



8011-01p
SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-68227; File No. SR-NYSEArca-2012-123)

November 14, 2012

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

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 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 website 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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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").⁴ 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.⁵

⁴ 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.

⁵ 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.

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.⁶ 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;⁷ 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.⁸

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

⁶ 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.

⁷ 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.

⁸ 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.

daily value), specific symbols or end users.⁹ 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 connection fees related to such ports.¹⁰ The Exchange proposes that users of RMG would no longer be required to pay port fees for order/quote entry ports designated as being used for RMG because, in the Exchange's opinion, order/quote entry ports are an integral part of RMG and such users are already charged a fee for RMG, including additional connections related thereto, which the Exchange believes is sufficient to cover its costs related to making the order/quote entry ports available for RMG purposes. Accordingly, the Exchange proposes to specify that port fees are not applicable to order/quote entry ports designated as being used for RMG.

Drop Copy Ports

The Exchange proposes to implement a fee for drop copy ports,¹¹ for which the Exchange does not currently charge a fee, provided, however, that users of RMG would not be charged for drop copy ports if such ports are designated as being used for RMG purposes. The Exchange proposes to charge \$500 per port per month for drop copy ports.¹² Additionally, the Exchange proposes to specify that only one fee per drop copy port would apply, even if the port receives

⁹ 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."

¹⁰ Currently, a \$3,000 charge per month applies for an initial RMG connection and a \$1,000 charge for every additional connection thereafter.

¹¹ See supra note 4.

¹² The Exchange proposes to add language to the Fee Schedule to differentiate between drop copy ports and order/quote entry ports.

drop copies from multiple order/quote entry ports and/or drop copies for activity on both NYSE Arca Equities and NYSE Arca Options.

In addition, the Exchange proposes that users of RMG would not be charged for drop copy ports if such ports are designated as being used for RMG purposes. The Exchange proposes that users of RMG not be required to pay port fees for drop copy ports designated as being used for RMG because, in the Exchange's opinion, ports are an integral part of RMG and such users are already charged a fee for RMG, including additional connections related thereto, which the Exchange believes is sufficient to cover its costs related to making the ports available for RMG purposes. Accordingly, the Exchange proposes to specify that port fees are not applicable to drop copy ports designated as being used for RMG.

Backup Datacenter

Finally, the Exchange proposes that unutilized order/quote entry ports that connect to the Exchange via its backup datacenter and are not utilized be considered established for backup purposes and not charged port fees.¹³ However, if activity were conducted through one of these order/quote entry ports, whether for backup or any other purposes, port fees would apply for the relevant month or months. In this regard, the Exchange notes that it monitors usage of these particular ports. Accordingly, if an order/quote were sent to the Exchange via one of these ports, then the port would be charged the applicable monthly port fee.

The Exchange also proposes that drop copy ports that connect to the Exchange via its backup datacenter not be charged if the drop copy port is configured such that it is duplicative of another drop copy port of the same user, regardless of whether the drop copy port is utilized or not. The Exchange is proposing to treat drop copy ports in this manner because a firm would not

¹³ See supra note 8.

derive any value or utility from a drop copy port in the datacenter that is duplicative of another drop copy port that it already has outside of the datacenter, in that, because drop copy ports are used to send duplicative information, a second drop copy port carrying the same information would not be a useful resource, except for a backup purpose.

Overall, the Exchange believes that the changes proposed herein will result in the method of billing for ports more closely aligning with the needs of firms with ports. The proposed changes will also permit the Exchange to remain competitive with other exchanges with respect to fees charged for ports.¹⁴ The Exchange notes that the proposed changes are not otherwise intended to address any other issues surrounding ports or port fees and that the Exchange is not aware of any problems that port users would have in complying with the proposed change.

The Exchange proposes to implement these changes on November 1, 2012. In this regard, the Exchange notes that billing for ports would be based, as is currently on the case, on the number of ports on the third business day prior to the end of the month. In addition, the level of activity with respect to a particular port would still not affect the assessment of monthly fees, such that, except for ports that are not charged and ports considered established for backup purposes, even if a particular port is not used, a port fee would still apply.

¹⁴ For example, the charge for connectivity to the NASDAQ Stock Market LLC (“NASDAQ”) NY-Metro and Mid-Atlantic Datacenters is \$500 and a separate charge for Pre-Trade Risk Management ports is applicable, which ranges from \$400 to \$600 and is capped at \$25,000 per firm per month. Also, the BATS Exchange, Inc. (“BZX”) charges \$400 per month per pair (primary and secondary data center) for logical ports. Additionally, EDGA Exchange, Inc. (“EDGA”) and EDGX Exchange, Inc. (“EDGX”) each charge \$500 per port. EDGA and EDGX also provide the first five ports for free.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),¹⁵ in general, and furthers the objectives of Section 6(b)(4) of the Act,¹⁶ 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.

Overall, the Exchange believes that the proposed changes, including the rates proposed, are reasonable because the fees charged for order/quote entry ports and drop copy ports are expected to permit the exchange to offset, in part, its connectivity costs associated with making such ports available, including costs based on gateway software and hardware enhancements and resources dedicated to gateway development, quality assurance, and support. In this regard, the Exchange believes that its fees are competitive with those charged by other venues, and that in some cases its port fees are less expensive than many of its primary competitors.¹⁷ The Exchange believes that the changes proposed herein will result in the method of billing for ports more closely aligning with the needs of firms with ports.

The Exchange believes that the proposed change to the methodology for billing for order/quote entry ports is reasonable because it will simplify the fees for ports by eliminating the pair requirement and allowing a firm that requires more than five pairs of ports to request, and pay for, the specific number of ports that it requires, rather than requesting ports in pairs and in groups of five. This aspect of the proposed change is also equitable and not unfairly discriminatory because it will result in charges for order/entry ports being based on the number

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(4).

¹⁷ See supra note 14.

of ports utilized. This aspect of the proposed change is also equitable and not unfairly discriminatory because it will apply on an equal basis for all ports on the Exchange, except for order/quote entry ports related to RMG and order/quote entry ports in the backup datacenter that are not utilized.¹⁸

The Exchange believes that it is reasonable to charge \$200 per port per month for order/quote entry ports because, when combined with the change to the methodology for billing for ports, it could result in a decrease in the overall cost to users of ports. The proposed rate is also reasonable because it is comparable to the rates of other exchanges.¹⁹ The Exchange also believes that these changes to the fees are equitable and not unfairly discriminatory because they would apply to all users of order/quote entry ports on the Exchange, subject to the exceptions noted above.

The Exchange believes that the proposed new fee for drop copy ports is reasonable because it will result in a fee being charged for the use of technology and infrastructure provided by the Exchange. In this regard, the Exchange believes that the rate is reasonable because it is comparable to the rate charged by other exchanges for drop copy ports.²⁰ Furthermore, the Exchange believes that the proposed rate for a drop copy port is reasonable because, when compared to the proposed rate for order/quote entry ports, it reflects the level of resources required of the Exchange to establish and maintain the port, including the various sources from which data comes (i.e., establishing connections to order/quote entry ports as well as, in certain circumstances, to order/quote entry ports on both NYSE Arca Equities and NYSE Arca Options).

¹⁸ The Exchange describes below how the proposed changes regarding RMG and the backup datacenter are consistent with the Act.

¹⁹ See supra note 14.

²⁰ See supra note 14.

The proposed rate is also reasonable in light of the functional/operational differences between a drop copy port and an order/quote entry port (e.g., that configuration and monitoring of the drop copy port is more substantial and because drop copy ports capture cumulative activity).

The Exchange also believes that it is reasonable that only one fee per drop copy port would apply, even if the port receives drop copies from multiple order/quote entry ports and/or from both NYSE Arca Equities and NYSE Arca Options, because the purpose of drop copies is such that a trading unit's or a firm's entire order and execution activity is captured, including with respect to both equities and options. This is also reflected in the rate of \$500 that is proposed for drop copy ports, which is higher than the rate proposed for order/quote entry ports. The Exchange believes that the proposed new fee for drop copy ports is equitable and not unfairly discriminatory because it will apply on an equal basis to all users of drop copy ports and to all drop copy ports on the Exchange, except for those order/entry ports related to RMG and ports in the backup datacenter.²¹ In this regard, all firms are able to request drop copy ports, as is the case with order/quote entry ports.

The Exchange believes that not charging for ports that are designated to be used for RMG is reasonable because ports are an integral part of RMG and such users are already charged a fee for RMG, including additional connections related thereto, which the Exchange believes is sufficient to cover its costs related to making the ports available for RMG purposes.²² In this regard, ports not designated as being used for RMG purposes would remain subject to port fees. The Exchange also believes that this is equitable and not unfairly discriminatory because it would apply equally to all ETP Holders that utilize RMG, which is fully-voluntary and is available to any ETP Holder.

²¹ See supra note 18.

²² See supra note 9.

The Exchange believes that it is reasonable to not charge for order/quote entry ports in its backup datacenter that are not utilized. However, the exchange does not restrict firms from using order/quote entry ports from the backup datacenter and, as described above, if one of these ports is utilized for order/quote entry, then port fees would apply. The Exchange believes that this is equitable and not unfairly discriminatory because it would permit firms to have ports established for backup purposes, should they ever be needed, without the burden of paying for such ports when they are not utilized. The Exchange believes this is equitable and not unfairly discriminatory because firms will not be disincentivized from requesting backup ports because of a fee that may otherwise apply. This would contribute to the efficiency of a backup process if primary order/quote entry ports ever became unavailable.

The Exchange also believes that it is reasonable to not charge for drop copy ports in its backup datacenter if configured such that it is duplicative of another drop copy port of the same user, regardless of whether the drop copy port is utilized or not. The Exchange believes that it is reasonable to treat drop copy ports in this manner because a firm would not derive any value/use from a drop copy port in the datacenter that is duplicative of another drop copy port that it already has outside of the datacenter (i.e., because drop copy ports are used to send duplicative information anyways, a second drop copy port carrying the same information would not be a useful resource), except for a backup purpose. The Exchange believes that this is equitable and not unfairly discriminatory because it would permit firms to have ports established for drop copy purposes in the backup datacenter, should they ever be needed, without the burden of paying for such ports. Because the drop copy port would not be providing any information that the firm did not already have, since the port would be configured such that it is duplicative of another drop copy port of the same user, the Exchange believes that it is equitable and not unfairly

discriminatory to treat order/quote entry ports and drop copy ports differently in this manner. The Exchange believes this is also equitable and not unfairly discriminatory because firms will not be disincentivized from requesting backup drop copy ports because of a fee that may otherwise apply. This would contribute to the efficiency of a backup process if primary drop copy ports ever became unavailable.

Finally, 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 rule change reflects this competitive environment.

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)²³ of the Act and subparagraph (f)(2) of Rule 19b-4²⁴ thereunder, because it establishes a due, fee, or other charge imposed by the NYSE Arca.

²³ 15 U.S.C. 78s(b)(3)(A).

²⁴ 17 CFR 240.19b-4(f)(2).

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 e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2012-123 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-2012-123. This file number should be included on the subject line if e-mail 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 website (<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 website 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-NYSEArca-2012-123 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

Kevin M. O'Neill
Deputy Secretary

[FR Doc. 2012-28144 Filed 11/19/2012 at 8:45 am; Publication Date: 11/20/2012]

²⁵ 17 CFR 200.30-3(a)(12).