

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-70795; File No. SR-NYSEArca-2013-109)

October 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 Apply Routing Fees to Penny Pilot Issues

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 October 22, 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”) to apply routing fees to Penny Pilot issues. The Exchange proposes to implement the fee change effective November 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.

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 apply routing fees to Penny Pilot issues. The Exchange proposes to implement the fee change effective November 1, 2013.

The Exchange currently charges a routing fee of \$0.11 per contract for orders in non-Penny Pilot issues that are routed and executed at away market centers pursuant to order protection requirements of the Options Order Protection and Locked/Crossed Market Plan.<sup>4</sup> The fee applies to standard and Mini option contracts. In addition, the Exchange passes through any transaction fees charged by the destination exchange on executions of such routed orders. The Exchange pays a fee to its routing brokers, and in turn pays clearing fees to OCC to clear routed orders.

The Exchange proposes to begin charging the same \$0.11 per contract routing fee for orders in Penny Pilot issues, which would apply to both standard and Mini option contracts. The Exchange also proposes to pass through any transaction fees charged by the destination exchange on executions of routed orders in Penny Pilot issues. The proposed change would not affect the applicable liquidity take rates for Penny Pilot or non-Penny Pilot issues. The Exchange notes that it did not initially impose the routing fee on Penny Pilot issues because Penny Pilot issues

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<sup>4</sup> See Securities Exchange Act Release No. 64216 (April 6, 2011), 76 FR 20396 (April 12, 2011) (SR-NYSEArca-2011-16).

were charged a take liquidity fee that offset the cost of routing.<sup>5</sup> The Exchange subsequently imposed a take liquidity fee on non-Penny Pilot issues.<sup>6</sup> The Exchange believes that imposing a routing fee would further defray the cost of routing orders and would allow routed orders in Penny Pilot issues to be charged in the same manner as routed orders in non-Penny Pilot issues, which may reduce investor confusion. The Exchange notes that firms may avoid routing charges by either routing orders themselves directly to the away market that is at the National Best Bid or Offer (“NBBO”), or by use of various order types on the Exchange that carry an instruction to not route the order.

The proposed change is not otherwise intended to address any other issues, and the Exchange is not aware of any problems that firms 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>7</sup> in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,<sup>8</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 it is reasonable to impose routing fees on Penny Pilot issues because it would further defray the cost of routing orders. These charges may be avoided by direct routing of an order to the away market that is at the NBBO or by the use of do-not-route

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<sup>5</sup> Id. at 20398.

<sup>6</sup> See Securities Exchange Act Release No. 68179 (November 8, 2012), 77 FR 68163 (November 15, 2012) (SR-NYSEArca-2012-121).

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

<sup>8</sup> 15 U.S.C. 78f(b)(4) and (5).

order types on the Exchange. The Exchange believes that it is equitable and not unfairly discriminatory to impose routing fees on Penny Pilot issues because they are applied in an identical manner to all market participants with similarly situated orders. In addition, the Exchange would be imposing the same routing fees that currently apply to non-Penny Pilot issues. The Exchange also believes that harmonizing the routing fees that apply to Penny Pilot and non-Penny Pilot issues would reduce client confusion.

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>9</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 changes will assist the Exchange in balancing its revenues and costs when routing orders to away market centers and allow routed orders in Penny Pilot issues to be charged in the same manner as routed orders in non-Penny Pilot issues, which may reduce investor confusion. The Exchange also notes that firms may avoid these charges by direct routing of an order to the away market that is at the NBBO or by the use of do-not-route order types on the Exchange.

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

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<sup>9</sup> 15 U.S.C. 78f(b)(8).

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.

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

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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).

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2013-109 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-2013-109. 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 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-2013-109, 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).