Contract owners, a Fund Adviser or any General Account will vote its respective shares of the Fund in the same proportion as all votes cast on behalf of all Variable Contract owners having voting rights; provided, however, that such an Adviser or General Account shall vote its shares in such other manner as may be required by the Commission or its staff.

8. Each Fund will comply with all provisions of the Act requiring voting by shareholders (which, for these purposes, shall be the persons having a voting interest in its shares), and, in particular, the Fund will either provide for annual meetings (except to the extent that the Commission may interpret Section 16 of the Act not to require such meetings) or comply with Section 16(c) of the Act (although each Fund is not, or will not be, one of those trusts of the type described in Section 16(c) of the Act), as well as with Section 16(a) of the Act and, if and when applicable, Section 16(b) of the Act. Further, each Fund will act in accordance with the Commission's interpretations of the requirements of Section 16(a) with respect to periodic elections of trustees and with whatever rules the Commission may promulgate thereunder.

9. A Fund will make its shares available to the VLI Accounts, VA Accounts, and Plans at or about the time it accepts any seed capital from its Adviser or from the General Account of a Participating Insurance Company.

10. Each Fund has notified, or will notify, all Participants that disclosure regarding potential risks of mixed and shared funding may be appropriate in VLI Account and VA Account prospectuses or Plan documents. Each Fund will disclose, in its prospectus that: (a) Shares of the Fund may be offered to both VA Accounts and VLI Accounts and, if applicable, to Plans; (b) due to differences in tax treatment and other considerations, the interests of various Variable Contract owners participating in the Fund and the interests of Plan participants investing in the Fund, if applicable, may conflict; and (c) the Fund's Board will monitor events in order to identify the existence of any material irreconcilable conflicts and to determine what action, if any, should be taken in response to any such conflicts.

11. If and to the extent Rule 6e–2 and Rule 6e–3(T) under the Act are amended, or proposed Rule 6e–3 under the Act is adopted, to provide exemptive relief from any provision of the Act, or the rules thereunder, with respect to mixed or shared funding, on terms and conditions materially different from any exemptions granted in the order requested in this Application, then each Fund and/or Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with Rules 6e–2 or 6e–3(T), as amended, or Rule 6e–3, to the extent such rules are applicable.

12. Each Participant, at least annually, shall submit to the Board of each Fund such reports, materials or data as the Board reasonably may request so that the trustees may fully carry out the obligations imposed upon the Board by the conditions contained in this Application. Such reports, materials and data shall be submitted more frequently if deemed appropriate by the Board. The obligations of the Participants to provide these reports, materials and data to the Board, when it so reasonably requests, shall be a contractual obligation of all Participants under their participation agreement with the Fund.

13. All reports of potential or existing conflicts received by a Board, and all Board action with regard to determining the existence of a conflict, notifying Participants of a conflict and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

14. Each Fund will not accept a purchase order from a Qualified Plan if such purchase would make the Plan an owner of 10 percent or more of the assets of the Fund unless the Plan executes an agreement with the Fund governing participation in the Fund that includes the conditions set forth herein to the extent applicable. A Plan will execute an application containing an acknowledgement of this condition at the time of its initial purchase of shares.

Conclusion

Applicants submit, for all of the reasons explained above, that the exemptions requested are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–24770 Filed 10–22–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70703; File No. SR–NYSEArca–2013–102]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Options Fee Schedule Relating to Market Maker and Lead Market Maker Transaction Credits

October 17, 2013.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on October 7, 2013, 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Options Fee Schedule (''Fee Schedule'') to conform references to certain Market Maker and Lead Market Maker (''LMM'') transaction credits to the transaction credits implemented in a recent fee change. The Exchange proposes to implement the fee change immediately. The text of the proposed rule change is available on the Exchange's Web site at *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.

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

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 conform references to certain Market Maker and LMM transaction credits to the transaction credits implemented in a recent fee change. The Exchange proposes to implement the fee change immediately.

The Exchange recently amended the Fee Schedule to reduce the credit for the base Market Maker monthly posting credit tier for Penny Pilot issues, including SPY, from $0.32 to $0.28.[4] This base tier credit applies to posted electronic executions in Penny Pilot issues for Market Makers that do not qualify for the Market Maker Select Tier credit of $0.32 or the Market Maker Super Tier credit of $0.37. The base tier credit is duplicative of the standard credit for posted electronic Market Maker executions in Penny Pilot issues that is specified in the standard transaction fee and credit table in the Fee Schedule (*i.e.,* the table that specifies the fees and credits that apply if a separate table or section of the Fee Schedule is not applicable). In other words, a Market Maker that does not qualify for the Select Tier or the Super Tier credit is effectively subject to the standard transaction fee and credit table in the Fee Schedule. The legacy $0.32 Market Maker credit still appears within the standard fee and credit table. The Exchange therefore proposes to similarly reduce the standard Market Maker credit within the standard transaction fee and credit table from $0.32 to $0.28 for posted electronic Market Maker executions in Penny Pilot issues.[5] Without this change the Fee Schedule would reflect two different credits applicable to the same posted electronic Market Maker executions in Penny Pilot issues.

The standard LMM credit within the standard transaction fee and credit table for posted electronic executions in Penny Pilot issues currently is also $0.32. The Exchange proposes to similarly reduce this credit from $0.32 to $0.28.[6] This reduction would maintain equal standard credits for LMMs and Market Makers for posted electronic executions in Penny Pilot issues, which was the case prior to the recent fee change that reduced the credit for the base Market Maker monthly posting credit tier for Penny Pilot issues, including SPY, from $0.32 to $0.28.[7]

The Exchange notes that the proposed change is not otherwise intended to address any other issues, and the Exchange is not aware of any problems that OTP Holders and OTP Firms, including Market Makers and LMMs, would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[9] 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 change is reasonable because without it the Fee Schedule would reflect two different credits applicable to the same posted electronic Market Maker executions in Penny Pilot issues. The proposed change is also reasonable because it would maintain equal standard credits for LMMs and Market Makers for posted electronic executions in Penny Pilot issues.

The Exchange believes that the proposed change is equitable and not unfairly discriminatory because it would apply to all Market Makers and LMMs on an equal and non-discriminatory basis. The Exchange further believes that the proposed change is equitable and not unfairly discriminatory because it would reasonably ensure consistency and conformity regarding duplicative references to the credits applicable to posted electronic Market Maker executions in Penny Pilot issues while also reasonably ensuring that Market Maker and LMM credits for posted electronic executions in Penny Pilot issues are equal.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition. 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,[10] 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. Instead, the Exchange believes that the proposed change would eliminate any potential confusion for Market Makers regarding the applicable credit for posted electronic executions in Penny Pilot issues as a result of a recent fee change that amended one reference to the applicable rate, but not a duplicative reference in the Fee Schedule. Additionally, the proposed change would reasonably ensure that LMMs receive a standard credit for posted electronic executions in Penny Pilot issues that is equal to the standard credit received by Market Makers, which was the case prior to the recent fee change that reduced the credit for the base Market Maker monthly posting credit tier for Penny Pilot issues, including SPY, from $0.32 to $0.28.[11]

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. 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 rule 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) [12] of the Act and subparagraph (f)(2) of Rule 19b–4 [13] thereunder, because it establishes a due,

[4] *See* Securities Exchange Act Release No. 70504 (September 25, 2013), 78 FR 60358 (October 1, 2013) (SR–NYSEArca–2013–93).

[5] The fee change established pursuant to SR–NYSEArca-2013–93 became effective on October 1, 2013. The Exchange will therefore apply the $0.28 credit to all posted electronic Market Maker executions in Penny Pilot issues that do not qualify for the Select Tier or the Super Tier credit beginning on October 1, 2013.

[6] This aspect of the proposed change will become effective immediately upon filing, at which point the Exchange will apply the $0.28 credit to posted electronic LMM executions in Penny Pilot issues. The Exchange will apply the current $0.32 credit to posted electronic LMM executions in Penny Pilot issues prior to such date of effectiveness.

[7] *See supra,* note 4.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4) and (5).

[10] 15 U.S.C. 78f(b)(8).

[11] *See supra,* note 4.

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(2).

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) [14] 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*. Please include File Number SR–NYSEArca–2013–102 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–2013–102. 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–2013–102, and should be submittedon or before November 13, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

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[14] 15 U.S.C. 78s(b)(2)(B).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70704; File No. SR–OCC–2013–10]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change To Amend Policy Statement Adopted Under Rule 205 Entitled ''Back-Up Communication Channel to Internet Access''

October 17, 2013.

I. Introduction

On August 23, 2013, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–OCC–2013–10 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b-4 thereunder.[2] The proposed rule change was published for comment in the **Federal Register** on September 5, 2013.[3] The Commission received no comment letters regarding the proposed rule change. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

OCC is making certain changes to its Policy Statement adopted under OCC Rule 205 [4] entitled ''Back-up Communication Channel to Internet Access'' requiring clearing members that use the internet as their primary means to access OCC's information and data systems to maintain a secure back-up means of communication in order to provide for business continuance in the event of an internet outage.

In 2006, OCC adopted a Policy Statement under Rule 205 requiring clearing members that primarily use the internet to access OCC's systems to maintain: (i) An OCC-approved method for accessing OCC's information and data systems in order to perform, on a timely basis, critical business activities in the event of an internet outage (''Back-Up Communication Channel''), and (ii) separate service arrangements with two independent internet service providers.[5]

Guidelines were established so that the Back-Up Communication Channel authorized for a particular clearing member was determined in accordance with the firm's business profile using certain criteria. OCC believes that the existing Policy Statement gives OCC the ability to designate a clearing member within a particular Back-Up Communication Channel category, if the clearing member meets any of the criteria that are enumerated under the particular category.[6] For example, a clearing member that: (i) Ranked among the top twenty-five clearing members by cleared volume during a calendar year; (ii) cleared more than one account type as defined in OCC's By-Laws and Rules; (iii) cleared two or more product types; (iv) conducted Clearing Member Trade Assignment (''CMTA'') business; (v) input a high volume of daily post-trade activity; (vi) generally utilized multiple forms of collateral; (vii) utilized most ancillary services offered by OCC; or (viii) used a lease line for data transmissions, would generally be designated as a ''Category A'' firm. ''Category A'' firms were required to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Exchange Act Release No. 34–70289 (August 29, 2013), 78 FR 54707 (September 5, 2013).

[4] OCC Rule 205, in relevant part, prescribes that clearing members shall submit instructions, notices, reports, data, and other items to the Corporation by electronic data entry in accordance with procedures prescribed or approved by the OCC. OCC supports the submission of these instructions, notices, reports, data and other items through use of an Internet connection to OCC's secured Web site.

[5] Securities Exchange Act Release No. 53980 (June 14, 2006), 71 FR 36155 (June 23, 2006)(SR–OCC–2006–04).

[6] Email from Bruce Kelber, Vice President and Associate General Counsel, OCC, to Wyatt Robinson, Attorney Adviser, Division of Trading and Markets, Securities and Exchange Commission (October 15, 2013) (stating that the criteria used to determine whether a particular firm should be designated as a Category A firm, Category B firm, or Category C firm under OCC's existing policy statement is intended to be interpreted as ''or'' statements.) OCC believes that the same interpretation will apply to the Policy Statement after changes pursuant to the proposed rule change are implemented. *Id.*