

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-67461; File No. SR-NYSEArca-2012-69)

July 18, 2012

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

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 July 12, 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 (“Fee Schedule”). The Exchange proposes to implement the fee changes on July 12, 2012. 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, as described below, and implement the fee changes on July 12, 2012.

ETP Holders, including Market Makers, are currently eligible to qualify for the Tape C Step Up Tier and the corresponding reduced execution fee of \$0.0029 per share for orders that take liquidity from the Exchange in Tape C securities.

The Exchange proposes to introduce a Tape C Step Up Tier 2 for ETP Holders, including Market Makers, that, on a daily basis, measured monthly, directly execute providing volume in Tape C Securities ("Tape C Adding ADV") during the billing month that is at least 2 million shares greater than the ETP Holder's or Market Maker's Tape C Adding ADV during the second calendar quarter of 2012 ("Q2 2012"), subject to the ETP Holder's or Market Maker's combined providing ADV in Tape A, Tape B, and Tape C securities during the billing month as a percentage of CADV being no less than during Q2 2012.⁴

ETP Holders and Market Makers that satisfy the requirements for the Tape C Step Up Tier 2 will receive a \$0.0002 per share credit for orders that provide liquidity to the Exchange in Tape C Securities, which shall be in addition to the ETP Holder's or Market Maker's Tiered or

⁴ For purposes of determining whether a firm that becomes an ETP Holder after Q2 2012 qualifies for the Tape C Step Up Tier 2, the new ETP Holder's Tape C Adding ADV during Q2 2012 would be zero. Similarly, the ETP Holder's combined providing ADV in Tape A, Tape B, and Tape C securities during Q2 2012 would be zero. Additionally, the ADV of a firm that becomes an ETP Holder during Q2 2012 would be calculated based on the number of trading days during Q2 2012, not the number of trading days during which the firm was an ETP Holder.

Basic Rate credit(s).⁵ As proposed, Investor Tier 1 and Investor Tier 2 ETP Holders and Market Makers could not qualify for the Tape C Step Up Tier 2. However, Investor Tier 3 ETP Holders and Market Makers could qualify for the Tape C Step Up Tier 2 credit. For all other fees and credits, Tiered or Basic Rates would apply based on a firm's qualifying levels. The Exchange proposes prohibiting Investor Tier 1 and Investor Tier 2 ETP Holders from qualifying for the Tape C Step Up Tier 2 because the ETP Holders that qualify for Investor Tier 1 and Investor Tier 2 would already receive a higher credit for such executions. In contrast, the Exchange proposes permitting Investor Tier 3 ETP Holders to qualify for the Tape C Step Up Tier 2 credit because, even when combined with the \$0.0002 Tape C Step Up Tier 2 credit, the ETP Holders that qualify for Investor Tier 3 would not achieve an overall credit rate that is higher than that which is available under Investor Tiers 1 or 2.

For example, assume that a particular ETP Holder's Tape C Adding ADV during the billing month is 4 million shares and that its Tape C Adding ADV during Q2 2012 was 1.5 million shares. Additionally, assume that the ETP Holder's combined providing ADV in Tape A, Tape B, and Tape C securities during the billing month was 0.25% of CADV and that its combined providing ADV in Tape A, Tape B, and Tape C securities during Q2 2012 was 0.23%

⁵ The Exchange notes that, for purposes of determining whether an ETP Holder or Market Maker qualifies for the Tape C Step Up Tier 2 for the month of July 2012, the ETP Holder's or Market Maker's Tape C Adding ADV during the billing month would be measured beginning on July 12, 2012, the effective and operative date of this proposed change, through the end of the month and would not take into account the activity or trading days prior to that date. Similarly, the ETP Holder's or Market Maker's combined providing ADV in Tape A, Tape B, and Tape C securities during the billing month as a percentage of CADV would be calculated using the period beginning on July 12, 2012 through the end of the month and would not take into account the activity or trading days prior to that date. For an ETP Holder or Market Maker that qualifies for the \$0.0002 per share credit for July 2012, the credit would not apply to the ETP Holder's or Market Maker's orders that provide liquidity to the Exchange in Tape C Securities prior to July 12, 2012.

of CADV. In this example, the ETP Holder would qualify for the Tape C Step Up Tier 2 and would receive a credit of \$0.0002 per share for its orders that provide liquidity to the Exchange in Tape C securities, which would be in addition to the ETP Holder's Tiered or Basic Rate credit(s).⁶ However, if the ETP Holder's Tape C Adding ADV during the billing month were 3 million shares, i.e., less than 2 million shares greater than the Q2 2012 amount, then the ETP Holder would not qualify for the Tape C Step Up Tier 2. Similarly, if the ETP Holder's combined providing ADV in Tape A, Tape B, and Tape C securities during the billing month were 0.20% of CADV, i.e., less than the Q2 2012 percentage, then the ETP Holder would not qualify for the Tape C Step Up Tier 2.

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"), in general, and furthers the objectives of Section 6(b)(4) of the Act, 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 rule change is reasonable, equitable and not unfairly discriminatory because it would encourage ETP Holders to send additional orders in Tape C securities to the Exchange for execution in order to qualify for an incrementally higher credit for such executions 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

⁶ For example, if the ETP Holder submits a Mid-Point Passive Liquidity Order that provides liquidity on the Exchange and the ETP Holder is billed according to Basic Rates, the ETP Holder would receive a total credit of \$0.0017 per share (i.e., \$0.0015 per share pursuant to the Basic Rates plus \$0.0002 per share pursuant to the Tape C Step Up Tier 2).

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 Tape C Step Up Tier 2 credit is reasonable because it is directly related to an ETP Holder's level of executions in Tape C securities during the month. The Exchange also believes that the proposed rate is reasonable because, when combined with other Tier or Basic Rate credits that are available to ETP Holders, it is consistent with certain other credits, such as the Investor Tier 2 credit of \$0.0032, which are available to ETP Holders that satisfy certain criteria related to the ETP Holder's level of trading activity on the Exchange. Additionally, the Exchange believes that the proposed Tape C Step Up Tier 2 credit is equitable and not unfairly discriminatory because it would incentivize ETP Holders to submit orders in Tape C securities 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 Tape C Step Up Tier 2 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.

Additionally, the Exchange believes that prohibiting Investor Tier 1 and Investor Tier 2 ETP Holders from qualifying for the Tape C Step Up Tier 2 is reasonable, equitable and not unfairly discriminatory because the ETP Holders that qualify for Investor Tier 1 and Investor Tier 2 would already receive a higher credit for such executions. In contrast, the Exchange believes that permitting Investor Tier 3 ETP Holders to qualify for the Tape C Step Up Tier 2 credit is reasonable, equitable and not unfairly discriminatory because, even when combined with the \$0.0002 Tape C Step Up Tier 2 credit, the ETP Holders that qualify for Investor Tier 3

would not achieve an overall credit rate that is higher than that which is available under Investor Tiers 1 or 2.

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

IV. Solicitation of Comments

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(2).

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-2012-69 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-2012-69. 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 Section, 100 F Street, NE, Washington, DC 20549-1090. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet website at www.nyse.com. 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-2012-69 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

Kevin M. O'Neill
Deputy Secretary

⁹ 17 CFR 200.30-3(a)(12).