

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-71214; File No. SR-NYSEArca-2013-146)

December 31, 2013

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 Eliminate the Mid-Point Passive Liquidity Order Tier, Add a New Routable Order Cross-Asset Tier, and Make Other Changes Relating to Open Orders

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 December 19, 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 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 eliminate the Mid-Point Passive Liquidity (“MPL”) Order Tier, add a new Routable Order Cross-Asset Tier, and make other changes relating to open orders. The Exchange proposes to implement the changes on January 2, 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to eliminate the MPL Order Tier, add a new Routable Order Cross-Asset Tier, and make other changes relating to open orders. The Exchange proposes to implement the changes on January 2, 2014.

Currently, the Exchange provides a \$0.0020 per share credit for ETP holders, including Market Makers, that execute an Average Daily Volume ("ADV") of providing MPL orders during the month that is 0.0775% or more of the U.S. Consolidated ADV ("US CADV"). When the Exchange proposed the MPL Order Tier credit, the Exchange expected it to incentivize ETP Holders to submit additional MPL orders on the Exchange;⁴ however, the credit has not had the intended effect. Accordingly, the Exchange proposes to eliminate the MPL Order Tier. The \$0.0015 per share credit would remain in place for the Tier 1, Tier 2, and Basic rates.

The Exchange also is proposing a new Routable Order Cross-Asset Tier. Under the Routable Order Cross-Asset Tier, ETP Holders, including Market Makers, that (1) provide

⁴ See Securities Exchange Act Release No. 69926 (July 3, 2013), 78 FR 41154 (July 9, 2013) (SR-NYSEArca-2013-67).

liquidity of 0.40% or more of the US CADV during the billing month across all Tapes, (2) maintain a ratio during the billing month across all Tapes of executed provide liquidity that is eligible to route away from the Exchange (“Routable Orders”) to total executed provide liquidity of 65% or more, (3) execute an ADV of provide liquidity during the billing month across all Tapes that is equal to at least the ETP Holder’s or Market Maker’s May 2013 provide liquidity across all Tapes plus 40%, and (4) are affiliated with an OTP Holder or OTP Firm that provides an ADV of manual (i.e., non-electronic) executions (as defined in footnote 5 of the NYSE Arca Options Fee Schedule)⁵ on NYSE Arca Options (excluding mini options, qualified contingent cross orders, and strategy trades) across all account type ranges of at least 1.5% of total Customer equity and ETF option ADV as reported by the Options Clearing Corporation would qualify for a \$0.0032 per share credit for Routable and non-Routable Orders that provide liquidity in Tape A and C securities and a \$0.0027 per share credit for Routable and non-Routable Orders that provide liquidity in Tape B securities. The Exchange notes that the proposed credits would provide an alternative way to qualify for the current Routable Order Tier credit of \$0.0032 for Tape A and Tape C securities and an alternative way to qualify for the current Tape B Step Up Tier credit of \$0.0027 for Tape B securities that are offered by the

⁵ As provided in footnote 5 in the NYSE Arca Options Fee Schedule, manual executions exclude certain electronic transactions. Specifically, a manual order that executes in part against one or more electronic orders or quotes resting on the NYSE Arca Options Consolidated Book prior to executing against interest in the NYSE Arca Options Trading Crowd would be considered a manual transaction order for the entire order. A manual order that executes entirely against one or more electronic orders or quotes resting on the Consolidated Book would be considered an electronic transaction for the entire order. In either case, the contra-side electronic order or quote would be considered an electronic transaction. In order to be considered a manual transaction, all manual orders must be entered into NYSE Arca Options’ Electronic Order Capture System. Manual orders that are entered into an order entry device approved by NYSE Arca Options and contemporaneously recorded into the Electronic Order Capture System are also considered manual transactions.

Exchange.⁶ The Exchange also proposes to make conforming changes to the Tape B Adding Tier, Tape B Step Up Tier, Tape C Step Up Tier, and Tape C Step Up Tier 2 to specify that ETP Holders and Market Makers that qualify for the proposed Routable Order Cross-Asset Tier would not additionally qualify for those tiers.

Lastly, the Exchange proposes to amend footnote 1 in the Fee Schedule to eliminate the restriction that credits will not be applied to open orders (e.g., “Good Till Cancelled” or “GTC” Orders) executed after the trading date on which they were entered. The Exchange is eliminating the restriction to encourage more orders to be submitted and enhance liquidity on the Exchange.

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,⁷ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,⁸ 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 eliminating the MPL Order Tier is reasonable because it has generally not incentivized ETP Holders to submit additional liquidity in MPL orders as

⁶ The \$0.0027 per share credit for executions of Tape B securities under the Routable Order Cross-Asset Tier is the same credit that ETP Holders would receive if they qualified for both the Tier 1 (\$0.0023) and Tape B Step Up Tier (\$0.0004) credits.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4) and (5).

intended.⁹ The Exchange believes that removal of the MPL Order Tier is equitable and not unfairly discriminatory because it would be eliminated for all ETP Holders. The Exchange also believes that eliminating the MPL Order Tier is reasonable and equitable because ETP Holders can still receive a \$0.0015 credit for MPL orders that provide liquidity under the Tier 1, Tier 2, and Basic rates.

The Exchange believes that the proposal to add the new Routable Order Cross-Asset Tier is reasonable because it would provide firms with an alternative way in which to qualify for the current Routable Order Tier credit of \$0.0032 for Tape A and Tape C securities and an alternative way to qualify for the current Tape B Step Up Tier credit of \$0.0027 for Tape B securities through equity and options orders, thereby encouraging increased trading activity on both the NYSE Arca equity and option markets. The Exchange believes that the thresholds that it has set for qualifying for the new tier are reasonable because they are based in part on the qualifications for the existing Routable Order Tier. The Exchange believes that lowering the ratio for Routable Orders from 75% in the current Routable Order Tier to 65% in the proposed Routable Order Cross-Asset Tier is reasonable because under the proposed tier, ETP Holders would be required to meet an additional threshold in options volume in order to qualify for the credit. The Exchange further believes that the proposed Routable Order Cross-Asset Tier is equitable and not unfairly discriminatory because ETP Holders that are not affiliated with an NYSE Arca Options OTP Holder or OTP Firm would continue to have the opportunity to qualify for the same levels of credit pursuant to either the Routable Order Tier or the Tier 1 and Tape B Step Up Tier. The Exchange also believes that it is reasonable, equitable, and not unfairly discriminatory for an ETP Holder or Market Maker that qualifies for the proposed Routable

⁹ See supra note 4.

Order Cross-Asset Tier to not be eligible for the Tape B Adding Tier, Tape B Step Up Tier, Tape C Step Up Tier, or Tape C Step Up Tier 2 because the ETP Holders and Market Makers that qualify for these specified tiers would already receive the benefit of a lower fee or an equal or incrementally higher credit for such executions that add liquidity.

The Exchange believes that it is reasonable to include Tape B securities within the proposed Routable Order Cross-Asset Tier because it would encourage additional liquidity on the Exchange in such securities. The Exchange further believes that it is equitable and not unfairly discriminatory to apply the same qualifying thresholds to Tape B securities as would apply to Tape A and Tape C securities, but to apply a lower credit for Tape B securities (i.e., \$0.0027 compared to \$0.0032), because existing pricing on the Exchange for Tape B Securities is often different from Tape A and Tape C Securities, with different credits and fees.

The Exchange believes that eliminating the restriction on open orders in footnote 1 and making credits available to open orders that execute after the day that they are entered is reasonable because it may encourage more open orders to be submitted, which may enhance liquidity on the Exchange. The Exchange believes that the proposed change to footnote 1 is equitable and not unfairly discriminatory because all ETP Holders would have the opportunity to earn credits for open orders that do not execute on the day entered.

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. In particular, the removal of the MPL Order Tier will not impose a burden on competition because the tier will be removed in its entirety and generally has not encouraged liquidity on the Exchange, as intended. The proposal to add the new Rutable Order Cross-Asset Tier will not place a burden on competition because ETP Holders that are not affiliated with an OTP Holder or OTP Firm can still qualify to receive the same proposed credits pursuant to the other existing tiers discussed above. The Exchange believes that the proposed change to footnote 1 will not impose a burden on competition but rather will create an incentive to submit open orders to the Exchange, thereby promoting competition. 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 promotes a 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)¹¹ of

¹⁰ 15 U.S.C. 78f(b)(8).

¹¹ 15 U.S.C. 78s(b)(3)(A).

the Act and subparagraph (f)(2) of Rule 19b-4¹² 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 Commission shall institute proceedings under Section 19(b)(2)(B)¹³ 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-2013-146 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-2013-146. 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

¹² 17 CFR 240.19b-4(f)(2).

¹³ 15 U.S.C. 78s(b)(2)(B).

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-2013-146 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.¹⁴

Elizabeth M. Murphy
Secretary

¹⁴ 17 CFR 200.30-3(a)(12).