Currently, the Exchange imposes a \$75,000 cap per month on Firm Proprietary fees and Broker Dealer fees for transactions in standard option contracts cleared in the customer range for open outcry executions, exclusive of strategy executions, royalty fees and Firm trades executed via a joint back office agreement. The Exchange has made recent

changes to its Fee Schedule to encourage Customer order flow.<sup>4</sup> As a result, Firm and Broker Dealer open outcry executions subject to this fee cap have increased, and the Exchange believes that the current fee cap is too low. As such, the Exchange proposes to raise the fee cap to \$100,000, which the Exchange believes is in line with current market activity and would continue to encourage Firms and Broker Dealers to engage in a high level of open outcry executions. The Exchange notes that it has not raised the fee cap since it was introduced in 2010.<sup>5</sup> The Exchange also proposes to make a conforming change to endnote 9.

The proposed changes are 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 changes.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>7</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 the proposed Market Maker OTP pricing tiers are reasonable because the level of support the Exchange must provide each Market Maker firm per Market

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<sup>4</sup> See e.g., Securities Exchange Act Release No. 68898 (Feb. 11, 2013), 78 FR 11261 (Feb. 15, 2013) (SR-NYSEArca-2013-11).

<sup>5</sup> See Securities Exchange Act Release Nos. 63471 (Dec. 8, 2010), 75 FR 77928 (Dec. 14, 2010) (SR-NYSEArca-2010-108) (adopting \$75,000 fee cap); 67419 (July 12, 2012), 77 FR 42343 (July 18, 2012) (SR-NYSEArca-2012-71) (extending fee cap to Broker Dealers).

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(4) and (5).

Maker OTP decreases as the number of Market Maker OTPs increases. The Exchange's administrative costs are higher to set up and maintain a Market Maker Firm, such as the paperwork relating to having a Market Maker operation. There is a marginal decrease in administrative costs as the number of Market Maker OTPs increases. The Exchange also believes that a decreasing price structure for successive OTPs may encourage Market Maker firms to purchase additional OTPs and quote more issues, thereby enhancing liquidity on the Exchange. At least two other exchanges also offer similar tiered pricing models for their trading permits where the price decreases with each successive permit. For example, the Exchange's affiliate, NYSE Amex Options, has a sliding scale for market maker Amex Trading Permits ("ATPs"). NYSE Amex Options charges \$8,000 per month for the first ATP, \$6,000 per month for the second ATP, \$5,000 per month for the third ATP, \$4,000 for the fourth ATP, \$3,000 per month for the fifth ATP, and \$2,000 per month for each additional ATP.<sup>8</sup> A market maker must have five ATPs in order to trade all issues on NYSE Amex Options, which cost \$26,000. Chicago Board Options Exchange, Inc. ("CBOE") also has a sliding scale for Trading Permit Holders ("TPHs") who are acting as market makers. The sliding scale is \$5,500 per month for permits one to 10, \$4,000 per month for permits 11 to 20, and \$2,500 per month for permits 21 and higher.<sup>9</sup> The Exchange has estimated that a CBOE market maker would need 34 permits to trade all issues on CBOE, which cost \$130,000, assuming the market maker qualifies for the

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<sup>8</sup> See NYSE Amex Options Fee Schedule, dated as of May 1, 2013, available at [https://globalderivatives.nyx.com/sites/globalderivatives.nyx.com/files/nyse\\_amex\\_options\\_fee\\_schedule\\_050113.pdf](https://globalderivatives.nyx.com/sites/globalderivatives.nyx.com/files/nyse_amex_options_fee_schedule_050113.pdf).

<sup>9</sup> The discounted permit rates of \$4,000 and \$2,500 are only available to TPHs who commit to a full year of that number of permits. See CBOE Fee Schedule, dated as of May 8, 2013, available at [http://www.cboe.com/framed/PDFframed.aspx?content=/publish/feeschedule/CBOEFeeSchedule.pdf&section=SEC\\_RESOURCES&title=CBOE%20-%20CBOE](http://www.cboe.com/framed/PDFframed.aspx?content=/publish/feeschedule/CBOEFeeSchedule.pdf&section=SEC_RESOURCES&title=CBOE%20-%20CBOE).

sliding scale permit rates. The Exchange notes that its proposed fees of \$18,000 for four Market Maker OTPs to cover all issues on the Exchange will still be less than these other two exchanges.

As stated above, it is equitable and not unfairly discriminatory for the Exchange to charge more for the first two OTPs and the same or less for the successive OTPs because the level of support the Exchange must provide for the initial OTPs decreases as the number of Market Maker OTPs increases. The Exchange believes that it is equitable and not unfairly discriminatory to offer favorable pricing to Market Maker firms that quote more issues on the Exchange because that activity promotes liquidity on the Exchange, which benefits all market participants.

The Exchange believes that raising the fee cap for Firm and Broker Dealer open outcry executions is reasonable because it will strike a more appropriate balance between encouraging such executions and generating adequate revenues in light of the Exchange's costs associated with such trading activity. As noted above, the Exchange has not increased the fee cap since it was introduced in 2010. In addition, the proposed fee cap is similar to the fee cap imposed on at least one other exchange.<sup>10</sup> The Exchange further believes that the proposed \$100,000 fee cap is equitable and not unfairly discriminatory because even at such increased level, it would continue to encourage Firms and Broker Dealers to engage in a high level of open outcry executions, which would increase liquidity on the Exchange and benefit all market participants. The Exchange believes that it is equitable and not unfairly discriminatory to continue to offer the fee cap to Firms and Broker Dealers, and not other market participants, because its purpose is to

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<sup>10</sup> Under the NYSE Amex Options Fee Schedule, fees for Firm Proprietary manual trades are aggregated and capped at \$100,000 per month for member firms, with certain exceptions. See n.6 of the NYSE Amex Options Fee Schedule, supra n.8.

attract large block order flow to the floor of the Exchange, where such orders can be better handled in comparison with electronic orders that are not negotiable.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,<sup>11</sup> 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. The proposed Market Maker OTP fees will allow the Exchange to remain competitive with other exchanges by offering a sliding scale of OTP fees while keeping its fees less than certain of its competitors. The Exchange believes that raising the fee cap for Firm and Broker Dealers will promote competition because [sic] would continue to encourage liquidity on the Exchange via open outcry executions, which would benefit all market participants. 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 rule change promotes a 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>12</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>13</sup> thereunder, because it establishes a due, fee, or

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<sup>11</sup> 15 U.S.C. 78f(b)(8).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(2).

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 Commission shall institute proceedings under Section 19(b)(2)(B)<sup>14</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-2013-55 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-2013-55. 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

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<sup>14</sup> 15 U.S.C. 78s(b)(2)(B).



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 Street, NE, Washington, DC 20549, 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 publicly available. All submissions should refer

to File Number SR-NYSEArca-2013-55 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>15</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(12).