

and not unfairly discriminatory because the Exchange would assess the same Fixed Fee that is proposed when routing Customer orders to a NASDAQ OMX exchange. All market participants that route an order to an away market, other than PHLX or BX Options, would be assessed a uniform fee of \$0.13 per contract if the away market (non-NASDAQ OMX exchange) pays a rebate. These proposals would apply uniformly to all market participants when routing to an away market that pays a rebate, other than PHLX and BX Options.

Finally, market participants may submit orders to the Exchange as ineligible for routing or “DNR” to avoid Routing Fees.<sup>12</sup> Also, orders are routed to an away market based on price first.<sup>13</sup>

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

NASDAQ does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposal creates a burden on intra-market competition because the Exchange is applying the same Routing Fees to all market participants in the same manner dependent on the routing venue, with the exception of Customers. The Exchange will continue to assess separate Customer Routing Fees. Customers will continue to receive the lowest fees as compared to non-Customers when routing orders, as is the case today. Other options exchanges also assess lower Routing Fees for customer orders as compared to non-customer orders.<sup>14</sup>

The Exchange’s proposal would allow the Exchange to continue to recoup its costs when routing Customer orders to PHLX or BX Options as well as away markets that pay a rebate when such orders are designated as available for routing by the market participant. The Exchange continues to pass along savings realized by leveraging NASDAQ OMX’s infrastructure and scale to market participants when Customer orders are routed to PHLX and BX Options and is providing those savings to all market participants. Today, other options exchanges also assess fixed routing fees to recoup costs incurred by

the exchange to route orders to away markets.<sup>15</sup>

Market participants may submit orders to the Exchange as ineligible for routing or “DNR” to avoid Routing Fees.<sup>16</sup> It is important to note that when orders are routed to an away market they are routed based on price first.<sup>17</sup>

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

No written comments were either solicited or received.

### **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)(ii) of the Act.<sup>18</sup> 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 shall institute proceedings to determine whether the proposed rule 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–NASDAQ–2014–098 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. All submissions should refer to File Number SR–NASDAQ–2014–098. 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–NASDAQ–2014–098 and should be submitted on or before December 5, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

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

[FR Doc. 2014–26946 Filed 11–13–14; 8:45 am]  
**BILLING CODE 8011–01–P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34–73557; File No. SR–NYSEArca–2014–131]

### **Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Amending the NYSE Arca Options Fee Schedule Relating to Qualified Contingent Cross (“QCC”) Transactions Fees, Effective November 1, 2014**

November 7, 2014.

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 October 31, 2014, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (the “Commission”) a

<sup>12</sup> See NASDAQ Rules at Chapter VI, Section 11(e) (Order Routing).

<sup>13</sup> See Chapter VI, Section 11 of the BX Options and NOM Rules.

<sup>14</sup> BATS assesses lower customer routing fees as compared to non-customer routing fees per the away market. For example BATS assesses ISE customer routing fees of \$0.52 per contract and an ISE non-customer routing fee of \$0.65 per contract. See BATS BZX Exchange Fee Schedule.

<sup>15</sup> See CBOE’s Fees Schedule and ISE’s Fee Schedule.

<sup>16</sup> See note 12.

<sup>17</sup> See note 13.

<sup>18</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>19</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.

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 relating to Qualified Contingent Cross transaction fees, effective November 1, 2014. 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 purpose of this filing is to modify the Exchange's fees for QCC transactions. The Exchange proposes to implement the fee changes on November 1, 2014.

Currently, the Exchange charges \$0.10 per contract side for QCC transactions, regardless of whether a Customer is part of the transaction. The Exchange proposes to adopt a differentiated fee schedule and to instead charge \$0.00 per contract side for Customers and \$0.20 per contract side for non-Customers.

As is the case today, the Exchange would continue to offer a Floor Broker rebate of \$0.035 per contract side for executed QCC orders, but proposes to introduce one exception: there would be no Floor Broker rebate for executions of QCC orders where there are Customers on both sides of the transaction. For example, a QCC transaction where a Customer buying 1,000 ABC Dec 40

Calls trades with a different Customer selling 1,000 ABC Dec 40 Calls would be ineligible for the Floor Broker rebate. However, a QCC transaction with a Customer on only one side, executed by a Floor Broker, would continue to receive the rebate.

The Exchange believes that restructuring the QCC fees as proposed would allow OTP Holders and OTP Firms to compete on a more equal footing with other exchanges offering similar QCC fees.

The Exchange is also proposing a non-substantive, formatting change to the section of the fee schedule that applies to QCC transactions. The Exchange is proposing to re-format the "QUALIFIED CONTINGENT CROSS TRANSACTION FEES" section of the Fee Schedule as a table with distinct rows and columns to make the Fee Schedule easier for participants to navigate.

##### **2. Statutory Basis**

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>3</sup> in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,<sup>4</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 the proposed rates are reasonable, equitable and not unfairly discriminatory as they are consistent with those charged by other markets.<sup>5</sup> The Exchange believes that proposed rates are likewise not unreasonable, inequitable or unfairly discriminatory because the same fee would be charged to all non-Customers alike. It is also not unreasonable, inequitable or unfairly discriminatory to impose no charge on Customers for QCC transactions because this change would enable non-Customers to better compete for (and, thus, to better attract) Customer business.

In addition, the Exchange believes that it is not unreasonable, inequitable or unreasonably discriminatory to exempt from the Floor Broker rebate those QCC transactions where there are Customers on both sides of the transaction. A rebate is the refunding of a portion of an assessed fee; however, when there are Customers on both sides of a QCC transaction, the Exchange is

not assessing any fees. Accordingly, the Exchange believes that not offering a rebate for QCC transactions on which a fee that [sic] was never assessed in the first instance, cannot be viewed as unreasonable, inequitable or unreasonably discriminatory.

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>6</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 Exchange believes the proposed fee change is reasonably designed to be fair and equitable, and therefore, will not unduly burden any particular group of market participants trading on the Exchange vis-à-vis another group. The Exchange believes the proposed change to offer QCC transactions to Customers free of charge may enhance the competitive position of Non-Customers and allow OTP Holders and OTP Firms to compete more effectively for Customer QCC orders. In addition, the Exchange believes that the proposed changes will enhance the competitiveness of the Exchange relative to other exchanges which offer comparable differentiated fees for QCC transactions.<sup>7</sup>

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 fee 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)<sup>8</sup> of the Act and

<sup>3</sup> 15 U.S.C. 78f(b).

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

<sup>5</sup> See e.g., NASDAQ OMX LLC [sic] Pricing Schedule, available here, <http://www.nasdaqtrader.com/Micro.aspx?id=PHLXPricing>.

<sup>6</sup> 15 U.S.C. 78f(b)(8).

<sup>7</sup> See supra n. 5.

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

subparagraph (f)(2) of Rule 19b-4<sup>9</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>10</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:

##### *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-2014-131 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-NYSEArca-2014-131. 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 offices 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-2014-131, and should be submitted on or before December 5, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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**BILLING CODE 8011-01-P**

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-73559; File No. SR-BATS-2014-018]

#### Self-Regulatory Organizations; BATS Exchange, Inc.; Order Disapproving a Proposed Rule Change To Adopt Rule 14.11(k) to List Managed Portfolio Shares and to List and Trade Shares of Certain Funds of the Spruce ETF Trust

November 7, 2014

On August 4, 2014, BATS Exchange, Inc. ("Exchange" or "BATS") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to adopt new BATS Rule 14.11(k), which would permit the Exchange to list Managed Portfolio Shares, which are shares of actively managed exchange-traded funds ("ETFs") for which the portfolio is disclosed quarterly, and to list and trade shares of certain funds of the Spruce ETF Trust ("Trust")<sup>3</sup> under proposed BATS Rule 14.11(k). The

proposed rule change was published for comment in the **Federal Register** on August 13, 2014.<sup>4</sup> The Commission received one comment letter on the proposal.<sup>5</sup> On September 24, 2014, pursuant to Section 19(b)(2) of the Exchange Act,<sup>6</sup> the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.<sup>7</sup>

This Order disapproves the proposed rule change.

#### I. Description of the Proposal

The Exchange proposes to: (1) Add new BATS Rule 14.11(k) which would permit the listing of Managed Portfolio Shares; and (2) list and trade shares ("Shares") of the following funds (each a "Fund" and, collectively, the "Funds") under the proposed rule: Large Cap Fund, Large Cap Value Fund, Large Cap Growth Fund, Large/Mid Cap Fund, Large/Mid Cap Value Fund, Large/Mid Cap Growth Fund, Large Cap Long-Short Fund, Large Cap Value Long-Short Fund, Large Cap Growth Long-Short Fund, Large/Mid Cap Long-Short Fund, and Large/Mid Cap Value Long-Short Fund, Large/Mid Cap Growth Long-Short Fund, and Large Cap Growth Active Insights Fund. The discussion below summarizes the Exchange's proposal, details of which are described in the Notice.<sup>8</sup>

##### A. Proposed Listing Rules

The Exchange's proposal would define the term "Managed Portfolio Share" as a security that (a) is issued by an investment company ("Investment Company") organized as an open-end management investment company or similar entity, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies; (b) is issued in a predetermined Creation Unit<sup>9</sup> size in

<sup>4</sup> See Securities Exchange Act Release No. 72787 (Aug. 7, 2014), 79 FR 47488 ("Notice").

<sup>5</sup> See Letter from Gary L. Gastineau, President, ETF Consultants.com, Inc., to Elizabeth M. Murphy, Secretary, Commission, dated Aug. 30, 2014 ("Comment Letter").

<sup>6</sup> 15 U.S.C. 78s(b)(2).

<sup>7</sup> See Securities Exchange Act Release No. 73199, 79 FR 58844 (September 30, 2014). The Commission designated November 11, 2014 as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

<sup>8</sup> See Notice, *supra* note 4.

<sup>9</sup> Under the proposal, a "Creation Unit" is a specified minimum number of Managed Portfolio

Continued

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

<sup>10</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> The Commission notes that the Trust, which would be the issuer of the funds, filed an Application for an Order under Section 6(c) of the Investment Company Act of 1940 ("1940 Act") and rules thereunder (File No. 812-13953), dated September 1, 2011 ("Exemptive Application"). The Commission published notice of this application ("Notice of an Application for Exemptive Relief") on October 21, 2014. See Investment Company Act Release No. 31301 (Oct. 21, 2014), 79 FR 63964 (Oct. 27, 2014).