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SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-66946; File No. SR-NYSEArca-2012-36)

May 8, 2012

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Equities Fee Schedule to Make Correction to the Tape A, Tape B, and Tape C Step Up Tiers

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 April 27, 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 Fee Schedule (“Fee Schedule”) to make a correction to the Tape A, Tape B, and Tape C Step Up Tiers. The proposed change will be operative on May 1, 2012. The text of the proposed rule change is available at the Exchange, [www.nyse.com](http://www.nyse.com), and 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

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<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.

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 to make a correction to the Tape A, Tape B, and Tape C Step Up Tiers. These fees were adopted as of March 1, 2012.<sup>4</sup> As described in more detail below, in certain provisions of the Fee Schedule, the Exchange inadvertently made a reference to “Baseline Month” when it should have instead referred to “billing month.”

Tape A Step Up Tier

Currently, the Tape A Step Up Tier allows ETP Holders and Market Makers that take liquidity from the Book to pay a reduced fee of \$0.0029 per share if they directly execute providing volume in Tape A Securities during the billing month (“Tape A Adding ADV”) that is at least the greater of (a) the ETP Holder’s or Market Maker’s January 2012 (“Baseline Month”) Tape A Adding ADV (“Tape A Baseline ADV”) plus 0.075% of US Tape A Consolidated Average Daily Share Volume (“CADV”) for the *Baseline Month* or (b) the ETP Holder’s or Market Maker’s Tape A Baseline ADV plus 20%, subject to the ETP Holders’ and Market Makers’ total providing liquidity in Tape A, Tape B, and Tape C Securities increasing in an amount no less than 0.03% of US CADV over their Baseline Month providing liquidity.

Additionally, if a firm’s ratio of Tape A Baseline ADV to its total Tape A average daily volume (“ADV”) during the Baseline Month is less than 30%, the \$0.0029 rate would only apply to the ETP Holder’s or Market Maker’s shares that are executed in an amount up to and

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<sup>4</sup> See Securities Exchange Act Release No. 66568 (March 9, 2012), 77 FR 15819 (March 16, 2012) (SR-NYSEArca-2012-17) (the “Release”).

including 0.75% of the US Tape A CADV during the billing month. The rate of \$0.0030 per share would apply to the ETP Holder's or Market Maker's remaining shares that are executed, unless the ETP Holder's or Market Maker's Tape A Adding ADV is greater than its Tape A Baseline ADV by at least 0.25% of the US Tape A CADV during the billing month. Investor Tier ETP Holders or Investor Tier Market Makers cannot qualify for the Tape A Step Up Tier.

The Exchange proposes to amend the Fee Schedule so that ETP Holders and Market Makers that take liquidity from the Book to pay a reduced fee of \$0.0029 per share if they directly execute providing volume in Tape A Securities during the billing month ("Tape A Adding ADV") that is at least the greater of (a) the ETP Holder's or Market Maker's Baseline Month Tape A Adding ADV ("Tape A Baseline ADV") plus 0.075% of US Tape A Consolidated Average Daily Share Volume ("CADV") for the *billing month* or (b) the ETP Holder's or Market Maker's Tape A Baseline ADV plus 20%, subject to the ETP Holders' and Market Makers' total providing liquidity in Tape A, Tape B, and Tape C Securities increasing in an amount no less than 0.03% of US CADV over their Baseline Month providing liquidity. The Exchange does not propose to make any additional changes to the Tape A Step Up Tier.

#### Tape B Step Up Tier

Currently, the Tape B Step Up Tier allows ETP Holders and Market Makers that take liquidity from the Book to pay a reduced fee of \$0.0026 per share if they directly execute providing volume in Tape B Securities during the billing month ("Tape B Adding ADV") that is at least the greater of (a) the ETP Holder's or Market Maker's Baseline Month Tape B Adding ADV ("Tape B Baseline ADV") plus 0.25% of US Tape B CADV for the *Baseline Month* or (b) the ETP Holder's or Market Maker's Tape B Baseline ADV plus 20%, subject to the ETP Holders' and Market Makers' total providing liquidity in Tape A, Tape B, and Tape C Securities

increasing in an amount no less than 0.03% of US CADV over their Baseline Month providing liquidity.

Additionally, if a firm's ratio of Tape B Baseline ADV to its total Tape B ADV during the Baseline Month is less than 30%, the \$0.0026 rate would only apply to the ETP Holder's or Market Maker's shares that are executed in an amount up to and including 1.5% of the US Tape B CADV during the billing month. The rate of \$0.0028 or \$0.0030 per share, as applicable, would apply to the ETP Holder's or Market Maker's remaining shares that are executed, unless the ETP Holder's or Market Maker's Tape B Adding ADV is greater than its Tape B Baseline ADV by at least 0.45% of the US Tape B CADV during the billing month. Investor Tier ETP Holders, Investor Tier Market Makers, and Lead Market Makers ("LMMs") cannot qualify for the Tape B Step Up Tier. In addition, LMM provide volume cannot apply to the Tape B Step Up Tier volume requirements.

The Exchange proposes to amend the Fee Schedule so that ETP Holders and Market Makers that take liquidity from the Book to pay a reduced fee of \$0.0026 per share if they directly execute providing volume in Tape B Securities during the billing month ("Tape B Adding ADV") that is at least the greater of (a) the ETP Holder's or Market Maker's Baseline Month Tape B Adding ADV ("Tape B Baseline ADV") plus 0.25% of US Tape B CADV for the *billing month* or (b) the ETP Holder's or Market Maker's Tape B Baseline ADV plus 20%, subject to the ETP Holders' and Market Makers' total providing liquidity in Tape A, Tape B, and Tape C Securities increasing in an amount no less than 0.03% of US CADV over their Baseline Month providing liquidity. The Exchange does not propose to make any additional changes to the Tape B Step Up Tier.

### Tape C Step Up Tier

Currently, the Tape C Step Up Tier allows ETP Holders and Market Makers that take liquidity from the Book to pay a reduced fee of \$0.0029 per share if they directly execute providing volume in Tape C Securities during the billing month (“Tape C Adding ADV”) that is at least the greater of (a) the ETP Holder’s or Market Maker’s Baseline Month Tape C Adding ADV (“Tape C Baseline ADV”) plus 0.10% of US Tape C CADV for the *Baseline Month* or (b) the ETP Holder’s or Market Maker’s Tape C Baseline ADV plus 20%, subject to the ETP Holders’ and Market Makers’ total providing liquidity in Tape A, Tape B, and Tape C Securities increasing in an amount no less than 0.03% of US CADV over their Baseline Month providing liquidity.

Additionally, if a firm’s ratio of Tape C Baseline ADV to its total Tape C ADV during the Baseline Month is less than 30%, the \$0.0029 rate would only apply to the ETP Holder’s or Market Maker’s shares that are executed in an amount up to and including 1.1% of the US Tape C CADV during the billing month. The rate of \$0.0030 per share would apply to the ETP Holder’s or Market Maker’s remaining shares that are executed, unless the ETP Holder’s or Market Maker’s Tape C Adding ADV is greater than its Tape C Baseline ADV by at least 0.33% of the US Tape C CADV during the billing month. Investor Tier ETP Holders or Investor Tier Market Makers cannot qualify for the Tape C Step Up Tier.

The Exchange proposes to amend the Fee Schedule so that ETP Holders and Market Makers that take liquidity from the Book to pay a reduced fee of \$0.0029 per share if they directly execute providing volume in Tape C Securities during the billing month (“Tape C Adding ADV”) that is at least the greater of (a) the ETP Holder’s or Market Maker’s Baseline Month Tape C Adding ADV (“Tape C Baseline ADV”) plus 0.10% of US Tape C CADV for the

*billing month* or (b) the ETP Holder's or Market Maker's Tape C Baseline ADV plus 20%, subject to the ETP Holders' and Market Makers' total providing liquidity in Tape A, Tape B, and Tape C Securities increasing in an amount no less than 0.03% of US CADV over their Baseline Month providing liquidity. The Exchange does not propose to make any additional changes to the Tape C Step Up Tier.

The Exchange notes that the discrepancy did not have an adverse effect on ETP Holders with respect to March and April 2012 billing because the total market volume reported to the Consolidated Tape in January 2012, March 2012, and April 2012 was not significantly different.<sup>5</sup> However, going forward, the Exchange believes that, as intended in its original filing, the threshold should move in proportion to volume in the billing month in order to properly incentivize ETP Holders to post more volume on the Exchange. For example, if overall volume doubles in the current billing month, ETP Holders volume also may double in terms of shares, although their volumes relative to the entire market remain unchanged. The Exchange did not intend to offer the more favorable Step Up Tier rates in these circumstances, and as such, the correction to the calculation to reflect the billing month is necessary.

The proposed change will be operative on May 1, 2012 .

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>6</sup> in general, and Section 6(b)(4) of the Act,<sup>7</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and

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<sup>5</sup> The Exchange further notes that each of the examples in the footnotes of the Release correctly reflected the Exchange's intention to reference the billing month.

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(4).

other persons using its facilities. The Exchange further believes that the correction to the Fee Schedule is reasonable, equitable and not unfairly discriminatory because all similarly situated ETP Holders will be subject to the same fee structure. In particular, the Exchange intended to provide an option to qualify for the Step Up Tiers that would be based on a calculation of both the ETP Holder's providing volume in the Baseline Month and the billing month. The Exchange also believes the proposed amendments to the Tape A, Tape B, and Tape C Step Up Tiers will continue to 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.

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)<sup>8</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>9</sup> 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

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2012-36 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-2012-36. 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-2012-36 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.<sup>10</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).