SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-64593; File No. SR-NYSEArca-2011-34)

June 3, 2011

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 to Introduce Two New Pricing Tiers, Investor Tier 1 and Investor Tier 2

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 June 1, 2011, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") 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 amend the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services (the "Schedule") to introduce two new pricing tiers, Investor Tier 1 and Investor Tier 2. The text of the proposed rule change is available at the Exchange's principal office, at www.nyse.com, at the Commission's Public Reference Room, and at the Commission's website at www.sec.gov.

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

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

2 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

Effective June 1, 2011, NYSE Arca proposes to introduce two new pricing tier levels, Investor Tier 1 and Investor Tier 2. Investor Tier 1 will allow customers to earn a credit of $0.0032 per share for executed orders that provide liquidity to the Book for Tape A, Tape B and Tape C securities. Investor Tier 2 will allow customers to earn a credit of $0.0030 per share for executed orders that provide liquidity to the Book for Tape A, Tape B and Tape C securities. All other fees and credits will be at the existing tiered and basic rates based on the firms qualifying levels.

In order to qualify for the new Investor Tiers, customers must meet all of the following criteria on a monthly basis:

- Maintain a ratio of cancelled orders to total orders of less than 30%. In calculating this ratio, the Exchange will exclude Immediate-or-Cancel orders, which are liquidity removing in nature.
- Maintain a ratio of executed liquidity adding volume to total volume of greater than 80%.
- For Investor Tier 1, firms must add at least 35 million shares of liquidity per day on NYSE Arca to qualify. For Investor Tier 2, firms must add at least 10 million shares of liquidity per day but less than 35 million shares of liquidity per day on NYSE Arca to qualify. Trade activity on days when the market closes early is excluded from both Investor Tiers.

The goal of the Investor Tiers is to incentivize customers to maintain low cancellation rates and provide liquidity that supports the quality of price discovery and promotes market transparency. The tiers reward providers whose orders stay on the Book and do not rapidly cancel a large portion of their orders placed, which makes the price discovery process more efficient and results in higher fill rates, greater depth and lower volatility. It serves to encourage customers to post orders that are more likely to be executed.

2. <u>Statutory Basis</u>

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934 (the "Act"),[3] in general, and Section 6(b)(4) of the Act,[4] 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 Exchange believes that the proposal does not constitute an inequitable allocation of fees, as all similarly situated member organizations and other market participants will be charged the same amount and access to the Exchange's market is offered on fair and non-discriminatory terms.

NYSE Arca believes that the Investor Tiers are equitable and non-discriminatory because both are open to all customers on an equal basis and provide credits that are reasonably related to the value to an exchange's market quality associated with higher volumes. While the Investor Tiers distinguish among orders, such distinctions "are not designed to permit unfair discrimination" but rather intended to promote submission of liquidity providing orders to NYSE Arca, which would benefit all NYSE Arca members and all investors. Similarly, NASDAQ established an Investor Support Program ("ISP") targeting retail and institutional investor orders where firms receive a higher rebate if they meet all of the following criteria: 1) Add at least 10 million shares of liquidity per day via ISP-designated ports; 2) Maintain a ratio of orders-to-orders executed of less than 10 to 1 (counting only liquidity-providing orders and excluding certain order types) on ISP-designated ports; 3) Exceed the firm's August 2010 "baseline"

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[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4).

volume of liquidity added across all the firm's ports or, if a firm does not have an August baseline, then the firm will be deemed to have added an average of 35 million shares per day as the baseline starting point to qualify for the higher rebate program.[5] In addition, by offering two Investor Tiers the Exchange believes more customers may provide the targeted order flow and more customers will be eligible to receive the credits for such orders.

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 levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. The Exchange believes that the proposed rule change reflects this competitive environment because it will broaden the conditions under which customers may qualify for higher liquidity provider credits.

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.

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5 See Securities Exchange Act Release No. 63270 (November 8, 2010), 75 FR 69489 (November 12, 2012) [sic]; Securities Exchange Act Release No. 63414 (December 2, 2010), 75 FR 76505 (December 28, 2010).

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)[6] of the Act and subparagraph (f)(2) of Rule 19b-4[7] 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 e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2011-34 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-2011-34. 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

6 15 U.S.C. 78s(b)(3)(A).

7 17 CFR 240.19b-4(f)(2).

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-2011-34 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.[8]

Cathy H. Ahn
Deputy Secretary

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[8] 17 CFR 200.30-3(a)(12).