

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-67986; File No. SR-NYSEArca-2012-104)

October 4, 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 September 24, 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”) to (i) increase the credit for executions of Mid-Point Passive Liquidity (“MPL”) Orders that provide liquidity on the Exchange in certain active Tape C Securities, and (ii) eliminate the credit that is currently applicable to Passive Liquidity (“PL”) Orders in Tape B Securities that provide liquidity on the Exchange. 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 (i) increase the credit for executions of MPL Orders that provide liquidity on the Exchange in certain active Tape C Securities, and (ii) eliminate the credit that is currently applicable to PL Orders in Tape B Securities that provide liquidity on the Exchange. The Exchange proposes to implement the fee changes on October 1, 2012.

A PL Order is an order to buy or sell a stated amount of a security at a specified, undisplayed price.⁴ An MPL Order is a PL Order executable only at the midpoint of the Protected Best Bid and Offer.⁵ In this regard, PL Orders, including MPL Orders, allow for additional opportunities for passive interaction with trading interest on the Exchange and are designed to offer potential price improvement to incoming marketable orders submitted to the Exchange.⁶

⁴ See Rule 7.31(h)(4).

⁵ See Rule 7.31(h)(5).

⁶ See, e.g., Securities Exchange Act Release No. 54511 (September 26, 2006), 71 FR 58460, 58461 (October 3, 2006) (SR-PCX-2005-53).

Currently, MPL Orders that provide liquidity on the Exchange receive a \$0.0015 per share credit, regardless of whether the order is for a Tape A, B or C Security. The Exchange proposes to increase this credit to \$0.0025 per share for MPL Orders that provide liquidity on the Exchange in the following Tape C Securities, which were selected based on year-to-date consolidated average daily volume (“CADV”):

<u>Company Name</u>	<u>Symbol</u>
Cisco Systems, Inc.	CSCO
Dell Inc.....	DELL
Facebook, Inc.	FB
Intel Corporation	INTC
Microsoft Corporation.....	MSFT
Micron Technology Inc.....	MU
Oracle Corporation.....	ORCL
Research In Motion Limited	RIMM
SIRIUS XM Radio Inc.	SIRI
Zynga, Inc.	ZNGA

These securities would be deemed “Active Tape C Securities” for purposes of the Fee Schedule.⁷ The Exchange believes that this proposed change would incentivize ETP Holders to submit additional MPL Orders in the Active Tape C Securities. This would increase the liquidity available on the Exchange in the Active Tape C Securities and, therefore, could increase the potential price improvement to incoming marketable orders submitted to the Exchange.

Separately, PL Orders in Tape B Securities that provide liquidity on the Exchange currently receive a per share credit.⁸ The Exchange proposes to eliminate this Tape B PL Order credit, such that PL Orders in Tape B Securities that provide liquidity on the Exchange would neither receive a credit nor be charged a fee. The credit for PL Orders in Tape B securities that

⁷ Any change to the list of Active Tape C Securities would be made by submitting a proposed rule change to the Commission.

⁸ The credit is currently \$0.0015 per share for Tier 1 and Step Up Tier 1 and \$0.0010 per share for Tier 2, Tier 3, Step Up Tier 2 and Basic Rates. For Investor Tiers 1-4, the applicable credit is based on a firm’s qualifying levels.

provide liquidity to the Exchange was originally designed to incentivize ETP Holders to submit orders that provide liquidity on the Exchange in such securities.⁹ The Exchange has determined to eliminate the Tape B PL Order credit because it has generally not incentivized ETP Holders to submit additional liquidity in Tape B Securities in the form of PL Orders. The Exchange notes that PL Orders in Tape A and C Securities that provide liquidity on the Exchange are currently neither provided with a credit nor charged a fee, as is proposed for Tape B Securities. Accordingly, this proposed change would align the treatment of PL Orders in Tape B securities that provide liquidity on the Exchange with that of Tape A and C Securities in the Exchange's Fee Schedule.

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"),¹⁰ in general, and furthers the objectives of Section 6(b)(4) of the Act,¹¹ 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 change is reasonable because the increased credit of \$0.0025 per share would incentivize ETP Holders to submit additional MPL Orders in Active Tape C Securities. This would increase the liquidity available on the Exchange in Active Tape C Securities and, therefore, could increase the potential price improvement to incoming marketable orders submitted to the Exchange. In this regard, the selection by the Exchange of

⁹ See Securities Exchange Act Release No. 67180 (June 11, 2012), 77 FR 36027 (June 15, 2012) (SR-NYSEArca-2012-56).

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4).

the particular Active Tape C Securities is reasonable because the Exchange's market for such securities would improve as a result of the increase in liquidity that the Exchange anticipates resulting from the proposed credit increase. The Exchange believes that the proposed change is equitable and not unfairly discriminatory because it would apply equally to MPL Orders from all ETP Holders in Active Tape C Securities. Additionally, the proposed change is equitable and not unfairly discriminatory because, by applying to Active Tape C Securities, all market participants will have an opportunity to interact in such names, as opposed to thinly traded securities that might be less liquid.

The Exchange also believes that the proposed change is reasonable because eliminating the Tape B PL Order credit would remove a pricing feature from the Fee Schedule that has generally not incentivized ETP Holders to submit additional PL Orders in Tape B Securities, as was originally intended. In this regard, the PL Order credit was originally designed to incentivize ETP Holders to provide additional liquidity on the Exchange in Tape B Securities and, therefore, to potentially increase the quality of the Exchange's market in these securities.¹² Removal of the Tape B PL Order credit is also equitable and not unfairly discriminatory because it would be eliminated for all ETP Holders. The Exchange also notes that PL Orders in Tape A and C Securities that provide liquidity on the Exchange are currently neither provided with a credit nor charged a fee, as is proposed for Tape B Securities. Accordingly, this proposed change would align the treatment of PL Orders in Tape B securities that provide liquidity on the Exchange with that of Tape A and C Securities for purposes of the Exchange's Fee Schedule.

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

¹² See supra note 9.

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)¹³ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁴ 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.

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:

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(2).

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-2012-104 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-2012-104. 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-2012-104 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.¹⁵

Kevin M. O'Neill
Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).