

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-71409; File No. SR-NYSEArca-2014-06)

January 27, 2014

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Increase Its Options Regulatory Fee

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 January 22, 2014, 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 increase its Options Regulatory Fee. The Exchange proposes to implement this change on February 3, 2014. 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 increase its Options Regulatory Fee ("ORF"), effective February 3, 2014.

Background

The ORF, which is currently \$0.005 per contract, is assessed by the Exchange on each OTP Holder or OTP Firm for all options transactions executed or cleared by the OTP Holder or OTP Firm that are cleared by The Options Clearing Corporations ("OCC") in the customer range, i.e., transactions that clear in the customer account of the OTP Holder's or OTP Firm's clearing firm at OCC, regardless of the marketplace of execution.<sup>4</sup> In other words, the Exchange imposes the ORF on all customer-range transactions executed by an OTP Holder or OTP Firm even if the transactions do not take place on the Exchange. In the case where an OTP Holder or OTP Firm executes a transaction and a different OTP Holder or OTP Firm clears the transaction, the ORF would be assessed to the OTP Holder or OTP Firm that executes the transaction. In the case where a non-OTP Holder or non-OTP Firm executes a transaction and an OTP Holder or OTP Firm clears the transaction, the ORF would be assessed to the OTP Holder or OTP Firm that clears the transaction.

The dues and fees paid by OTP Holders or OTP Firms go into the general funds of the Exchange, a portion of which is used to help pay the costs of regulation. In particular, the ORF is

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<sup>4</sup> See Securities Exchange Act Release No. 34-68174 (November 7, 2012), 77 FR 67845 (November 14, 2012) (SR-NYSEArca-2012-118).

designed to recover a material portion of the costs to the Exchange of the supervision and regulation of OTP Holders or OTP Firms, including performing routine surveillances and investigations, as well as policy, rulemaking, interpretive, and enforcement activities. The Exchange monitors the amount of revenue collected from the ORF to ensure that this revenue, in combination with other regulatory fees and fines, does not exceed regulatory costs. The ORF is collected indirectly from OTP Holders or OTP Firms through their clearing firms by OCC on behalf of the Exchange.

#### Proposed Change

The Exchange proposes to increase the ORF from \$0.005 per contract to \$0.0055 per contract in order to recoup increased regulatory expenses while also ensuring that the ORF will not exceed such expenses. Transaction volumes across the industry have increased moderately since the ORF was last changed in December 2012, but the Exchange's regulatory expenses have increased at a faster rate. The Exchange believes that revenue generated from the proposed ORF, when combined with all of the Exchange's other regulatory fees, will cover a material portion but not all of the Exchange's regulatory costs. The Exchange will continue to monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed regulatory costs. If the Exchange determines that regulatory revenues exceed regulatory costs, the Exchange will adjust the ORF by submitting a fee filing change to the Commission.<sup>5</sup> The Exchange proposes to implement this fee change on February 3, 2014.

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<sup>5</sup> The Exchange notes that its regulatory responsibilities with respect to member compliance with options sales practice rules have been allocated to FINRA under an SEC Rule 17d-2 agreement; the ORF is not designed to cover the cost of options sales practice regulation. See Securities Exchange Act Release No. 64399 (May 4, 2011), 76 FR 27114 (May 10, 2011) (SR-NYSEArca-2011-20).

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),<sup>6</sup> in general, and furthers the objectives of Section 6(b)(4) and (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 and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed fee change is reasonable because the Exchange’s revenue from the collection of the ORF has not kept pace with Exchange’s regulatory expenses. As described above, the ORF seeks to recover the costs of supervising and regulating members, including performing routine surveillances and investigations, as well as policy, rulemaking, interpretive and enforcement activities. The proposed ORF increase will help to offset these regulatory expenses, but would not result in total regulatory revenue exceeding total regulatory costs. The Exchange further notes that another options exchange has raised its options regulatory fee to \$0.0095 per contract and thus the Exchange’s ORF of \$0.0055 per contract will still be below that level.<sup>8</sup>

The Exchange believes that the proposed ORF increase is equitable and not unfairly discriminatory because it is objectively allocated to all OTP Holders or OTP Firms on all of their transactions that clear in the customer range at OCC. Moreover, the Exchange believes the ORF ensures fairness by assessing higher fees to those member firms that require more Exchange

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

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

<sup>8</sup> See Securities Exchange Act Release No. 34-71007 (December 6, 2013), 78 FR 75653 (December 12, 2013) (SR-CBOE-2013-117).

regulatory services based on the amount of customer options business they conduct. Regulating customer trading activity is more labor intensive and requires greater expenditure of human and technical resources than regulating non-customer trading activity. Surveillance and regulation of non-customer trading activity generally tends to be more automated and less labor intensive. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are anticipated to be higher than the costs associated with administering the non-customer component of its regulatory program. As such, the Exchange proposes assessing higher fees to those firms that will require more Exchange regulatory services based on the amount of customer options business they conduct.<sup>9</sup>

The Exchange believes that the ORF will continue to be equitable and not unfairly discriminatory because the fee increase is objectively allocated to all OTP Holders or OTP Firms. As noted above, the Exchange will continue to monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed regulatory costs. If the Exchange determines that regulatory revenues exceed regulatory costs, the Exchange will adjust the ORF by submitting a fee filing change to the Commission.

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

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 change is not designed to address any competitive issues. Rather, the proposed

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<sup>9</sup> The ORF is not charged for orders that clear in categories other than the customer range (e.g., market maker orders) because members incur the costs of owning memberships and through their memberships are charged transaction fees, dues and other fees that go into the general funds of the Exchange, a portion of which is used to help pay the costs of regulation. See supra note 4.

change is designed to help the Exchange adequately fund its regulatory activities while seeking to ensure that total regulatory revenues do not exceed total regulatory costs.

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

<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-2014-06 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-2014-06. 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, D.C. 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-2014-06, 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).