

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-67419; File No. SR-NYSEArca-2012-71)

July 12, 2012

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the NYSE Arca Options Fee Schedule to Increase the Posted Liquidity Credit for Market Makers

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 June 29, 2012, 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 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”) to increase the posted liquidity credit for Market Makers who achieve certain average electronic execution thresholds per day in Penny Pilot issues, including an additional credit for posting liquidity in options on the SPDR S&P 500 ETF (“SPY”), and to amend the fees for certain broker-dealer transactions. The Exchange proposes to make the changes operative on July 1, 2012. The text of 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.

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

<sup>2</sup> 17 CFR 240.19b-4.

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 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 to increase the posted liquidity credit for Market Makers who achieve certain average electronic execution thresholds per day in Penny Pilot issues,<sup>3</sup> including an additional credit for posting liquidity in options on SPY, and to amend fees for certain broker-dealer transactions.

Penny Pilot Issues

Currently, Market Makers receive a \$0.32 per contract credit for posted electronic executions in Penny Pilot issues, regardless of the number of electronic executions per day. The Exchange proposes to increase the credit for posted electronic executions based on certain volume thresholds in Penny Pilot issues, with an additional credit for posted electronic executions in SPY, as follows:

Tier	Qualification Basis (Average	Credit Applied to	Credit Applied to
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<sup>3</sup> Under NYSE Arca Options Rule 6.72, options on certain issues have been approved to trade with a minimum price variation of \$0.01 as part of a pilot program that is currently scheduled to expire on December 31, 2012. See SR-NYSEArca-2012-65.

	Electronic Executions Per Day)	Posted Electronic Market Maker Executions in Penny Pilot Issues (except SPY)	Posted Electronic Market Maker Executions in SPY
Base		(\$0.32)	(\$0.34)
Tier 1	30,000 Contracts from Market Maker Posted Orders in Penny Pilot Issues	(\$0.34)	(\$0.36)
Tier 2	80,000 Contracts from Market Maker Posted Orders in Penny Pilot Issues	(\$0.38)	(\$0.40)
Tier 3	150,000 Contracts from Market Maker Posted Orders in Penny Pilot Issues	(\$0.40)	(\$0.42)

For example, if a Market Maker has average electronic executions per day of 40,000 contracts from posted orders in Penny Pilot issues, the Market Maker would receive a credit of \$0.34 per contract for posted electronic executions in non-SPY Penny Pilot issues, and a credit of \$0.36 per contract for posted electronic executions in SPY.

#### Manual Broker-Dealer Fees

Currently, broker-dealers are charged a fee of \$0.25 per contract for manual standard executions. There is no charge for Customer<sup>4</sup> electronic executions in non-Penny Pilot issues or Customer manual executions or a manual Firm facilitation<sup>5</sup> of a Customer order. The Exchange believes that a transaction in which a broker-dealer clearing in the customer range facilitates a Customer order should be treated in the same manner as a manual Firm Facilitation transaction, and therefore proposes that there be no

<sup>4</sup> The term “Customer” excludes a broker-dealer. See NYSE Arca Rule 6.1A(a)(4).

<sup>5</sup> The term “Firm” means a broker-dealer that is not registered as a dealer-specialist or market maker on a registered national securities exchange or association. See NYSE Arca Rule 6.1(b)(36). The fee for a manual Firm Facilitation transaction applies to any transaction involving a Firm proprietary trading account that has a customer of that same Firm on the contra side of the transaction. See endnote 7 of the Fee Schedule.

charge for such transactions under the Fee Schedule. On occasion, broker-dealers will facilitate orders on behalf of Customers. The broker-dealer may or may not be an Options Trading Permit (“OTP”) Holder or OTP Firm, but places both the Customer order and the broker-dealer’s order with a Floor Brokerage firm for execution in open outcry. If, for instance, the broker-dealer is executing on behalf of its foreign subsidiary, the order will be marked as broker-dealer but must clear in the customer range at OCC. To qualify for the free execution, the broker-dealer’s proprietary trade must be handled by an OTP Holder or an OTP Firm on an agency basis and the broker-dealer and the Customer must both clear through the same clearing firm.

#### Fee Cap

Currently, there is a \$75,000 per month fee cap on Firm manual executions, which excludes Strategy Executions, Royalty Fees, and firm trades executed via a Joint Back Office agreement.<sup>6</sup> The Exchange proposes also to apply the same \$75,000 cap (with the same exclusions) on broker-dealer fees for manual executions clearing in the customer range. For example a broker-dealer who trades in the customer range and does not have a Customer on the contra side of the manual transaction would continue to be subject to a \$0.25 manual broker-dealer charge. In said instances, those trades would continue to get billed at the \$0.25 rate but would benefit from the new \$75,000 cap.

The Exchange proposes to make all of the changes described above operative on July 1, 2012.

#### 2. Statutory Basis

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<sup>6</sup> The Fee Schedule currently does not specify that such cap is applied monthly; the Exchange proposes to specify that in the Fee Schedule.

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act,<sup>8</sup> in particular, because it provides for the equitable allocation of reasonable dues, 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 increase in credits for Market Makers' posted electronic executions in Penny Pilot issues and SPY is reasonable because it would incent Market Makers to post higher volumes on the Exchange, which will promote liquidity. In addition, the increased credit for electronic executions in SPY is reasonable because it is comparable to rate differentials applied to certain symbols offered on at least one other exchange,<sup>9</sup> and it will attract additional order flow in SPY to the Exchange. Moreover, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to pay Market Makers a higher credit because Market Makers have higher obligations than other market participants, and the Exchange would allocate the higher credit to Market Makers that make significant contributions to market quality by providing more liquidity at the National Best Bid and Offer.

The Exchange believes that not charging a broker-dealer that clears in the customer range for facilitating a Customer order is reasonable because it will encourage this type of broker-dealer to facilitate Customer orders and increase participation in open

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<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(4).

<sup>9</sup> See NASDAQ OMX PHLX LLC Pricing Schedule as of June 1, 2012, Rebates and Fees for Adding and Removing Liquidity in Select Symbols, available at <http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLXTools/PlatformViewer.asp?selectednode=chp%5F1%5F4%5F1&manual=%2Fnasdaqomxphlx%2Fphlx%2Fphlx%2Drulesbrd%2F>.

outcry, which will in turn promote liquidity on the Exchange. In addition, the proposed rule change is reasonable, equitable, and not unfairly discriminatory because broker-dealers facilitating Customer orders that clear in the customer range are performing essentially the same business as Firm facilitation orders, in addition to maintaining Customer margin on the account, and it is open to all broker-dealers on an equal basis.

The Exchange also believes that including broker-dealer transactions that clear in the customer range in the \$75,000 limit on fees for open outcry transactions for both Firms and broker-dealers is reasonable, equitable, and not unfairly discriminatory because broker-dealers entering orders that clear in the customer range are performing essentially the same business as Firm proprietary orders, in addition to maintaining Customer margin on the account.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges.

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)<sup>10</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>11</sup> 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.

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-2012-71 on the subject line.

Paper Comments:

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(2).

- 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-2012-71. 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, 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-2012-71 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>12</sup>

Kevin M. O'Neill  
Deputy Secretary

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