

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-65922; File No. SR-NYSEArca-2011-91)

December 9, 2011

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on December 1, 2011, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (“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 amend the NYSE Arca Options Fee Schedule (“Fee Schedule”) with respect to manual orders. The Exchange proposes to make the rule change operative on December 1, 2011. The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and [www.nyse.com](http://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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 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

The Exchange proposes to amend the Fee Schedule with respect to manual orders.

Electronic orders and quotes resting on the Consolidated Book currently have priority over equal-priced bids or offers in the Trading Crowd.<sup>3</sup> In this regard, a Floor Broker, after negotiating a price with the Trading Crowd, may be required to trade against resting interest on the Consolidated Book (“clear the Book”) before trading against interest in the Trading Crowd. Currently, if a Floor Broker clears the Book before trading against interest in the Trading Crowd, the Exchange charges the portion of the order executed against the Consolidated Book an electronic transaction fee and charges any remaining order size that trades against interest in the Trading Crowd a manual transaction fee.<sup>4</sup>

The Exchange proposes to amend endnote 5 of the Fee Schedule to reflect that a manual order that executes in part against an electronic order or quote resting on the Consolidated Book prior to executing against interest in the Trading Crowd would be assessed the applicable manual

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<sup>3</sup> See NYSE Arca Options Rule 6.75(a) and (b).

<sup>4</sup> For example, a Broker-Dealer manual order is currently charged a standard execution fee of \$0.25 per contract. However, if a portion of the Broker-Dealer manual order executes against resting interest on the Consolidated Book, then that portion of the manual order is instead charged the \$0.50 per-contract rate for a Broker-Dealer electronic order. Similarly, if the Broker-Dealer manual order is in a Penny Pilot class and executes against resting interest on the Consolidated Book, then that portion of the manual order is considered to “Take Liquidity” and is instead charged the \$0.45 per-contract rate for a Broker-Dealer electronic order. The Exchange notes that, at the time of the adoption of Post-Take pricing for electronic executions in Penny Pilot classes, the Exchange determined that any execution in Penny Pilot issues against resting orders in the Consolidated Book would be charged a “take liquidity” fee. See Securities Exchange Act Release No. 55223 (February 1, 2007), 72 FR 6306 (February 9, 2007) (SR-NYSEArca-2007-07).

transaction fee for the entire order. As is the case today, the contra-side electronic order or quote would be assessed the applicable electronic transaction fee or credit. However, if a manual order executes completely against an electronic order or quote, and therefore does not execute against interest in the Trading Crowd, then both sides of the transaction would continue to be charged only the applicable electronic transaction fee. In order to be eligible for the manual transaction fee, all manual orders must be entered into the Exchange's Electronic Order Capture System.

The Exchange proposes to make the rule change operative on December 1, 2011.

## 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>5</sup> in general, and Section 6(b)(4) of the Act,<sup>6</sup> in particular, because 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 proposed rule change is not designed to permit unfair discrimination between customers, issuers, brokers or dealers. Under the proposed change a manual order that executes partially against an electronic order or quote resting on the Consolidated Book prior to executing against interest in the Trading Crowd would be assessed the applicable manual transaction fee for the entire order. The Exchange believes that this is reasonable, equitable, and not unfairly discriminatory because a customer who sends an order to the Floor for execution has no control over whether a portion of the manual order will execute against the Consolidated Book and therefore has significant uncertainty about the transaction fees applicable to such order, whereas a customer that submits an electronic order has certainty that only electronic transaction fees will apply. The Exchange also believes it is reasonable, equitable, and not unfairly discriminatory to charge the electronic

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

<sup>6</sup> 15 U.S.C. 78f(b)(4).

transaction fee for manual orders that are executed entirely against one or more electronic orders or quotes resting on the Consolidated Book. Manual transaction fees are lower than electronic transaction fees and the proposed rule change will reduce the incentive for customers to submit manual orders to obtain the lower fee even though there is sufficient liquidity in the Consolidated Book to fill the order. When both sides of the order execute fully on the Consolidated Book, the Exchange believes it is equitable and not unfairly discriminatory to charge both sides of the trade the same category of transaction fee. The Exchange expects that by providing more certainty about the applicable transaction fees, customers will be encouraged to submit manual orders to the Exchange and that the additional order flow will benefit all market participants.

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)(ii) of the Act<sup>7</sup> and subparagraph (f)(2) of Rule 19b-4<sup>8</sup> thereunder, because it establishes a due, fee, or other charge imposed by 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.

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<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>8</sup> 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2011-91 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-2011-91. 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-2011-91 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>9</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>9</sup> 17 CFR 200.30-3(a)(12).