

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-84099; File No. SR-NYSEARCA-2018-64)

September 12, 2018

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

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 29, 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 modify the NYSE Arca Options Fee Schedule (“Fee Schedule”). The Exchange proposes to implement the fee change effective September 1, 2018. 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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to modify the Fee Schedule, effective September 1, 2018, to modify the existing Floor Broker rebate for executed Qualified Contingent Cross (“QCC”) orders⁴, and to adjust the Firm and Broker Dealer Monthly Fee Cap.

Currently, the Exchange offers a Floor Brokers Rebate of \$0.035 per contract side for QCC trades executed on behalf of non-Customers.⁵ The Exchange also offers a Firm and Broker Dealer Monthly Fee Cap (the “Fee Cap”) which caps fees at \$100,000 for Manual (Open Outcry) Executions and, for QCC transactions executed by a Floor Broker from the Floor of the Exchange, for Firm and Broker Dealer transactions cleared in the customer range.⁶

⁴ The QCC permits an OTP Holder or OTP Firm to effect a qualified contingent trade (“QCT”) in a Regulation NMS stock and cross the options leg of the trade on the Exchange immediately upon entry and without order exposure if the order is for at least 1,000 contracts, is part of a QCT, is executed at a price at least equal to the national best bid or offer, as long as there are no Customer orders in the Exchange’s Consolidated Book at the same price.

⁵ See Fee Schedule, QUALIFIED CONTINGENT CROSS TRANSACTION FEES, available here, https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf.

⁶ The Fee Cap excludes fees for Strategy Executions, Royalty Fees and firm trades executed via a Joint Back Office agreement. See *id.* FIRM AND BROKER DEALER MONTHLY FEE CAP. The Exchange also offers a lesser cap on fees for those OTP Holders and OTP Firms that achieve certain Tiers of the Customer

The Exchange proposes to replace the existing Floor Broker Rebate with a two-tiered credit. As proposed, the first tier would provide a \$0.07 per contract credit for “Floor Brokers executing 300,000 or fewer contracts in a month,” which tier would effectively replace the current \$0.035 “Floor Broker Rebate for Executed Orders – Per Contract Side.”⁷ The Exchange proposes to introduce a second tier that would enable Floor Brokers to earn a higher credit -- of \$0.10 -- for executed QCC transactions in excess of 300,000 contracts.⁸ The proposed credits would be paid solely on the volume executed to achieve each tier and is not retroactive to the first contract.⁹ For example, if a Floor Broker executes 400,000 QCC contracts in a given month, the Floor Broker would receive the \$0.07 per contract for the first 300,000 QCC transactions and \$0.10 per contract for the remaining 100,000 contracts. As with the existing Floor Broker Rebate,

Penny Pilot Posting Credit Tiers. See id., FIRM AND BROKER DEALER MONTHLY FIRM CAP TIERS.

⁷ The Exchange also proposes to make a number of textual changes to the table regarding QCC transactions. Specifically, the Exchange proposes to revise the title of the table to reflect the shorthand “QCC” and that the table includes fees “and credits”; to revise the column headings to “Participant” and “Per Contract Fee or Credit”; to remove reference to “per side” with respect to QCC fees as fees/credits are based on participant type executing such contracts; and to remove the term “Rebate” as the Floor Brokers are actually given a credit against fees incurred. See proposed Fee Schedule, QUALIFIED CONTINGENT CROSS (“QCC”) TRANSACTION FEES AND CREDITS and Endnote 13. The Exchange believes these technical changes would add clarity and transparency to the Fee Schedule.

⁸ See id. (including reference to Endnote 13 in proposed tier, consistent with the current schedule for QCCs). See Fee Schedule, Endnote 13 supra n. 5 (providing that the Floor Broker credit does not apply to QCC executions in which a Customer is on both sides of the QCC and capping the potential monthly credit at \$375,000 per Floor Broker firm).

⁹ See id., Endnote 13 (providing, in relevant part, “[t]he Floor Broker credit is paid only on volume within the applicable tier and is not retroactive to the first contract traded”).

Customer-to-Customer QCC trades would not qualify for any credit as such transactions net the Exchange no revenue.

The Exchange notes that the proposed credit for Floor Brokers is consistent with such credits offered for QCC volumes across the industry. Specifically, the Nasdaq OMX PHLX (“PHLX”) and Nasdaq ISE (“ISE”) pay volume-based rebates for QCC volume that range from \$0.00 to \$0.11 per contract.¹⁰

The Exchange also proposes to adopt an incremental service fee of \$0.01 per contract for Firm or Broker Dealer Manual transactions once an OTP Holder or OTP Firm has reached the applicable Fee Cap. The incremental service fee would not apply to the execution of a QCC order. The Exchange notes that this proposed fee is competitive as it is consistent with the incremental service fee that NYSE American imposes once firms have reached a similar monthly fee cap on that exchange.¹¹

2. Statutory Basis

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

¹⁰ See PHLX Pricing Schedule, [available here](#), <http://www.nasdaqtrader.com/Micro.aspx?id=phlxpricing>; and ISE Schedule of Fees, [available here](#), http://ise.cchwallstreet.com/tools/PlatformViewer.asp?selectednode=chp_1_1_5&manual=%2Fcontents%2Fise%2Fise-fee%2F.

¹¹ See NYSE American Options Fee Schedule, [Section I.I., Firm Monthly Fee Cap](#), [available here](#), https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE_American_Options_Fee_Schedule.pdf (providing that “[o]nce a Firm has reached the Firm Monthly Fee Cap, an incremental service fee of \$0.01 per contract for Firm Manual transactions will apply, except for the execution of a QCC order, in which case there is no incremental service fee”). The Exchange notes that the fee cap on NYSE American applies only to “Firms,” whereas the NYSE Arca Fee Cap applies to both Firms and Broker Dealers.

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 the proposed tiered Floor Broker credits for QCC volume rebates are reasonable, equitable and not unfairly discriminatory because the credits are designed to attract more QCC volume to the Exchange. To the extent that the credits attract additional order flow to the Exchange, all market participants should benefit. Market participants may engage Floor Brokers to entrust them with their QCC orders and, given the credit that a Floor Broker may receive, such market participants may negotiate the appropriate fee for such order flow.

The Exchange also believes that the proposed credits are equitable and not unfairly discriminatory because they would apply to all Floor Brokers that execute QCC orders on the Exchange on an equal and non-discriminatory basis. Moreover, the Exchange notes that the proposed credits are consistent with credits offered by other options exchanges. Specifically, PHLX and ISE pay volume-based rebates for QCC volume that range from \$0.00 to \$0.11 per contract.¹²

The Exchange believes that the proposed textual changes to the Floor Broker credit (see supra n. 7) would add clarity, transparency and internal consistency to the Fee Schedule.

The Exchange believes that adopting the proposed incremental service fee once a firm reaches the Fee Cap is reasonable because it would allow the Exchange to recoup the costs incurred in providing certain services, including but not limited to trade matching and processing, post trade allocation, submission for clearing and customer service activities related to trading activity on the Exchange. In this regard, the

¹² See supra n. 10.

Exchanges notes that the proposed fee is consistent with similarly such incremental fees charged on other options exchanges in connection with similar fee caps and is therefore competitive.¹³ Finally, the Exchange believes the proposal to adopt the service fee is equitable and not unfairly discriminatory because it would uniformly apply to all member firms engaged in manual proprietary trading that have reached the Fee Cap.

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

In accordance with Section 6(b)(8) of the Act, the Exchange does not believe that the proposed rule change would 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 change would allow Floor Brokers to better compete for QCC volumes as the credits are consistent with those paid to participants on other exchanges.¹⁴ The Exchange also believes that the proposed service fee is likewise competitive as it would allow the Exchange to recoup certain costs incurred in providing services to member firms and is consistent with similar such fees charged by other exchanges that offer a similar monthly fee cap.¹⁵

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. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

¹³ See supra n. 11.

¹⁴ See supra n. 10.

¹⁵ See supra n. 11.

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)¹⁶ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁷ 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)¹⁸ 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:

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f)(2).

¹⁸ 15 U.S.C. 78s(b)(2)(B).

- 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-2018-64 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NYSEARCA-2018-64. 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 Number SR-NYSEARCA-2018-64 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.¹⁹

Eduardo A. Aleman
Assistant Secretary

¹⁹ 17 CFR 200.30-3(a)(12).