before being eligible to join the public roster after moving to a job that would not otherwise disqualify them for service. FINRA maintained that the proposed two-year cooling off period responds to the concerns raised by investor representatives and would be a positive step toward enhancing investors' perception of fairness in FINRA's arbitration forum. FINRA also stated that it intends to further review, under the auspices of the National Arbitration and Mediation Committee, both the public and non-public arbitrator definitions with a view towards clarifying the definitions and reviewing additional issues such as those raised in comment letters on the proposed rule change. Therefore, FINRA declined to amend the proposed rule change.

IV. Commission's Findings

The Commission has carefully reviewed the proposed rule change, the comments received, and FINRA's Response Letter. Based on its review of the record, 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 association.[25] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[26] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

More specifically, the Commission finds that the proposed rule change to exclude persons associated with a mutual fund or hedge fund from serving as public arbitrators and require individuals to wait for two years after ending certain affiliations before they may be permitted to serve as public arbitrators would benefit investors and other participants in the forum by improving investor confidence in the neutrality of FINRA's public arbitrator roster. While the Commission appreciates the suggestions regarding exclusions from the definition of ''public arbitrator'' and the proposed two-year cooling off period, we believe that FINRA has responded adequately to comments. We also agree with the Response Letter's position that the proposed rule change should improve investors' perception about the fairness and neutrality of FINRA's public arbitrator roster, particularly given the Response Letter's representation that FINRA intends to conduct a comprehensive review of both the public and non-public arbitrator definitions with a view towards further clarifying the definitions and reviewing additional issues such as those raised in comment letters on the proposed rule change.

For the reasons stated above, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[27] that the proposed rule change (SR–FINRA–2013–003) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–08323 Filed 4–9–13; 8:45 am]

BILLING CODE 8011–01–P

[25] In approving this proposed rule change, the Commission has considered the rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[26] 15 U.S.C. 78*o*–3(b)(6).

[27] 15 U.S.C. 78s(b)(2).

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69311; File No. SR–NYSEArca–2013–36]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Standard Options Transaction Fees

April 4, 2013.

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 March 27, 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 Substance of the Proposed Rule Change

The Exchange proposes to amend Standard Options Transaction Fees. The text of the proposed rule change is available on the Exchange's Web site 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 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 purpose of this filing is to modify the transaction charges for executing standard options trades on NYSE Arca. The Exchange proposes to raise the Take Liquidity Rate in both Penny Pilot Issues and non-Penny Pilot issues, while reducing the Post Liquidity credit for NYSE Arca Market Makers in non-Penny Pilot issues. The Exchange also proposes to modify the Customer Monthly Posting Credit Tiers and Qualifications to provide additional tiers to incent an increased level of Customer activity, and create new Tiers for a similar increase in Customer activity by providing higher Post Liquidity credits in non-Penny Pilot issues.

First, the Exchange proposes to no longer differentiate the Take Liquidity rate by contra party, so that a participant will have a single fee for Taking Liquidity in Penny Pilot issues. The Exchange proposes to raise the Take Liquidity rate for all non-Customers trading in Penny Pilot issues to $0.47 per contract.

Similarly, the Exchange proposes raising the Take Liquidity fee for Electronic Executions in non-Penny Pilot issues for all participants, with similar increases but differentiated fees by participant type. The Take Liquidity fee for LMMs trading in non-Penny Pilot issues will be increased from $0.78 to

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

$0.84. The Take Liquidity fee for all NYSE Arca Market Makers will also increase to $0.84, from the current $0.80. The Take Liquidity fee for Firm and Broker Dealer transactions in non-Penny Pilot issues will increase from $0.85 to $0.87, while the Take Liquidity fee in non-Penny Pilot issues for Customers will increase from $0.79 to $0.82.

The Exchange proposes to modify the Post Liquidity rate for NYSE Arca Market Makers in non-Penny Pilot issues by reducing it to a credit of $0.05.

The increases in various Take Liquidity rates and the reduction of the Post Liquidity credit for NYSE Arca Market Makers in non-Penny Pilot issues is to provide sufficient funding for various Customer Post Liquidity credits.

NYSE Arca proposes to modify the Customer Monthly Posting Credit Tiers and Qualifications for Executions in Penny Pilot Issues. First, the Exchange proposes to eliminate the first and third qualification requirements for Tier 4. Secondly, the Exchange proposes to reduce the level of activity needed to meet the current second qualification for Tier 4 from 0.95% to 0.85% of Total Industry Customer equity and ETF option Average Daily Volume (ADV) from Posted Orders in Penny Pilot Issues, all account types. Thirdly, the Exchange proposes to add Tier 5 with a credit of $0.45 to be applied to posted electronic Customer executions in Penny Pilot issues. To earn the new Tier 5 credit, a firm must qualify by providing ''At least 0.50% of Total Industry Customer equity and ETF option ADV from Customer Posted Orders in both Penny Pilot and non-Penny Pilot Issues, plus executed ADV of Retail Orders of 0.3% of U.S. Equity Market Share Posted and Executed on NYSE Arca Equity Market''. The Exchange also proposes an additional Tier, Tier 6, with a qualification of ''At least 0.95% of Total Industry Customer equity and ETF option ADV from Customer Posted Orders in both Penny Pilot and non-Penny Pilot Issues'', with a credit for meeting the qualification of $0.47 per contract applied to posted electronic executions in Penny Pilot issues.

The Exchange also proposes the creation of Customer Posting Credit Tiers in Non-Penny Pilot Issues with two Tiers to receive a higher credit to be applied to posted electronic Customer executions in non-Penny Pilot issues. To qualify for the first tier, Tier A, an Order Flow Provider would need to provide ''At least 0.50% of Total Industry Customer equity and ETF option ADV from Customer Posted Orders in both Penny Pilot and Non-Penny Pilot Issues Plus executed ADV of Retail Orders of 0.3% ADV of U.S. Equity Market Share Posted and Executed on NYSE Arca Equity Market'', the same criterion as Tier 5 in the Customer Posted Liquidity Credits for Penny Pilot issues. Meeting the qualifications for Tier A will provide a credit applied to posted electronic Customer executions in non-Penny Pilot issues of $0.80.

The qualification basis for Tier B would be the same as for the new Tier 6 in the Customer Tiers for Posting Credits in Penny Pilot Issues: at least 0.95% of Total Industry Customer equity and ETF option ADV from Customer posted orders in both Penny Pilot and non-Penny Pilot issues. Order Flow Provider (''OFP'') firms that meet the qualification would, in addition to the higher tier in Penny Pilot issues, also receive a credit of $0.81 applied to posted electronic executions in non-Penny Pilot names.

The changes to various Customer Post Liquidity credit tiers, and the creation of the new Customer Posting Credit Tiers in Non-Penny Pilot Issues, are to encourage additional Customer order flow to be sent to the Exchange.

NYSE Arca also proposes additional language in endnote 8, to define Retail Orders. A Retail Order must qualify for the Retail Order Tier set forth in the Schedule of Fees and Charges for NYSE Arca Equities, Inc.

NYSE Arca intends for the new fees to be in effect on April 1, 2013.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[5] 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 proposal to raise certain Take Liquidity fees in Penny Pilot issues is reasonable in that all of the non-Customer rates are being raised to a rate that is already applied to certain transactions in Penny Pilot issues. While the rate for Customers will remain at a slightly lower level, this is not unfairly discriminatory, as non-Customers want to attract Customer order flow, and Customers have other costs, such as commissions, which are not charged to non-Customers.

The Exchange proposal to raise the Take Liquidity fees in non-Penny Pilot names is reasonable because they are within the established range of similar fees charged by other markets. One exchange charges a Take Liquidity fee of as much as $0.89 per contract. In addition, the increase in Take Liquidity fees is also non- discriminatory because the Exchange is making a similar increase for all participant types. While the fees are not identical, they are equitable in that the increases are by similar amounts, and the resultant fees are differentiated by the overall costs and obligations of the different participants. The Exchange will now be charging the same Take Liquidity rate to both Market Makers and LMMs. While the rate for Firms and Broker Dealers is slightly higher, it is not unreasonably discriminatory because Market Makers have higher fees for Trading Permits and have market maker obligations which require them to pay for equipment and connectivity. Customers will pay a slightly lower Take Liquidity rate because Customers have other costs not borne by non-Customers, and a lower fee for Customers is not discriminatory because non-Customers wish to have Customer orders attracted to the Exchange by having lower fees.

The Exchange proposal to reduce the Post Liquidity credit in non-Penny Pilot issues for NYSE Market Makers is reasonable in that the range of fees for Market Maker transactions in non-Penny Pilot issues varies across all market centers from a credit of $0.70 to a fee of $0.85. It is not unfairly discriminatory as different market participants have different costs and obligations. It is not unfairly discriminatory to have a higher Post Liquidity credit for Lead Market Makers as compared to other NYSE Arca Market Makers because LMMs have a higher quoting obligation and higher costs and there are barriers to entry and exit of appointment as an LMM that are not imposed on other Market Makers.

The NYSE Arca proposal to modify the Customer Monthly Posting Credit Tiers and Qualifications in Penny Pilot issues is reasonable in that it sets credits within the range of credits offered for similar Customer activity on other markets, which range as high as $0.48. It is not unreasonably discriminatory to set credit tiers to incent higher amounts of Customer volume, as non-Customers wish to have Customer orders attracted to the Exchange by having more attractive fees. The differing Credit Tiers are not unreasonably discriminatory amongst various OFPs because, while

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4) and (5).

firms may be allowed to meet some tiers with a variety of sources, most of the incentive levels can still be met by an Order Flow Provider whose business consists only of Customer order flow. And while the new Tier 5 is available for Order Flow Firms who also have an Equity Trading Permit (''ETP''), those firms who only have an Options Trading Permit may still achieve the highest tier and greatest Customer Posting Credit by meeting a reasonable level of market share and including all options volume, from both Penny Pilot and non-Penny Pilot issues, to meet that market share level.

Additionally, the NYSE Arca creation of new Customer Posting Credit Tiers in non-Penny Pilot issues is reasonable and non-discriminatory in that it extends upon the common and reasonable concept of rewarding higher Customer volume with higher Post Liquidity credits by applying it to non-Penny Pilot issues. As stated before, it is not unreasonably discriminatory to set credit tiers to incent higher amounts of Customer volume, as non-Customers wish to have Customer orders attracted to the Exchange by having more attractive fees. As with Customer Tier 6 in the Customer Monthly Posting Credit Tiers and Qualifications in Penny Pilot issues, those firms who only have an Options Trading Permit may still achieve Tier B and the greatest Customer Posting Credit by meeting a reasonable level of market share and including all options volume, from both Penny Pilot and non-Penny Pilot issues, to meet that market share level.

In addition, the Exchange believes that the addition of the proposed language in end note 8 to define Retail Orders, which refers to qualification for the Retail Order Tier set forth in the Schedule of Fees and Charges for NYSE Arca Equities, Inc., will provide clarifying language to investors regarding calculation of ADV executed on NYSE Arca Equity Market, for purposes of the proposed charges.

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.

The Exchange believes that the new Take Liquidity rates in Penny Pilot issues does not impose a burden on competition because it sets the same rate for all non-Customer participants, regardless of contra party.

Similarly, by raising all of the Take Liquidity rates for non-Penny Pilot issues by similar amounts, the new Take Liquidity fees for non-Penny Pilot issues do not impose a burden on competition because all participants are affected to the same extent.

In addition, the adjustment of the NYSE Arca Market Maker Post Liquidity rate in non-Penny Pilot issues reduces the burden on competition because it aligns the NYSE Market Maker rate to an equitable balance that reflects both the higher costs of being a Lead Market Maker and the lower overall costs of other non-Customers.

The Exchange notes that the modifications to the Customer Monthly Credit Tiers and Qualifications reduces the burden on competition by providing additional incentives for Customers to bring orders to the Exchange. This incents competition because non-Customers wish to have Customer orders attracted to the Exchange by having attractive fees and incentives.

Similarly, the creation of new Customer Posting Credit Tiers for higher Customer credits in non-Penny Pilot issues does not impose a burden on competition but incents additional order flow to come to NYSE Arca and will increase competition amongst non-Customers to trade against Customer orders.

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.

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)[6] of the Act and subparagraph (f)(2) of Rule 19b–4[7] 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)[8] 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:

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.* Please include File Number SR–NYSEArca–2013–36 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–2013–36. 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

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(2).

[8] 15 U.S.C. 78s(b)(2)(B).

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–2013–36 and should be submitted on or before May 1, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–08331 Filed 4–9–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69309; File No. SR–BYX–2013–011]

Self-Regulatory Organizations; BATS–Y Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify Market Maker Peg Order Functionality

April 4, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on March 22, 2013, BATS–Y Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II 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 is filing with the Commission a proposal to amend the functionality of the Market Maker Peg Order to more closely resemble analogous order types offered by NASDAQ Stock Market LLC (''Nasdaq'') and EDGX Exchange, Inc. (''EDGX'')[3] and to make certain clarifying changes to the rule.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.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 and discussed any comments it received on 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 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 purpose of this proposed rule change is to amend BYX Rule 11.9(c)(16). Specifically, the Exchange proposes to: (1) Remove the option to allow Market Maker Peg Orders to be priced and executed during the Pre-Opening Session[4] and the After Hours Trading Session[5] and to cancel all Market Maker Peg Orders that are on the BATS [sic] Book[6] at the end of Regular Trading Hours; (2) remove the option for a Market Maker Peg Order to be automatically cancelled where there is no NBBO and the order is priced based on the last reported sale from the single plan processor; (3) remove the functionality that would allow a Market Maker to designate a more aggressive offset from the NBBO; (4) make clear that a Market Maker Peg Order will not peg to itself; and (5) make clear that only registered Market Makers are eligible to enter Market Maker Peg Orders. The Exchange is also proposing to reaffirm that it will continue to offer the present automated functionality provided to market makers under Rule 11.8(e) for a period of three months after the implementation of the Market Maker Peg Order.

Market Maker Peg Orders Entered Outside of Regular Trading Hours

The Exchange is proposing to amend BYX Rule 11.9(c)(16) to eliminate the option for Market Maker Peg Orders to be priced and executed outside of Regular Trading Hours and to cancel all Market Maker Peg Orders that are on the BATS [sic] Book at the end of Regular Trading Hours. As currently written, a Market Maker may enter a Market Maker Peg Order at any time during the Pre-Opening Session[7] or Regular Trading Hours, with an order entered during the Pre-Opening Session, by default, to remain unpriced and unexecutable until Regular Trading Hours, however, a Market Maker could designate that the order be priced and executable immediately upon entry during the Pre-Opening Session.

Specifically, the Exchange is proposing rule changes to eliminate the ability for a Market Maker to designate that an order be priced and executable immediately upon entry during the Pre-Opening Session, to state that all Market Maker Peg Orders that are on the BATS [sic] Book expire at the end of Regular Trading Hours, and to reject all Market Maker Peg Orders entered during the After Hours Trading Session. The Exchange is proposing these changes in order to make its Market Maker Peg Order functionality more closely resemble that of Market Maker Peg Orders at Nasdaq and EDGX. Because the Market Maker Peg Order is designed to help Market Makers meet their quoting obligation on the Exchange and the Exchange's quoting obligations do not include any obligations outside of Regular Trading Hours, the Exchange does not believe that allowing Market Maker Peg Orders to be priced and executed outside of Regular Trading Hours provides Market Makers with any benefit that would warrant the additional complexity that the functionality would require. As such, the Exchange believes that eliminating the ability to have Market Maker Peg Orders price and execute outside of Regular Trading Hours will, in conjunction with the other changes proposed in this filing, act to simplify the Market Maker Peg Order type, thereby increasing its utility to Market Makers and decreasing the likelihood of unforeseen complications.

Pricing Market Maker Peg Orders to the Last Reported Sale

The Exchange is proposing to amend BYX Rule 11.9(c)(16) to eliminate the functionality that would allow a Market Maker to designate Market Maker Peg Orders to be cancelled where there is no NBBO and the order would otherwise be priced to the last reported sale from the single plan processor. Currently, a Market Maker may optionally designate

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange notes that EDGA Exchange, Inc. also has an order type identical to that of EDGX, however, for the purposes of this filing, the Exchange is referring only to the order type functionality available at EDGX.

[4] Pre-Opening Session means the time between 8:00 a.m. and 9:30 a.m. Eastern Time.

[5] After Hours Trading Session means the time between 4:00 p.m. and 5:00 p.m. Eastern Time.

[6] BATS [sic] Book means the System's electronic file of orders.

[7] The Pre-Opening Session means the time between 8:00 a.m. and 9:30 a.m. Eastern Time.