

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-70503; File No. SR-NYSEArca-2013-95)

September 25, 2013

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Options Fee Schedule to Add an Additional Tier to the Lead Market Maker Rights Fees

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 September 19, 2013, 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Options Fee Schedule (“Fee Schedule”) to add an additional tier to the Lead Market Maker (“LMM”) rights fees. The Exchange proposes to implement the fee change effective October 1, 2013. 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

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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 add an additional tier to the LMM rights fees. The Exchange proposes to implement the fee change effective October 1, 2013.

OTP Firms acting as LMMs are assessed a fee for LMM rights for each appointed issue.⁴ The LMM rights fee is based on the average national daily volume ("ADV") of Customer contracts traded in that issue.⁵ The LMM rights fees are assessed at the end of each month on each issue that an LMM holds in its LMM appointment. Currently, the LMM rights fees are charged as follows:

⁴ "OTP Firm" is defined in NYSE Arca Rule 1.1(r). "Market Maker" is defined in NYSE Arca Rule 6.32. "Lead Market Maker" is defined in NYSE Arca Rule 6.82.

⁵ The term "Customer" excludes a broker-dealer. See NYSE Arca Rule 6.1A(a)(4).

Average National Daily Customer Contracts	Monthly Issue Fee
0-1,000	\$45
1,001 to 2,000	\$75
2,001 to 5,000	\$200
5,001 to 15,000	\$375
15,001 to 100,000	\$750
Over 100,000	\$1,500

The Exchange's formal listing standards are provided under NYSE Arca Rule 5.3 (Criteria for Underlying Securities) and prescribe the minimum standards that must be satisfied before the Exchange lists a particular issue. However, the Exchange is not required to list an issue simply because it satisfies the minimum standards. To date, the Exchange generally has not listed an issue if the Exchange anticipated that it would trade an ADV of 100 or fewer Customer contracts because the minimal revenue associated with such low-volume issues would not offset the costs of listing and maintaining the listing of such issues. However, other exchanges do list such issues, and the Exchange has determined that it may be appropriate to list these low-volume issues as a convenience for OTP Holders and OTP Firms whose customers wish to transact in such issues and to satisfy requests of LMMs that have requested appointments in such issues.

In order to better align the Exchange's revenue with the costs of listing these low-volume issues, the Exchange proposes to add an additional LMM rights fee tier for issues with an ADV of Customer contracts of between 0 and 100. The LMM rights fee for this new tier would be \$125. The resulting LMM rights fees would be charged as follows:

Average National Daily Customer Contracts	Monthly Issue Fee
0-100	\$125
101-1,000	\$45
1001 to 2,000	\$75
2,001 to 5,000	\$200
5,001 to 15,000	\$375
15,001 to 100,000	\$750
Over 100,000	\$1,500

The Exchange proposes that the new LMM rights fee tier apply only to (i) an option listed on the Exchange for the first time on or after October 1, 2013, and (ii) an option listed on the Exchange prior to October 1, 2013 that is reallocated to a new LMM on or after October 1, 2013. Thus, the LMM for an issue with an ADV of Customer contracts within the new lowest tier (i.e., 0-100 contracts) that listed on the Exchange prior to October 1, 2013 would continue to be subject to the \$45 monthly issue fee. If, on or after October 1, 2013, the LMM relinquished that appointment and a new LMM applied for and was granted an appointment in that issue, then the new LMM would be subject to the revised fees; following the reallocation, if the issue traded a monthly ADV of 100 or fewer Customer contracts, then the new LMM would pay the \$125 monthly fee.

The proposed change is not otherwise intended to address any other issues, and the Exchange is not aware of any problems that LMMs would have in complying with the proposed change.⁶

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Sections 6(b)(4) and (5) 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 believes that including an additional LMM rights fee tier with a corresponding fee of \$125 is reasonable because it would better balance the Exchange's costs to list and maintain the listing of these lowest volume issues against the minimal revenue that such issues are anticipated to generate for the Exchange. The Exchange also believes that it is reasonable to grandfather LMMs that hold an appointment in an issue listed before October 1, 2013 at the lower \$45 fee level in order to create an incentive for LMMs to maintain those appointments.

The fee increase is also reasonable, equitable, and not unfairly discriminatory because it will encourage more efficient use of the Exchange's resources. Unfettered growth in option listings without an offsetting growth in volume would ultimately result in increased costs for all

⁶ The Exchange notes that NYSE MKT LLC submitted a similar proposal to implement a rights tier and fee for low-volume issues listed on NYSE Amex Options LLC. See Securities Exchange Act Release No. 67153 (June 7, 2012), 77 FR 35437 (June 13, 2012) (SR-NYSEMKT-2012-05).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4) and (5).

participants on the Exchange. As a result of the fee increase, LMMs that wish to request new appointments in the lowest volume issues would directly contribute toward some of the Exchange's costs to support that trading instead of having those costs shared among all Exchange participants. The Exchange also believes that the fee increase is equitable and not unfairly discriminatory because LMMs choose to apply for appointments, and thus only those LMMs that are willing to pay the applicable fee will apply for the appointment. An LMM that does not wish to pay the higher fee for a new appointment after October 1, 2013 will not request such an appointment, nor will it be required to take one. The Exchange believes that it is equitable and not unfairly discriminatory to grandfather those LMMs that maintain appointments in previously listed issues that have a monthly ADV of 100 or fewer Customer contracts after October 1, 2013 at the \$45 monthly fee level; otherwise, those LMMs would face a significant monthly fee increase. The Exchange believes that grandfathering is fair and reasonable in light of existing LMMs' expectations concerning fee levels at the time their appointments were accepted.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

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

In accordance with Section 6(b)(8) of the Act,⁹ 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. The proposed rule change would enhance competition among exchanges by permitting the Exchange to better balance its revenues and costs when

⁹ 15 U.S.C. 78f(b)(8).

listing extremely low-volume issues that also may be listed on other exchanges. The Exchange does not believe that the proposed change would burden competition among LMMs because LMMs apply for such appointments based on their own business decisions.

Finally, 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 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.

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 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)¹² of the Act to determine

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(2).

¹² 15 U.S.C. 78s(b)(2)(B).

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:

- 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-2013-95 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-2013-95. 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 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-2013-95, 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.¹³

Kevin M. O'Neill
Deputy Secretary

¹³ 17 CFR 200.30-3(a)(12).