

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-68399; File No. SR-NYSEARCA-2012-134)

December 11, 2012

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the NYSE Arca Options Fee Schedule to Allow Manual Orders Entered into the Exchange's Electronic Order Capture System or Entered into an Order Entry Device and Contemporaneously Recorded into the EOC System to Qualify for the Manual Transaction Fee

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 November 29, 2012, 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") to allow manual orders that are entered into the Exchange's Electronic Order Capture ("EOC") System or entered into an order entry device approved by the Exchange and contemporaneously recorded into the EOC System to qualify for the manual transaction fee. The text of 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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to allow manual orders that are entered into the Exchange's EOC System⁴ or entered into an order entry device approved by the Exchange and contemporaneously recorded into the EOC System to qualify for the manual transaction fee. The Exchange proposes to make the fee change operative on December 1, 2012.

In December 2011, the Exchange amended 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 transaction fee for the entire order.⁵ 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 the order would be charged the applicable electronic transaction fee. The Exchange also specified that in order to be eligible for the manual transaction fee, all orders

⁴ The EOC System is the Exchange's electronic audit trail and order tracking system that provides an accurate time-sequenced record of all orders and transactions on the Exchange. EOC records the receipt of an order and documents the life of the order through the process of execution, partial execution, or cancellation. See NYSE Arca Options Rule 6.1(b)(39).

⁵ See Securities Exchange Act Release No. 65922 (December 9, 2011), 76 FR 78066 (December 15, 2011) (SR-NYSEArca-2011-91).

must be entered into the Exchange's EOC System. Therefore, currently, Floor Brokers that enter orders into an order entry device rather than only into the EOC System are not eligible to take advantage of the lower transaction fees for manual orders, even though orders entered into such devices are recorded in the EOC System. For example, a Floor Broker manual order in a Non Penny Pilot Issue is currently charged a standard execution fee of \$0.25 per contract. However, if such Floor Broker manual order is entered in an order entry device in order to interact with orders in the Consolidated Book, then the Floor Broker is charged the electronic execution rate of \$0.85 per contract for taking liquidity. The Exchange proposes to make explicit in endnote 5 that, in order to be eligible for the manual transaction fee, all orders must be entered into the Exchange's EOC System. In addition, the Exchange proposes to expand such eligibility requirement to include manual orders entered into an order entry device approved by the Exchange and contemporaneously recorded in the Exchange's EOC System. The approved order entry devices would provide an audit trail and order tracking system for executed orders which would allow such orders to be matched upon recordation into the EOC System. The approved order entry devices would be announced via Regulatory Bulletin.

Currently, electronic orders and quotes resting on the Consolidated Book have priority over equal-priced bids or offers in the trading crowd.⁶ 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. Pursuant to NYSE Arca Rule 6.67, Options Trading Permit ("OTP") Holders and OTP Firms use the EOC for the systematization and manual execution of orders executed by open outcry.

⁶ See NYSE Arca Options Rule 6.75(a) and (b).

To avoid Trade-Throughs, which are prohibited by NYSE Arca Rule 6.94, Floor Brokers often direct their support staff to enter orders into an order entry device while they are executing an order in the trading crowd in order to clear the Consolidated Book and away markets. Floor Brokers are not required to use an order entry device; however, the Exchange recognizes that Floor Brokers use order entry devices to accommodate their business decisions regarding best practices because such devices capture unique order information and OTP identification and are able to pass such information to the Exchange for recordation into the EOC System. The Exchange believes that Floor Brokers that enter orders on order entry devices and contemporaneously record such orders into the EOC System achieve the same execution goals for manual orders as those entered only through the EOC System, and therefore, should be subject to the same manual pricing structure.

The Exchange notes that the proposed changes are not otherwise intended to address any other issues and the Exchange is not aware of any problems that OTP Holders and OTP Firms would have in complying with the proposed change.

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”),⁷ in general, and furthers the objectives of Section 6(b)(4) of the Act,⁸ 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 also believes that the proposed rule change is consistent with Section 6(b)(5) of the

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4).

Act,⁹ in particular, because it is designed to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that incorporating the manual transaction fee eligibility requirement into the Fee Schedule and expanding the requirement to include manual orders entered into an order entry device approved by the Exchange and contemporaneously recorded in the Exchange's EOC System is reasonable because the Fee Schedule would more clearly describe the types of manual orders that qualify for the manual transaction fee. In addition, the Exchange believes that expanding the requirement to include manual orders entered into order entry devices and recorded in the EOC System is reasonable because Floor Brokers that use order entry devices are executing trading interest in the Consolidated Book on an efficient basis and should be able to benefit from the reduced manual transaction fee. The Exchange believes that the proposed rule change is equitable and not unfairly discriminatory because Floor Brokers that enter orders through order entry devices achieve the same execution goals as orders entered only through the EOC System, and, therefore, should be subject to the same fee structure. Furthermore, any order entered through an order entry device would have an audit trail and order tracking, and would be recorded into the EOC System. In addition, Floor Brokers use order entry devices to avoid Trade-Throughs on the Exchange, which thereby benefits the Exchange and all market participants, and therefore, it is equitable and not unfairly discriminatory to extend the manual transaction fee to Floor Brokers that use such devices to enter manual orders.

By clarifying the eligibility requirement for the manual transaction fee, the proposed rule change eliminates confusion, thereby removing an impediment to and perfecting the mechanism

⁹ 15 U.S.C. 78f(b)(5).

of a free and open market system. The clarification of this eligibility requirement will also make it easier for the Exchange to administer the manual transaction fee and ensure that it is appropriately assessed when it is applicable.

Finally, 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.

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-2012-134 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-2012-134. 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. 20549-1090, 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 NYSE's principal office and on its Internet website at www.nyse.com. 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-2012-134, 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

Kevin M. O'Neill
Deputy Secretary

¹² 17 CFR 200.30-3(a)(12).