

Finally, the fee change is not unfairly discriminatory because it applies to all members.

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

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Because the market for exchange services is extremely competitive, members may readily opt to disfavor NASDAQ if they believe that alternatives offer them better value. For this reason and the reasons discussed in connection with the statutory basis for the proposed rule change, NASDAQ does not believe that the proposed changes will impair the ability of members or competing trading venues to maintain their competitive standing in the financial markets.

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

Written comments were neither solicited nor 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>6</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-2012-056 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-NASDAQ-2012-056. 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-2012-056 and should be submitted on or before May 29, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012-11002 Filed 5-7-12; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-66904; File No. SR-NYSEArca-2012-40]

**Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Implementing a Fee Change for the Floor Broker Electronic Order Capture Device**

May 2, 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 April 30, 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 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 the NYSE Arca Options Fee Schedule ("Fee Schedule") to revise the fee for the Floor Broker Electronic Order Capture Device ("EOC Device"). 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 revise the fee for the EOC Device.

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

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

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>7</sup> 17 CFR 200.30-3(a)(12).

The EOC Device is used by Floor Brokerage operations to comply with the requirements of NYSE Arca Rule 6.67, Order Format and System Entry Requirements, namely, the systemization of order details and electronic tracking of all events in the life of an order, up to and including cancellation or execution. The Exchange's current Electronic Order Capture System<sup>3</sup> platform was implemented in February 2010, and the \$175 monthly fee for the new EOC Devices began being charged on March 1, 2010.

Effective May 1, 2012, the Exchange proposes to cap the current monthly fee of \$175 for each EOC Device at \$4,200, which represents 24 months of charges. If any OTP Holder has paid more than \$4,200 as of that date, the Exchange will provide a credit so that such OTP Holder will be charged the same total amount as other OTP Holders.<sup>4</sup> If an OTP Holder requests a new EOC Device or the Exchange replaces the current Electronic Order Capture System platform, the OTP Holder will be charged \$175 per month for each new EOC Device until the \$4,200 cap is reached again.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)<sup>5</sup> of the Securities Exchange Act of 1934 (the "Act"), in general, and Section 6(b)(4)<sup>6</sup> of the Act, in particular, in that 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 is not unfairly discriminatory. The Exchange believes that it is reasonable to implement a cap that takes into account (1) the value to the OTP Holder of the equipment, installation, and maintenance provided by the Exchange, and (2) the cost to the Exchange of providing such resources and services. In addition, the Exchange believes that it is reasonable to resume the monthly fee if an OTP Holder requests a new EOC Device or the Exchange replaces the current platform because the Exchange will be incurring new costs to provide a new EOC Device. The Exchange also believes that the cap is equitably allocated and not unfairly discriminatory because it will apply to all OTP Holders beginning on the same

date and take into account payments made for EOC Devices currently used. The Exchange recognizes that certain OTP Holders have been using an EOC Device since February 2010, when the most recent Electronic Order Capture System was implemented, and will provide a credit so that all OTP Holders using the current EOC Device will be subject to the same total fees. As such, the Exchange believes that the proposed change is reasonable, equitable, and not unfairly discriminatory.

### 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-2012-40 on the subject line.

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

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

### 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-2012-40. 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-2012-40 and should be submitted on or before May 29, 2012.

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

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012-11001 Filed 5-7-12; 8:45 am]

**BILLING CODE 8011-01-P**

<sup>3</sup> See NYSE Arca Rule 6.1(b)(39).

<sup>4</sup> For example, if an OTP Holder began using an EOC Device on March 1, 2010, the OTP Holder will have paid a total of \$4,550 by May 1, 2012. The Exchange will credit such an OTP Holder \$350.

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

<sup>6</sup> 15 U.S.C. 78f(b)(4).

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