

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-70912; File No. SR-NYSEARCA-2013-128)

November 21, 2013

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services to Specify the Method of Billing When More than One Pricing Tier Could be Applicable

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on November 15, 2013, 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 (the “Fee Schedule”) to specify the method of billing when more than one pricing tier could be applicable. The Exchange proposes to implement the Fee Schedule change immediately. The text of the proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

---

<sup>1</sup> 15 U.S.C.78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 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 specify the method of billing when more than one pricing tier could be applicable. The Exchange proposes to implement the Fee Schedule change immediately.

An ETP Holder may qualify for several different pricing “Tiers” based on its level of activity during a particular month. These Tiers each have a corresponding fee or credit that applies to the ETP Holder’s transactions during the month. Generally, a qualifying ETP Holder would be subject to a lower transaction fee or a higher transaction credit, depending on the particular Tier. For example, an ETP Holder that qualifies for Tape C Step Up Tier 2 receives an incremental \$0.0002 per share credit for executions that provide liquidity to the Book in Tape C securities, which is in addition to the ETP Holder’s Tiered or Basic Rate credit(s) (e.g., \$0.0002 in addition to the \$0.0030 credit under Tier 1).<sup>4</sup>

---

<sup>4</sup> To qualify for the Tape C Step Up Tier 2 an ETP Holder must directly execute providing average daily volume (“ADV”) 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 Tape C Adding ADV during the second quarter of 2012 (“Q2 2012”), subject to the ETP Holder’s combined providing ADV in Tape A, Tape B, and Tape C Securities during the

Due to the lower fee or higher credit that applies, certain of the pricing Tiers specify that a qualifying ETP Holder is not able to qualify to receive certain other specific Tier pricing.

Continuing with the example above, Tape C Step Up Tier 2 provides that Investor Tier 1 and Cross-Asset Tier ETP Holders, among others, cannot qualify for Tape C Step Up Tier 2.<sup>5</sup>

Without these exclusions, an ETP Holder could receive a higher credit than intended (e.g., \$0.0034 under Investor Tier 1 plus \$0.0002 under Tape C Step Up Tier 2 would be a total credit of \$0.0036) or lower fees compared to the other fees and credits in the Fee Schedule.<sup>6</sup>

The Exchange determines qualifications for the Tiers after the billing month ends. If an ETP Holder or Market Maker qualifies for more than one Tier in the Fee Schedule, the Exchange applies the most favorable rate available under such Tiers. For example, if an ETP Holder or

---

billing month as a percentage of consolidated ADV (“CADV”) being no less than during Q2 2012.

To qualify for Tier 1, an ETP Holder must (1) provide liquidity an ADV per month of 0.70% or more of CADV or (2) (a) provide liquidity an ADV per month of 0.15% or more of CADV and (b) be affiliated with an Options Trading Permit (“OTP”) Holder or OTP Firm that provides an ADV of electronic posted executions (including all account types) in Penny Pilot issues on NYSE Arca Options (excluding mini options) of at least 100,000 contracts, of which at least 25,000 contracts must be for the account of a market maker.

<sup>5</sup> To qualify for Investor Tier 1, an ETP Holder must (1) provide liquidity of 0.60% or more of CADV per month, (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%.

To qualify for the Cross Asset Tier, an ETP Holder must (1) provide liquidity of 0.40% or more of the CADV per month, and (2) be affiliated with an OTP Holder or OTP Firm that provides an ADV of electronic posted Customer executions in Penny Pilot issues on NYSE Arca Options (excluding mini options) of at least 0.95% of total Customer equity and exchange-traded fund option ADV, as reported by The Options Clearing Corporation.

<sup>6</sup> See Securities Exchange Act Release No. 67461 (July 18, 2012), 77 FR 43408, 43409 (July 24, 2012) (SR-NYSEArca-2012-69) in which the Exchange noted its belief that prohibiting certain ETP Holders from qualifying for the Tape C Step Up Tier 2 was reasonable, equitable and not unfairly discriminatory because the ETP Holders that qualify for certain other Tiers would already receive a higher credit for such executions.

Market Maker qualifies for both the Cross-Asset Tier and the Tape C Step Up Tier 2, the Exchange will apply the single most favorable tier to the ETP Holder or Market Maker. The Exchange has consistently applied pricing in this manner and now proposes to codify this practice by adding text to the Tiers in the Fee Schedule that could be effected.

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,<sup>7</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>8</sup> 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 it specifies the Exchange's current method of billing when more than one pricing Tier could be applicable to an ETP Holder. This method of billing is reasonable because it results in the application of the most beneficial fees and credits for which an ETP Holder qualifies when an ETP Holder qualifies for more than one pricing Tier. The proposed change is equitable and not unfairly discriminatory because it applies to all ETP Holders equally. The proposed change is also equitable and not unfairly discriminatory because it eliminates the potential for an ETP Holder that qualifies for more than one pricing Tier to receive less favorable pricing than other ETP Holders that qualify for one of the same Tiers.

---

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(4) and (5).

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,<sup>9</sup> 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. Instead, the proposed change describes the Exchange's existing method of applying fees and credits for ETP Holders that qualify for the various Tiers within the Fee Schedule. This billing method is designed to result in the application of the most beneficial fees and credits for which an ETP Holder qualifies if such ETP Holder qualifies for more than one pricing Tier. This billing method is also designed to increase competition on the Exchange by eliminating a potential disincentive for ETP Holders to submit orders on the Exchange – i.e., if less beneficial fees and credits could apply as a result of qualifying for multiple Tiers. 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 or credit levels at a particular venue to be unattractive. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. The billing method described herein is based on objective standards that are applicable to all ETP Holders and reflects the need for the Exchange to offer significant financial incentives to attract order flow. For these reasons, the Exchange believes that the proposed rule change reflects this competitive environment and is therefore consistent with the Act.

---

<sup>9</sup> 15 U.S.C. 78f(b)(8).

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)<sup>10</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>11</sup> 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)<sup>12</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEARCA-2013-128 on the subject line.

---

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(2).

<sup>12</sup> 15 U.S.C. 78s(b)(2)(B).

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-2013-128. 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-2013-128 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.<sup>13</sup>

Kevin M. O'Neill  
Deputy Secretary

---

<sup>13</sup> 17 CFR 200.30-3(a)(12).