

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-71475; File No. SR-NYSEArca-2014-09)

February 4, 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 Eliminate the Tape B Adding Tier and Modify the Tape B Step Up Tier

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 23, 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 eliminate the Tape B Adding Tier and modify the Tape B Step Up Tier. The Exchange proposes to implement the changes 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.

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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 eliminate the Tape B Adding Tier and modify the Tape B Step Up Tier. The Exchange proposes to implement the changes on February 1, 2014.

Currently, under the Tape B Adding Tier, the Exchange provides a \$0.0002 per share credit for ETP holders, including Market Makers, that provide liquidity of 0.675% or more of U.S. consolidated ADV ("CADV") in Tape B Securities ("U.S. Tape B CADV") for the billing month. When the Exchange proposed the Tape B Adding Tier credit, the Exchange expected it to incentivize ETP Holders to provide additional liquidity to the Exchange in Tape B Securities;⁴ however, the credit has not had the intended effect. Accordingly, the Exchange proposes to eliminate the Tape B Adding Tier.

The Exchange also proposes to revise the Tape B Step Up Tier. Currently, ETP Holders, including Market Makers, that, on a daily basis, measured monthly, directly execute providing volume in Tape B Securities during the billing month ("Tape B Adding ADV") that is equal to at least the ETP Holder's May 2013 Tape B Adding ADV plus 0.275% of U.S. Tape B CADV for the billing month receive a credit of \$0.0004 per share for orders that provide liquidity to the Exchange in Tape B Securities, which is in addition to the ETP Holder's Tiered or Basic Rate

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

credit(s). The Exchange proposes to revise the threshold for qualifying for the tier by requiring ETP Holders, including Market Makers, on a daily basis, measured monthly, to directly execute Tape B Adding ADV that is equal to at least 0.275% of the US Tape B CADV for the billing month over the ETP Holder's or Market Maker's May 2013 Tape B Adding ADV taken as a percentage of Tape B CADV ("Tape B Baseline % CADV"). The Exchange believes that the revised threshold criteria are more logical and fairer in that they take into account a change in a Member's volume relative to CADV. The Tape B Step Up Tier would continue to be a credit of \$0.0004 per share in addition to the ETP Holder's Tiered or Basic Rate credit(s).

For example, under the proposed Fee Schedule, if the ETP Holder's Tape B Baseline % CADV during May 2013 was 0.10%, the ETP Holder would need to have a Tape B Adding ADV of at least 0.375% in order to qualify for the applicable credit of \$0.0004 per share (i.e., 0.10% Tape B Baseline % CADV plus 0.275% of the US Tape B CADV for the billing month).

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,⁵ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,⁶ 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.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4) and (5).

The Exchange believes that eliminating the Tape B Adding Tier is reasonable because it has generally not incentivized ETP Holders to provide additional liquidity in Tape B Securities as intended.⁷ The Exchange believes that removal of the Tape B Adding Tier is equitable and not unfairly discriminatory because it would be eliminated for all ETP Holders.

The Exchange believes that revising the Tape B Step Up Tier is reasonable because it would make the eligibility requirement consistent with the Exchange's other variable eligibility requirements that also are based on percentage of volume while still incenting ETP Holders and Market Makers to provide liquidity in Tape B Securities. The Exchange believes that the revised threshold criteria for this tier are more logical and fairer in that they take into account a change in a Member's volume relative to CADV. The Exchange believes that the revised Tape B Step Up Tier is equitable and not unfairly discriminating because the \$0.0004 credit will remain the same and would continue to be available for all ETP Holders, including Market Makers, on an equal and non-discriminatory basis.

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,⁸ 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 Tape B Adding 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 revised Tape B Step

⁷ See supra note 4.

⁸ 15 U.S.C. 78f(b)(8).

Up Tier will not place a burden on competition because it will apply uniformly to all ETP Holders and Market Makers, and the Exchange does not propose to change the level of the credit.

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)⁹ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁰ 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)¹¹ of the Act to determine whether the proposed rule change should be approved or disapproved.

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(2).

¹¹ 15 U.S.C. 78s(b)(2)(B).

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-2014-09 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-2014-09. 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 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-2014-09, 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.¹²

Kevin M. O'Neill
Deputy Secretary

¹² 17 CFR 200.30-3(a)(12).