

cancellation fee of \$0.30/order cancellation.

### *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.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The proposed rule change is to take effect pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>23</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder<sup>24</sup> because it establishes or changes a due, fee or other charge applicable to the Exchange's members and non-members, which renders the proposed rule change effective upon filing.

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.

### **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-CHX-2012-15 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-CHX-2012-15. 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 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 CHX. 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-CHX-2012-15, and should be submitted on or before December 11, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>25</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012-28135 Filed 11-19-12; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-68233; File No. SR-NYSEArca-2012-103]**

### **Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Changes Amending NYSE Arca, Inc. Rules 3.2 and 3.3 and NYSE Arca Equities, Inc. Rules 3.2 and 3.3 To Expand the Eligibility Requirements for Service on Certain Boards of Directors and Committees**

November 14, 2012.

#### **I. Introduction**

On September 18, 2012, NYSE Arca, Inc. ("NYSE Arca") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section

19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 ("Act"),<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> proposed rule changes to amend NYSE Arca Rules 3.2 and 3.3 and NYSE Arca Equities, Inc. ("NYSE Arca Equities") Rules 3.2 and 3.3 to expand the eligibility requirements for service on the Board of Directors of NYSE Arca ("NYSE Arca Board") and certain committees of NYSE Arca and NYSE Arca Equities. The proposed rule changes were published for comment in the **Federal Register** on October 1, 2012.<sup>4</sup> The Commission received no comment letters on the proposal.

#### **II. Background**

##### *Amendments to NYSE Arca Rules 3.2 and 3.3*

NYSE Arca Rule 3.2(a) sets forth the general provisions for Options Committees. Specifically, NYSE Arca Rule 3.2(a)(8) states that any OTP Holder<sup>5</sup> of the Exchange in good standing, Allied Person<sup>6</sup> of an OTP Firm,<sup>7</sup> or person from the public is eligible for appointment or election to various Options Committees. NYSE Arca Rule 3.2(b) sets forth the eligibility requirements for three specific Options Committees: The Ethics and Business Conduct Committee (the "EBCC Committee"), the Nominating Committee, and the OTP Advisory Committee.<sup>8</sup> NYSE Arca Rule 3.3(a) sets forth the eligibility requirements for the Board Appeals Committee and Appeals

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> See Securities Exchange Act Release No. 67923 (September 25, 2012), 77 FR 59995 (SR-NYSEArca-2012-103) (the "Notice").

<sup>5</sup> An "OTP Holder" is a natural person, in good standing, who has been issued an Options Trading Permit ("OTP"), or has been named as a nominee. See NYSE Arca Rule 1.1(q).

<sup>6</sup> An "Allied Person" (for purposes of NYSE Arca Rules) is an individual who is (1) an employee of an OTP Firm who controls such firm, (2) an employee of an OTP Firm corporation who is a director or a principal executive officer of such corporation, (3) an employee of an OTP Firm limited liability company who is a manager or a principal executive officer of such limited liability company, or (4) a general partner in an OTP Firm partnership. Each of these persons must be approved by the Exchange as an Allied Person. See NYSE Arca Rule 1.1(b).

<sup>7</sup> "OTP Firm" means a sole proprietorship, partnership, corporation, limited liability company, or other organization in good standing who holds an OTP or upon whom an individual OTP Holder has conferred trading privileges on the Exchange's trading facilities. See NYSE Arca Rule 1.1(r).

<sup>8</sup> The EBCC currently consists primarily of OTP Holders and Allied Persons of an OTP Firm. See NYSE Arca Rule 3.2(b)(1)(A). The Nominating Committee currently consists of six OTP Holders. See NYSE Arca Rule 3.2(b)(2)(A). The OTP Advisory Committee currently consists of OTP Holders. See NYSE Arca Rule 3.2(b)(3)(A).

<sup>23</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>24</sup> 17 CFR 240.19b-4(f)(2).

<sup>25</sup> 17 CFR 200.30-3(a)(12).

Panel.<sup>9</sup> The Exchange proposes to amend its rules to expand the eligibility requirements to serve on these various committees and panels to include OTP Holders, Allied Persons of OTP Firms and Associated Persons<sup>10</sup> of OTP Firms.

The Exchange also proposes to expand the eligibility for its fair representation directors.<sup>11</sup> Currently, the Nominating Committee publishes the name of one OTP Holder or Allied Person of an OTP Firm as its nominee for the NYSE Arca Board.<sup>12</sup> The Exchange proposes to expand the eligibility for fair representation directors by amending this rule to allow the Nominating Committee to publish the name of an Associated Person of an OTP Firm as well.

#### *Amendments to NYSE Arca Equities Rules*

The Exchange proposes to make parallel changes to the NYSE Arca Equities Rules. NYSE Arca Equities Rule 3.2(a) sets forth general provisions for various Equities Committees. Specifically, NYSE Arca Equities Rule 3.2(a)(8) states that any ETP Holder<sup>13</sup> of the Exchange in good standing or Allied Person<sup>14</sup> of an ETP Holder,<sup>15</sup> or person

<sup>9</sup> Each Appeals Panel is made up of no less than three (3) but no more than five (5) individuals, at least one of whom is a director that is an OTP Holder or Allied Person of an OTP Firm. See NYSE Arca Rule 3.3(a)(1)(B).

<sup>10</sup> "Associated Person" is person who is a partner, officer, director, member of a limited liability company, trustee of a business trust, employee of an OTP Firm, or any person directly or indirectly controlling, controlled by or under common control with an OTP Firm. See NYSE Arca Rule 1.1(d).

<sup>11</sup> Under Section 3.02(a) of the Bylaws of NYSE Arca, the NYSE Arca Board must have 8–12 directors, and at least 20 percent of the directors must be individuals nominated by trading permit holders, with at least one director nominated by the Equities Trading Permit Holders ("ETP Holders") of NYSE Arca Equities, and at least one director nominated by the OTP Holders of the Exchange. In addition, at least 50 percent of the directors must be directors who represent the public. The exact number of the directors nominated by the ETP Holders and OTP Holders is determined from time to time by the NYSE Arca Board, subject to the percentage restrictions described above.

<sup>12</sup> See NYSE Arca Rule 3.2(b)(2)(C)(ii).

<sup>13</sup> An "ETP Holder" is a sole proprietorship, partnership, corporation, limited liability company or other organization in good standing that has been issued an Equities Trading Permit. See NYSE Arca Equities Rule 1.1(n).

<sup>14</sup> An "Allied Person" (for purposes of NYSE Arca Equities Rules) is an individual who is (1) an employee of an ETP Holder who controls such firm, (2) an employee of an ETP Holder corporation who is a director or a principal executive officer of such corporation, (3) an employee of an ETP Holder limited liability company who is a manager or a principal executive officer of such limited liability company, or (4) a general partner in an ETP Holder partnership; each of these persons must be approved by NYSE Arca Equities as an Allied Person. See NYSE Arca Equities Rule 1.1(c).

<sup>15</sup> ETP Firm means a sole proprietorship, partnership, corporation, limited liability company,

from the public is eligible for appointment or election to Equities Committees. NYSE Arca Equities Rule 3.2(b) sets forth provisions for two specific Equities Committees: The Business Conduct Committee (the "BCC Committee") and the Nominating Committee (the "Equities Nominating Committee").<sup>16</sup> NYSE Arca Rule 3.3(a) sets forth the eligibility requirements for the Board Appeals Committee.<sup>17</sup> The Exchange proposes to amend the rules of NYSE Arca Equities so to expand the eligibility requirements to serve on these various committees and panels to include ETP Holders, Allied Persons of ETP Firms and Associated Persons<sup>18</sup> of ETP Firms.

In addition to amending the composition requirements of the Equities Nominating Committee, the Exchange also proposes to amend NYSE Arca Rules 3.2(b)(2)(C)(i) to expand the eligibility for fair representation directors. Currently, the Equities Nominating Committee may nominate ETP Holders or Allied Persons of ETP Holders to serve on the NYSE Arca Board. The Exchange proposes to expand the eligibility for fair representation directors by amending this rule to allow the Equities Nominating Committee to publish the name of an Associated Person of an ETP Firm as well.

### **III. Discussion and Commission Findings**

The Commission has reviewed carefully the proposed rule changes and finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>19</sup> In particular, the Commission finds that the proposed rule changes are consistent with Section

or other organization in good standing who holds an OTP or upon whom an individual OTP Holder has conferred trading privileges on the Exchange's trading facilities. See NYSE Arca Rule 1.1(r).

<sup>16</sup> The BCC currently consists of a minimum of one ETP Holder or Allied Persons of an ETP Holder. See NYSE Arca Equities Rule 3.2(b)(1)(A). The Nominating Committee currently consists of six ETP Holders. See NYSE Arca Equities Rule 3.2(b)(2)(A).

<sup>17</sup> Each Appeals Committee currently consists of at least one public director and at least one director that is an ETP Holder or Allied Person of an ETP Firm. See NYSE Arca Equities Rule 3.3(a)(1)(A).

<sup>18</sup> "Associated Person" is person who is a partner, officer, director, member of a limited liability company, trustee of a business trust, employee of an ETP Holder, or any person directly or indirectly controlling, controlled by or under common control with an ETP Holder. See NYSE Arca Equities Rule 1.1(f).

<sup>19</sup> In approving the proposed rule changes, the Commission has considered their impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

6(b)(3) of the Act,<sup>20</sup> which, among other things, requires that the rules of an exchange assure a fair representation of its members in the selection of its directors and administration of its affairs and provides that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker or dealer. As the Exchange notes, the proposed rule changes are consistent with the composition requirements set forth in the governing documents of other self-regulatory organizations.<sup>21</sup> The Exchange is not proposing to alter the number of fair representation candidates on the boards or any other aspect of the NYSE Arca Board's composition or nomination process.

The proposed rule change also furthers the objectives of Section 6(b)(6) of the Act,<sup>22</sup> because it provides for appropriate discipline for violations of Exchange rules and regulations. The Commission believes that the proposed rule change will expand the available candidates with industry knowledge that are eligible for membership on the Options and Equities Committees that are involved in reviewing disciplinary actions against OTP Holders, OTP Firms, and ETP Holders and advising on rule changes related to disciplinary matters and trading rules.

The Commission also believes that the proposed rule change furthers the objectives of Section 6(b)(5) of the Act<sup>23</sup> in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, the Commission believes the proposed rule change would expand the pool of candidates eligible for membership on the NYSE Arca Board and committees of NYSE Arca and NYSE Arca Equities and thereby increase the breadth of industry knowledge that would be available to these entities, which should benefit the public interest.

<sup>20</sup> 15 U.S.C. 78f(b)(3).

<sup>21</sup> See Notice, *supra* note 3 at 59995–59997.

<sup>22</sup> 15 U.S.C. 78f(b)(6).

<sup>23</sup> 15 U.S.C. 78f(b)(5).

#### IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule changes are consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act<sup>24</sup> that the proposed rule changes (SR–NYSEArca–2012–103), are approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>25</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68227; File No. SR–NYSEArca–2012–123]

#### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Change the Monthly Fees for the Use of Ports

November 14, 2012.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b–4 thereunder,<sup>3</sup> notice is hereby given that, on November 1, 2012, 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 the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services (the “Fee Schedule”) to change the monthly fees for the use of ports. 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 Exchange proposes to amend the Fee Schedule to change the monthly fees for the use of ports that provide connectivity to the Exchange’s trading systems (i.e., ports for entry of orders and/or quotes (“order/quote entry ports”)) and to implement a fee for ports that allow for the receipt of “drop copies” of order or transaction information (“drop copy ports” and, together with order/quote entry ports, “ports”).<sup>4</sup> The Exchange proposes to implement the fee changes on November 1, 2012.

###### Order/Quote Entry Ports

The Exchange currently makes order/quote entry ports available for connectivity to its trading systems and charges \$300 per port pair per month for up to five pairs of ports, then \$1,500 per month for each additional five pairs of ports.<sup>5</sup>

The Exchange proposes to change the current methodology for order/quote entry port billing, such that order/quote

entry ports would be charged on a per port basis, without billing in groups of five and without requiring that ports be in pairs.<sup>6</sup> More specifically, the Exchange proposes to charge \$200 per port per month for order/quote entry ports, which are currently charged \$300 per pair per month for activity on NYSE Arca Equities;<sup>7</sup> provided, however, that (i) users of the Exchange’s Risk Management Gateway service (“RMG”) would not be charged for order/quote entry ports if such ports are designated as being used for RMG purposes, and (ii) unutilized order/quote entry ports that connect to the Exchange via its backup datacenter would be considered established for backup purposes and not charged port fees.<sup>8</sup>

The Exchange proposes that users of RMG would not be charged for order/quote entry ports if such ports are designated as being used for RMG purposes. RMG enables Sponsoring ETP Holders to verify whether a Sponsored Participant’s orders comply with order criteria established by the Sponsoring ETP Holder for the Sponsored Participant, including, among other things, criteria related to order size (per order or daily quantity limits), credit limits (per order or daily value), specific symbols or end users.<sup>9</sup> Currently, users of RMG are required to pay the existing order/quote entry port fees for connectivity to the Exchange’s trading systems, in addition to the RMG

<sup>6</sup> The Exchange stated in the Adopting Release that the port fee is charged per participant. The Exchange later clarified that “per participant” means per ETP ID for purposes of the port fees, since an ETP Holder may have more than one unique ETP ID. See Amending Release, at 1766–1767. The proposed fee change would change the current methodology such that ports would not be charged on a per ETP ID basis. Accordingly, reference to per ETP ID would be removed from the Fee Schedule related to port fees.

<sup>7</sup> The Exchange does not currently charge for order/quote entry ports related to option activity on NYSE Arca Options. However, via a separate proposed rule change, the Exchange is proposing to implement port fees applicable to option activity on NYSE Arca Options. See SR–NYSEArca–2012–122. In this regard, separate port fees would be charged for an order/quote entry port that is authorized for both equity and option order/quote entry.

<sup>8</sup> Since the Adopting Release, the Exchange has not charged for order/quote entry ports that connect to the Exchange through its backup datacenter, which is currently located in Chicago, Illinois, irrespective of whether activity was conducted through such ports.

<sup>9</sup> See Securities Exchange Act Release No. 60607 (September 1, 2009), 74 FR 46275 (September 8, 2009) (SR–NYSEArca–2009–80) (order approving RMG). See also Securities Exchange Act Release No. 60664 (September 14, 2009), 74 FR 48110 (September 21, 2009) (SR–NYSEArca–2009–81) (establishing RMG fees). The Exchange proposes a non-substantive change to the Fee Schedule to move the first instance of Risk Management Gateway being defined as “RMG.”

<sup>24</sup> 15 U.S.C. 78s(b)(2).

<sup>25</sup> 17 CFR 200.30–3(a)(12).

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b–4.

<sup>4</sup> Firms receive confirmations of their orders and receive execution reports via the order/quote entry port that is used to enter the order or quote. A “drop copy” contains redundant information that a firm chooses to have “dropped” to another destination (e.g., to allow the firm’s back office and/or compliance department, or another firm—typically the firm’s clearing broker—to have immediate access to the information). Such drop copies can only be sent via a drop copy port. Drop copy ports cannot be used to enter orders and/or quotes.

<sup>5</sup> See Securities Exchange Act Release No. 63056 (October 6, 2010), 75 FR 63233 (October 14, 2010) (SR–NYSEArca–2010–87) (the port fee “Adopting Release”). See also Securities Exchange Act Release No. 66110 (January 5, 2012), 77 FR 1766 (January 11, 2012) (SR–NYSEArca–2012–01) (the port fee “Amending Release”). For example, the current fee for six pairs of ports would be \$3,000 total per month (i.e., \$1,500 total for the first five pairs and \$1,500 for the sixth pair). The fee would remain \$3,000 for pairs seven through 10. The fee would increase by \$1,500, to \$4,500 total, for pairs 11 through 15.