

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-67595; File No. SR-NYSEArca-2012-80)

August 6, 2012

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Proposing to Amend 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 26, 2012, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) 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 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 August 1, 2012.

The Exchange proposes to introduce a new Investor Tier 1 and corresponding credit in the Fee Schedule for ETP Holders, including Market Makers, that (1) provide liquidity of 0.60% or more of the U.S. consolidated average daily volume ("CADV") per month,⁴ (2) maintain a ratio of cancelled orders to total orders of less than 30%, excluding Immediate-or-Cancel orders, and (3) maintain a ratio of executed liquidity adding volume-to-total volume of greater than 80%. ETP Holders and Market Makers that qualify for this proposed new Investor Tier 1 would receive a credit of \$0.0034 per share for orders that provide liquidity to the Exchange.⁵

The Exchange also proposes to renumber the existing Investor Tiers (e.g., current Investor Tier 1 would become Investor Tier 2) as well as cross references in the Fee Schedule to the existing Investor Tiers. In this regard, the Exchange notes that the Tape A, B and C Step Up Tiers and the Tape C Step Up Tier 2 provide that current Investor Tier 1 and 2 ETP Holders and Market Makers are not able to qualify for those Tape Step Up Tiers. The Exchange proposes that new Investor Tier 1 ETP Holders and Market Makers would similarly not be able to qualify for those Tape Step Up Tiers. However, current Investor Tier 3 ETP Holders and Market

⁴ CADV means United States Consolidated Average Daily Volume for transactions reported to the Consolidated Tape and excludes volume on days when the market closes early.

⁵ For all other fees and credits, Tiered or Basic Rates apply based on a firm's qualifying levels.

Makers, which would become Investor Tier 4 ETP Holders and Market Makers after the proposed renumbering, would remain able to qualify for those Tape Step Up Tiers. The Exchange also proposes to specify that current Investor Tier 1, which would become Investor Tier 2, would apply to ETP Holders, including Market Makers, that provide liquidity of 0.45% or more, but less than 0.60% or more, of CADV per month.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934, 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 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 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 new Investor Tier 1 is reasonable because it is directly related to an ETP Holder's level of liquidity provided on the Exchange during the month, including the percentage of the ETP Holder's total activity that adds liquidity on the Exchange. Additionally, the Exchange believes that the rate proposed for the new Investor Tier 1 is reasonable because it would incentivize ETP Holders to provide liquidity on the Exchange and would result in a credit that is reasonably related to an exchange's market

quality that is associated with higher volumes. Additionally, the Exchange believes that prohibiting proposed new Investor Tier 1 ETP Holders from qualifying for the Tape A, B and C Step Up Tiers and the Tape C Step Up Tier 2 is reasonable, equitable and not unfairly discriminatory because the ETP Holders that qualify for Investor Tier 1 would already receive a higher credit for such executions.

The Exchange believes that the proposed thresholds required for an ETP Holder to qualify for proposed new Investor Tier 1 are reasonable, equitable and not unfairly discriminatory because these percentages are within a range that the Exchange believes would incentivize ETP Holders to submit orders to the Exchange to qualify for the applicable credit of \$0.0034 per share. The Exchange notes that these thresholds are consistent with the thresholds required for current Investor Tiers 1 and 2, which similarly make credits available to ETP Holders that are also based on the ETP Holder's level of activity as a percentage of CADV, ratio of cancelled orders to total orders and ratio of executed liquidity adding volume-to-total volume.⁶ Moreover, like existing pricing on the Exchange that is tied to ETP Holder volume levels, the Exchange believes that the proposed new Investor Tier 1 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 believes that the proposed renumbering of the existing Investor Tiers, as well as the added language for current Investor Tier 1, which would become Investor Tier 2, related to the applicable percentage of CADV per month, is reasonable, equitable and not

⁶ For example, current Investor Tier 1 requires, in part, that an ETP Holder maintain a ratio of executed liquidity adding volume to total volume of greater than 80%, which is the same ratio proposed for the new Investor Tier 1. Also, current Investor Tier 2 requires, in part, that an ETP Holder provide liquidity of 0.60% or more of CADV per month, which is the same percentage proposed for the new Investor Tier 1.

unfairly discriminatory because it would conform the Fee Schedule to the newly added Investor Tier 1.

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.

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-2012-80 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-2012-80. 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-2012-80 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).