

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-67618; File No. SR-NYSEARCA-2012-81)

August 8, 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 Add an Additional Tier to the Lead Market Maker Rights Fee and an Alternative Qualification Basis for Market Makers that Post Liquidity in Penny Pilot Issues and Options on the SPDR S&P 500 ETF

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 July 27, 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 add an additional tier to the Lead Market Maker (“LMM”) rights fee and an alternative qualification basis for Market Makers that post liquidity in Penny Pilot issues and options on the SPDR S&P 500 ETF (“SPY”). 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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 add an additional tier to the LMM rights fee and an alternative qualification basis for Market Makers that post liquidity in Penny Pilot issues and options on SPY.

LMM Rights

OTP Firms⁴ acting as LMMs are assessed a fee for LMM rights for each appointed issue.⁵ The LMM rights fee is based on the average daily volume (“ADV”) of Customer contracts traded in that issue.⁶ Currently, the LMM rights fees are charged as follows:

| Average National Daily Customer Contracts | Monthly Issue Fee |
|---|-------------------|
| 0 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 to add an additional tier for issues with an ADV of between 0-1000 contracts that will be charged an LMM rights fee of \$45. The LMM rights fee for issues with an ADV of between 1001-2000 contracts would continue to be \$75. The fees are assessed

⁴ See NYSE Arca Rule 1.1(r).

⁵ “Market Maker” is defined in NYSE Arca Rule 6.32. “Lead Market Maker” is defined in NYSE Arca Rule 6.82.

⁶ The term “Customer” excludes a broker-dealer. See NYSE Arca Rule 6.1A(a)(4).

at the end of each month on each issue that an LMM holds in their LMM appointment. The proposed LMM rights fees would be charged as follows:

| Average National Daily Customer Contracts | Monthly Issue Fee |
|---|-------------------|
| 0-1000 | \$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 |

Penny Pilot Issues

Currently, Market Makers receive a per contract credit for posted electronic executions based on certain volume thresholds in Penny Pilot issues, with an additional credit for posted electronic executions in SPY, as follows:

| Tier | Qualification Basis (Average Electronic Executions Per Day) | Credit Applied to Posted Electronic Market Maker Executions in Penny Pilot Issues (except SPY) | Credit Applied to Posted Electronic Market Maker Executions in SPY |
|--------|---|--|--|
| Base | | (\$0.32) | (\$0.34) |
| Tier 1 | 30,000 Contracts from Market Maker Posted Orders in Penny Pilot Issues | (\$0.34) | (\$0.36) |
| Tier 2 | 80,000 Contracts from Market Maker Posted Orders in Penny Pilot Issues | (\$0.38) | (\$0.40) |
| Tier 3 | 150,000 Contracts from Market Maker Posted Orders in Penny Pilot Issues | (\$0.40) | (\$0.42) |

For example, if a Market Maker has average electronic executions per day of 40,000 contracts from posted orders in Penny Pilot issues, the Market Maker receives a credit of \$0.34 per contract for posted electronic executions in non-SPY Penny Pilot issues, and a credit of \$0.36 per contract for posted electronic executions in SPY.

The Exchange proposes to add an alternative qualification basis for Market Makers that post liquidity in Penny Pilot issues and SPY. Market Makers will have an alternative method to qualify for the Tier 2 credit applied to posted electronic executions in Penny Pilot issues and SPY. A Market Maker may qualify for the Tier 2 credit by:

- Having an ADV of 80,000 executed electronic Market Maker posted contracts in Penny Pilot issues, including SPY, or
- Having a combined ADV of 150,000 executed electronic Market Maker and Customer posted contracts in Penny Pilot issues, including SPY, from all affiliated OTP Holders⁷ and OTP Firms.

For purposes of this calculation, days when the market closes early are not included in the ADV. The Exchange does not propose to change the base rate, Tier 1, or Tier 3 credits for Market Makers that post electronic executions in Penny Pilot issues or SPY. The proposed Market Maker monthly posting credit tiers and qualifications for executions in Penny Pilot issues and SPY would be as follows:

| Tier | Qualification Basis (Average Electronic Executions Per Day) | Credit Applied to Posted Electronic Market Maker Executions in Penny Pilot Issues (except SPY) | Credit Applied to Posted Electronic Market Maker Executions in SPY |
|--------|--|---|--|
| Base | | | (\$0.32) (\$0.34) |
| Tier 1 | 30,000 Contracts from Market Maker Posted Orders in Penny Pilot Issues | | (\$0.34) (\$0.36) |
| Tier 2 | 80,000 Contracts from Market Maker Posted Orders in Penny Pilot Issues | 150,000 Contracts Combined from Market Maker Posted Orders and Customer Electronic Posted Orders in Penny | (\$0.38) (\$0.40) |

⁷ See NYSE Arca Rule 1.1(q).

| | | | | |
|--------|--|---------------|----------|----------|
| | | Pilot Issues* | | |
| Tier 3 | 150,000 Contracts from Market Maker Posted Orders in Penny Pilot Issues | | (\$0.40) | (\$0.42) |
| | * <u>Includes transaction volume from the Market Maker's affiliates.</u> | | | |

For example, if a Market Maker has average electronic executions per day of 160,000 contracts combined from Market Maker posted orders and Customer electronic posted orders in Penny Pilot issues, the Market Maker receives a credit of \$0.38 per contract for Market Maker posted electronic executions in non-SPY Penny Pilot issues, and a credit of \$0.40 per contract for Market Maker posted electronic executions in SPY.

The Exchange proposes to make all of the changes described above operative on August 1, 2012.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Section 6(b)(4) of the Act,⁹ 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 tier for LMM rights fees is reasonable, equitable, and not unfairly discriminatory because certain issues have declined to an ADV below 1,000 Customer contracts, which in turn produces a profit for LMMs that is lower than the amount of the LMM rights fee. Issues that are particularly unprofitable run the risk of

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4).

being delisted, even though the decline in ADV may be temporary. Therefore, it is reasonable to lower the LMM rights fee to an amount that is more closely aligned to the revenues generated by these issues. In addition, the fee is equitable and not unfairly discriminatory because it would apply uniformly to all similarly situated LMMs.

The Exchange further believes that the proposed alternative qualification basis for Market Makers is reasonable, equitable and not unfairly discriminatory because it is set at a level that would be more achievable for Market Makers and encourages Market Makers to send additional Customer orders to the Exchange. In this regard, the Exchange has proposed more than one method of qualifying for the Tier 2 credit. Overall, the Exchange believes that this will result in more Market Makers qualifying for the tier, receiving the increased credits, and therefore reducing their overall transaction costs on the Exchange. In addition, the Exchange believes that the proposed alternative qualification basis would continue to incent Market Makers to increase the level of Customer order flow sent to, and liquidity added on, the Exchange, thereby potentially improving the quality and efficiency of order interaction and executions on the Exchange. The Exchange believes that the aspect of the proposed change related to the activity of an affiliated OTP Holder or OTP Firm is reasonable, equitable and not unfairly discriminatory because it would encourage increased trading activity on the Exchange. In this regard, the proposal is designed to bring additional posted order flow to the Exchange, so as to provide additional opportunities for all OTP Holders and OTP Firms to trade on the Exchange. The Exchange further believes that the proposed change is reasonable, equitable and not unfairly discriminatory because the tiers, and the corresponding credits, will apply uniformly to all Market Makers.

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 adjust its fees to remain competitive with other exchanges.

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 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:

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(2).

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-2012-81 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-2012-81. 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 20549-1090 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the Exchange'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-2012-81 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).