

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-71016; File No. SR-NYSEArca-2013-136)

December 6, 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 Raise the Take Liquidity Fee for Lead Market Maker and Market Maker Electronic Executions in Penny Pilot Issues

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on November 26, 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 raise the Take Liquidity fee for Lead Market Maker (“LMM”) and Market Maker electronic executions in Penny Pilot Issues. The Exchange proposes to implement the fee change effective December 1, 2013. The text of the proposed rule change is available on the Exchange’s website at 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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to raise the Take Liquidity fee for LMM and Market Maker electronic executions in Penny Pilot Issues.⁴ The Exchange proposes to implement the fee change effective December 1, 2013.⁵ Currently, the Exchange charges a Take Liquidity fee of \$0.47 per contract for LMM and Market Maker electronic executions in Penny Pilot Issues. The Exchange proposes to raise the Take Liquidity fee to \$0.48 per contract for LMM and Market Maker electronic executions in Penny Pilot Issues in order to keep the fee

⁴ As provided under NYSE Arca Options Rule 6.72, options on certain issues have been approved to trade with a minimum price variation of \$0.01 as part of a pilot program that is currently scheduled to expire on December 31, 2013. See Securities Exchange Act Release No. 69790, (June 18, 2013) 78 FR 37853 (June 24, 2013) (SR-NYSEArca-2013-59).

⁵ The Exchange notes that it has previously filed with the Securities and Exchange Commission a proposed rule change to amend the Fee Schedule relating to co-location fees (File No. SR-NYSEArca-2013-131). Exhibit 5 to SR-NYSEArca-2013-131 specified an effective date for the revised Fee Schedule of December 3, 2013 (changed from November 8, 2013). Exhibit 5 to the instant proposed rule change specifies an effective date of December 1, 2013 (changed from November 8, 2013). On December 1, 2013, the Exchange will update the Fee Schedule to reflect the fee change reflected in the instant proposed rule change, with an effective date of December 1, 2013. On December 3, 2013, the Exchange, subject to effectiveness of SR-NYSEArca-2013-131, will further update the Fee Schedule to reflect the changes set forth in SR-NYSEArca-2013-131, with an effective date of December 3, 2013.

in the same range as other exchanges⁶ and generate revenue that will help support credits offered to market participants that post liquidity. The Exchange does not propose to make any other changes to the fees for electronic executions in Penny Pilot Issues. Take Liquidity fees will remain at \$0.48 for Firms and Broker Dealers and \$0.45 for Customers.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,⁸ 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 raising the Take Liquidity fee from \$0.47 per contract to \$0.48 per contract for LMM and Market Maker electronic executions in Penny Pilot Issues will result in the Exchange's fees for taking liquidity in Penny Pilot issues remaining comparable to fees charged by at least one other exchange.⁹ In addition, the proposed fee change is reasonable because it will generate revenue that will help to support the credits offered for posting liquidity, which are available to all market participants.

The Exchange believes that the proposed fee increase is equitable and not unfairly discriminatory because the Exchange would uniformly assess all market participants, except

⁶ For example, NASDAQ Options Market ("NOM") charges Firms, Professionals, and Non-NOM Market Makers, NOM Market Makers, and Broker-Dealers \$0.48 per contract for removing liquidity in Penny Pilot Options while Customers are charged \$0.45 per contract. See NASDAQ Options Rules Chapter XV, Section 2, and Securities Exchange Act Release No. 70820, (November 6, 2013) 78 FR 68122 (November 13, 2013) (SR-NASDAQ-2013-136).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4) and (5).

⁹ See supra note 6.

Customers, the same Take Liquidity fee of \$0.48 per contract. Customer order flow benefits the market by increasing liquidity, which benefits all market participants; thus Customers are assessed lower fees. Also, LMMs and Market Makers have the ability to earn a higher Post Liquidity credit of \$0.28 per contract for electronic executions in Penny Pilot Issues compared to the \$0.10 per contract Post Liquidity Credit that is available to Firms and Broker Dealers. This is equitable and not unfairly discriminatory because LMMs and Market Makers have obligations to quote and commit capital, both of which contribute to market quality and price discovery on the Exchange. Firms and Broker Dealers do not have such obligations.

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,¹⁰ 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 fee will allow the Exchange to remain competitive with other exchanges by keeping its fees in a similar range.¹¹ The Exchange believes that the proposed fee change reduces the burden on competition because it takes into account the value that various market participants add to the marketplace, as discussed above. 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.

¹⁰ 15 U.S.C. 78f(b)(8).

¹¹ See supra note 6.

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)¹² of the Act and subparagraph (f)(2) of Rule 19b-4¹³ 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)¹⁴ 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

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(2).

¹⁴ 15 U.S.C. 78s(b)(2)(B).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2013-136 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-2013-136. 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-2013-136, 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.¹⁵

Kevin M. O'Neill
Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).