Martha Redding
Chief Counsel

NYSE EURONEXT

April 4, 2014

Via Electronic Mail

Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: File No. SR-NYSEArca-2014-04 / Revising the Order of Priority in Open Outcry

NYSE Arca, Inc. (the "Exchange") appreciates the opportunity to respond to comments raised regarding our rule filing SR-NYSEArca-2014-04 (the "Proposal"), a proposed rule change that would amend the rules of the Exchange by revising the order of priority of bids and offers when executing orders in open outcry to more closely align with practices on all other U.S. options exchange trading floors.

The Proposal received letters from seven commenters. Five comment letters were on behalf of floor brokerage or market making firms, including market makers with both open outcry and electronic trading operations, and recommended approving the Proposal. The other two commenters made various observations about the Proposal without offering a specific recommendation regarding its approval.

The Proposal is a Scaled-Back Version of Priority Rules Already in Effect on All Other U.S. Options Exchange Trading Floors

Our filing proposes to align the rules of NYSE Arca with those of all other U.S. options exchange trading floors by revising NYSE Arca's priority rules such that floor participants would have priority over non-Customers in the electronic book at the same price when executing trades in open outcry. Our proposal includes the (unique) caveat that any non-Customer electronic interest with time priority over a Customer order in the book would also maintain priority over floor participants. As such, this proposal would preserve non-Customer electronic priority in more cases than the rules of any other existing U.S. options exchange trading floor. Therefore, it is fair to assume that any party concerned about the Proposal has even greater concerns about the priority rules already approved by the Commission and in effect on all other U.S. options exchange trading floors for many years. It is therefore somewhat surprising that any party would take the occasion of NYSE Arca's delayed adoption of a *scaled-back* form of established, industry-standard exchange floor priority rules as an opportunity to raise new objections to the practice only as proposed to apply on NYSE Arca.

mredding@nyx.com
InterContinental Exchange | NYSE Euronext, 11 Wall Street, New York, NY 10005, United States
T +1 (212) 656-2938
F +1 (212) 656-8101
www.nyx.com

Below, we speak to some of the observations made by the commenters. In general, we limit our comments to issues that are pertinent to the Proposal and refrain from addressing certain wide-ranging market structure issues raised by commenters that are not directly relevant to our filing. It is not our role to defend the rules of other markets, and the Commission should not apply a different standard to NYSE Arca than to other exchanges.

The Proposal Does Not Contemplate a Novel or Wholesale Change in Priority Rules

One commenter[1] suggested that the Exchange instead adopt a pure size priority model for all participants. A wholesale restructuring of the priority model of the Exchange is beyond the scope of the current filing, which seeks only to align NYSE Arca's priority rules for floor participants with that of all other U.S. options exchanges, aside from select circumstances in which will continue to uniquely favor electronic participants as we do today. Further, the commenter's suggestion would unduly disadvantage retail Customer orders for small size by allowing later-arriving professional participants willing to trade a larger quantity to take priority over them, to the detriment of the retail Customer segment whose interests many exchanges and the SEC have rightly sought to protect.

The Proposal in No Way Reduces Priority for Orders that Provide Price Improvement

Another commenter's letter[2] primarily expresses concerns with the practice of crossing institutional orders without price improvement from electronic participants. These concerns, however, are entirely unrelated to the Proposal, which seeks to change allocation priority, as part of the industry-standard practice of executing a cross in open outcry, among various participants who have expressed willingness to execute a given trade *at the same price as each other*. The rules of NYSE Arca require, and under the Proposal will continue to require, that any electronic participant who displays an improved price—whether in advance of an open-outcry order's receipt, or during the "negotiation phase," or at any other time prior to execution—will take priority over *all* participants, whether electronic or on the trading floor, at inferior prices. The Proposal seeks to enhance the ability of NYSE Arca participants to trade in a just and equitable manner by ending NYSE Arca options floor participants' current status as "outliers" <u>with inferior priority relative to the electronic book in comparison with floor participants on every other options trading floor in the United States</u>. Ending this inequitable treatment for NYSE Arca options floor participants will in no way reduce opportunities for price improvement.

Specifically, the commenter suggests that the Proposal would "attract more clean-cross type orders that further insulate customer interest from competition by parties other than crowd participants." NYSE Arca disagrees with this characterization. The Proposal is intended to promote liquidity and price discovery on the Exchange by adopting a priority structure that would be similar to, but (again) more favorable for electronic non-Customer participants than, the priority structure that exists on all other U.S. options exchange trading floors. However,

---

1 *See* Letter from Abraham Kohen, AK FE Consultants, to the Commission dated January 31, 2014.

2 *See* Letter from Gerald D. O'Connell, Chief Regulatory Officer, Susquehanna International Group, LLP, to Elizabeth M. Murphy, Secretary, Commission, dated March 14, 2014.

nothing in the Proposal would "insulate customer interest from competition by parties other than crowd participants," as the commenter contends. Specifically, NYSE Arca Rule 6.47(a)(3) states that "the execution price [for a Non-Facilitation (Regular Way) Cross] must be equal to or better than the NBBO." This requirement would not be affected by the Proposal. Further, NYSE Arca Rule 6.47(c)(3) states that "the execution price [for a crossing a Solicited Order] must be equal to or better than the NBBO." This requirement would also not be impacted by the Proposal. In fact, all requirements under which a floor participant must yield to a superior electronic bid or offer on NYSE Arca or any other market will continue to be in effect under the proposal. As a result, crowd participants will continue to compete to provide the best price to customers with all electronic market participants on all exchanges under the Proposal, precisely as they do today. The only change under the proposal is the *counterparty* a given order will trade against in the specific circumstance that a crowd participant and a non-Customer electronic participant both have an order at the same price. The proposal has no impact on the price at which a customer's order would trade.

The letter goes on to state that "[t]he underpinning problem is that these clean-cross orders are usually negotiated outside the view of the off-floor MMs responsible for the vast majority of the displayed liquidity in the subject options. This means that the crosses often occur at prices that have not been sufficiently vetted by those most likely to offer price improvement." For the reasons explained above, the Proposal in no way reduces the ability or incentive for any participant to improve its displayed quote electronically. If an off-floor Market Maker wishes to post an improving quote on the Exchange's electronic book for a particular option, they can do so today and they will still be able to do so with the Proposal in effect. The Proposal only impacts the allocation of orders among multiple participants who have expressed interest in trading at the same price. As such, any suggestion that it would inhibit "price improvement" reflects a misunderstanding of the Proposal.

The Proposal Removes Impediments to Competition Unique to NYSE Arca Participants

The commenter then asks for an explanation of "Arca's belief that more (and cleaner) block floor crosses is good for investors." Institutional trading desks provide a valuable service by providing liquidity to investors for block-size orders, and we understand that the commenter itself participates in this business. Indeed, it is generally accepted in the industry that to provide institutional trading desks with some incentive to provide liquidity to their clients, it is appropriate for them to take priority, to a limited extent, over other participants when executing cross orders (typically up to 40% of the order under the rules of most exchanges). However, NYSE Arca has not taken a position on whether an increased total level of block executions in the options market would be a positive or negative development for investors, and has not represented and does not believe (as the letter implies) that the total level of larger-sized block floor crosses on an industry-wide basis would increase as a result of the Proposal. As discussed in our filing, NYSE Arca's goal is to offer investors an alternative, competitive venue for execution of *existing* institutional block cross volume that currently happens *on other trading floors*.

For example, consider a hypothetical option series listed only on NYSE Arca and NASDAQ OMX Phlx ("Phlx"). Suppose the electronic best offers on each market are identical, as follows:

NYSE Arca	1.00 offer, 100 contracts, no Customer interest
Phlx	1.00 offer, 100 contracts, no Customer interest

Under current rules, given the choice between the two, an institution wishing to facilitate 40% of its customer's order to pay 1.00 for 100 contracts will almost always choose to take the order to Phlx—knowing that they would have *no* opportunity to facilitate any portion of the 100 contracts on NYSE Arca due to current rules granting complete priority to the electronic participants at the price. Consider the following very similar example where the best offers on each market are 0.01 higher:

NYSE Arca	1.01 offer, 100 contracts, no Customer interest
Phlx	1.01 offer, 100 contracts, no Customer interest

Even in this instance, it is likely that an institution looking to facilitate a portion of its customer's interest at a price of 1.00 may choose to avoid the NYSE Arca trading floor due to the possibility that the 1.01 electronic offer would briefly "flicker" to 1.00 prior to completion of the trade in open outcry, thereby preventing any facilitation and again effectively leaving the firm with no choice but to direct the order to Phlx, where an updated 1.00 offer would not impact the firm's ability to facilitate the trade. <u>In both cases, under today's rules, the firm would not direct the order to NYSE Arca and potentially receive "price improvement"; instead, the order would simply execute at 1.00 on Phlx.</u>

If the Proposal were in effect, NYSE Arca would offer a viable alternative venue for executing these trades, perhaps utilizing a floor broker based on the NYSE Arca trading floor with whom the investor or institution has a favorable relationship resulting in lower commissions, or possibly using a trading system preferred by the institution or its customer that may not support routing to Phlx floor brokers. As such, the Proposal would reduce the burden on competition and enhance the ability of investors to choose among several competing venues to execute an order.

* * * * * * *

In summary, the NYSE Arca filing is a straightforward proposal to implement a scaled-back version of industry-standard priority rules already in effect on all other U.S. options exchange trading floors. Doing so would enhance competition by offering investors an additional competitive venue for trade execution while preserve all existing opportunities for price improvement. We are confident that the commenters as well as the Commission will agree that all market centers should be held to equivalent standards, and that NYSE Arca should not be precluded from implementing a rule that is already in effect throughout the rest of the options exchange industry. As such, we respectfully request speedy approval of the Proposal.

Thank you again for providing us with the opportunity to respond to comments raised about the Proposal. Should you have any questions or comments, please do not hesitate to contact us.

Sincerely,