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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-69305; File No. SR-NYSEArca-2013-32)

April 4, 2013

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending 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 March 25, 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 its Schedule of Fees and Charges for Exchange Services ("Fee Schedule") to (i) amend Step Up Tier 1 and Step Up Tier 2 (the "Step Up Tiers") to increase the volume threshold requirements needed to be eligible for each respective tier; (ii) amend the Cross-Asset Tier to replace the numeric benchmark needed to be eligible for the tier with a benchmark based on a percentage of options contract volume; (iii) add a new Retail Order Cross-Asset Tier; (iv) raise the fee charged for transactions in securities with a per share price below $1.00; and (v) amend the options-related volume requirements in certain tiers in the Fee Schedule to exclude volume in mini options from contributing to the volume requirements of the

1 15 U.S.C.78s(b)(1).

2 15 U.S.C. 78a.

3 17 CFR 240.19b-4.

affected tiers. The Exchange proposes to implement the changes on April 1, 2013. 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 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 its Fee Schedule to (i) amend the Step Up Tiers to increase the volume threshold requirements needed to be eligible for each respective tier; (ii) amend the Cross-Asset Tier to replace the numeric benchmark needed to be eligible for the tier with a benchmark based on a percentage of options contract volume; (iii) add a new Retail Order Cross-Asset Tier; (iv) raise the fee charged for transactions in securities with a per share price below $1.00; and (v) amend the options-related volume requirements in certain tiers in the Fee Schedule to exclude volume in mini options from contributing to the volume requirements of the affected tiers. The Exchange proposes to implement the changes on April 1, 2013.

Step Up Tiers

Currently, in order to qualify for Step Up Tier 1, an ETP Holder on a daily basis, measured monthly, must directly execute providing volume on NYSE Arca in an amount that is an increase of no less than 0.15% of U.S. consolidated average daily volume ("US CADV") in

Tape A, Tape B, and Tape C securities for that month over the ETP Holder's average daily providing volume in June 2011 (the "Baseline Month"), subject to a minimum increase of 15 million average daily providing shares.[4] The Exchange proposes to increase the eligibility requirement for Step Up Tier 1 to no less than 0.20% of US CADV for the month over the ETP Holder's average daily providing volume in the Baseline Month, subject to a minimum increase of 20 million average daily providing shares.

Similarly, in order to qualify for Step Up Tier 2, an ETP Holder on a daily basis, measured monthly, must directly execute providing volume on NYSE Arca in an amount that is an increase of no less than 0.10% of US CADV for that month over the ETP Holder's average daily providing volume in the Baseline Month, subject to a minimum increase of 10 million average daily providing shares. The Exchange proposes to increase the eligibility requirement for Step Up Tier 2 to no less than 0.12% of US CADV for the month over the ETP Holder's average daily providing volume in the Baseline Month, subject to a minimum increase of 12 million average daily providing shares.

By way of example, if an ETP Holder executed an average daily providing volume of 5 million shares in the Baseline Month, then to qualify for Step Up Tier 2 in a month where US CADV is 11 billion shares, that ETP Holder would need to increase its average daily providing volume by at least 13.2 million shares, or 0.12% of that month's US CADV, for a total average daily providing volume of at least 18.2 million shares. If that same ETP Holder in that same month increased its average daily providing volume by at least 22 million shares, or 0.20% of

4 US 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. Transactions that are not reported to the Consolidated Tape are not included in US CADV. The Exchange currently makes this data publicly available on a T + 1 basis from a link at http://www.nyxdata.com/US-and-European-Volumes.

that month's US CADV, for a total average daily providing volume average of at least 27 million shares, then that ETP Holder would qualify for Step Up Tier 1.[5]

As previously explained,[6] the goal of the Step Up Tiers is to incent ETP Holders to increase the orders sent directly to NYSE Arca and therefore provide liquidity that supports the quality of price discovery and promotes market transparency. In the Step Up Tiers Release, the Exchange explained that the Step Up Tiers were expected to benefit ETP Holders whose increased order flow provided added levels of liquidity (thereby contributing to the depth and market quality of the Book) but who are still not eligible for Tier 1, 2 or 3, or Investor Tier 1 or 2.[7] For similar reasons, the Exchange believes that raising the volume requirements needed to be eligible for each respective Step Up Tier will continue to incent ETP Holders to increase the orders sent directly to NYSE Arca and therefore provide liquidity that supports the quality of price discovery and promotes market transparency. The Exchange believes that this especially is the case given that the credits for Tape A and Tape C securities under Step Up Tier 1 ($0.00295) and Step Up Tier 2 ($0.0029) are substantially higher that the credits for Tape A and Tape C securities under the Basic Rates ($0.0021) and Tier 3 ($0.0025).

<u>Cross-Asset Tier</u>

Currently, under the Cross-Asset Tier, ETP Holders and Market Makers that (1) provide liquidity of 0.45% or more of the US CADV per month in Tape A, Tape B, and Tape C securities

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5 In addition, for both Step Up Tiers, those ETP Holders that did not directly provide volume to NYSE Arca in the Baseline Month will be treated as having an average daily providing volume of zero for the Baseline Month. With respect to the increased percentage of US CADV, the volume requirements to reach the Step Up Tiers' pricing levels will adjust each calendar month based on the US CADV for that given month.

6 <u>See</u> Securities Exchange Act Release No. 64820 (July 6, 2011), 76 FR 40974 (July 12, 2011) (SR-NYSEArca-2011-41) ("Step Up Tiers Release").

7 <u>Id.</u> at 76 FR 40975.

combined, 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 90,000 contracts receive a per share credit of $0.0030 for orders in Tape A, Tape B and Tape C securities that provide liquidity to the Book. The Exchange proposes to replace the current fixed 90,000-contract requirement with a variable requirement of at least 0.95% of total Customer equity and exchange-traded fund ("ETF") option (as discussed below, excluding mini options) ADV, as reported by the Options Clearing Corporation ("OCC").[8] The Exchange is proposing these changes to the Cross-Asset Tier in order to make the eligibility requirement consistent with the Exchange's other variable eligibility requirements that are based on percentage of volume. The Exchange believes that using an eligibility requirement based on percentage of volume will better reflect fluctuations in trading volumes. In this respect, the Exchange notes that Equity and ETF Customer volume is a widely followed benchmark of industry volume and is indicative of industry market share. The

[8] The OCC provides volume information in two product categories: equity and ETF volume and index volume, and the information can be filtered to show only Customer, firm, or market maker account type. Equity and ETF Customer volume numbers are available directly from the OCC each morning, or may be transmitted, upon request, free of charge from the Exchange. Total Industry Customer equity and ETF option ADV is comprised of those equity and ETF option contracts that clear in the customer account type at OCC, including Exchange-Traded Fund Shares, Trust Issued Receipts, Partnership Units, and Index-Linked Securities such as Exchange-Traded Notes (see NYSE Arca Options Rule 5.3(g)-(j)), and does not include contracts that clear in either the firm or market maker account type at OCC or contracts overlying a security other than an equity or ETF security. The Exchange notes that there is one Penny Pilot issue, Mini NDX 100 Stock Index, that does not overlie an equity or ETF security that is eligible for the Customer posting credit. This Penny Pilot issue is not included in equity and ETF option ADV; however, the Exchange expects that the effect on the calculations for the qualification thresholds for tiered Customer posting credits to be negligible. Under the proposed rule change, Total Industry Customer equity and ETF option ADV will be that which is reported for the month by OCC in the month in which the credits may apply. The Exchange currently makes this data publicly available on a T+1 basis from a link at http://www.nyxdata.com/factbook.

Exchange also notes that based on current volume, the 0.95% volume requirement is consistent with the original 110,000 contract requirement which was lowered July 1, 2012 due to concerns over temporarily lower volume on NYSE Arca Options.[9] The proposed changes to the Cross-Asset Tier would thus eliminate the need to modify a fixed number requirement because a threshold based on volume would automatically make the necessary adjustments.

Retail Order Cross-Asset Tier

The Exchange also is proposing a new Retail Cross-Asset Tier. Under the Retail Cross-Asset Tier, firms that execute at least 0.30% of US CADV in retail orders and are affiliated with an NYSE Arca OTP Holder or OTP Firm that provides an ADV of electronic posted Customer executions in customer penny pilot options of at least 0.50% of total Customer equity and ETF option (as discussed below, excluding mini options) ADV would qualify for a $.0034 rebate for retail orders that provide liquidity. The Retail Cross-Asset Tier would provide firms with a second way to qualify for the $0.0034 rebate (in addition to Investor Tier 1) using equity retail and options customer post. The Exchange notes that the $0.0034 rebate is $.0001 higher than the current Retail Order Tier in light of the tier including an additional options requirement and a higher equity retail requirement.

Sub-$1.00 Securities

Currently, a fee of 0.2% of the total dollar value of the transaction is charged for transactions with a per share price below $1.00 that take liquidity from the Book. The Exchange proposes raising the fee from 0.2% of the total dollar value of the transaction to 0.3% of the total dollar value of the transaction. The Exchange is proposing these changes as they are consistent

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9 See Securities Exchange Act Release Nos. 67180 (June 11, 2012), 77 FR 36027 (June 15, 2012)(SR-NYSEArca-2012-56) and 67424 (July 12, 2012), 77 FR 42347 (July 18, 2012)(SR-NYSE-Arca-2012-70).

with similar fee amounts charged by other exchanges.[10]

Mini Options

The Exchange proposes to amend the Fee Schedule to specifically exclude volume in mini options from contributing to the volume requirements for tiers with an options volume-related component. Specifically, the proposed amendment would exclude volume in mini options from contributing to the volume requirements in Tier 1 and the Cross-Asset Tier. Mini option volume similarly would be excluded from the proposed Retail Order Cross-Asset Tier discussed above.

The proposed changes are not otherwise intended to address any other problem, and the Exchange is not aware of any significant problem that the affected market participants would have in complying with the proposed changes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[12] 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 amendments to the Step Up Tiers that raise the volume requirements needed to be eligible for each respective tier are reasonable because the

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10 See, e.g., DirectEdge Fee Schedule, available at http://www.directedge.com/Membership/FeeSchedule/EDGXFeeSchedule.aspx; and Nasdaq Fee Schedule, available at http://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2#execution.

11 15 U.S.C. 78f(b).

12 15 U.S.C. 78f(b)(4) and (5).

proposed changes are designed to further incent ETP Holders to increase the orders sent directly to NYSE Arca and therefore provide liquidity that supports the quality of price discovery and promotes market transparency. The Exchange believes that this is especially the case given that the credits for Tape A and Tape C securities under Step Up Tier 1 ($0.00295) and Step Up Tier 2 ($0.0029) are substantially higher than the credits for Tape A and Tape C securities under Basic Rates ($0.0021) and Tier 3 ($0.0025). The Exchange further believes that the proposed amendments to the Step Up Tiers are equitable and not unfairly discriminatory because they will benefit ETP Holders whose increased order flow provides added levels of liquidity (thereby contributing to the depth and market quality of the Book), but who may still not be eligible for Tier 1, 2 or 3, or other tiers. Moreover, the Step Up Tiers are available for all ETP Holders to satisfy.

The Exchange believes that the proposal to amend the Cross-Asset Tier to replace the current fixed benchmark needed to be eligible for the tier with a variable benchmark based on a percentage of volume is reasonable because it will make the eligibility requirement consistent with the Exchange's other variable eligibility requirements that also are based on percentage of volume. In addition, the Exchange believes that expanding the basis for the Cross-Asset Tier to include all Customer equity and ETF options ADV will better reflect the correlation between options trading and the underlying securities, which trade at the Exchange, including ETFs. In this respect, the Exchange notes that Equity and ETF Customer volume is a widely followed benchmark of industry volume and is indicative of industry market share.[13] In addition, the Exchange believes that the proposed amendments to the Cross-Asset Tier are equitable and not unfairly discriminatory because they will apply to all ETP Holders and Market Makers.

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13 See supra note 8.

Moreover, the Cross-Asset Tier is available for all ETP Holders to satisfy, except for those ETP Holders that are not affiliated with an NYSE Arca Options OTP Holder or OTP Firm. However, the Exchange notes that ETP Holders that are not affiliated with an NYSE Arca Options OTP Holder or OTP Firm are still eligible for the $0.0030 Cross-Asset Tier rate when they qualify for one of the other Tiers described in the Fee Schedule (e.g., Tier 1).

The Exchange believes that the proposal to add the new Retail Order Cross-Asset Tier is reasonable because it would provide firms with a way in which to qualify for $0.0034 rebate through equity retail and options customer orders. The Exchange further believes that the proposed Retail Order Cross-Asset Tier is equitable and not unfairly discriminatory because a firm that does not submit options orders can still be eligible for the $0.0034 rebate available from Investor Tier 1.

The Exchange believes that the proposal to raise the fee charged for transactions with a per share price below $1.00 that take liquidity from the Book from 0.2% to 0.3% of the total dollar value of the transaction is reasonable because the proposed new rate is consistent with similar fee amounts charged by other exchanges.[14] The Exchange further believes that the proposed fee increase is equitable and not unfairly discriminatory because it will apply to all transactions that take liquidity from the Exchange in securities with a per share price below $1.00.

Finally, the Exchange believes that the proposal to exclude volume in mini options from contributing to the option volume requirements for Tier 1, the Cross-Asset Tier and the proposed Retail Order Cross-Asset Tier is reasonable because the options volume requirement currently in place in the fee schedule were established prior to the existence of mini options, a new product

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[14] See supra note 10.

on NYSE Arca Options. Because mini options are such a new product, the Exchange believes it is reasonable to exclude mini option volume in this way. The Exchange further believes that the proposal to exclude volume in mini options from the tiers mentioned above is equitable and not unfairly discriminatory because all market participants that are eligible for the affected tiers will be similarly situated.

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. In particular, the proposed amendments to the Step Up Tiers that raise the volume requirement needed to be eligible for each respective tier are designed to incent ETP Holders and Market Makers to increase the volume of orders sent directly to NYSE Arca and therefore provide liquidity that supports the quality of price discovery and promotes market transparency.

The proposal to amend the Cross-Asset Tier to replace the numeric benchmark needed to be eligible for the tier with a benchmark based on a percentage of volume will not place an undue burden on competition because it will apply uniformly to all ETP Holders and Market Makers. The proposal to add the new Retail Order Cross-Asset Tier will not place an undue burden on competition because all firms can be eligible for the $0.0034 credit, as those firms that do not submit options orders can still qualify to receive the $0.0034 rebate by meeting the requirements of Investor Tier 1.

The proposal to raise the fee charged for transactions with a per share price below $1.00 from 0.2% to 0.3% of the total value of orders that take liquidity from the Book is consistent with similar fees charged by other exchanges. Finally, the proposal to exclude volume in mini options from contributing to the option volume requirements for Tier 1, the Cross-Asset Tier and the proposed Retail Order Cross-Asset Tier will not place an undue burden on competition because all market participants will be similarly situated in their inability to the use volume in mini options to satisfy the options volume requirements of the affected tiers.

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 change reflects this competitive environment.

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)(ii) of the Act[15] 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 Securities and Exchange Commission ("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)[16] of the Act to determine whether the proposed rule change should be approved or disapproved.

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15 15 U.S.C. 78s(b)(3)(A)(ii).

16 15 U.S.C. 78s(b)(2)(B).

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-2013-32 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-2013-32. 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 such filing also will be available for inspection and copying at the principal offices of NYSE Arca. 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-2013-32, 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.[17]

Kevin M. O'Neill
Deputy Secretary

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[17] 17 CFR 200.30-3(a)(12).