

Customer and avoid incurring any transaction fees. Additionally Professional Customers may elect to register as a Broker-Dealer and, once registered as a Broker-Dealer, may apply to become Market Makers to transact on a proprietary basis as Market Makers or become ATP Holders to transact on the Exchange as a Firm. In light of the ability to access the Exchange in a variety of ways, each of which is priced differently, Professional Customers, Broker-Dealers and other participants may access the Exchange in a manner that makes the most economic sense for them.

The Exchange believes that the proposed change to establish volume-based tiers for Professional Customers and Broker-Dealers that transact electronically is reasonable, equitable, and not unfairly discriminatory. As noted previously, they have lower aggregate fees when compared to, for example, the ATP fees incurred by a NYSE Amex Market Maker to quote the entire universe of names traded on the Exchange. Further, the establishment of the tiers will enable Professional Customers and Broker-Dealers that transact in sufficient volumes to obtain a lower per contract rate on all of their electronic volumes in a given month. This is reasonable and equitable given that a higher volume of marketable orders, which these volume tiers will encourage, is beneficial to other Exchange participants due to the increased opportunity to trade. The Exchange believes the proposed change to adopt volume-based tiers for Professional Customers and Broker-Dealers that transact electronically is not unfairly discriminatory because the change will apply to all participants in those categories equally.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they determine that such venues offer more favorable trading conditions and rates.

Finally, the Exchange believes that the amendment of the "Broker Dealer Manual" and "Professional Customer Manual" fees in the Fee Schedule is equitable and reasonable because it would result in increased clarity in the Fee Schedule regarding such fees.

#### *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)<sup>16</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>17</sup> thereunder, because it establishes a due, fee, or other charge imposed by NYSE MKT.

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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEMKT-2012-17 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-NYSEMKT-2012-17. 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, 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-NYSEMKT-2012-17 and should be submitted on or before August 8, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-67424; File No. SR-NYSEArca-2012-70]

### **Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services**

July 12, 2012.

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 June 29, 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.

<sup>18</sup> 17 CFR 200.30-3(a)(12).

<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.

<sup>16</sup> 15 U.S.C. 78s(b)(3)(A).

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

## **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services ("Fee Schedule"). The Exchange proposes to implement the fee changes on July 1, 2012. The text of the proposed rule change is available on the Exchange's Web site 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**

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 the Fee Schedule, as described below, and implement the fee changes on July 1, 2012.

ETP Holders, including Market Makers, are currently eligible to qualify for the Cross-Asset Tier and the corresponding credit of \$0.0030 per share for orders that provide liquidity on the Exchange. To qualify, an ETP Holder must (1) provide liquidity of 0.50% or more of the U.S. Consolidated Average Daily Volume ("CADV")<sup>4</sup> per month, and (2) be affiliated with an NYSE Arca Options OTP Holder or OTP Firm that provides an average daily volume ("ADV") of electronic posted Customer executions in Penny Pilot issues on NYSE Arca Options of at least 110,000 contracts.<sup>5</sup>

<sup>4</sup> U.S. CADV means United States Consolidated Average Daily Volume for transactions reported to the Consolidated Tape and excludes volume on days when the market closes early.

<sup>5</sup> An affiliate of an ETP Holder would be a person or firm that directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the ETP Holder. See NYSE Arca Equities Rule 1.1(b). As provided under NYSE Arca Options Rule 6.72, options on certain issues have been approved to trade with a minimum price variation of \$0.01 as part of a pilot

The Exchange proposes to decrease the CADV percentage threshold from 0.50% to 0.45% and to decrease the options ADV threshold from 110,000 contracts to 90,000 contracts. The Exchange has determined to make these changes in light of current and anticipated market conditions and believes that these changes will provide a greater incentive to attract additional equities and options liquidity.

#### **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"), in general, and furthers the objectives of Section 6(b)(4) of the Act, 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 rule change is reasonable, equitable and not unfairly discriminatory because the proposed changes to the Cross-Asset Tier would directly relate to the activity of an ETP Holder and the activity of an affiliated OTP Holder or OTP Firm on the Exchange, thereby encouraging increased trading activity on both the NYSE Arca equity and option markets. The Exchange has determined to adjust the CADV and contract thresholds in light of current and anticipated market conditions and believes that these changes will provide a greater incentive to attract additional equities and options liquidity.

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.

program that is currently scheduled to expire on December 31, 2012. See SR-NYSEArca-2012-65.

### *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>6</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>7</sup> thereunder, because it establishes [sic] 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:

### *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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2012-70 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-2012-70. 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

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(f)(2).

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 Section, 100 F Street NE., Washington, DC 20549-1090. Copies of the filing will also be available for inspection and copying at the NYSEArca's principal office and on its Internet Web site at [www.nyse.com](http://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-2012-70 and should be submitted on or before August 8, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Kevin M. O'Neill,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67421; File No. SR-NYSEAmex-2012-31]

### Self-Regulatory Organizations; NYSE Amex LLC; Order Approving a Proposed Rule Change Defining a Primary Specialist in Each Options Class and Modifying the Specialist Entitlement Accordingly

July 12, 2012.

#### I. Introduction

On May 11, 2012, NYSE Amex LLC (the "Exchange" or "NYSE Amex") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to define a Primary Specialist in each options class and modify the Specialist entitlement. The proposed rule change was published for comment in the **Federal Register** on May 31, 2012.<sup>3</sup> The Commission received no comment letters on the proposal. This

order approves the proposed rule change.

#### II. Description of the Proposal

The Exchange proposes to amend Rules 964NY and 964.2NY to define Primary Specialists, and to modify the order allocation entitlement amongst Specialist Pool participants.

Rule 964NY sets forth the priority for the allocation of incoming orders to resting interest at a particular price in the NYSE Amex System. Under the current rule, the priority for the allocation of incoming orders at the same price is as follows: (1) resting Customer orders; (2) Directed Order Market Makers, provided they satisfy the criteria to be eligible to receive a Directed Order; (3) the Specialist Pool (for non-Directed Orders); and (4) non-Customer interest (on a size pro-rata basis). As currently provided in Rule 964NY(b)(2)(C) and Rule 964.2NY, the Specialist and e-Specialists in each class compete in the Specialist Pool on a size pro-rata basis, and do not compete for the allocation of non-Directed Orders of five contracts or fewer.<sup>4</sup> Such orders are allocated on a rotating basis (i.e., a round robin) to a Specialist or e-Specialist in the Specialist Pool.

The Exchange now proposes to designate a Primary Specialist from amongst the Specialist Pool participants. According to the Exchange, the Primary Specialist will be determined using objective evaluation of the relative quote performance of each Specialist and e-Specialist. The evaluation will be conducted on a quarterly basis and would include one or more of the following factors: time and size at the NBBO, average quote width, average quote size, and the relative share of electronic volume in a given class of options.<sup>5</sup> The Exchange will issue a Regulatory Bulletin at least five business days prior to each evaluation period with the evaluation criteria, including the relative weighting of each factor.

Under the proposed rule change, the Primary Specialist (instead of the Specialist) would receive any additional weighting in the size pro rata allocation amongst Specialist Pool participants. This additional weighting would be determined by the Exchange, as is currently the case. Additionally, under the proposal, rather than a round robin allocation of non-Directed Orders for five contracts or fewer, all such orders

would be allocated to the Primary Specialist after any allocation to Customers, not to exceed the size of the Primary Specialist's quote, provided the Primary Specialist is quoting at the NBBO. If the Primary Specialist's quote size is less than the order of five contracts or fewer, any remaining contracts after the Primary Specialist receives its allocation will be allocated in accordance with Rule 964NY(b)(2)(D) (i.e., size pro rata). In addition, as is the case under the current rule for the Specialist Pool, if the Primary Specialist is not quoting at the NBBO at the time the order for five or fewer contracts arrives, then the order will be executed in accordance with the provision of Rule 964NY(b)(2)(D).<sup>6</sup>

The Exchange stated that it will not implement this proposal until it has notified ATP Holders via Regulatory Bulletin regarding the rule change. The Exchange plans to issue notice announcing the compliance date of the rule change within 90 days from the effective date of the rule change.<sup>7</sup>

#### III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>8</sup> Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>9</sup> in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transaction in securities, to remove impediments and perfect the mechanisms of a free and open market, and, in general, to protect investors and the public interest.

The Commission closely scrutinizes exchange rule proposals to adopt or amend participation guarantees where such guarantees would rise to a level that could have a material adverse impact on quote competition within a particular exchange.<sup>10</sup> As noted by the Exchange, the proposed rule change is intended to enhance quote competition

<sup>6</sup> The Exchange is also proposing to correct a typographical error in Rule 964.2NY(b)(3)(A) by changing the word "on" to "one."

<sup>7</sup> See Notice, *supra* note 3, at 32158.

<sup>8</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

<sup>10</sup> See Securities Exchange Act Release No. 44641 (August 2, 2001), 66 FR 41643 (August 8, 2001) (SR-ISE-2001-17), at 41644-41645; see also Securities Exchange Act Release No. 51818 (June 10, 2005), 70 FR 35146 (June 16, 2005) (SR-ISE-2005-18), at 35149.

<sup>8</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Securities Exchange Act Release No. 67057 (May 24, 2012), 77 FR 32157 ("Notice").

<sup>4</sup> Under the rule, the Specialist's pro-rata allocation may receive additional weighting as determined by the Exchange.

<sup>5</sup> The first evaluation period may be longer or shorter than a calendar quarter, depending on Commission approval of the proposed rule change.