

contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.* Attachment D at 1. Mr. Nicoski contends that there will be no issue of market dominant products subsidizing competitive products as a result of this contract. *Id.* *Related contract.* The Postal Service included a redacted version of the related contract with the Request. *Id.* Attachment B. The contract is scheduled to become effective one business day following the date that the Commission issues all regulatory approval. *Id.* at 4. The contract will expire 3 years from the effective date. *Id.* The Postal Service represents that the contract is consistent with 39 U.S.C. 3633(a). *Id.* Attachment E.

The Postal Service filed much of the supporting materials, including the related contract, under seal. *Id.* Attachment F. It maintains that the redacted portions of the Governors' Decision, contract, customer-identifying information, and related financial information should remain confidential. *Id.* at 3. This information includes the price structure, underlying costs and assumptions, pricing formulas, information relevant to the customer's mailing profile, and cost coverage projections. *Id.* The Postal Service asks the Commission to protect customer-identifying information from public disclosure indefinitely. *Id.* at 7.

## II. Notice of Filings

The Commission establishes Docket Nos. MC2013-58 and CP2013-79 to consider the Request pertaining to the proposed Priority Mail Express & Priority Mail Contract 14 product and the related contract, respectively.

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than September 10, 2013. The public portions of these filings can be accessed via the Commission's Web site (<http://www.prc.gov>).

The Commission appoints Pamela A. Thompson to serve as Public Representative in these dockets.

## III. Ordering Paragraphs

*It is ordered:*

1. The Commission establishes Docket Nos. MC2013-58 and CP2013-79 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Pamela A. Thompson is appointed to serve as an officer of the Commission (Public Representative) to represent the

interests of the general public in these proceedings.

3. Comments by interested persons in these proceedings are due no later than September 10, 2013.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

**Shoshana M. Grove,**

*Secretary.*

[FR Doc. 2013-21794 Filed 9-6-13; 8:45 am]

**BILLING CODE P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-70303]

### Order Exempting Broker-Dealers Participating in NYSE Arca, Inc.'s Lead Market Maker Incentive Program From Section 11(d)(1) of the Securities Exchange Act of 1934 and Rule 11d1-2 Thereunder

September 3, 2013.

On June 6, 2013, the Securities and Exchange Commission ("Commission") approved a proposed rule change of NYSE Arca, Inc. ("Exchange" or "NYSE Arca") to adopt new NYSE Arca Equities Rule 8.800 ("Rule 8.800"). Rule 8.800 establishes an incentive program on a pilot basis ("Incentive Program") for Lead Market Makers ("LMMs") in certain exchange-traded products ("ETPs").<sup>1</sup> The Incentive Program is designed to encourage market makers to take LMM assignments in certain lower volume ETPs by offering an alternative fee structure for those LMMs and "LMM Payments" that would be funded from the Exchange's general revenues if the LMM meets or exceeds certain performance standards set forth in Rule 8.800(c) that relate to the LMM's quoting activity in the ETP. The costs of the Incentive Program would be funded by charging participating issuers non-refundable "Optional Incentive Fees"

<sup>1</sup> Securities Exchange Act Release No. 69706 (June 6, 2013), 78 FR 35340 (June 12, 2013) (SR-NYSEArca-2013-34) (the "Approval Order"). The Approval Order contains a detailed description of the Incentive Program. On March 21, 2013, the Exchange filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, as amended ("Act" or "Exchange Act") and Rule 19b-4 thereunder, a proposed rule change to establish the Program. The proposed rule change, as modified by Amendment No. 1 thereto, was published for comment in the **Federal Register** on April 11, 2013. Securities Exchange Act Release No. 69335 (Apr. 5, 2013), 78 FR 21681 (Apr. 11, 2013). The Approval Order grants approval of the proposed rule change, as modified by Amendments No. 1 and 2.

which may be paid by sponsors on behalf of the issuer.

Section 11(d)(1) of the Exchange Act<sup>2</sup> generally prohibits a broker-dealer from extending or maintaining credit, or arranging for the extension or maintenance of credit, on shares of new issue securities, if the broker-dealer participated in the distribution of the new issue securities within the preceding 30 days. Shares of open-end investment companies and unit investment trusts registered under the Investment Company Act of 1940, such as exchange traded fund ("ETF") shares, are distributed in a continuous manner. Broker-dealers that sell such securities are therefore participating in the "distribution" of a new issue for purposes of Section 11(d)(1).<sup>3</sup>

The Division of Trading and Markets, acting under delegated authority, granted an exemption from Section 11(d)(1) and Rule 11d1-2 thereunder to broker-dealers that have entered into an agreement with an ETF's distributor to place orders with the distributor to purchase or redeem the ETF's shares ("Broker-Dealer APs").<sup>4</sup> The SIA Exemption allows a Broker-Dealer AP to extend or maintain credit, or arrange for the extension or maintenance of credit, to or for customers on the shares of qualifying ETFs subject to the condition that neither the Broker-Dealer AP, nor any natural person associated with the Broker-Dealer AP, directly or indirectly (including through any affiliate of the Broker-Dealer AP), receives from the fund complex any payment, compensation, or other economic incentive to promote or sell the shares of the ETF to persons outside the fund complex, other than non-cash compensation permitted under NASD Rule 2830(l)(5)(A), (B), or (C). This condition is intended to eliminate special incentives that Broker-Dealer APs and their associated persons might otherwise have to "push" ETF shares.

The Incentive Program will permit certain ETPs, including ETFs and commodity-based exchange traded trusts, to voluntarily incur increased listing fees payable to the Exchange. In turn, the Exchange will use a portion of the fees to make LMM Payments to market makers that improve the market quality of participating issuers'

<sup>2</sup> 15 U.S.C. 78k(d)(1).

<sup>3</sup> See, e.g., Exchange Act Release Nos. 6726 (Feb. 8, 1962), 27 FR 1415 (Feb. 15, 1962) and 21577 (Dec. 18, 1984), 49 FR 50174 (Dec. 27, 1984).

<sup>4</sup> See Letter from Catherine McGuire, Chief Counsel, Division of Trading and Markets, Securities and Exchange Commission to Securities Industry Association (Nov. 21, 2005) ("SIA Exemption").

securities.<sup>5</sup> LMM Payments will be accrued solely for quoting activity on the Exchange. Broker-dealers receiving the incentive payments would not be in compliance with the compensation condition of the SIA Exemption discussed above.<sup>6</sup> Therefore, an LMM that is also a Broker-Dealer AP for an ETF (or an associated person or an affiliate of a Broker-Dealer AP) that receives the incentives will not be able to rely on the SIA Exemption from Section 11(d)(1).<sup>7</sup>

Thus, NYSE Arca has requested, on behalf of itself and those broker-dealers that receive payments under the Incentive Program as discussed in its letter, an exemption from the requirements of Section 11(d)(1) of the Exchange Act and Rule 11d1–2 thereunder.<sup>8</sup>

NYSE Arca maintains that a Broker-Dealer AP and a broker-dealer that is not a Broker-Dealer AP in a particular ETF, but effects transactions in shares of the ETF exclusively in the secondary market (“Non-AP Broker-Dealer”) should be able to rely on the SIA Exemption, notwithstanding the receipt of payments under the Incentive

<sup>5</sup> Among other things, the Incentive Program requires LMMs to: (1) Maintain continuous, two-sided trading interest where the price of the bid (offer) interest is not more than a designated percentage away from the then current NBBO; (2) maintain quotes or orders at the NBBO or better (the “Inside”) during the month during Core Trading Hours in accordance with certain maximum width and minimum depth thresholds based on daily share volume and share price, unless the thresholds are otherwise met by quotes or orders of all market participants across all markets trading the security; (3) maintain quotes or orders on NYSE Arca at the NBBO that meet either a time-at-the-Inside requirement or a size-setting NBBO requirement; and (4) for at least 90% of the time when quotes may be entered during Core Trading Hours each trading day, as averaged over the course of a month, maintain (A) at least 2,500 shares of attributable, displayed posted buy liquidity on the Exchange that is priced no more than 2% away from the NBB for the particular ETP; and (B) at least 2,500 shares of attributable, displayed posted offer liquidity on the Exchange that is priced no more than 2% away from the NBO for the particular ETP. If an LMM does not meet these quoting requirements, it will not receive an LMM Payment, and an LMM that does not meet or exceed these performance standards for any two of the three months of a quarter or for five months during the pilot period may lose its LMM status. Request Letter at 5.

<sup>6</sup> The incentive payments market makers may receive under Rule 8.800 are indirect payments from the fund complex to the market maker and that those payments are compensation to promote or sell the shares of the ETF.

<sup>7</sup> See Approval Order, *supra* note 1, at 31–33.

<sup>8</sup> Letter from Janet McGinness, Senior Vice President and Secretary, NYSE Euronext to David Blass, Chief Counsel, Division of Trading and Markets, Securities and Exchange Commission (September 3, 2013) (“Request Letter”). The relief requested is similar to the relief the Commission previously granted to NASDAQ Stock Market LLC in connection with its pilot Market Quality Program. See Exchange Act Release No. 69892 (June 28, 2013).

Program. Among other things, the Exchange notes that the LMM Payment is provided only to LMMs that meet or exceed market quality standards and that the Incentive Program will not provide an incentive for LMMs to “push” the securities of participating issuers.<sup>9</sup> Rather, the Exchange states that the Incentive Program is intended to foster enhanced liquidity, robust quoting activity, narrowed spreads, and reduced transaction costs for investors in participating ETPs. NYSE Arca notes that the LMM Payments are not attributable to LMMs executing transactions in securities, but only for LMMs’ two-sided quoting activity. The Exchange also states that the disclosure provisions of the Incentive Program will alert and educate investors about the program and the LMM Payments.<sup>10</sup>

NYSE Arca also asserts that the Incentive Program’s goal of enhancing market quality is most likely to be

<sup>9</sup> Congress adopted Section 11(d)(1) in response to concerns about potential conflicts of interest faced by persons acting as both brokers and dealers in the distribution of new issue securities. In a House report accompanying the Exchange Act, Congress noted:

It is difficult to serve two masters. And it is particularly difficult to give impartial advice to a client if the dealer-broker has his own securities to sell, particularly when they are new securities for which there is no ready market.

H.R. Rep. No. 1383, 73d Cong., 2d Sess. 15 (1934). Congress concluded that forcing the separation of brokers and dealers would have led brokers to abandon their dealer business, impairing the mechanism to distribute new securities. In lieu of this measure, Congress required broker-dealers to disclose to customers the capacity in which they were acting and adopted section 11(d)(1) prohibiting broker-dealers from extending margin on new issue securities in the distribution of which the broker-dealer had participated. *Id.*

<sup>10</sup> Request Letter at 7. The Exchange notes that its new rules are designed to provide comprehensive and accessible disclosure to investors about the MQP Program through the Exchange’s Web site or the Web sites of the participating issuers. New Rules 8.800(b)(6) and (7) require the Exchange to disclose on its Web site the following information with respect to the operation of the Incentive Program: (i) The ETPs participating in the Incentive Program and the LMM assigned to each participating ETP; (ii) the date a particular ETP begins participating or ceases participating in the Incentive Program; (iii) the date the Exchange receives written notice of an issuer’s intent to withdraw its ETP from the Incentive Program, or an LMM’s intent to withdraw from its ETP assignment(s) in the Incentive Program, and, in each case, the intended withdrawal date, if provided; and (iv) the amount of the Optional Incentive Fee for each ETP. The Exchange also will include on its Web site a fair and balanced description of the Incentive Program, including a description of the potential benefits and risks that may be attendant with an ETP’s participation in the program. An issuer of an ETP that is approved to participate in the Incentive Program will also be required to (i) issue a press release to the public when an ETP commences or ceases participation in the Incentive Program, (ii) post such press release on its Web site, and (iii) provide on its Web site a hyperlink to the Exchange’s Web page describing the Incentive Program.

accomplished if the program attracts as many participating market makers as possible. In the Exchange’s view, eligible market makers may decline to participate in the program if no exemption from Section 11(d)(1) and Rule 11d1–2 is available, either because the market makers may already extend credit to customers on the securities of participating issuers or because the value to market makers of offering credit services to customers on such securities may outweigh the value of participating in the Incentive Program.<sup>11</sup> The Commission recognizes that broker-dealers that have to choose between participating in the Incentive Program and having the ability to offer credit services to customers in reliance on the SIA Exemption for business reasons may determine to continue to offer the credit services and decline to participate in the Incentive Program. In other words, the lack of an available exemption from Section 11(d)(1) and Rule 11d1–2 thereunder could serve to reduce the number of market makers in the Incentive Program.

The Commission finds that it is appropriate in the public interest, and is consistent with the protection of investors, to grant a limited exemption from Section 11(d)(1) of the Exchange Act and Rule 11d1–2 thereunder to Broker-Dealer APs and Non-AP Broker-Dealers that participate in the Incentive Program. The Incentive Program is intended to improve market quality by promoting enhanced liquidity, reduced spreads, and reduced cost of investing in the securities of participating issuers. The Commission believes that granting the exemption will encourage a larger number of market makers to participate in the Incentive Program and that a larger number of participating market makers should create greater potential for the market quality improvements the Incentive Program aims to achieve. The Commission notes in particular that the Exchange will determine to pay an LMM Payment only if an LMM maintains certain minimum quoting standards.<sup>12</sup> No portion of the LMM Payment is attributable to sales of ETP securities and thus the LMM Payment should provide no direct incentive for LMMs to promote the sale of ETP securities. Thus, the Commission does not believe that the LMM Payment will provide the kind of incentive for “share-pushing” with which Congress was concerned when it enacted Section 11(d).<sup>13</sup> Moreover, the required Web site

<sup>11</sup> Request Letter at 6.

<sup>12</sup> See note 5, *supra*.

<sup>13</sup> See note 9, *supra*.

disclosures, discussed above,<sup>14</sup> should also help LMMs' customers understand the Program's effect on LMMs' incentives and thus will help investors to make informed decisions in light of the additional incentives LMMs may have in providing quotes for these securities.

### Conclusion

*It is therefore ordered*, that Broker-Dealer APs and Non-AP Broker-Dealers that participate in the Incentive Program, may rely on the SIA Exemption pertaining to Section 11(d)(1) and Rule 11d1-2 thereunder,<sup>15</sup> subject to the conditions provided in that exemption, notwithstanding that Broker-Dealer APs and Non-AP Broker-Dealers may receive LMM Payments for participating in the Incentive Program as described in your request.

This exemption will expire when the Incentive Program terminates, and is subject to modification or revocation at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013-21816 Filed 9-6-13; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, September 12, 2013 at 2:00 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

<sup>14</sup> See note 10, *supra*.

<sup>15</sup> See note 4, *supra*.

<sup>16</sup> 17 CFR 200.30-3(a)(62).

Commissioner Piwowar, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting will be:  
Institution and settlement of injunctive actions;  
Institution and settlement of administrative proceedings; and  
Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551-5400.

Dated: September 5, 2013.

**Elizabeth M. Murphy,**  
*Secretary.*

[FR Doc. 2013-22040 Filed 9-5-13; 4:15 pm]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-70301; File No. SR-C2-2013-032]

### Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Options Regulatory Fee

September 3, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 21, 2013, C2 Options Exchange, Incorporated 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 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

C2 Options Exchange, Incorporated (the "Exchange" or "C2") proposes to amend the Options Regulatory Fee. The text of the proposed rule change is available on the Exchange's Web site (<http://www.c2exchange.com/Legal/>), at

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

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

the Exchange's Office of the Secretary, 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 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 Exchange has reevaluated the current amount of the Options Regulatory Fee ("ORF") in light of better than expected trading volume so far in 2013 among other factors. In order to try to ensure that revenue collected from the ORF, in combination with other regulatory fees and fines, does not exceed the Exchange's total regulatory costs, the Exchange proposes to reduce the ORF from \$.002 per contract to zero. The proposed fee change would be operative on September 1, 2013. The Exchange intends to reevaluate the amount of the ORF again in connection with its annual budget review.

The ORF is assessed by the Exchange to each Permit Holder for all options transactions executed or cleared by the Permit Holder that are cleared by The Options Clearing Corporation ("OCC") in the customer range (i.e., transactions that clear in a customer account at OCC) regardless of the marketplace of execution. In other words, the Exchange imposes the ORF on all customer-range transactions executed by a Permit Holder, even if the transactions do not take place on the Exchange.<sup>3</sup> The ORF also is charged for transactions that are not executed by a Permit Holder but are ultimately cleared by a Permit Holder.

<sup>3</sup> Exchange rules require each Permit Holder to record the appropriate account origin code on all orders at the time of entry in order to allow the Exchange to properly prioritize and route orders and assess transaction fees pursuant to the rules of the Exchange and report resulting transactions to the OCC. C2 order origin codes are defined in C2 Regulatory Circular RG13-015. The Exchange represents that it has surveillances in place to verify that Trading Permit Holders mark orders with the correct account origin code.