

*B. Self-Regulatory Organization's Statement on Burden on Competition*

CBOE 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. The proposed rule change is not designed to address any competitive issues. Rather, the proposed rule change is designed to help the Exchange to adequately fund its regulatory activities while seeking to ensure that total regulatory revenues do not exceed total regulatory costs.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and paragraph (f) of Rule 19b-4<sup>9</sup> thereunder. At any time within 60 days of the filing of the 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 will institute proceedings 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2013-117 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-CBOE-2013-117. 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 publicly available. All submissions should refer to File Number SR-CBOE-2013-117 and should be submitted on or before January 2, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-71016; File No. SR-NYSEArca-2013-136]

**Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Options Fee Schedule To Raise the Take Liquidity Fee for Lead Market Maker and Market Maker Electronic Executions in Penny Pilot Issues**

December 6, 2013.

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 November 26, 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 raise the Take Liquidity fee for Lead Market Maker ("LMM") and Market Maker electronic executions in Penny Pilot Issues. The Exchange proposes to implement the fee change effective December 1, 2013. 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.

Permit Holder proprietary transactions if the Exchange deems it advisable.

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f).

<sup>10</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.

*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 raise the Take Liquidity fee for LMM and Market Maker electronic executions in Penny Pilot Issues.<sup>4</sup> The Exchange proposes to implement the fee change effective December 1, 2013.<sup>5</sup> Currently, the Exchange charges a Take Liquidity fee of \$0.47 per contract for LMM and Market Maker electronic executions in Penny Pilot Issues. The Exchange proposes to raise the Take Liquidity fee to \$0.48 per contract for LMM and Market Maker electronic executions in Penny Pilot Issues in order to keep the fee in the same range as other exchanges<sup>6</sup> and generate revenue that will help support credits offered to market participants that post liquidity. The Exchange does not propose to make any other changes to the fees for electronic executions in Penny Pilot Issues. Take Liquidity fees will remain at \$0.48 for Firms and Broker Dealers and \$0.45 for Customers.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Sections

6(b)(4) and (5) of the Act,<sup>8</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 raising the Take Liquidity fee from \$0.47 per contract to \$0.48 per contract for LMM and Market Maker electronic executions in Penny Pilot Issues will result in the Exchange's fees for taking liquidity in Penny Pilot issues remaining comparable to fees charged by at least one other exchange.<sup>9</sup> In addition, the proposed fee change is reasonable because it will generate revenue that will help to support the credits offered for posting liquidity, which are available to all market participants.

The Exchange believes that the proposed fee increase is equitable and not unfairly discriminatory because the Exchange would uniformly assess all market participants, except Customers, the same Take Liquidity fee of \$0.48 per contract. Customer order flow benefits the market by increasing liquidity, which benefits all market participants; thus Customers are assessed lower fees. Also, LMMs and Market Makers have the ability to earn a higher Post Liquidity credit of \$0.28 per contract for electronic executions in Penny Pilot Issues compared to the \$0.10 per contract Post Liquidity Credit that is available to Firms and Broker Dealers. This is equitable and not unfairly discriminatory because LMMs and Market Makers have obligations to quote and commit capital, both of which contribute to market quality and price discovery on the Exchange. Firms and Broker Dealers do not have such obligations.

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 proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed fee will allow the Exchange to remain competitive with

other exchanges by keeping its fees in a similar range.<sup>11</sup> The Exchange believes that the proposed fee change reduces the burden on competition because it takes into account the value that various market participants add to the marketplace, as discussed above. 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 promotes a 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 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:

<sup>11</sup> See *supra* note 6.

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

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

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

<sup>4</sup> 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 program that is currently scheduled to expire on December 31, 2013. See Securities Exchange Act Release No. 69790, (June 18, 2013) 78 FR 37853 (June 24, 2013) (SR-NYSEArca-2013-59).

<sup>5</sup> The Exchange notes that it has previously filed with the Securities and Exchange Commission a proposed rule change to amend the Fee Schedule relating to co-location fees (File No. SR-NYSEArca-2013-131). Exhibit 5 to SR-NYSEArca-2013-131 specified an effective date for the revised Fee Schedule of December 3, 2013 (changed from November 8, 2013). Exhibit 5 to the instant proposed rule change specifies an effective date of December 1, 2013 (changed from November 8, 2013). On December 1, 2013, the Exchange will update the Fee Schedule to reflect the fee change reflected in the instant proposed rule change, with an effective date of December 1, 2013. On December 3, 2013, the Exchange, subject to effectiveness of SR-NYSEArca-2013-131, will further update the Fee Schedule to reflect the changes set forth in SR-NYSEArca-2013-131, with an effective date of December 3, 2013.

<sup>6</sup> For example, NASDAQ Options Market ("NOM") charges Firms, Professionals, and Non-NOM Market Makers, NOM Market Makers, and Broker-Dealers \$0.48 per contract for removing liquidity in Penny Pilot Options while Customers are charged \$0.45 per contract. See NASDAQ Options Rules Chapter XV, Section 2, and Securities Exchange Act Release No. 70820, (November 6, 2013) 78 FR 68122 (November 13, 2013) (SR-NASDAQ-2013-136).

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>9</sup> See *supra* note 6.

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

*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-2013-136 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-2013-136. 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-NYSEArca-2013-136, and should be submitted on or before January 2, 2014.

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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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-71008; File No. SR-NASDAQ-2013-146]

**Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Routing Fees**

December 6, 2013.

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> notice is hereby given that on November 27, 2013, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASDAQ. 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**

NASDAQ proposes to modify Chapter XV, Section 2, entitled "NASDAQ Options Market—Fees and Rebates," which governs pricing for NASDAQ members using the NASDAQ Options Market ("NOM"), NASDAQ's facility for executing and routing standardized equity and index options, to amend Routing Fees.

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on December 2, 2013.

The text of the proposed rule change is available on the Exchange's Web site at <http://www.nasdaq.cchwallstreet.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 Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these 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 aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

**1. Purpose**

The purpose of this filing is to amend the Routing Fees in Section 2(3) of Chapter XV in order to recoup costs the Exchange incurs for routing and executing certain orders in equity options to away markets. Today, the Exchange assesses a Non-Customer a \$0.95 per contract Routing Fee to any options exchange. The Customer Routing Fee for option orders routed to NASDAQ OMX PHLX LLC ("PHLX") is a \$0.05 per contract Fixed Fee in addition to the actual transaction fee assessed. The Customer Routing Fee for option orders routed to NASDAQ OMX BX, Inc. ("BX Options") is \$0.00 per contract. The Customer Routing Fee for option orders routed to all other options exchanges<sup>3</sup> (excluding PHLX and BX Options) is a fixed fee of \$0.15 per contract ("Fixed Fee") in addition to the actual transaction fee assessed. If the away market pays a rebate, the Routing Fee is \$0.00 per contract.<sup>4</sup>

The Exchange proposes to increase the Customer Routing Fixed Fee of \$0.15 per contract when an option order is routed to all other exchanges to \$0.20 per contract. With respect to the fixed costs, the Exchange incurs a fee when it utilizes Nasdaq Options Services LLC ("NOS"), a member of the Exchange and the Exchange's exclusive order router.<sup>5</sup> Each time NOS routes an order to an away market, NOS is charged a clearing fee<sup>6</sup> and, in the case of certain exchanges, a transaction fee is also charged in certain symbols, which fees are passed through to the Exchange. The Exchange currently recoups clearing and transaction charges incurred by the Exchange as well as certain other costs incurred by the Exchange when routing to away markets, such as administrative and technical costs associated with operating NOS, membership fees at

<sup>3</sup> Including BATS Exchange, Inc. ("BATS"), BOX Options Exchange LLC ("BOX"), the Chicago Board Options Exchange, Incorporated ("CBOE"), C2 Options Exchange, Incorporated ("C2"), International Securities Exchange, LLC ("ISE"), the Miami International Securities Exchange, LLC ("MIAX"), NYSE Arca, Inc. ("NYSE Arca"), NYSE MKT LLC ("NYSE Amex") and Topaz Exchange, LLC ("Gemini").

<sup>4</sup> For all Routing Fees, the transaction fee will continue to be based on the away market's actual transaction fee or rebate for particular market participants and in the case that there is no transaction fee or rebate assessed by the away market, the fixed fee.

<sup>5</sup> See NASDAQ Rules at Chapter VI, Section 11(e) (Order Routing).

<sup>6</sup> The Options Clearing Corporation ("OCC") assesses \$0.01 per contract side.

<sup>15</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.