

interest, for securities traded pursuant to UTP.

The Exchange proposes to reduce DMM units' quoting obligations applicable to "more active" securities traded in the UTP Pilot Program to quoting at the NBBO for 5% of the trading day. The Commission notes that this percentage would reflect the quoting requirement currently applicable to DMM units quoting non-UTP Pilot Program securities, *i.e.*, those listed on the Exchange.<sup>12</sup> There would be one significant difference between the proposed quoting obligation for the UTP Pilot Program and the current quoting obligation for non-UTP Pilot Program securities—UTP Pilot Program quoting obligations are and would continue to be calculated on a security-by-security basis, rather than averaged across a portfolio of all of a DMM unit's assigned securities. The Commission believes that this security-by-security basis calculation is reasonably designed to maintain robust quotes for all UTP Pilot Program securities. In addition, the Exchange's proposal would reduce quoting obligations only for "more active" securities, which by definition are more liquid and may, therefore, be less reliant on quoting obligations for continued liquidity. Finally, based on the Exchange's experience during the UTP Pilot Program, the proposed quoting obligation is designed to ensure the continued active participation by DMM units in such securities.

The Commission also finds that the proposed deletion in NYSE Amex Equities Rule 504(b)(1)(A) to the reference to NYSE Amex Equities Rule 103B(II) is consistent with the Act. The Exchange represented that this reference is not necessary within Rule 504(b)(1)(A), and that, despite the proposed deletion, DMM units would remain subject to NYSE Amex Equities Rule 103B(II) with respect to security allocation eligibility.

For the foregoing reasons, the Commission finds that the proposal to amend the UTP Pilot Program is consistent with the requirements of the Act.

#### IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change (SR-NYSEAmex-2011-101) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66377; File No. SR-NYSEArca-2012-12]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Implementing Changes to the NYSE Arca Options Fee Schedule Relating to Post Liquidity Credits

February 10, 2012.

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 January 31, 2012, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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 increase the Post Liquidity credits on Customer posted electronic executions and to delete references to Royalty Fees for foreign currency options, which the Exchange no longer trades. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and [www.nyse.com](http://www.nyse.com).

#### 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 Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange proposes to amend the Fee Schedule to increase the Post Liquidity credits on Customer posted electronic executions and to delete references to Royalty Fees for foreign currency options, which the Exchange no longer trades. The Exchange proposes to make the rule change operative on February 1, 2012.

##### Post Liquidity Credits

Electronic transactions in Penny Pilot issues<sup>3</sup> are assessed Take Liquidity fees and credited with Post Liquidity credits. Under the current Fee Schedule, the Post Liquidity credit is \$0.25 per contract for Customers, \$0.32 per contract for Lead Market Makers and Market Makers, and \$0.10 per contract for Firms and Broker Dealers. OTP Holders that provide aggregated Customer posting volume in Penny Pilot issues that exceeds certain thresholds receive higher Post Liquidity credits on all Customer posted electronic executions. Specifically, an OTP Holder sending Customer orders that in the aggregate exceed 500,000 contracts executed in a month from posting liquidity receives a Post Liquidity credit of \$0.32 per contract on all executions resulting from posted liquidity. If such aggregated Customer orders exceed 800,000 contracts executed in a month from posting liquidity, the OTP Holder receives a Post Liquidity credit of \$0.34 per contract on all executions resulting from posted liquidity. If such aggregated Customer orders exceed 1,200,000 contracts executed in a month from posting liquidity, the OTP Holder receives a Post Liquidity credit of \$0.38 per contract on all executions resulting from posted liquidity. The volume thresholds are intended to incentivize firms to route additional Customer orders to the Exchange.

The Exchange proposes to amend the volume thresholds for the Post Liquidity credits by lowering the initial volume threshold to qualify for the first level of higher Post Liquidity credits, generally raising the amount of the Post Liquidity

<sup>3</sup> Under NYSE Arca Options Rule 6.72, options on certain issues have been approved to trade in a minimum price variation of \$0.01 as part of a pilot program that is scheduled to expire on June 30, 2012.

<sup>12</sup> See NYSE Amex Equities Rule 104(a)(1)(A).

<sup>13</sup> 15 U.S.C. 78s(b)(2).

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

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

credits for the next two volume thresholds, and creating a new higher volume threshold that will pay a higher Post Liquidity credit than is currently offered. The Exchange notes, however, that under the proposed volume thresholds, an OTP Holder that sends

Customer orders that in the aggregate exceed 500,000 but not 800,000 contracts executed in a month will receive a lower Post Liquidity credit of \$0.28 per contract, which is lower than the \$0.32 Post Liquidity credit under the current Fee Schedule. The Exchange

believes that the overall redistribution of the credits will in turn increase order flow to add liquidity on the Exchange and encourage greater participation by the largest market participants. The proposed volume thresholds and Post Liquidity credits are as follows:

	Monthly total customer contracts executed from posted liquidity	Per contract rate on all posted liquidity
Threshold 1 .....	More than 350,000 .....	– \$0.28
Threshold 2 .....	More than 800,000 .....	– 0.36
Threshold 3 .....	More than 1,200,000 .....	– 0.42
Threshold 4 .....	More than 3,500,000 .....	– 0.43

**Royalty Fees for Foreign Currency Options**

The current Fee Schedule sets forth Royalty Fees for certain foreign currency options. Because the Exchange no longer trades foreign currency options, it proposes to delete references to such Royalty Fees.

**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”) <sup>4</sup> in general and Section 6(b)(4) of the Act <sup>5</sup> in particular because it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. The proposed change is equitably allocated and not unfairly discriminatory because it will apply uniformly to all similarly situated OTP Holders that direct Customer orders to the Exchange. The proposed fees also are equitably allocated and reasonable because they create an incrementally higher incentive for OTP Holders to bring additional liquidity to the Exchange, thereby contributing to price discovery and benefiting investors generally. Moreover, the difference between (1) the Post Liquidity credits received by OTP Holders that aggregate Customer orders, and (2) the Post Liquidity credit received by Firms and Broker Dealers is not inequitable or unfairly discriminatory because the Exchange believes that it has structured its Fee Schedule in a manner to attract order flow from all such entities. In this regard, the Exchange has found that the higher Post Liquidity credit for Firms and Broker Dealers has not caused them to send additional order flow to the

Exchange. Based on its observations, the Exchange believes that such entities focus on the ability to trade with Customer order flow to capture the spread rather than on rebates and fees. Accordingly, the Exchange is proposing to further generally increase the Post Liquidity credits for Customer order flow to attract such order flow to the Exchange. Although certain OTP Holders that send Customer orders that in the aggregate exceed 500,000 but not 800,000 contracts executed in a month will receive a slightly lower Post Liquidity credit than they currently do, other OTP Holders that previously did not qualify for the credit will qualify going forward. The Exchange believes that overall redistribution of the credits will in turn increase order flow to add liquidity on the Exchange and encourage greater participation by the largest market participants. With the anticipated increase in such order flow to the Exchange, the Exchange expects to attract additional order flow from Firms and Broker Dealers to trade with such order flow. The Exchange further believes that the proposed change is reasonable because other exchanges offer comparable tiers of credits for adding Customer liquidity in Penny Pilot issues.<sup>6</sup>

**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>7</sup> of the Act and subparagraph (f)(2) of Rule 19b-4 <sup>8</sup> thereunder, because it establishes a due, fee, or other charge imposed by the 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-2012-12 on the subject line.

**Paper Comments**

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary,

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

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

<sup>6</sup> See, e.g., Nasdaq Options Market pricing, available at <http://nasdaqtrader.com/Micro.aspx?id=OptionsPricing>, and BATS BZX Exchange Fee Schedule, Effective January 3, 2012, available at <http://batstrading.com/FeeSchedule/>.

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(2).

Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2012-12. 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 the 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-2012-12 and should be submitted on or before March 8, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66372; File No. SR-NASDAQ-2012-021]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ Stock Market LLC Relating to Fidelity Bonds

February 10, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

(“Act”),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on January 31, 2012, 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 and II 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

The NASDAQ Stock Market LLC proposes to amend NASDAQ Rule 3020 to reflect recent changes to a corresponding rule of the Financial Industry Regulatory Authority (“FINRA”).

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

Many of NASDAQ's rules are based on rules of FINRA (formerly the National Association of Securities Dealers (“NASD”). Beginning in 2008, FINRA embarked on an extended process of moving rules formerly designated as “NASD Rules” into a consolidated FINRA rulebook. In most cases, FINRA has renumbered these rules, and in some cases has substantively amended them. Accordingly, NASDAQ also has initiated a process of modifying its rulebook to ensure that NASDAQ rules corresponding to FINRA/NASD rules

continue to mirror them as closely as practicable.

This proposed rule change concerns NASDAQ Rule 3020 entitled “Fidelity Bonds,” which follows and incorporates by reference former NASD Rule 3020.<sup>3</sup> FINRA recently amended its rules to adopt former NASD Rule 3020, relating to Fidelity Bonds, with certain changes, into the consolidated FINRA rulebook as FINRA Rule 4360.<sup>4</sup> NASDAQ Rule 3020 provides that “[a] member designated to Nasdaq for oversight pursuant to SEC Rule 17d-1 shall comply with NASD Rule 3020 as if such Rule were part of Nasdaq's Rules.” The Exchange proposes to amend this text to reference new FINRA Rule 4360, which replaced NASD Rule 3020.

NASD Rule 3020(a) generally provides that each member required to join the Securities Investor Protection Corporation (“SIPC”) that has employees and that is not a member in good standing of one of the enumerated national securities exchanges must maintain fidelity bond coverage. FINRA Rule 4360 requires each member that is required to join SIPC to maintain blanket fidelity bond coverage with specified amounts of coverage based on the member's net capital requirement, with certain exceptions. NASD Rule 3020(a)(1) requires members to maintain a blanket fidelity bond in a form substantially similar to the standard form of Brokers Blanket Bond promulgated by the Surety Association of America. New FINRA Rule 4360 requires members to maintain fidelity bond coverage that provides for per loss coverage without an aggregate limit of liability. Also, pursuant to FINRA Rule 4360, a member's fidelity bond must provide against loss and have Insuring Agreements covering at least the following: Fidelity, on premises, in transit, forgery and alteration, securities and counterfeit currency. The rule change modified the descriptive headings for these Insuring Agreements, in part, from NASD Rule 3020(a)(1) and NYSE Rule 319(d) to align them with the headings in the current bond forms available to broker-dealers. FINRA Rule 4360 also eliminates the specific coverage provisions in NASD Rule

<sup>3</sup> The purpose of the fidelity bond is to protect a member against certain types of losses, including, but not limited to, those caused by the malfeasance of its officers and employees, and the effect of such losses on the member's capital.

<sup>4</sup> See Securities Exchange Act Release No. 63961 (February 24, 2011), 76 FR 11542 (March 2, 2011) (SR-FINRA-2010-059) (a rule change to adopt a rule of the National Association of Securities Dealers, Inc. (“NASD”) as part of the consolidation of the FINRA rulebook). This new rule took into account Incorporated NYSE Rule 319 (Fidelity Bonds) and its Interpretation.

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

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

<sup>9</sup> 17 CFR 200.30-3(a)(12).