

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-64216; File No. SR-NYSEArca-2011-16)

April 6, 2011

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Modifying Credits for Posting Liquidity for Certain Transactions and Imposing Routing Fees to Defray the Costs of Routing Orders to Away Markets

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that, on April 1, 2011, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) 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 Exchange. 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 credits for posting liquidity for certain transactions and impose routing fees to defray the costs of routing orders to away markets. The text of the proposed rule change is available at the Exchange, at the Commission’s Public Reference Room, on the Commission’s website at www.sec.gov, and www.nyse.com.

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 specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

NYSE Arca proposes to modify its credits for posting liquidity in Penny Pilot issues.³

The Exchange also proposes to replace certain premium credits in high volume issues and volume tier pricing incentives for Customers and Market Makers in Penny Pilot issues with a Customer Monthly Posting Threshold structure in Penny Pilot issues that will provide increased credits in certain circumstances. In addition, the Exchange is proposing a routing fee and is also eliminating certain references to products that are no longer traded on the Exchange.

Changes to Post Liquidity Credits

Electronic transactions in Penny Pilot issues are assessed Take Liquidity fees and credited with Post Liquidity credits. The Exchange proposes to increase the Post Liquidity credit for Lead Market Makers and Market Makers from \$0.30 per contract to \$0.32 per contract. The Exchange proposes to reduce the Post Liquidity credit for Firm and Broker Dealer Electronic orders from \$0.25 per contract to \$0.10 per contract to reflect the fact that attempts to attract Firm and Broker Dealer liquidity with higher posting credits have not proved fruitful because based on our observations, such entities are proprietary traders who seek opportunities and venues to trade against Customer order flow to capture the spread rather than trade based on rebates and fees.

Lead Market Makers and Market Makers pay significantly higher OTP fees than OTP Holders that are Firm proprietary traders, while Broker Dealers that are not OTP Holders pay no

³ 363 issues have been approved to trade in a minimum price variation of \$0.01 as part of a Pilot Program ("Penny Pilot") in accordance with NYSE Arca Rule 6.72.

OTP fee. The proposed difference in Posting Credits between these categories is intended to partially offset the difference in OTP costs. Additionally, Market Makers and Lead Market Makers have an affirmative continuous quoting obligation that does not apply to Firms and Broker Dealers. This obligation imposes greater costs and potentially greater risks on Market Makers and Lead Market Makers than the costs and risks realized by Firms and Broker Dealers, and Market Makers and Lead Market Makers should thus be rewarded with a greater posting credit. The proposed differential is less than that found on NASDAQ OMX PHLX (“Phlx”), a competing market, which provides an “adding liquidity rebate” of \$0.23 for market makers and \$0.00 for Firms and Broker-Dealers, while charging an “adding liquidity fee” of \$0.00 for Market Makers, but \$0.05 for Firms and Broker Dealers. The differential on Phlx between the two classifications of market participants is \$0.28, while NYSE Arca proposes a differential of \$0.22.⁴

The Exchange proposes to eliminate the “Premium Tier” of issues which received an additional \$0.05 per contract Post Liquidity credit above the stated Post Liquidity rates. The Premium Tier distinction did not have the intended effect of increasing market share in these products, and the Exchange proposes a more streamlined fee schedule.

In addition, the Exchange proposes to increase the Post Liquidity credit above the base Customer Post Liquidity credit of \$0.25 per contract for OTP Holders that aggregate Customer orders that meet certain volume thresholds in Penny Pilot issues. An OTP Holder sending Customer orders that in the aggregate exceed 500,000 contracts executed in a month from posting liquidity will receive a posting credit of \$0.32 per contract on all executions resulting from posted liquidity. If such aggregated Customer orders exceed 800,000 contracts executed in

⁴ See Phlx Price List, “Make/Take Pricing Program” at (<http://www.nasdaqtrader.com/Micro.aspx?id=PHLXPricing>).

a month from posting liquidity, the OTP Holder will receive a posting credit of \$0.34 per contract on all executions resulting from posted liquidity. If such aggregated Customer orders exceed 1,200,000 contracts executed in a month from posting liquidity, the OTP Holder will receive a posting credit of \$0.38 per contract on all executions resulting from posted liquidity. The volume thresholds are intended to incentivize firms that route some Customer orders to the Exchange to increase the number of orders that are posted to achieve the next threshold. Increasing the number of orders posted on the Exchange will in turn provide tighter and more liquid markets, and therefore attract more business overall.

It is possible for an OTP Holder routing Customer orders to the Exchange to reach a threshold that provides for a greater posting credit than that of a Market Maker or Lead Market Maker. Market Makers and Lead Market Makers incorporate Post Liquidity credits into their models for quote calculations based on their overhead costs and prefer to have a single credit apply across all similar transactions. OTP Holders who aggregate Customer business are subject to the relative level of activity of the industry, and thus may not have enough business in a particular month to meet a volume threshold. To the extent that Market Makers have an obligation to be present on the Exchange, but Customer order flow may be directed anywhere, the Exchange wishes to incentivize the directing of Customer order flow to NYSE Arca. As indicated above, Firms and Broker Dealers are proprietary traders that seek to trade with Customer order flow to capture the spread rather than trade based on rebates and fees. We have found over time that the higher Post Liquidity credit for such entities has not caused them to post more liquidity on the Exchange. To incentivize such entities to send order flow to the Exchange, we have determined to increase the incentive to send Customer order flow to the Exchange,

which in turn is designed to attract more trading interest from such entities to trade with that Customer order flow, and enhance trading opportunities for all market participants.

The Exchange proposes to eliminate the “Tiered Pricing For Penny Pilot Issues,” which provided escalating Take Discounts for Customer executions in certain volume ranges, and provided additional Post Credits for Market Maker executions in certain volume ranges. The Take Discounts for Customers did not encourage more business, because Customers generally only take liquidity if there is no charge, or if there is liquidity at the NBBO that does not have a fee. Because of this, there is no structural incentive to increase the amount of liquidity-taking order flow since the Take Discounts only eliminate a portion of the fee. The Penny Pilot Tiered Pricing, which provided increased posting credits for Market Makers with volume in certain tiers, was problematic in that Market Makers, as stated above, could not build the potential credit into their overhead models for quote calculations. Market Makers preferred a definite credit for the first contract rather than those over 1,000,000.

The Exchange believes the adjustments to the Post Liquidity credits will encourage Market Makers and Customers to post liquidity in Penny Pilot issues on NYSE Arca, thereby providing reduced market spreads overall and increasing available liquidity on the Exchange.

Routing Fees

In order to defray costs associated with non-Penny Pilot executions, the Exchange is proposing a routing surcharge of \$0.11 per contract for orders that are routed and executed at away market centers pursuant to order protection requirements of the Options Order Protection and Locked/Crossed Market Plan. In addition, the Exchange proposes to pass through any transaction fees charged by the destination exchange on executions of routed orders. This is a new fee for NYSE Arca options intended to offset the costs and fees of routing orders for

execution in non-Penny Pilot issues. NYSE Arca pays a fee to its routing brokers, and in turn pays clearing fees to OCC to clear routed orders. At this time the fee is to be charged only to non-Penny Pilot issues, as orders in Penny Pilot issues which are routed are charged a take liquidity fee that offsets the cost of routing.

Firms may avoid routing charges by either routing orders themselves directly to the away market that is at the NBBO, or by use of various order types on NYSE Arca which carry an instruction to not route the order.

Deletion of Obsolete Reference

The Exchange is also proposing to delete references to Foreign Currency Options in the Transaction Fee schedule and in endnote 6, as Foreign Currency Options are no longer listed on the Exchange.

The proposed changes will be effective on April 1, 2011.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934 (the “Act”),⁵ in general, and Section 6(b)(4) of the Act,⁶ 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. In addition, the Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act in that it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed changes to the fee schedule are equitable and reasonable in that they apply uniformly to all similarly situated market participants, are within the range of fees assessed by

⁵ 15 U.S.C. 78f.

⁶ 15 U.S.C. 78f(b)(4).

other exchanges employing similar pricing schemes, and are designed to increase liquidity at the Exchange. In particular, the proposed increase in the Post Liquidity credit from \$0.30 to \$0.32 per contract for Lead Market Makers and Market Makers is equitable and reasonable because it is within the range of a rebate paid on the NASDAQ Options Market (“NOM”).⁷ Moreover, the Exchange is seeking to provide an additional incentive for Lead Market Makers and Market Makers to post liquidity on the Exchange. In addition, the proposed decrease in the Post Liquidity credit from \$0.25 to \$0.10 per contract for Firms and Broker Dealers is reasonable because it is consistent with a rebate paid on NOM and a similar decrease NOM imposed in July 2010.⁸ Further, as discussed above, the Exchange has observed that such entities are proprietary traders that seek to trade against Customer order flow to capture the spread rather than trade based on rebates and fees.

The proposed differential in the Post Liquidity credits between the (1) Lead Market Maker/Market Maker, and (2) Firm/Broker Dealer Electronic categories, is equitable and not unfairly discriminatory in that it is intended to partially offset the significantly higher OTP fees paid by Lead Market Makers and Market Makers. Further, this differential is also equitable and not unfairly discriminatory in that it provides additional compensation for the affirmative continuous quoting obligation that Lead Market Makers and Market Makers have, but which does not apply to Firms and Broker Dealers. In addition, as noted above, the proposed differential will still be less than the equivalent differential at the Phlx, a competing market.

⁷ See (<http://www.nasdaqtrader.com/Micro.aspx?id=OptionsPricing>). NOM provides a rebate of \$0.36 per contract for customers adding liquidity.

⁸ Id. NOM provides a rebate of \$0.10 per contract for firms adding liquidity. In addition, we note that in July 2010, NASDAQ decreased its rebate for firms adding liquidity from \$0.25 to \$0.10 per contract. See Exchange Act Release No. 62543 (July 21, 2010), 75 FR 44037 (July 27, 2010).

Similarly, the proposed increase in Post Liquidity credits for OTP Holders that aggregate Customer orders that meet certain volume thresholds in Penny Pilot issues is equitable and reasonable in that it applies uniformly to all similarly situated OTP Holders that direct Customer orders to the Exchange and is very similar to rebates paid on NOM.⁹ The fact that an OTP Holder routing Customer orders to the Exchange may reach a threshold that provides for a greater posting credit than that of a Market Maker or Lead Market Maker is not inequitable or unfairly discriminatory because (1) Market Makers and Lead Market Makers prefer a fixed credit not dependent on volume for purposes of their models for quote calculations based on their overhead costs, and (2) the higher posting credits for the top two threshold levels (which would exceed the posting credit applicable to Market Makers and Lead Market Makers) is subject to the overall level of market activity and may not be reached in any given month. Moreover, the difference between (1) the Post Liquidity credits received by OTP Holders that aggregate Customer orders, and (2) the Post Liquidity credit received by Firms and Broker Dealers, is not inequitable or unfairly discriminatory because the Exchange believes that it has structured its fee schedule in a manner to attract order flow from all such entities. In this regard, the Exchange has found that the higher Post Liquidity credit for Firms and Broker Dealers has not caused them to send additional order flow to the Exchange. Based on its observations, the Exchange believes that such entities focus on the ability to trade with Customer order flow to capture the spread rather than on rebates and fees. Accordingly, the Exchange is proposing to increase the Post Liquidity credits for Customer order flow to attract such order flow to the Exchange. With the anticipated increase in such order flow to the Exchange, the Exchange expects to attract additional order flow from Firms and Broker Dealers to trade with such order flow.

⁹ See supra note 7.

The imposition of routing fees in non-Penny Pilot issues is reasonable in that it is intended to defray the significant cost of routing orders, and these charges may be avoided by direct routing of an order to the away market that is at the NBBO or by the use of do-not-route order types on NYSE Arca. The routing fees are equitable and not unfairly discriminatory in that they are applied in an identical manner to all market participants with similarly situated orders.

Overall, the proposed changes to the fee schedule are structured to increase incentives for posting liquidity in Penny Pilot names so that the overall market is more competitive and spreads are tighter.

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.

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 other charge imposed by the NYSE Arca.

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.

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(2).

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-2011-16 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-2011-16. 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; 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-2011-16 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.¹²

Cathy H. Ahn
Deputy Secretary

¹² 17 CFR 200.30-3(a)(12).