

proposed rule change (SR-CBOE-2012-085) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Kevin M. O'Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68099; File No. SR-NYSEARCA-2012-115]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Options Fee Schedule To Change the Monthly Cost for Option Trading Permits

October 24, 2012.

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 October 16, 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 change the monthly cost for Option Trading Permits ("OTPs"). The text of the proposed rule change is available on the Exchange's Web site 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 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 its Fee Schedule to change the monthly cost for OTPs. The Exchange proposes to make the change immediately operative.

The Exchange requires that a Market Maker have an OTP in order to operate on the Exchange. For electronic Market Making, a Market Maker must have four OTPs in order to submit electronic quotations in every class on the Exchange. These four Market Maker OTPs also permit the firm to have at least one trader on the Floor of the Exchange as a Floor-based open outcry Market Maker. However, the manner in which those OTPs are assigned to individual traders may reduce the permissible number of issues in which electronic quotes are assigned. For instance, two associated Market Makers may assign OTP 1, 2, and 3 to trader A, while the fourth is assigned to trader B. Trader A may now only stream quotes electronically in 750 issues, while trader B may submit quotes electronically in 100 issues. To retain the appointment in more than 750 issues, all four OTPs must be in the same name, and to have an additional individual Market Maker on the Floor, a fifth OTP must be acquired.

To remain competitive in fixed fees among exchanges with trading floors, the Exchange is proposing to reduce the cost of additional Market Maker OTPs beyond the minimum of four that are required to submit electronic quotations in all issues listed on the Exchange. Accordingly, the Exchange proposes to specify that the existing fee of \$4,000 per OTP per month would apply to a Market Maker firm that has between one and four Market Maker OTPs.⁴ The Exchange would also specify that a Market Maker firm would be charged \$2,000 per OTP per month for each additional Market Maker OTP. As described above, each additional Market Maker OTP would permit the Market Maker firm, which already has the ability to make electronic markets in every class on the Exchange, to have an

additional trader on the Floor of the Exchange as an open outcry Market Maker.

The Exchange also proposes to adopt a similar reduction for additional OTPs for Floor Brokers as well as for Office and Clearing Firms.⁵ In this regard, a firm is required to have one OTP per trader that operates as a Floor Broker on the Exchange. The OTP permits the Floor Broker to accept orders from all other firms and in all classes traded on the Exchange. However, for operational or administrative reasons, Floor Brokers often require an additional OTP in order to have sufficient clerical staff to satisfy their order entry obligations, including that orders be entered into the Exchange's systems via the Electronic Order Capture Device ("EOC") prior to representation in the Trading Crowd.⁶ The additional OTP is assigned to the same Floor Broker, and only that same Floor Broker may represent orders and execute trades on the Floor of the Exchange. The Exchange requires an additional OTP for each EOC login. However, the additional OTP assigned to a Floor Broker would not permit the firm to have an additional Floor Broker on the Floor.⁷

Accordingly, the Exchange proposes to specify that the existing fee of \$1,000 per OTP per month would apply to a Floor Broker's first OTP and a charge of \$250 per OTP per month would apply for each additional OTP.⁸

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"),⁹ in general, and furthers the objectives of Section 6(b)(4) of the Act,¹⁰ 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

⁵ While the proposed change would technically apply to Office and Clearing Firms, these firms only need one OTP because they do not have personnel on the Floor of the Exchange.

⁶ See Rule 6.1(b)(30), which defines Trading Crowd to mean all Market Makers who hold an appointment in the option classes at the trading post where such trading crowd is located and all Market Makers who regularly effect transactions in person for their Market Maker accounts at that trading post, but generally will consist of the individuals present at the trading post.

⁷ The Exchange proposes to specify in the Fee Schedule that the additional OTP would not enable a second Floor Broker to operate on the Floor. A firm would be charged \$1,000 for an OTP for a second trader acting as a Floor Broker on the Exchange.

⁸ The Exchange notes that this proposed change would not have an impact on a firm that currently has one Floor Broker OTP.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4).

¹⁴ 17 CFR 200.30-3(a)(12).

¹⁵ U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ The Exchange notes that this proposed change would not have an impact on a firm that currently has between one and four Market Maker OTPs.

unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed change is reasonable because it will lower the cost for firms to acquire additional Market Maker OTPs. The Exchange believes that the proposed OTP pricing may lead to, among other things, additional Market Makers quoting in open outcry, which would increase the quality of the Exchange's market by increasing the depth of liquidity on the Exchange, which will benefit investors.

The Exchange also believes that the proposed change is reasonable because it will lower the cost for firms to acquire additional OTPs related to their Floor Broker activity, which will allow Floor Broker firms to price their services at a level that will enable them to attract higher levels of volume to the Floor of the Exchange while satisfying the Exchange's requirements related to entering, reporting and managing Floor volume. To the extent that Floor Brokers are able to attract higher volumes, they will bring more liquidity and price discovery to the Exchange. The Exchange also believes that the proposed change is equitable and not unfairly discriminatory because all firms may choose the particular type of OTP and function on the Exchange (e.g., Market Maker versus Floor Broker) that best suits their operational and business plans and needs.

The proposed change is also equitable and not unfairly discriminatory because it would lower the fees for additional OTPs beyond the minimum necessary in a manner that the Exchange believes reflects the differences in the roles and activity on the Exchange between different market participants. Specifically, the Exchange believes that it is equitable and not unfairly discriminatory to charge \$2,000 for each additional Market Maker OTP beyond four, as compared to \$250 for an additional OTP for a Floor Broker firm. In this regard, the additional Market Maker OTP would permit the firm, which already has the ability to make markets in every class on the Exchange, to have an additional trader on the Floor of the Exchange as an open outcry Market Maker. However, an additional OTP for a Floor Broker firm would not permit the firm to have a second trader on the Floor in the capacity of a Floor Broker, but would instead be utilized for operational/administrative purposes in order to satisfy applicable order entry and reporting requirements through EOC, for which one OTP per EOC login is required. Accordingly, this differential is equitable and not unfairly discriminatory because a Market Maker

firm would derive an increased presence on the Floor via the additional OTP, but the Floor Broker firm would not. The Exchange believes that the additional OTP for the Market Maker firm, and in turn the increased presence on the Floor, could represent a proportionately increased economic value as compared to the additional OTP for the Floor Broker firm.

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) ¹¹ of the Act and subparagraph (f)(2) of Rule 19b-4 ¹² 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 email to rule-comments@sec.gov. Please include File Number SR-NYSEARCA-2012-115 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-2012-115. This file number should be included on the subject line if email 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 Web site (<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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549-1090. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site 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-2012-115 and should be submitted on or before November 20, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Kevin M. O'Neill,
Deputy Secretary.

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¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(2).

¹³ 17 CFR 200.30-3(a)(12).