

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-82993; File No. SR-NYSEArca-2018-19)

April 4, 2018

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the NYSE Arca Options Fee Schedule With Respect to the 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 March 23, 2018, 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 Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Options Fee Schedule (“Fee Schedule”) by modifying the description of the Options Regulatory Fee (“ORF”). 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

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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.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to clarify the description of the ORF.

The Exchange charges an ORF in the amount of \$0.0055 per contract side. The proposed rule change does not change the amount of the ORF, but instead modifies the rule text to clarify how the ORF is assessed and collected. Currently, the Exchange describes the ORF as follows:

The Options Regulatory Fee will be assessed 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 Corporation ("OCC") in the customer range regardless of the exchange on which the transaction occurs. The fee is collected indirectly from OTP Holders or OTP Firms through their clearing firms by the OCC on behalf of NYSE Arca. Effective December 1, 2012, an OTP Holder or OTP Firm shall not be assessed the fee until it has satisfied applicable technological requirements necessary to commence operations on NYSE Arca. The Exchange may only increase or decrease the Options Regulatory Fee semi-annually, and any such fee change will be effective on the first business day of February or August. The Exchange will notify participants via a Trader Update of any change in the amount of the fee at least 30 calendar days prior to the effective date of the change.<sup>4</sup>

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<sup>4</sup> See Fee Schedule, NYSE Arca GENERAL OPTIONS and TRADING PERMIT (OTP) FEES, Regulatory Fees, Options Regulatory Fee, [available here](#).

The Exchange proposes to modify this description to more accurately reflect how the ORF is imposed. Specifically, the ORF is assessed to each OTP Holder or OTP Firm (referred to herein collectively as “OTP Holders”) for all options transactions cleared (but not necessarily executed) by an OTP Holder through the OCC in the customer range regardless of the exchange on which the transaction occurs. The ORF is only assessed to OTP Holders that act as the clearing firm for the transaction, regardless of whether the executing firm (if different from the clearing firm) is an OTP Holder.<sup>5</sup> Thus, the Exchange proposes to delete the words “executed or” from the current description of the ORF, and to make clear that the ORF is assessed “to each OTP Holder or OTP Firm” on transactions “that are cleared by the OTP Holder or OTP Firm through The Options Clearing Corporation (“OCC”)” and that the ORF is “collected from OTP Holder and OTP Firm clearing firms by OCC on behalf of NYSE Arca.”<sup>6</sup> The Exchange also proposes to clarify that it “uses reports from OCC when assessing and collecting the ORF.”<sup>7</sup> The Exchange believes these changes would clarify how the ORF is assessed and collected. To illustrate how the ORF is assessed and collected, the Exchange provides the following set of scenarios.

Scenario 1:

Executing (or Give-Up) Firm is not an OTP. The Executing Firm does not “give-up” or

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[https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE\\_Arca\\_Options\\_Fee\\_Schedule.pdf](https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf).

<sup>5</sup> The Exchange uses reports from OCC to determine the identity of the clearing firm and compares that to the list of OTP Holders for billing purposes.

<sup>6</sup> See proposed Fee Schedule, NYSE Arca GENERAL OPTIONS and TRADING PERMIT (OTP) FEES, Regulatory Fees, ORF. In connection with the proposed revisions, the Exchange proposes to remove as redundant the word “indirectly” from the sentence explaining that the OCC collects the ORF from the OTP Holder clearing firm. See id.

<sup>7</sup> See id. See supra note 5.

“CMTA” the transaction to another clearing firm.<sup>8</sup>

No ORF Fee is assessed.

Scenario 2:

Executing Firm is an OTP Holder. The Executing Firm “give-ups” or “CMTAs” the transaction to another clearing firm that is not an OTP Holder.

No ORF Fee is assessed.

Scenario 3:

The Executing (or Give-Up) Firm is an OTP Holder. The Executing Firm does not “give-up” or “CMTA” the transaction to another clearing firm.

ORF Fee is assessed on the self-clearing Executing Firm.

Scenario 4:

The Executing (or Give-Up) Firm is an OTP Holder. The Executing Firm “give-ups” or “CMTAs” the transaction to another clearing firm that is also an OTP Holder.

ORF Fee is assessed on the CMTA (clearing) firm.

Scenario 5:

The Executing (or Give-Up) Firm is not an OTP Holder. The Executing Firm “give-ups” or “CMTAs” the transaction to another clearing firm that is an OTP Holder.

ORF Fee is assessed on the CMTA (clearing) firm.

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As illustrated above, the Exchange does not assess the ORF on non-OTP Holders that self-clear transactions, even if the executing firm is an OTP Holder; the Exchange likewise does

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<sup>8</sup> A CMTA or Clearing Member Trade Assignment is an agreement by which an investor may enter derivative trades with a limited number of different brokers and later consolidate these trades with one brokerage house for clearing.

not impose the ORF if both the executing firm and the firm that clears the transaction on its behalf are non-OTP Holders.<sup>9</sup>

The Exchange proposes to modify the Fee Schedule to make clear that it does not assess the ORF on outbound linkage trades.<sup>10</sup> “Linkage trades” are tagged in the Exchange’s system, so the Exchange can distinguish them from other trades. A customer order routed to another exchange results in two customer trades, one from the originating exchange and one from the recipient exchange. Charging ORF on both trades could result in double-billing of ORF for a single customer order, thus the Exchange will not assess ORF on outbound linkage trades in a linkage scenario.

To further streamline the Fee Schedule, the Exchange also proposes to delete superfluous and obsolete references to long-past effective dates. Specifically, the Exchange proposes to delete references to the effective dates of December 1, 2012 and February 3, 2014, which would add clarity and transparency to the Fee Schedule.<sup>11</sup> In addition, the Exchange proposes to define the Options Regulatory Fee as the ORF and to utilize this shorthand reference in the description of this fee.<sup>12</sup>

The Exchange notes that the ORF is designed to recover a material portion of the costs to

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<sup>9</sup> Although the Exchange believes that its broad regulatory responsibilities would support applying the ORF to transactions that are executed (even if not ultimately cleared) by an OTP Holder, the Exchange only imposes the ORF on transactions ultimately cleared by OTP Holders at this time. The Exchange’s regulatory responsibilities are the same regardless of whether an OTP Holder enters a transaction or clears a transaction. The Exchange regularly reviews all such activities, including monitoring surveillance for position limit violations, manipulation, front-running, contrary exercise advice violations and insider trading. These activities span across multiple exchanges.

<sup>10</sup> See proposed Fee Schedule, NYSE Arca GENERAL OPTIONS and TRADING PERMIT (OTP) FEES, Regulatory Fees, ORF.

<sup>11</sup> See id.

<sup>12</sup> See id.

the Exchange of the supervision and regulation of OTP Holder Customer transactions, 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 Exchange may only increase or decrease the ORF semi-annually, and any such fee change will be effective on the first business day of February or August. If the Exchange determines that regulatory revenues exceed regulatory costs, the Exchange will adjust the ORF by submitting a fee filing and notifying OTP Holders via Trader Update at least 30 days prior to the effective date. The Exchange believes that revenue generated from the ORF, when combined with all of the Exchange's other regulatory fees and fines, will cover a material portion of the Exchange's regulatory costs.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)<sup>13</sup> of the Act, in general, and Section 6(b)(4) and (5)<sup>14</sup> of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Exchange believes the proposed changes to the description of ORF are reasonable, equitable and not unfairly discriminatory because the changes add clarity and transparency to the Fee Schedule by more accurately describing how the ORF is assessed and collected. The proposed change does not alter the operation of the ORF, nor does it alter the per contract rate of

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<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(4) and (5).

the ORF. The Exchange believes that specifying that OCC files are used to determine the assessment and collection of the ORF would add clarity and transparency to the Fee Schedule.

The Exchange believes it is reasonable, equitable and not unfairly discriminatory to opt to not to assess and collect the ORF when neither the executing firm nor the CMTA (clearing) firm is an OTP Holder because such entities are not members of the Exchange. Although the Exchange believes that its broad regulatory responsibilities would support applying the ORF to transactions that are executed (even if not ultimately cleared) by an OTP Holder, because its regulatory responsibilities are the same regardless of whether an OTP Holder executes a transaction or clears a transaction, at this time the Exchange imposes the ORF solely on transactions ultimately cleared by OTP Holders.

The Exchange believes the ORF is equitable and not unfairly discriminatory because it is assessed to all OTP Holders on all their transactions that clear as customer at the OCC. The Exchange believes it is appropriate to assess the ORF only to transactions that clear as customer at the OCC because regulating OTP Holders' customer trading activity is more labor intensive and requires greater expenditure of human and technical resources than regulating OTP Holders' non-customer trading activity. The Exchange believes the ORF is designed to be fair by assessing fees to those OTP Holders that require more Exchange regulatory services based on the amount of customer options business they conduct.

The Exchange believes it is reasonable, equitable and nondiscriminatory to not impose the ORF on outbound linkage trades. Linkage trades" are tagged in the Exchange's system, so the Exchange can distinguish them from other trades. A customer order routed to another exchange results in two customer trades, one from the originating exchange and one from the recipient exchange. Charging ORF on both trades could result in double-billing of ORF for a

single customer order, thus the Exchange will not assess ORF on outbound linkage trades in a linkage scenario.

The Exchange believes that the proposal deleting outdated reference to long-past effective dates and removing the word “indirectly” is reasonable as it would streamline the Fee Schedule by removing superfluous language thereby making the Fee Schedule easier for market participants to navigate.

The ORF is designed to recover a material portion of the costs to the Exchange of the supervision and regulation of OTP Holder customer options business, 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 Exchange has designed the ORF to generate revenues that, when combined with all of the Exchange’s other regulatory fees, would be less than or equal to the Exchange’s regulatory costs, which is consistent with the view of the Securities and Exchange Commission (“Commission”) that regulatory fees be used for regulatory purposes and not to support the Exchange’s business side. In this regard, the Exchange believes that the ORF is reasonable.

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 rule change is not intended to address any competitive issues but rather to provide more clarity and transparency regarding how the Exchange assesses and collects the ORF. The Exchange believes any burden on competition imposed by the proposed rule change is



outweighed by the need to help the Exchange adequately fund its regulatory activities to ensure compliance with the Exchange Act.

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>15</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>16</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>17</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>15</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>16</sup> 17 CFR 240.19b-4(f)(2).

<sup>17</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 No. SR-NYSEArca-2018-19 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 No. SR-NYSEArca-2018-19. 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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change.

Persons submitting comments are cautioned that we do not redact or edit personal identifying

information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-NYSEArca-2018-19, 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>18</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>18</sup> 17 CFR 200.30-3(a)(12).