

2012–014 and should be submitted on or before March 8, 2012.

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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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66379; File No. SR–NYSEArca–2012–11]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Equities Fee Schedule Increasing the Indication of Interest Tier 1 Credit and the Tracking Order Tier 1 Credit for ETP Holders and Market Makers

February 10, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> notice is hereby given that, on February 1, 2012, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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 increase the indication of interest (“IOI”) Tier 1 credit and the Tracking Order Tier 1 credit for ETP Holders and Market Makers. The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and [www.nyse.com](http://www.nyse.com).

#### 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 amend the Fee Schedule to increase the IOI Tier 1 credit<sup>3</sup> and the Tracking Order<sup>4</sup> Tier 1 credit for ETP Holders and Market Makers. The credits are designed to attract trading interest to and promote liquidity on the Exchange. The Exchange does not propose to make any changes to the other IOI or Tracking Order Tiers.

##### IOI Tier 1 Credit

Currently, an IOI Tier 1 credit is offered to each ETP Holder and Market Maker that send IOIs to the Exchange resulting in executions with an average daily share volume (“ADV”) per month greater than or equal to 10 million shares in Tape A, B, and C securities. The credit is \$0.0012 per share for each share up to and including 15 million shares and \$0.0015 per share for each share in excess of 15 million shares.<sup>5</sup>

The Exchange proposes to amend the IOI Tier 1 credit so that each ETP Holder and Market Maker will receive a credit of \$0.0015 per share for all shares if its IOIs result in executions on the Exchange with an ADV per month greater than 15 million shares. The Exchange will continue to provide a \$0.0012 credit per share for IOIs sent to the Exchange resulting in executions with an ADV per month up to and including 15 million shares (assuming the 10 million share threshold is met).

For example, under the current Fee Schedule, if an ETP Holder sends IOIs

to the Exchange resulting in executions with an ADV per month of 17 million shares, the ETP Holder receives a \$0.0012 per share credit for the first 15 million shares and a \$0.0015 per share credit for the 2 million shares in excess of the 15 million shares. Under the proposed Fee Schedule, the ETP Holder will receive a \$0.0015 per share credit for all 17 million shares.

##### Tracking Order Tier 1

Currently, the Tracking Order Tier 1 credit is offered to each ETP Holder and Market Maker that sends Tracking Orders to the Exchange resulting in executions with an ADV per month greater than or equal to 5 million shares in Tape A, B, and C securities.<sup>6</sup> The credit is \$0.0012 per share for each share up to and including 15 million shares and \$0.0015 per share for each share in excess of 15 million shares.

The Exchange proposes to amend the Tracking Order Tier 1 credit so that each ETP Holder and Market Maker will receive a credit of \$0.0015 per share for all shares if its Tracking Orders result in executions on the Exchange with an ADV per month greater than 15 million shares. The Exchange will continue to credit ETP Holders \$0.0012 per share for Tracking Orders that result in executions up to and including 15 million shares (assuming the 5 million share threshold is met).

For example, under the current Fee Schedule, if an ETP Holder sends Tracking Orders to the Exchange resulting in executions with an ADV per month of 17 million shares, the ETP Holder receives a \$0.0012 per share credit for the first 15 million shares and a \$0.0015 per share credit for the remaining 2 million shares. Under the proposed Fee Schedule, the ETP Holder will receive a \$0.0015 per share credit for all 17 million shares.

##### 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”),<sup>7</sup> in general, and Section 6(b)(4) of the Act,<sup>8</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 other persons using its facilities. The proposed change is

<sup>3</sup> An IOI is a non-displayed indication of symbol, size and side, which does not interact with the NYSE Arca Book. At their discretion, participating ETP Holders and Market Makers may send an IOI to the Exchange, which in turn will consider the IOI when determining potential destinations for outbound routes. See Securities Exchange Act Release No. 58397 (August 20, 2008), 73 FR 50389 (August 26, 2008) (SR–NYSEArca–2008–83).

<sup>4</sup> A Tracking Order is an undisplayed, priced round lot order that is eligible for execution in the Tracking Order Process against orders equal to or less than the aggregate size of Tracking Order interest available at that price. See NYSE Arca Equities Rule 7.31(f).

<sup>5</sup> See Securities Exchange Act Release No. 60495 (August 13, 2009), 74 FR 41957 (August 19, 2009) (SR–NYSEArca–2009–72). The Exchange proposed an incremental credit in an effort to attract and enhance participation in the IOI program, by offering attractive rebates and volume based incentives.

<sup>6</sup> See Securities Exchange Act Release No. 60944 (November 5, 2009), 74 FR 58668 (November 13, 2009) (SR–NYSEArca–2009–99). The Exchange proposed to add new transaction credits stemming from the use of Tracking Orders in an effort to enhance participation on the Exchange and to offer increased liquidity to ETP Holders and Market Makers.

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

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

<sup>17</sup> 17 CFR 200.30–3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b–4.

equitably allocated and not unfairly discriminatory because it applies uniformly to all similarly situated ETP Holders and Market Makers that send IOIs and Tracking Orders to the Exchange. The Exchange believes that the proposal also is reasonable and equitably allocated because it provides higher credits to ETP Holders and Market Makers that contribute to market quality by providing higher volumes of liquidity, and it is consistent with other tiered credits on the Exchange that pay a rebate on all volume and not just the incremental volume. The Exchange believes that increasing the credits will attract additional order flow and liquidity to the Exchange.

#### *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>9</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>10</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 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2012-11 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-2012-11. This file number should be included on the subject line if email 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 Web site (<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 Web site 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-2012-11 and should be submitted on or before March 8, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-66378; File No. SR-NYSEArca-2012-13]

#### **Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Equities Fee Schedule To Increase the Investor Tier 1 Credit for ETP Holders and Market Makers**

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##### *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 amend the Fee Schedule to increase the Investor

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b-4.