

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-71503; File No. SR-NYSEArca-2014-13)

February 6, 2014

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services to Add A New Pricing Tier Applicable to Orders that Add Liquidity on the Exchange

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 January 28, 2014, 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 Equities Schedule of Fees and Charges for Exchange Services (“Fee Schedule”) to add a new pricing tier applicable to orders that add liquidity on the Exchange. The Exchange proposes to implement the fee change on February 1, 2014. 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.

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 add a new pricing tier applicable to orders that add liquidity on the Exchange. The Exchange proposes to implement the fee change effective February 1, 2014.

The Exchange proposes to add a new "Step Up Tier 3" applicable to an ETP Holder, including a Market Maker, that on a daily basis, measured monthly, directly executes providing volume ("Adding ADV") during the billing month that is both (i) at least 0.20% of U.S. consolidated average daily volume ("U.S. CADV") for the billing month and (ii) at least 0.125% taken as a percentage of U.S. CADV for the billing month over the ETP Holder's December 2013 Adding ADV taken as a percentage of U.S. CADV in December 2013 ("Baseline % CADV").⁴ For example, if U.S. CADV during the billing month is 7 billion shares, an ETP

⁴ U.S. CADV means United States Consolidated Average Daily Volume for transactions reported to the Consolidated Tape, excluding odd lots through January 31, 2014 (except for purposes of Lead Market Maker pricing), and excludes volume on days when the market closes early. Transactions that are not reported to the Consolidated Tape are not included in U.S. CADV. An ETP Holder with zero Adding ADV in December 2013 (e.g., a firm that became an ETP Holder after December 2013) would be treated as having Baseline % CADV of zero for purposes of the proposed Step Up Tier 3.

Holder's Adding ADV during the billing month would first need to be at least 14 million shares (i.e., at least 0.20% of U.S. CADV for the billing month). If U.S. CADV in December 2013 was 6 billion shares and an ETP Holder's December 2013 Adding ADV was 6 million shares, the ETP Holder's Baseline % CADV would be 0.10% (i.e., the ETP Holder's December 2013 Adding ADV taken as a percentage of U.S. CADV in December 2013). The ETP Holder's Adding ADV during the billing month would therefore need to be at least 0.225% of U.S. CADV for the billing month (i.e., Baseline % CADV of 0.10% plus at least 0.125%), which would equate to at least 15.75 million shares of Adding ADV and would therefore be a "step up" of 9.75 million shares.

A qualifying ETP Holder would receive a credit of \$0.0004 per share for (i) Adding ADV in Tape A securities during the billing month taken as a percentage of U.S. CADV in Tape A securities in the billing month in excess of the Baseline % CADV in Tape A securities and (ii) Adding ADV in Tape C securities during the billing month taken as a percentage of U.S. CADV in Tape C securities in the billing month in excess of the Baseline % CADV in Tape C securities.⁵ Continuing with the example above, if the ETP Holder's Adding ADV during the billing month was the minimum of 15.75 million shares identified above, and if 8 million shares consisted of Tape A securities, and further if 3.2 billion of the 7 billion shares of overall U.S. CADV during the billing month were in Tape A securities, then the ETP Holder's Adding ADV in Tape A securities taken as a percentage of U.S. CADV in Tape A securities during the billing month would be 0.25% (i.e., 8 million divided by 3.2 billion). Also, assume that in December

⁵ Orders that provide liquidity in Tape B securities would count toward the ETP Holder's qualification for the proposed Step Up Tier 3, but such orders would not be eligible for a credit under the proposed Step Up Tier 3. The Exchange's Fee Schedule currently already includes a "Tape B Step Up Tier" that provides for a similar credit of \$0.0004 per share only for orders in Tape B securities that provide liquidity.

2013 4.5 million shares of the ETP Holder's Baseline % CADV consisted of Tape A securities and that 3 billion of the 6 billion shares of overall U.S. CADV in December 2013 were in Tape A securities. The ETP Holder's Baseline % CADV in Tape A securities would be 0.15% (i.e., 4.5 million divided by 3 billion). The excess in the billing month over December 2013 would be 0.10% (i.e., 0.25% minus 0.15%). 0.10% of U.S. CADV in Tape A securities for the billing month would be 3.2 million shares (i.e., 0.01 multiplied by 3.2 billion shares U.S. CADV in Tape A securities). Therefore, an average daily credit of \$1,280 would apply under proposed Step Up Tier 3 for the ETP Holder's Tape A securities during the billing month (i.e., \$0.0004 multiplied by 3.2 million), which would be a monthly credit of \$26,880 (with 21 trading days in the month). The same analysis would be performed with respect to the ETP Holder's Tape C securities.

The credits provided under the proposed Step Up Tier 3 would be in addition to the ETP Holder's Tiered or Basic Rate credit(s); provided, however, that such combined credit would not be permitted to exceed \$0.0034 per share. For example, an ETP Holder that qualifies for Investor Tier 3 receives a credit of \$0.0032 under Investor Tier 3.⁶ If this same ETP Holder also qualifies for the proposed Step Up Tier 3, its orders (i) in Tape A securities that are eligible for the Step Up Tier 3 credit would receive an additional credit of \$0.0002 (i.e., \$0.0032 under Investor Tier 3 plus a remaining \$0.0002 under proposed Step Up Tier 3), and (ii) in Tape C securities that are eligible for the Step Up Tier 3 credit would receive an additional credit of \$0.0002 (i.e., \$0.0032 under Investor Tier 3 plus a remaining \$0.0002 under proposed Step Up Tier 3).

⁶ Investor Tier 3 requires that an ETP Holder (1) provide liquidity of 0.60% or more of the U.S. CADV per month, (2) maintain a ratio of cancelled orders to total orders less than 30%, excluding Immediate-or-Cancel orders, and (3) maintain a ratio of executed liquidity adding volume-to-total volume of greater than 50%.

Lead Market Makers (“LMMs”) on the Exchange could not qualify for the proposed new Step Up Tier 3, nor would LMM provide volume apply to the applicable volume requirements proposed for the new Step Up Tier 3.⁷ Retail Order Tier and Retail Order Cross-Asset Tier ETP Holders and Market Makers also could not qualify for the proposed new Step Up Tier 3, nor would Retail Order provide volume apply to the applicable volume requirements.⁸

Finally, for ETP Holders that qualify for the proposed new Step Up Tier 3, Tiered or Basic Rates would apply to all other fees and credits, based on a firm’s qualifying levels, and if an ETP Holder qualifies for more than one tier in the Fee Schedule, the Exchange would apply the most favorable rate available under such tiers.

The proposed change is not otherwise intended to address any other issues, and the Exchange is not aware of any problems that ETP Holders 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,⁹ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁰ 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 the proposed Step

⁷ The Exchange’s Fee Schedule currently already includes separate pricing applicable only to LMMs.

⁸ The Retail Order Tier and Retail Order Cross Asset Tier currently already provide for credits applicable only to Retail Orders.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4) and (5).

Up Tier 3 credit would encourage ETP Holders to send additional orders to the Exchange across all Tapes for execution in order to qualify for an incrementally higher credit for such executions in Tape A and Tape C securities that add liquidity on the Exchange. In this regard, the Exchange believes that this may incentivize ETP Holders to increase the orders sent directly to the Exchange and therefore provide liquidity that supports the quality of price discovery and promotes market transparency. The Exchange believes that the rate proposed for the Step Up Tier 3 credit is reasonable because it is directly related to an ETP Holder's level of executions in Tape A and Tape C Securities during the month. This rate is also within the range of other credits available to ETP Holders that execute providing volume during a billing month that is greater than during a particular "baseline" month.¹¹

The Exchange believes that the proposed Step Up Tier 3 credit is also equitable and not unfairly discriminatory because it would incentivize ETP Holders to submit orders in securities across all Tapes to the Exchange and would result in a credit that is reasonably related to an exchange's market quality that is associated with higher volumes. Moreover, like existing pricing on the Exchange that is tied to ETP Holder volume levels, the Exchange believes that the proposed Step Up Tier 3 credit is equitable and not unfairly discriminatory because it would be available for all ETP Holders, including Market Makers, on an equal and non-discriminatory basis. The Exchange also believes that it is equitable and not unfairly discriminatory that orders that provide liquidity in Tape B securities would not be eligible for a credit under the proposed Step Up Tier 3 because the Exchange's Fee Schedule currently already includes a "Tape B Step Up Tier" that provides for a similar credit of \$0.0004 per share only for orders in Tape B securities that provide liquidity.

¹¹ See, e.g., the "Tape B Step Up Tier," for which a corresponding credit of \$0.0004 applies.

The Exchange also believes that it is equitable and not unfairly discriminatory that the proposed \$0.0004 credit under the Step Up Tier 3 would not be permitted to exceed \$0.0034 per share when combined with other credits available to ETP Holders under other tiers specified in the Fee Schedule because the ETP Holders that qualify for these specified tiers would already receive a higher credit for such executions.

Similarly, the Exchange believes that it is equitable and not unfairly discriminatory to prohibit LMMs on the Exchange from qualifying for the proposed new Step Up Tier 3 and to exclude LMM provide volume from applying to the applicable volume requirements proposed for the new Step Up Tier 3. This is because, like ETP Holders that qualify for other tiers in the Fee Schedule that provide for incrementally higher credits, LMMs are already eligible for increased credits that range from \$0.0035 per share to \$0.0045 per share for executions of transactions that add liquidity to the Exchange.

The Exchange also believes that it is equitable and not unfairly discriminatory to prohibit Retail Order Tier and Retail Order Cross-Asset Tier ETP Holders from qualifying for the proposed new Step Up Tier 3 and to exclude Retail Orders from applying to the applicable volume requirements proposed for the new Step Up Tier 3. This is because Retail Orders, and the ETP Holders that submit them, are already eligible for increased credits that range from \$0.0033 to \$0.0034 per share for executions of transactions that add liquidity to the Exchange.

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,¹² the Exchange believes that the proposed rule change would not 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 will encourage competition, including by attracting additional liquidity to the Exchange, which will make the Exchange a more competitive venue for, among other things, order execution and price discovery. In general, ETP Holders impacted by the proposed change may readily adjust their trading behavior to maintain or increase their credits or decrease their fees in a favorable manner, and will therefore not be disadvantaged in their ability to compete. More specifically, an ETP Holder could qualify for the proposed new Step Up Tier 3 by providing sufficient adding liquidity to satisfy the applicable proposed volume requirements. The Exchange also notes that the proposed Step Up Tier 3 would be similar to existing pricing tiers and applicable credits on the Exchange.¹³

Also, the Exchange does not believe that the proposed change will impair the ability of ETP Holders or competing order execution venues to maintain their competitive standing in the financial markets. In this regard, the Exchange notes that existing pricing tiers of other exchanges similarly provide for credits for market participants that provide certain levels of liquidity on those exchanges.¹⁴

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

¹² 15 U.S.C. 78f(b)(8).

¹³ See supra note 11.

¹⁴ See, e.g., the “Investor Support Program” under NASDAQ Stock Market, LLC (“NASDAQ”) Rule 7014.

venue to be excessive or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. As a result of all of these considerations, the Exchange does not believe that the proposed changes will impair the ability of member organizations or competing order execution 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

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)¹⁵ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁶ thereunder, because it establishes a due, 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

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f)(2).

Commission shall institute proceedings under Section 19(b)(2)(B)¹⁷ 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 e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2014-13 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-2014-13. 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

¹⁷ 15 U.S.C. 78s(b)(2)(B).

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 NYSE. 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-2014-13, 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.¹⁸

Kevin M. O'Neill
Deputy Secretary

¹⁸ 17 CFR 200.30-3(a)(12).