

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-72789; File No. SR-NYSEArca-2014-84)

August 7, 2014

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Options Fee Schedule Relating to Lead Market Maker Rights Fees

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 August 1, 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 amend the NYSE Arca Options Fee Schedule (“Fee Schedule”) relating to Lead Market Maker (“LMM”) Rights Fees. The Exchange proposes to implement the fee change effective August 1, 2014. 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

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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 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 purpose of this filing is to reduce the Lead Market Maker Rights Fees for all Lead Market Makers ("LMMs") that transact a significant daily volume.

Currently, LMMs pay a Lead Market Maker Rights Fee ("LMM Rights Fee") on each issue in their allocation, ranging from \$45 per month to \$1,500 per month, depending on the activity level in the issue. The monthly LMM Rights Fee is based on the Average National Daily Customer Contracts. The applicable LMM Rights Fee is directly related to the number of allocations in an LMM's appointment; the more allocations in an appointment, the higher the LMM Rights Fee. This is particularly the case for issues that have higher Average National Daily Customer Contracts, which have higher LMM Rights Fees associated with them. Because of the LMM Rights Fees, LMMs that transact a significant amount of business on the Exchange have been reluctant to take on additional allocations. At the present time, there are approximately 2,600 different underlying issues listed on NYSE Arca Options. The Exchange regularly receives five to 10 requests to list new issues each week. The Exchange then surveys the LMM community to invite applications for allocation. At present, most surveys only receive one or two responses per issue, and a key factor in applying for allocation is the profitability of trading in an issue given the anticipated Rights Fee.

In order to generate more LMM interest in applying for new issue allocations, the Exchange is implementing a volume-based metric that will apply to all LMMs on the Exchange. Any LMM that meets certain volume criteria will be eligible for a reduced LMM Rights Fee.

Specifically, the Exchange is proposing that LMMs with daily contract volume traded electronically of at least 50,000 contracts, of which 10,000 such contracts are in its LMM appointment, will qualify for a reduced LMM Rights Fee. LMMs that qualify will be charged a 50% reduction in total LMM Rights Fees. As proposed, whether an LMM will be charged 50% of the LMM Rights Fee will be determined based on an average of the daily contract volume traded electronically each trading day by that LMM in a calendar month.

The Exchange believes that providing a means for LMMs that achieve certain volume levels to be eligible for a reduced monthly LMM Rights Fees will encourage LMMs that already transact a significant amount of business on the Exchange, but may be reluctant to apply for additional allocations, to apply for additional allocations. NYSE Arca proposes that the volume be in overall electronic Market Maker volume with a static, specified subset of that contract volume (*i.e.*, 10,000 contracts) from names in the LMM appointment, which the Exchange believes will enable LMMs that have a smaller number of issues in their appointment or have a preponderance of low volume issues to achieve this rate modification along with their larger LMM counterparts.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁴ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,⁵ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(4) and (5).

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 modification to LMM Rights Fees is reasonable, equitable and not unfairly discriminatory because by reducing the overhead costs of LMMs that transact a significant amount of business on the Exchange, the Exchange would create an incentive for LMMs that meet certain volume standards to apply for additional allocations. Because of the overhead costs associated with the LMM Rights Fees, LMMs that meet the proposed volume standards have expressed that they are unwilling to apply for additional appointments in new issues. The Exchange believes that the proposed fee change would promote a fair and orderly market and protect investors and the public interest because it would encourage LMMs that engage in significant trading on the Exchange to apply for additional appointments, thus assuring the availability of an LMM for all new appointments. The Exchange believes it is also reasonable, equitable and not unfairly discriminatory to provide a reduced fee to LMMs because the reduced overhead costs will enhance the ability to provide liquidity, which will benefit all market participants.

In addition, the Exchange believes that the proposed rate is reasonable, equitable and not unfairly discriminatory because it will recognize those LMMs that meet their obligation to provide liquidity, as evidenced by achieving a significant yet reasonable electronic transaction volume. The Exchange believes that the requisite volume level (i.e., 50,000 contracts) to qualify for the reduced fee is reasonable, equitable and not unfairly discriminatory because it is lower than the current average volume traded by LMMs, and therefore it is a standard well within reach of the preponderance of LMMs, regardless of whether they have a physical presence on the Floor. In addition, the static, specific portion to be executed in the LMM's appointment (i.e.,

10,000 contracts) is moderately above the average traded by LMMs in their appointment. The Exchange therefore believes that the static portion of the volume requirement is reasonably tailored to encourage LMMs to actively engage in their LMM appointments in order to qualify for the proposed LMM Right Fees change. The Exchange further believes that this requirement is reasonable, equitable and not unfairly discriminatory because it only requires a moderate proportion of the volume requirement in the LMM appointment, which encourages LMMs with fewer names or with a preponderance of low volume names in their appointments, to be eligible for the proposed fee change. Further, the proposed reduced rate is reasonable, equitable and not unfairly discriminatory among LMMs because it is based on an achievable volume level (i.e., 50,000 contracts is below the average volume traded by LMMs) with a meaningful volume – 10,000 contracts – in the LMM appointment, which allows the LMM to apply the breath of its market making business so that the mix of issues in an LMM's appointment does not become a barrier to achievement. In addition, because the proposed fee change would be based only on prospective electronic volume executed on the Exchange, and therefore all LMMs could attain the volume threshold, the Exchange believes the fee is reasonable, equitable and not unfairly discriminatory.

The proposed fee is also reasonable, equitable and not unfairly discriminatory because the Exchange believes it may indirectly benefit non-LMM market participants. Specifically, while the LMM Rights Fee is charged only to LMMs and therefore arguably has no direct impact on non-LMMs, the Exchange notes that, absent this proposal, LMMs seeking to avoid large monthly Rights Fees could either decline to apply for new option allocations and/or choose to relinquish their LMM role in any number of option issues. The Exchange believes that having LMMs resign from acting as a LMM in an option issue to reduce the amount of the LMM Rights

Fee they incur would be detrimental to the Exchange and its participants. Because LMMs have heightened quoting obligations as compared to Market Makers,⁶ LMMs that may choose to relinquish issues to reduce their LMM Rights Fees, would result in reduced displayed liquidity in those issues, thereby harming investors and the public. Thus, the Exchange believes the proposal is reasonable, equitable and not unfairly discriminatory to non-LMMs and, in fact, may benefit other market participants.

The Exchange notes that the notion of a volume-based metric is not new or novel in the context of a monthly fee, such as the LMM Rights Fee. For example, on NYSE MKT LLC, a Floor Market Maker may qualify for a “reduced” options trading permit (“ATP”) fee, which is calculated on a monthly basis, if, among other things, the Market Maker transacts most of its volume in open outcry.⁷ Thus, the proposed reduced monthly LMM Rights Fee is reasonable, equitable and not unfairly discriminatory as other options exchanges impose similar rate structures.

The timing of the calculation of the LMM Rights Fee is reasonable as it is calculated on the issues in an LMM’s appointment on the last trading day of the month, which gives all LMMs

⁶ See Rule 6.37B(b) and (c) (requiring that LMMs provide “continuous two-sided quotations throughout the trading day in its appointed issues for 90% of the time the Exchange is open for trading in each issue” while requiring that Market Makers provide “continuous two-sided quotations throughout the trading day in its appointed issues for 60% of the time the Exchange is open for trading in each issue”).

⁷ See NYSE Amex Options Fee Schedule, dated August 1, 2014, available here: https://www.theice.com/publicdocs/nyse/markets/amex-options/NYSE_Amex_Options_Fee_Schedule.pdf (providing that “[a] Floor Market Maker that purchases no more than two ATPs per month may purchase them for \$5,000 each (‘Floor Market Maker ATP Fee’) if the Floor Market Maker transacts at least 75% of its volume, excluding Qualified Contingent Cross and Strategy Executions, manually, by public outcry.”)

a fixed date to anticipate what the fees will be and time to meet the volume standards for the proposed fee.

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,⁸ 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 Exchange believes that the proposed rate reduces the burden on competition because it will enhance the ability for LMMs to quote competitively in more issues. The Exchange believes the reduced rate will reduce the burden on competition among LMMs as the reduced overhead costs will enhance the ability of firms to provide liquidity, which will benefit all market participants. The Exchange also believes that the proposed fee reduction will have a positive impact on competition and may indirectly benefit non-LMM market participants. Specifically, while the LMM Rights Fee is charged only to LMMs and therefore arguably has no direct impact on non-LMMs, the Exchange notes that absent this proposal LMMs seeking to avoid large monthly Rights Fees could decline to apply for new option allocations and/or choose to relinquish their LMM role in any number of option issues. The Exchange believes that having LMMs resign from acting as a LMM in an option issue to reduce the amount of the LMM Rights Fee they incur would be detrimental to the Exchange and its participants. Because LMMs have heightened quoting obligations as compared

⁸ 15 U.S.C. 78f(b)(8).

to Market Makers,⁹ LMMs that may choose to relinquish issues to reduce their LMM Rights Fees, would result in reduced displayed liquidity in those issues, thereby harming investors and the public. In this regard, the Exchange believes the proposal does have a meaningful positive impact on competition.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues, and providing a reduced LMM Rights Fees will allow LMMs to both expand the number of issues allocated to them and to reduce the overhead which in turn encourages liquidity to compete for business. The Exchange believes that basing the qualification for the LMM Rights Fee on electronic transaction volume will encourage competition that is in furtherance of the Act by attracting business with enhanced liquidity and reduced market spread.

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)¹⁰ of the Act and subparagraph (f)(2) of Rule 19b-4¹¹ thereunder, because it establishes a due, fee, or

⁹ See supra n. 6.

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(2).

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)¹² 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. Please include File Number SR-NYSEArca-2014-84 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2014-84. 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

¹² 15 U.S.C. 78s(b)(2)(B).

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-2014-84, 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.¹³

Kevin M. O'Neill
Deputy Secretary

¹³ 17 CFR 200.30-3(a)(12).