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SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-70389; File No. SR-NYSEArca-2013-87)

September 13, 2013

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Proposing To Modify The Manner In Which It Calculates Volume, Liquidity And Quoting Thresholds Applicable To Billing On The Exchange In Relation To A Systems Issue Experienced By The NASDAQ UTP Securities Information Processor On August 22, 2013, Which Impacted Trading Across All Markets

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 September 4, 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 and II 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 modify the manner in which it calculates volume, liquidity and quoting thresholds applicable to billing on the Exchange in relation to a systems issue experienced by the NASDAQ UTP Securities Information Processor (“NASDAQ UTP SIP”) on August 22, 2013, which impacted trading across all markets (the “August 22, 2013 systems issue”). The text of the proposed rule change is available on

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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.

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.

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 modify the manner in which it calculates volume, liquidity and quoting thresholds applicable to billing on the Exchange in relation to the August 22, 2013 systems issue, which impacted trading across all markets.

As a result of the August 22, 2013 systems issue, the NASDAQ Stock Market LLC ("NASDAQ") halted trading in Tape C securities (i.e., NASDAQ-listed securities) for more than three hours, resulting in a more than 40% decrease in trading volume in Tape C securities and a more than 20% decrease in trading volume across all listed equity securities (i.e., Tape A, B and C securities) as compared to U.S. consolidated average daily volume ("CADV") for the previous trading days in August 2013.<sup>4</sup> The Exchange

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<sup>4</sup> See NASDAQ press release, available at <http://globenewswire.com/news-release/2013/08/22/568741/10045917/en/UPDATE-NASDAQ-OMX-Issues-Statement-on-the-Securities-Information-Processor.html>. For purposes of this

also believes that the trading halt impacted the ability of ETP Holders, including Market Makers, to demonstrate typical trading, quoting and liquidity in their assigned securities, leading to decreased quoting and trading volume compared to average daily volume (“ADV”) and CADV for the previous trading days in August 2013.

As provided in the Exchange’s Schedule of Fees and Charges for Exchange Services (“Equities Fee Schedule”), several of the Exchange’s transaction fees and credits are based on trading, quoting and liquidity thresholds that ETP Holders must satisfy in order to qualify for the particular rates (i.e., percentage of CADV and ADV thresholds). The Exchange believes that the halting of trading that resulted from the August 22, 2013 systems issue may impact the ability of ETP Holders to meet these thresholds during August 2013.<sup>5</sup> The Exchange therefore proposes to exclude August 22, 2013 from any CADV or ADV calculation described in the Equities Fee Schedule in order to reasonably ensure that an ETP Holder that would otherwise qualify for a particular threshold during August 2013, and the corresponding transaction rate, would not be negatively impacted by the August 22, 2013 systems issue.

The proposed change is not otherwise intended to address any other issues relating to fees and the Exchange is not aware of any problems that ETP Holders would have in complying with the proposed change. The Exchange notes that NASDAQ is

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proposal, “NASDAQ” refers to all NASDAQ OMX U.S. equity and option markets, including NASDAQ, NASDAQ OMX PHLX LLC (“Phlx”), and NASDAQ OMX BX, Inc. (“BX”).

<sup>5</sup> The Exchange notes that it does not perform the calculations necessary to determine whether these thresholds have been met until after the particular billing month has ended.

similarly excluding August 22, 2013 trading volume from pricing tier calculations.<sup>6</sup>

## 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 (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 rule change is reasonable because excluding August 22, 2013 from any CADV or ADV calculation described in the Equities Fee Schedule would reasonably ensure that an ETP Holder that would otherwise qualify for a particular threshold during August 2013, and the corresponding transaction rate, would not be negatively impacted by the August 22, 2013 systems issue. The Exchange also believes that the proposed rule change is equitable and not unfairly discriminatory because the trading halt on NASDAQ, which lasted more than three hours, resulted in significant decreases in trading volume and also impacted the ability of ETP Holders on the Exchange, including Market Makers, to demonstrate typical trading, quoting and liquidity in their assigned securities, leading to decreased quoting and trading volume compared to ADVs and CADVs for the previous trading days in August 2013. Therefore, excluding August 22, 2013 from any CADV or ADV calculation described in the Equities Fee Schedule would reasonably ensure than any market participant on the

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<sup>6</sup> See NASDAQ Equity Trader Alert #2013-78, [available at http://www.nasdaqtrader.com/TraderNews.aspx?id=ETA2013-78](http://www.nasdaqtrader.com/TraderNews.aspx?id=ETA2013-78).

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

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

Exchange would not be negatively impacted by the August 22, 2013 systems issue with respect to billing on the Exchange. The proposed rule change is also equitable and not unfairly discriminatory because it would result in all market participants on the Exchange being treated equally by excluding August 22, 2013 from any CADV or ADV calculation described in the Equities Fee Schedule.

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 believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change would treat all market participants on the Exchange equally by excluding August 22, 2013 from any CADV or ADV calculation described in the Equities Fee Schedule. Moreover, the Exchange believes that the proposed change would enhance competition between competing marketplaces by enabling the Exchange to exclude August 22, 2013 from any CADV or ADV calculation described in the Equities Fee Schedule, which is consistent with the manner by which NASDAQ has announced that it will be treating trading volumes from August 22, 2013 in pricing tier calculations.<sup>10</sup>

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

<sup>10</sup> See supra note 5.

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup> Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>13</sup> normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>14</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Commission believes that waiver of the

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> 17 CFR 240.19b-4(f)(6)(iii).

operative delay is consistent with the protection of investors and the public interest because the proposal will allow the Exchange to immediately implement the proposed change, thereby reducing the potential for confusion among member organizations and the public about how the Exchange will calculate certain volume, liquidity and quoting thresholds related to billing for activity on the Exchange during August 22, 2013. The Commission believes that the requested waiver will also assist the Exchange in determining transaction fees and credits for member organizations in a timely manner after the end of the billing month of August 2013. Therefore, the Commission designates the proposal operative upon filing.<sup>15</sup>

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>16</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:

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<sup>15</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. See 15 U.S.C. 78c(f).

<sup>16</sup> 15 U.S.C. 78s(b)(2)(B).

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-2013-87 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-2013-87. 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-2013-87, 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>17</sup>

Kevin M. O'Neill  
Deputy Secretary

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