

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-64820; File No. SR-NYSEArca-2011-41)

July 6, 2011

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 Introduce Two New Pricing Tiers, Step-Up Tier 1 and Step-Up Tier 2

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that, on June 30, 2011, 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 Exchange. 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 “Schedule”) to introduce two new pricing tiers, Step-Up Tier 1 and Step-Up Tier 2. The text of the proposed rule change is available at the Exchange, at www.nyse.com, at the Commission’s Public Reference Room, and at the Commission’s website at www.sec.gov.

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 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

Effective July 1, 2011, NYSE Arca proposes to introduce two new pricing tier levels, Step-Up Tier 1 and Step-Up Tier 2.

Step-Up Tier 1 will allow members to earn a credit of \$0.00295 per share for executed orders that provide liquidity to the Book for Tape A and Tape C securities and a credit of \$0.0023 per share for executed orders that provide liquidity to the Book for Tape B securities. Additionally, such members will be charged a fee of \$0.0028 per share for orders that take liquidity from the Book for Tape B securities and a fee of \$0.0029 per share for orders routed outside the Book to any away market centers for Tape B securities. Finally, such members also will be charged a fee of \$0.0023 per share for orders routed outside the Book to the NYSE for Tape A securities. Step-Up Tier 2 will allow members to earn a credit of \$0.0029 per share for executed orders that provide liquidity to the Book for Tape A and Tape C securities. Additionally, such members will be charged a fee of \$0.0028 per share for orders that take liquidity from the Book for Tape B securities and a fee of \$0.0029 per share for orders routed outside the Book to any away market centers for Tape B securities. Finally, such members also will be charged a fee of \$0.0023 per share for orders routed outside the Book to the NYSE for Tape A securities. All other fees and credits will be at the existing tiered and basic rates based on the members' qualifying levels.

In order to qualify for the Step-Up Tier 1, a member on a daily basis, measured monthly, must directly execute providing volume on NYSE Arca in an amount that is an increase of no

less than 0.15% of US average daily consolidated share volume in Tape A, Tape B, Tape C securities (“US ADV”) for that month over the member’s average daily providing volume in June 2011 (the “Baseline Month”), subject to a minimum increase of 15 million average daily providing shares. In order to qualify for the Step-Up Tier 2, a member on a daily basis, measured monthly, must directly execute providing volume on NYSE Arca in an amount that is an increase of no less than 0.10% of US ADV for that month over the member’s average daily providing volume in the Baseline Month, subject to a minimum increase of 10 million average daily providing shares.

By way of example, if a member provided an average daily volume of 5 million shares in the Baseline Month, then to qualify for Step-Up Tier 2 in a month where US ADV is 11 billion shares, that member would need to increase its average daily provide by at least 11 million shares, or 0.10% of that month’s US ADV, for a total daily providing average of at least 16 million shares. If that same member in that same month increased its average daily provide by at least 16.5 million shares, or 0.15% of that month’s US ADV, for a total daily providing average of at least 21.5 million shares, then that member would then qualify for Step-Up Tier 1.

In addition, for both Step-Up Tier 1 and Step-Up Tier 2, those members that did not directly provide volume to NYSE Arca in the Baseline Month will be treated as having an Arca average daily providing volume of zero for the Baseline Month. With respect to the increased percentage of US ADV, the volume requirements to reach the Step-Up Tiers pricing levels will adjust each calendar month based on the US ADV for that given month. For purposes of clarification, US ADV is equal to the volume reported by all exchanges and trade reporting facilities to the Consolidated Tape Association (“CTA”) Plan for Tapes A, B and C securities, however, US ADV does not include trades on days when the market closes early.

Transactions that are not reported to the Consolidated Tape, such as odd-lots and Crossing Session 2 transactions, are not included in US ADV. The Exchange currently makes this data publicly available on a T + 1 basis from a link at <http://www.nyxdata.com/US-and-European-Volumes>.

The Exchange notes that members may be able to qualify for more than one Tier in a given month, in such case, the most favorable rates would apply. For example, if a member directly provided 8 million average daily shares in the Baseline Month, and then increases the average daily providing volume by 12 million shares to 20 million shares in a subsequent month (where US ADV is 8 billion shares) and such provided liquidity meets all the requirements of Investor Tier 2 as well as Step-up Tier 2, then such member would receive Investor Tier 2 credits of \$.0030 per share for providing liquidity, and would be charged Step-Up Tier 2 fees for taking liquidity and routing.

The goal of the Step-Up Tiers is to incentivize members to increase the orders sent directly to NYSE Arca and therefore provide liquidity that supports the quality of price discovery and promotes market transparency. These Tiers would be expected to benefit members whose increased order flow provides added levels of liquidity, but may not be eligible for Tier 1, 2 and 3, or Investor Tier 1 and 2, thereby contributing to the depth and market quality of the Book. Additionally, a previous month baseline approach for rebates and fees has also been adopted by NASDAQ Stock Market LLC and EDGX for liquidity providers.³

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of

³ See Securities Exchange Act Release No. 63628 (January 3, 2011), 76 FR 1201 (January 7, 2011); and Securities Exchange Act Release No. 64632 (June 8, 2011), 76 FR 34792 (June 14, 2011). See EDGX Exchange Fee Schedule, n. 1 at <http://www.directedge.com/Membership/FeeSchedule/EDGXFeeSchedule.aspx>.

Section 6 of the Securities Exchange Act of 1934 (the “Act”),⁴ in general, and Section 6(b)(4) of the Act,⁵ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange believes that the proposal does not constitute an inequitable allocation of fees, as all similarly situated member organizations and other market participants will be charged the same amount and access to the Exchange’s market is offered on fair and non-discriminatory terms.

NYSE Arca believes that the Step-Up Tiers are equitable because they are open to all members on an equal basis and provide credits that are reasonably related to the value to an exchange’s market quality associated with higher volumes. As stated above, the Exchange believes that the Step-Up Tiers may incentivize members to increase the orders sent directly to NYSE Arca and therefore provide liquidity that supports the quality of price discovery and promotes market transparency. Moreover, the addition of such Tiers would benefit members whose increased order flow provides meaningful added levels of liquidity, but may not be eligible for the current Tiers, thereby contributing to the depth and market quality of the Book. In addition, by offering two Step-Up Tiers the Exchange believes more members may provide increased order flow and more members will be eligible to receive the credits for such orders. NYSE Arca also believes that the higher rebates would incent liquidity, and such increased volume increases potential revenue to the Exchange, allowing the Exchange to pass on the savings to members in the form of a higher rebate. Similar to the Baseline Month approach, NASDAQ and EDGX have established credits and fees which are based on increased volumes from a previous month baseline.⁶

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(4).

⁶ See n.4 above.

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 adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. The Exchange believes that the proposed rule change reflects this competitive environment because it will broaden the conditions under which members may qualify for higher liquidity provider credits.

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)⁷ of the Act and subparagraph (f)(2) of Rule 19b-4⁸ thereunder, because it establishes a due, fee, or other charge imposed by the NYSE Arca.

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.

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 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-2011-41 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-2011-41. 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-2011-41 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.⁹

Cathy H. Ahn
Deputy Secretary

⁹ 17 CFR 200.30-3(a)(12).