

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-67180; File No. SR-NYSEArca-2012-56)

June 11, 2012

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

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 May 31, 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 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 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 June 1, 2012.

Passive Liquidity Orders

A Passive Liquidity Order is an order to buy or sell a stated amount of a security at a specified, undisplayed price.⁴ Passive Liquidity Orders are available for all Equity Trading Permit (“ETP”) Holders.⁵

The Exchange does not currently make credits available for Passive Liquidity Orders in Exchange-listed and other Tape B securities that provide liquidity on the Exchange. The Exchange hereby proposes to implement credits for Passive Liquidity Orders in Exchange-listed and other Tape B securities that provide liquidity, as follows:

- \$0.0015 per share for Tier 1 and Step Up Tier 1;
- \$0.0010 per share for Tier 2, Tier 3, Step Up Tier 2 and Basic Rates; and
- For Investor Tiers 1-3, the applicable rate based on an ETP Holder’s qualifying levels.

The Exchange also does not currently charge a fee for Passive Liquidity Orders in Exchange-listed securities that remove liquidity from the Exchange.⁶ The Exchange hereby

⁴ See NYSE Arca Equities Rule 7.31(h)(4).

⁵ See NYSE Arca Equities Rule 1.1(n).

proposes to implement fees for Passive Liquidity Orders in Exchange-listed securities that remove liquidity, which would be the same as the applicable Tier, Step Up Tier or Basic Rate and would be based on an ETP Holder's qualifying levels, as follows:

- \$0.0026 per share fee for Tape B Step Up Tier;
- \$0.0028 per share fee for Tiers 1-3 and Step Up Tiers 1 and 2;
- \$0.0030 per share fee for Basic Rates; and
- For Investor Tiers 1-3, the applicable rate based on an ETP Holder's qualifying levels.

The Exchange also proposes to reflect in the Fee Schedule that, as is the case today, there is neither a fee nor a credit for Passive Liquidity Orders in Tape A and Tape C securities that provide liquidity, but that Passive Liquidity Orders that remove liquidity would be charged a fee of \$0.0030 per share, unless the ETP Holder qualifies for the Tape A or Tape C Step Up rate of \$0.0029 per share.

Finally, for Lead Market Makers ("LMMs"),⁷ the Exchange proposes to implement a \$0.0015 per share credit for Passive Liquidity Orders that provide liquidity in securities for which they are registered as the LMM.

PO and PO+ Orders

The Exchange proposes to amend the Fee Schedule to increase the Tier 1, Tier 2 and Basic Rate fee for PO and PO+ Orders in Tape A securities that are routed to the New York Stock Exchange ("NYSE") that execute in the opening or closing auction, from \$0.00085 to

⁶ The Exchange currently charges ETP Holders for Passive Liquidity Orders in non-Exchange-listed Tape B securities based on an ETP Holder's qualifying levels.

⁷ The term "Lead Market Maker" means a registered Market Maker that is the exclusive Designated Market Maker in listings for which the Exchange is the primary market. See NYSE Arca Equities Rule 1.1(ccc).

\$0.00095 per share.⁸ Related to this proposed increase, the Exchange proposes to explicitly state that the Tier 3 fee for PO and PO+ Orders routed to the NYSE that execute in the opening or closing auction would be \$0.00095 per share. The Exchange notes that the current rate is the \$0.00085 fee applicable under the Basic Rate section of the Fee Schedule. The increase from \$0.00085 to \$0.00095 for the Tier 3 rate would be a substantive change consistent with the proposed increase in the Basic Rate, but charging a fee for these transactions for Tier 3 ETP Holders would not be a change.

Cross-Asset Tier

The Exchange also proposes to provide for a new Cross-Asset Tier credit of \$0.0030 for orders that provide liquidity on the Exchange, which would apply to ETP Holders that (1) provide liquidity of 0.50% or more of the U.S. Consolidated Average Daily Volume (“CADV”)⁹ per month, and (2) are affiliated with an NYSE Arca Options Trading Permit (“OTP”) Holder or OTP Firm that provides an Average Daily Volume (“ADV”) of electronic posted Customer executions in Penny Pilot issues on NYSE Arca Options of at least 110,000 contracts.¹⁰

Related to the introduction of the proposed Cross-Asset Tier credit of \$0.0030, the Exchange proposes to specify in the Fee Schedule that Investor Tier 3 ETP Holders would

⁸ See NYSE Arca Equities Rule 7.31(x). A PO+ Order is a PO Order entered for participation in the primary market, other than for participation in the primary market opening or primary market re-opening. See also NYSE Arca Equities Rule 7.31(x)(3).

⁹ U.S. 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.

¹⁰ An affiliate of an ETP Holder would be a person or firm that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the ETP Holder. See NYSE Arca Rule 1.1(b). As provided under NYSE Arca Options Rule 6.72, options on certain issues have been approved to trade with a minimum price variation of \$0.01 as part of a pilot program that is currently scheduled to expire on June 30, 2012.

become eligible to qualify for the Tape A, Tape B and Tape C Step Up Tiers. Currently, Investor Tier 1-3 ETP Holders are ineligible to qualify for the reduced fees provided under the Tape A, Tape B and Tape C Step Up Tiers. However, Investor Tier 3 ETP Holders are currently eligible for the same \$0.0030 credit for their orders that provide liquidity on the Exchange as is proposed for the Cross-Asset Tier credit. Accordingly, this proposed change would align the fees that are applicable to ETP Holders that qualify for the Cross-Asset Tier and ETP Holders that qualify for Investor Tier 3.¹¹

NYSE Amex Name Change

NYSE Amex LLC (“NYSE Amex”) recently changed the name of its equities market to NYSE MKT LLC.¹² Accordingly, the Exchange proposes to update references in the Fee Schedule from “NYSE Amex” to “NYSE MKT.”

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 the credits for Passive Liquidity Orders in Exchange-listed and other Tape B securities that provide liquidity to the Exchange are designed to incentivize ETP Holders to submit orders in such securities that provide liquidity on the Exchange and could

¹¹ As is the case today, Investor Tier 1 and Investor Tier 2 ETP Holders would remain ineligible to qualify for the Tape A, Tape B or Tape C Step Up Tiers.

¹² See Securities Exchange Act Release No. 67037 (May 21, 2012), 77 FR 31415 (May 25, 2012) (SR-NYSEAmex-2012-32).

therefore increase the quality of the Exchange's market in these securities. The Exchange also believes that the proposed rule change is reasonable, equitable and not unfairly discriminatory because the fees and credits for Passive Liquidity Orders in Exchange-listed and other Tape B securities that provide liquidity on the Exchange would apply to all ETP Holders that choose to submit this order type.

With respect to the LMM credit for Passive Liquidity Orders that provide liquidity, the Exchange believes that the change is reasonable, because it will provide the LMM with incentives to increase liquidity in a security. Moreover, the Exchange believes that the LMM credit is equitable and not unfairly discriminatory because LMMs have unique quoting obligations including maintaining continuous two-sided quotes, NBBO requirements, minimum displayed size requirements, minimum quoted spread requirements and participation requirements for opening and closing auctions. The undisplayed Passive Liquidity Orders add liquidity to the Book and enhance the possibility of price improvement; however, their undisplayed status does not contribute to the BBO. To the contrary, the credit LMMs receive for displayed liquidity executions is much larger, which is consistent with the added transparency created through decreased quoted spreads and increased quoted sizes of the BBO. In addition, the credit is reasonable, equitable and not unfairly discriminatory because all similarly situated LMMs would be subject to the same proposed fee structure.

Additionally, the Exchange believes that the proposed rule change is reasonable, equitable and not unfairly discriminatory because it would result in a clearer and more explicit description of the fees and credits that are applicable to Passive Liquidity Orders in Tape A, Tape C, and non-Exchange-listed Tape B securities. The Exchange also believes that the proposed rule change is reasonable, equitable and not unfairly discriminatory because it would

result in the removal of obsolete text from the Fee Schedule related to the name change from NYSE Amex to NYSE MKT.

Also, the Exchange believes that the proposed rule change is reasonable, equitable and not unfairly discriminatory because it would result in an increase in the per share fee for PO and PO+ Orders routed to NYSE that execute in the opening or closing auction, thereby aligning the rate that the Exchange charges to ETP Holders with the rate that the Exchange is charged by NYSE. In this regard, the Exchange notes that a related fee on NYSE was recently increased for NYSE Market At-The-Close (“MOC”) Orders and Limit At-The-Close (“LOC”) Orders.¹³ Accordingly, the Exchange is proposing this increase so that the rate it charges to ETP Holders corresponds to the rate that the Exchange is charged by NYSE.¹⁴

Additionally, the Exchange believes that the proposed rule change is reasonable, equitable and not unfairly discriminatory because the proposed Cross-Asset Tier would directly relate to the activity of an ETP Holder and the activity of an affiliated OTP Holder or OTP Firm on NYSE Arca Options, thereby encouraging increased trading activity on both the NYSE Arca equity and option markets. In this regard, the proposal is designed to bring additional posted order flow to NYSE Arca Options, so as to provide additional opportunities for all OTP Holders and OTP Firms to trade on NYSE Arca Options. Furthermore, the Exchange notes that, similar to the proposed Cross-Asset Tier, the NYSE Arca Options Fee Schedule includes a credit for OTP Holders and OTP Firms that is based on both equity and option volume. Similarly, the NASDAQ Stock Market LLC (“NASDAQ”) charges certain fees based on both equity and

¹³ See Securities Exchange Act Release No. 66600 (March 14, 2012), 77 FR 16298 (March 20, 2012) (SR-NYSE-2012-07).

¹⁴ The Exchange notes that it does not differentiate between the rate it charges to ETP Holders for PO and PO+ Orders routed to NYSE that execute in the opening auction and those that execute in the closing auction.

option volume.¹⁵ Additionally, specifying that Investor Tier 3 ETP Holders would become eligible to qualify for the Tape A, Tape B and Tape C Step Up Tiers would align the fees that are applicable to ETP Holders that qualify for the Cross-Asset Tier and ETP Holders that qualify for Investor Tier 3.¹⁶

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)¹⁷ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁸ thereunder, because it establishes a due, fee, or other charge imposed by the NYSE Arca.

¹⁵ See NASDAQ Rule 7018. See also Securities Exchange Act Release Nos. 59879 (May 6, 2009), 74 FR 22619 (May 13, 2009) (SR-NASDAQ-2009-041) and 65317 (September 12, 2011), 76 FR 57778 (September 16, 2011) (SR-NASDAQ-2011-127).

¹⁶ As noted above, and as is the case today, Investor Tier 1 and Investor Tier 2 ETP Holders would remain ineligible to qualify for the Tape A, Tape B or Tape C Step Up Tiers.

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f)(2).

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:

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-2012-56 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-2012-56. 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-2012-56 and should be submitted on or before [insert date 21 days after publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Kevin M. O'Neill
Deputy Secretary

¹⁹ 17 CFR 200.30-3(a)(12).