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SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-70998; File No. SR-NYSEARCA-2013-133]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Proposes to Amend the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services to Specify the Exclusion of Odd Lot Transactions from Consolidated Average Daily Volume Calculations for a Limited Period of Time for Purposes of Certain Transaction Pricing on the Exchange Through January 31, 2014

December 5, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] notice is hereby given that, on November 22, 2013, NYSE Arca, Inc. ("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 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 (the "Fee Schedule") to specify the exclusion of odd lot transactions from consolidated average daily volume ("CADV") calculations for a limited period of time for purposes of certain transaction pricing on the Exchange. 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

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

2 17 CFR 240.19b-4.

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 specify the exclusion of odd lot transactions from CADV calculations for a limited period of time for purposes of certain transaction pricing on the Exchange. The Exchange proposes to implement the Fee Schedule on December 9, 2013.

The Exchange provides an ETP Holder with the opportunity to qualify for one or more pricing Tiers based on its level of activity during a particular month. Each Tier has a corresponding fee or credit that applies to the ETP Holder's transactions during the month. Generally, a qualifying ETP Holder would be subject to a lower transaction fee or a higher transaction credit, depending on the particular Tier. Many of these Tiers use a specific percentage of CADV as a threshold that an ETP Holder's activity must meet or exceed in order to qualify for the particular Tier. For example, an ETP Holder must, among other things, provide liquidity an average daily volume ("ADV") of 0.70% or more of CADV during the month to qualify for Tier 1 pricing.[3] As an additional example, transaction pricing for an ETP Holder that

[3] To qualify for Tier 1, an ETP Holder must (1) provide liquidity an ADV per month of 0.70% or more of CADV or (2) (a) provide liquidity an ADV per month of 0.15% or more of CADV and (b) be affiliated with an Options Trading Permit ("OTP") Holder or OTP Firm that provides an ADV of electronic posted executions (including all account

is a Lead Market Maker ("LMM") can depend on the CADV for the security in the previous month.

CADV is a measure of transactions in Tape A, Tape B and Tape C securities reported to the consolidated tape. Transactions that are not reported to the consolidated tape are not included in CADV for purposes of the Fee Schedule. An odd lot transaction, which is generally an execution of less than 100 shares, is not currently reported to the consolidated tape and is therefore not currently included in CADV.[4] Beginning December 9, 2013, odd lot transactions will be reported to the consolidated tape.[5] The Exchange proposes to amend Footnote 3 in the Fee Schedule to specify that odd lot transactions reported to the consolidated tape will be excluded from CADV through January 31, 2014 for purposes of billing on the Exchange. This proposed change is intended to maintain consistency in the Exchange's current method of determining Tier qualifications for a limited period of time in order to provide ETP Holders with

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types) in Penny Pilot issues on NYSE Arca Options (excluding mini options) of at least 100,000 contracts, of which at least 25,000 contracts must be for the account of a market maker.

4 See NYSE Arca Equities Rule 7.5. A round lot is generally an execution of 100 shares or a multiple thereof.

5 See Securities Exchange Act Release No. 70794 (October 31, 2013), 78 FR 66789 (November 6, 2013) (SR-CTA-2013-05) (Order Approving the Eighteenth Substantive Amendment to the Second Restatement of the CTA Plan). See also Securities Exchange Act Release No. 70793 (October 31, 2013), 78 FR 66788 (November 6, 2013) (File No. S7–24–89) (Order Approving Amendment No. 30 to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis). See also Securities Exchange Act Release No. 70898 (November 19, 2013), 78 FR 70386 (November 25, 2013) (SR-NYSE-2013-75). See also announcements regarding December 9, 2013 implementation date, available at https://cta.nyxdata.com/cta/popup/news/2385 and http://www.nasdaqtrader.com/TraderNews.aspx?id=uva2013-11. If the inclusion of odd lot transactions in the consolidated tape is delayed to a date after December 9, 2013, the manner of inclusion or exclusion of odd lot transactions described in this proposal for purposes of billing on the Exchange would similarly take effect on such later date.

an opportunity to adjust to the potential impact of the inclusion of odd lot transactions in CADV.

As described above, CADV is also used in the Fee Schedule to differentiate between securities with different CADV levels for purposes of LMM pricing. Odd lot transactions are currently excluded when determining the particular LMM Tier that applies because odd lot transactions are not currently reported to the consolidated tape. In contrast to the proposed change described above, the Exchange will not make any adjustment beginning on December 9, 2013 to consolidated tape figures for purposes of determining the applicable LMM Tier.[6] Therefore, beginning December 9, 2013, odd lot transactions reported to the consolidated tape would be included in LMM Tier determinations. These determinations are based on CADV from the previous month and LMMs would therefore be able to adjust their activity immediately on December 9, 2013 based on November 2013 CADV.

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

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[8] 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.

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6 The Exchange will reflect this in Footnote 3 in the Fee Schedule.

7 15 U.S.C. 78f(b).

8 15 U.S.C. 78f(b)(4) and (5).

The Exchange believes that the proposed change is reasonable because it will maintain consistency in the current manner of measuring ETP Holder activity with respect to transaction pricing on the Exchange for a limited period of time. Absent this change, the denominator of a Tier threshold calculation (i.e., CADV) would increase immediately when odd lot transactions begin to be reported to the consolidated tape and an ETP Holder would therefore need to immediately increase its own activity (i.e., the numerator) to qualify for the Tier compared to when odd lot transactions were not included in the consolidated tape. However, such an increase in ETP Holder activity would not result in any corresponding benefit to the ETP Holder, because the Exchange is not proposing a change to the Tier rates. The Exchange anticipates that the eventual impact on determining Tier qualifications will be minimal when odd lot transactions begin to be included in CADV. Notwithstanding the anticipated minimal impact, however, the Exchange believes that it is reasonable to provide ETP Holders with a limited transition period to adapt to such impact.

The Exchange believes that it is reasonable to include odd lot transactions in LMM Tier determinations immediately on December 9, 2013 because such determinations are based on CADV from the previous month. LMMs would therefore be able to adjust their activity immediately on December 9, 2013 based on November 2013 CADV. This is different than with excluding odd lot transactions from other CADV calculations for a limited period of time because such other CADV calculations are determined based on the actual billing month, not a prior month. Furthermore, the Exchange does not anticipate that including odd lot transactions in these determinations beginning on December 9, 2013 would have a significant impact on the

number of securities for which each particular LMM Tier would otherwise apply absent the inclusion of odd lot transactions.[9]

The proposed change is equitable and not unfairly discriminatory because it would apply to all ETP Holders equally. More specifically, odd lot transactions would be excluded from CADV for billing purposes for all ETP Holders for a limited period of time. The proposed change is also equitable and not unfairly discriminatory because the inclusion of odd lots in the CADV calculation beginning on February 1, 2014 would occur at the same time for all ETP Holders, after the same nearly two month transition period. The proposed change is also equitable and not unfairly discriminatory because odd lot transactions would be immediately included in LMM Tier determinations for all ETP Holders that operate as LMMs. Immediately including odd lot transactions reported to the consolidated tape in LMM Tier determinations is equitable and not unfairly discriminatory because LMMs would be able to adjust their activity immediately on December 9, 2013 based on November 2013 CADV. 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,[10] 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. Instead, the proposed change would maintain consistency in the Exchange's current method of determining Tier qualifications for a limited

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9 Based on October 2013 data, the applicable LMM Tier would change for only one security by including odd lot transactions.

10 15 U.S.C. 78f(b)(8).

period of time in order to give ETP Holders an opportunity to adjust to the inclusion of odd lot transactions in CADV. This proposed change is also designed to maintain competition on the Exchange by eliminating the potential for ETP Holders to immediately fail to qualify for a Tier due to the inclusion of odd lot transactions in the consolidated tape beginning on December 9, 2013. The Exchange believes that competition would not be burdened by including odd lot transactions in LMM Tier determinations because the Exchange anticipates that this would not have a significant impact on the number of securities for which each particular LMM Tier would otherwise apply absent the inclusion of odd lot transactions – i.e., only one security to which an LMM is assigned based on October 2013 data.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee or credit levels at a particular venue to be unattractive. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. The billing method described herein is based on objective standards that are applicable to all ETP Holders and reflects the need for the Exchange to offer significant financial incentives to attract order flow. For these reasons, the Exchange believes that the proposed rule change reflects this competitive environment and is therefore consistent with 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)[11] of

[11] 15 U.S.C. 78s(b)(3)(A).

the Act and subparagraph (f)(2) of Rule 19b-4[12] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

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)[13] 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:

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-2013-133 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-2013-133. This file number should be included on the subject line if e-mail is used. To help the Commission process and review

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12 17 CFR 240.19b-4(f)(2).

13 15 U.S.C. 78s(b)(2)(B).

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 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-2013-133 and should be submitted on or before [INSERT DATE 21 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,
Deputy Secretary.

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[14] 17 CFR 200.30–3(a)(12).