

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-70084; File No. SR-NYSEArca-2013-76)

July 31, 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 Increase the Royalty Fees Applicable to Non-Customer Transactions in Options on the Russell 2000 Index

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 25, 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 to increase the Royalty Fees applicable to non-Customer transactions in options on the Russell 2000 Index (“RUT”). 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

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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.

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 NYSE Arca Options Fee Schedule to increase the Royalty Fees applicable to non-Customer transactions in options on RUT from \$0.15 to \$0.40 per contract. Royalty Fees charged by the Exchange reflect the pass-through charges associated with the licensing of certain products, including RUT. The proposed increase in the Royalty Fee for RUT from \$0.15 to \$0.40 per contract is a reflection of the increased cost the Exchange has incurred in securing a license agreement from the index provider. Absent the license agreement, the Exchange and its participants would be unable to trade RUT options and would lose the ability to hedge small cap securities with a large notional value, European-style cash-settled index option.

The proposed change will be operative on August 1, 2013.

The proposed change is not otherwise intended to address any other issues relating to Royalty Fees and the Exchange is not aware of any problems that 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>4</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>5</sup> in

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

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

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 increase in the Royalty Fee from \$0.15 to \$0.40 for options on RUT is reasonable because Royalty Fees charged by the Exchange reflect the pass-through charges associated with the licensing of certain products, including RUT. The proposed increase is therefore a direct result of an increase in the licensing fee charged to the Exchange by the index provider and the owner of the intellectual property associated with the index.

The Exchange believes that the proposed increase in the Royalty Fee from \$0.15 to \$0.40 for options on RUT is equitable and not unfairly discriminatory because Royalty Fees are assessed only on those non-Customer participants who choose to transact in a product that requires the Exchange to obtain a licensing agreement based on the intellectual property rights associated with the product, as is the case with RUT. The Exchange further believes that this is equitable and not unfairly discriminatory because RUT has some products that can give participants a similar economic exposure without an associated Royalty Fee. In particular, there are exchange-traded fund (“ETF”) options that are based on RUT, such as the iShares Russell 2000 ETF traded under the symbol IWM. This means that participants that would be liable for the Royalty Fees can avoid them by transacting in alternative products, if they so choose.

The Exchange assesses the Royalty Fees on non-Customer participants such as NYSE Arca Market Makers, non-NYSE Arca Market Makers, OTP Holders and OTP Firms, and Broker Dealers.<sup>6</sup> The Exchange believes that it is equitable and not unfairly discriminatory to

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<sup>6</sup> See endnote 11 of the Fee Schedule.

continue to not charge Royalty Fees to Customers, which has been the case since the Exchange implemented Royalty Fees, because the Exchange is attempting to continue to attract Customer order flow in RUT options, which in turn can interact with other participants' order flow on the Exchange to their benefit.<sup>7</sup>

For the reasons given above, the Exchange believes that the proposed increase from \$0.15 to \$0.40 for the Royalty Fee charged to non-Customer transactions in RUT options is reasonable, equitable, and not unfairly discriminatory. 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.

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. By providing all participants on the Exchange with the ability to hedge via RUT options, the Exchange is not placing any burden on competition among its various participants. The Exchange further notes that the licensing agreement it has secured is not an exclusive agreement as at least two other option exchanges continue to trade RUT options and charge a fee related to such license.<sup>9</sup> As such, there is no burden on competition among exchanges for the trading of RUT options.

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<sup>7</sup> See Securities Exchange Act Release No. 55099 (January 12, 2007), 72 FR 2720 (January 22, 2007) (SR-NYSEArca-2006-91).

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

<sup>9</sup> See Chicago Board Options Exchange ("CBOE") Fee Schedule, available at <http://www.cboe.com/TradingResources/FeeSchedule.aspx>. The Exchange's affiliate NYSE MKT LLC also has proposed to increase its Royalty Fee for RUT options from \$0.15 to \$0.40 per contract. See SR-NYSEMKT-2013-65.

Finally, 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. 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 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 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.

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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).

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

#### 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-2013-76 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-2013-76. 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 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 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-2013-76, 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).