

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-70703; File No. SR-NYSEArca-2013-102)

October 17, 2013

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Options Fee Schedule Relating to Market Maker and Lead Market Maker Transaction Credits

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on October 7, 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 conform references to certain Market Maker and Lead Market Maker (“LMM”) transaction credits to the transaction credits implemented in a recent fee change. The Exchange proposes to implement the fee change immediately. 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.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to conform references to certain Market Maker and LMM transaction credits to the transaction credits implemented in a recent fee change. The Exchange proposes to implement the fee change immediately.

The Exchange recently amended the Fee Schedule to reduce the credit for the base Market Maker monthly posting credit tier for Penny Pilot issues, including SPY, from \$0.32 to \$0.28.<sup>4</sup> This base tier credit applies to posted electronic executions in Penny Pilot issues for Market Makers that do not qualify for the Market Maker Select Tier credit of \$0.32 or the Market Maker Super Tier credit of \$0.37. The base tier credit is duplicative of the standard credit for posted electronic Market Maker executions in Penny Pilot issues that is specified in the standard transaction fee and credit table in the Fee Schedule (i.e., the table that specifies the fees and credits that apply if a separate table or section of the Fee Schedule is not applicable). In other words, a Market Maker that does not qualify for the Select Tier or the Super Tier credit is effectively subject to the standard transaction fee and credit table in the Fee Schedule. The legacy \$0.32 Market Maker credit still appears within the standard fee and credit table. The

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<sup>4</sup> See Securities Exchange Act Release No. 70504 (September 25, 2013), 78 FR 60358 (October 1, 2013) (SR-NYSEArca-2013-93).

Exchange therefore proposes to similarly reduce the standard Market Maker credit within the standard transaction fee and credit table from \$0.32 to \$0.28 for posted electronic Market Maker executions in Penny Pilot issues.<sup>5</sup> Without this change the Fee Schedule would reflect two different credits applicable to the same posted electronic Market Maker executions in Penny Pilot issues.

The standard LMM credit within the standard transaction fee and credit table for posted electronic executions in Penny Pilot issues currently is also \$0.32. The Exchange proposes to similarly reduce this credit from \$0.32 to \$0.28.<sup>6</sup> This reduction would maintain equal standard credits for LMMs and Market Makers for posted electronic executions in Penny Pilot issues, which was the case prior to the recent fee change that reduced the credit for the base Market Maker monthly posting credit tier for Penny Pilot issues, including SPY, from \$0.32 to \$0.28.<sup>7</sup>

The Exchange notes that the proposed change is not otherwise intended to address any other issues, and the Exchange is not aware of any problems that OTP Holders and OTP Firms, including Market Makers and LMMs, 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

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<sup>5</sup> The fee change established pursuant to SR-NYSEArca-2013-93 became effective on October 1, 2013. The Exchange will therefore apply the \$0.28 credit to all posted electronic Market Maker executions in Penny Pilot issues that do not qualify for the Select Tier or the Super Tier credit beginning on October 1, 2013.

<sup>6</sup> This aspect of the proposed change will become effective immediately upon filing, at which point the Exchange will apply the \$0.28 credit to posted electronic LMM executions in Penny Pilot issues. The Exchange will apply the current \$0.32 credit to posted electronic LMM executions in Penny Pilot issues prior to such date of effectiveness.

<sup>7</sup> See supra, note 4.

the Act,<sup>8</sup> in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,<sup>9</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 proposed change is reasonable because without it the Fee Schedule would reflect two different credits applicable to the same posted electronic Market Maker executions in Penny Pilot issues. The proposed change is also reasonable because it would maintain equal standard credits for LMMs and Market Makers for posted electronic executions in Penny Pilot issues.

The Exchange believes that the proposed change is equitable and not unfairly discriminatory because it would apply to all Market Makers and LMMs on an equal and non-discriminatory basis. The Exchange further believes that the proposed change is equitable and not unfairly discriminatory because it would reasonably ensure consistency and conformity regarding duplicative references to the credits applicable to posted electronic Market Maker executions in Penny Pilot issues while also reasonably ensuring that Market Maker and LMM credits for posted electronic executions in Penny Pilot issues are equal.

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,<sup>10</sup> the Exchange does not believe that the

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

<sup>9</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>10</sup> 15 U.S.C. 78f(b)(8).

proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, the Exchange believes that the proposed change would eliminate any potential confusion for Market Makers regarding the applicable credit for posted electronic executions in Penny Pilot issues as a result of a recent fee change that amended one reference to the applicable rate, but not a duplicative reference in the Fee Schedule. Additionally, the proposed change would reasonably ensure that LMMs receive a standard credit for posted electronic executions in Penny Pilot issues that is equal to the standard credit received by Market Makers, which was the case prior to the recent fee change that reduced the credit for the base Market Maker monthly posting credit tier for Penny Pilot issues, including SPY, from \$0.32 to \$0.28.<sup>11</sup>

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)<sup>12</sup> of

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<sup>11</sup> See *supra*, note 4.

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

the Act and subparagraph (f)(2) of Rule 19b-4<sup>13</sup> 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)<sup>14</sup> of the Act to determine 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2013-102 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-2013-102. This file number should be included on the subject line if e-mail is used. To help the Commission process and review

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<sup>13</sup> 17 CFR 240.19b-4(f)(2).

<sup>14</sup> 15 U.S.C. 78s(b)(2)(B).

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-2013-102, 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>15</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(12).