

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>27</sup>

Elizabeth M. Murphy,  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65730; File No. SR-NYSEArca-2011-79]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Options Fee Schedule To Modify the Fees Relating to Qualified Contingent Cross Orders

November 10, 2011.

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 November 1, 2011, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) 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 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 (“Fee Schedule”) to modify the fees relating to Qualified Contingent Cross (“QCC”) orders. 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 purpose of the proposal is to modify the fees relating to QCC orders. Specifically, the Exchange intends to adopt a rebate of \$.10 per contract for executed QCC orders. The rebate will be credited to the executing Floor Broker.

The Exchange notes that the terms of a QCC order are negotiated and agreed to prior to being brought to an exchange for possible execution. In bringing a QCC order to the Exchange for execution, OTP Holders have two primary means of doing so. They can configure their systems to deliver the QCC order to the Exchange matching engines for validation and execution. Alternatively they can utilize the services of another OTP Holder acting as a Floor Broker. In turn, the Floor Broker who is in receipt of such an order can enter the order through an Exchange-provided system<sup>3</sup> to be delivered to the Exchange matching engine for validation and potential execution. In light of the fact that the Exchange does not offer a front-end for order entry, unlike some of the competing exchanges,<sup>4</sup> the Exchange believes it is necessary from a competitive standpoint to offer this rebate to the executing Floor Broker on a QCC order. The Exchange expects that the rebate offered to executing Floor Brokers will allow them to price their services at a level that will enable them to attract QCC order flow from participants who would otherwise utilize an existing front-end order entry mechanism offered by the Exchange's competitors instead of incurring the cost in time and money to develop their own internal systems to be able to deliver QCC orders directly to the Exchange systems. To the extent that Floor Brokers are able to attract these QCC orders, they will gain important information that will allow them to solicit the parties to the QCC orders for

participation in other trades, which will in turn benefit all other Exchange participants through the additional liquidity and price discovery that may occur as a result. The Exchange notes that at least two other exchanges offer a similar rebate.<sup>5</sup>

The proposed change will be operative on November 1, 2011.

##### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)<sup>6</sup> of the Securities Exchange Act of 1934 (the “Act”), in general, and Section 6(b)(4)<sup>7</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.

The Exchange believes the proposed \$.10 per contract rebate for Floor Brokers who enter QCC orders that execute is reasonable because it will allow Floor Brokers the opportunity to compete for QCC orders that would otherwise be entered into front-end order entry systems of competing exchanges.<sup>8</sup> The proposed rebate is comparable to that found on other exchanges<sup>9</sup> in that it is being offered to Floor Brokers as an inducement that may allow them to competitively price their services offered to all participants. To the extent that the rebate is successful in attracting additional order flow to the Exchange, all participants should benefit. As such, the Exchange believes that the rebate is appropriate and reasonable.

The Exchange believes the proposal to adopt a \$.10 per contract rebate is equitable and not unfairly discriminatory because it would uniformly apply to all QCC orders entered by a Floor Broker for validation by the system and potential execution. The rebate is not unfairly discriminatory to firms that enter QCC orders directly into the NYSE Arca System through electronic connection, because the fee for the QCC order is the same whether it is entered electronically or through a Floor Broker. In addition, under Commentary .01 to Arca Options Rule 6.90, only Floor Brokers may enter a QCC order from the Floor; therefore,

<sup>3</sup> Floor Brokers are required by NYSE Arca Options Rule 6.67 to have systematized orders prior to representing them in open outcry. Using the same Electronic Order Capture System, Floor Brokers will be able to enter QCC orders for validation by the Exchange matching engines and potential execution.

<sup>4</sup> The International Securities Exchange offers PRECISE TRADE as a means for users to enter orders and Chicago Board Options Exchange has a similar front-end order entry system called PULSE. Such systems do not require users to develop their own internal front-end order entry systems and may provide savings to users in terms of development time and costs.

<sup>5</sup> See Securities Exchange Act Release No. 65472 (October 3, 2011), 76 FR 62887 (October 11, 2011) (SR-NYSEAmex-2011-72) and NASDAQ OMX PHLX fee schedule dated September 12, 2011, page 21 (describing a Floor Broker Subsidy that can range as high as \$.09 per contract), available at <http://www.nasdaqtrader.com/content/marketregulation/membership/phlx/feesched.pdf>.

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

<sup>7</sup> 15 U.S.C. 78f(b)(4).

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

<sup>9</sup> See *supra* note 5.

<sup>27</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.

providing the rebate to Floor Brokers does not discriminate against other QCC orders entered into the NYSE Arca System from on the Floor. Any participant will be able to engage a rebate-receiving Floor Broker in a discussion surrounding the appropriate level of fees that they may be charged for entrusting the entry of the QCC order to the Floor Broker into the Exchange systems for validation and execution. The additional order flow attracted by this rebate should benefit all participants. The rebate is meant to assist Floor Brokers to recruit business on an agency basis from both OTP Holders and non-OTP Holder firms. The Floor Broker may use all or part of the rebate to offset the Floor Brokerage charges billed to the Firm. For this reason the Exchange believes the adoption of the proposed rebate is both 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>10</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>11</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-2011-79 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-2011-79. 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 a.m. and 3 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-NYSEArca-2011-79 and should be submitted on or before December 8, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Elizabeth M. Murphy,**  
Secretary.

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-65728, File No. SR-BATS-2011-035]

### **Self-Regulatory Organizations; BATS Exchange, Inc.; Order Approving Proposed Rule Change, as Modified by Partial Amendment No. 1, To Amend and Restate the Amended and Restated Bylaws of BATS Global Markets, Inc.**

November 10, 2011.

#### **I. Introduction**

On September 7, 2011, BATS Exchange, Inc. ("BATS" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to amend the Bylaws of the Exchange's sole stockholder, BATS Global Markets, Inc. ("Corporation"), in connection with the Corporation's anticipated initial public offering of shares of its Class A Common Stock (the "IPO"). The proposed rule change was published for comment in the **Federal Register** on September 26, 2011.<sup>3</sup> On November 3, 2011, the Exchange filed Partial Amendment No. 1 to the proposed rule change.<sup>4</sup> The Commission received no comment letters regarding the proposal. This order approves the proposed rule change, as modified by Partial Amendment No. 1.

#### **II. Description of the Proposal**

On May 13, 2011, the Corporation filed a registration statement on Form S-1 with the Commission to register shares of Class A common stock and to disclose its intention to conduct an IPO offering those shares and to list those shares for trading on the Exchange. In connection with its IPO, the Exchange filed this proposed rule change to amend and restate the Corporation's current Bylaws and adopt these changes as its Second Amended and Restated Bylaws ("New Bylaws"). The proposal would primarily amend and restate various provisions of the Bylaws in a manner that the Exchange believes

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

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

<sup>3</sup> See Securities Exchange Act Release No. 65353 (September 19, 2011), 76 FR 59472 (September 26, 2011) ("Notice").

<sup>4</sup> Partial Amendment No. 1 corrects an inconsistency between the Third Amended and Restated Certificate of Incorporation of the Corporation and the Corporation's proposed amended bylaws concerning actions of stockholders without a meeting. This is a technical amendment and is not subject to notice and comment as it does not materially affect the substance of the rule filing.

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(2).

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