

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-70045; File No. SR-NYSEArca-2013-73)

July 26, 2013

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Options Fee Schedule with Respect to Cap on Fees for 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 July 18, 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 Fee Schedule (“Fee Schedule”) with respect to cap on fees for Firm and Broker Dealer open outcry executions. 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

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

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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.

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 with respect to the cap on fees for Firm and Broker Dealer open outcry executions.

Currently, there is a \$100,000 cap per month on 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 ("JBO") agreement.<sup>4</sup> The Exchange proposes to amend the text of the Fee Schedule to make more explicit that the \$100,000 cap applies to the fees on a combined basis. For example, if in a given month a Firm incurred \$55,000 in Proprietary fees and \$55,000 in Broker Dealer fees for standard option contract transactions cleared in the customer range for open outcry executions, exclusive of strategy executions, royalty fees and Firm trades executed via a JBO agreement, then the Firm would only have to pay a total of \$100,000 in such fees.<sup>5</sup> If a

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<sup>4</sup> See Securities Exchange Act Release No. 69690 (June 4, 2013), 78 FR 34681 (June 10, 2013) (SR-NYSEArca-2013-55) (setting cap at \$100,000); see also Securities Exchange Act Release Nos. 67419 (July 12, 2012), 77 FR 42343 (July 18, 2012) (SR-NYSEArca-2012-71) (extending fee cap to Broker Dealers); 63471 (Dec. 8, 2010), 75 FR 77928 (Dec. 14, 2010) (SR-NYSEArca-2010-108) (adopting initial \$75,000 fee cap for Proprietary fees).

<sup>5</sup> Since the fee cap was amended in July 2012 to include Broker Dealer fees, the Exchange has provided a monthly report to its member firms that may have incorrectly suggested that fees for each of the two types of volume had to each separately reach \$100,000 before the fee cap applied. While the Exchange believes that the current text of the Fee Schedule is clear that both types of fees count toward the \$100,000 cap, the Exchange wishes to avoid any potential misunderstanding on the qualifications for the fee cap. The report text also will be updated accordingly to avoid any such misunderstanding. The Exchange notes that, since the \$75,000 fee cap and, later, the \$100,000 fee cap were

Firm or Broker Dealer only had one of the two types of fees that met those qualifications, then it could still qualify if such fees exceeded \$100,000 per month.

The proposed change is not intended to address any other issues, and the Exchange is not aware of any problems that Firms or Broker Dealers 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>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 change is reasonable because it will provide better notice about how to qualify for the fee cap. The Exchange further believes that the fee cap is equitable and not unfairly discriminatory because it is designed to encourage Firms and Broker Dealers to engage in a high level of open outcry executions, which will increase liquidity on the Exchange and benefit all market participants. The Exchange believes that it is equitable and not unfairly discriminatory to offer the fee cap to Firms and Broker Dealers, and not other market participants, because its purpose is to 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.

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implemented, no Firm or Broker Dealer has qualified for the fee cap, whether applied on a combined or separate basis.

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

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

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition. For these reasons, the Exchange believes that the proposal is consistent with the Act.

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

In accordance with Section 6(b)(8) of the Act,<sup>8</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. Rather, the proposed rule change will provide better notice about how to qualify for an available fee cap.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive or credits available at other venues to be more favorable. In such an environment, the Exchange must set its fees and credits so that it remains competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their trading practices, the Exchange believes that the degree to which fee or credit changes in this market may impose any burden on competition is extremely limited. As a result of all of these considerations, the Exchange does not believe that the proposed change will impair the ability of its market participants or competing order execution venues to maintain their competitive standing in the financial markets.

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.

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

### 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>9</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>10</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 Commission shall institute proceedings under Section 19(b)(2)(B)<sup>11</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-2013-73 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.

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<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

<sup>11</sup> 15 U.S.C. 78s(b)(2)(B).

All submissions should refer to File Number SR-NYSEArca-2013-73. 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 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-2013-73, 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>12</sup>

Kevin M. O'Neill  
Deputy Secretary

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