

reopening auction if the security is going to close shortly thereafter. This may cause price dislocations, uncertainty of executions, and added confusion during an already volatile period.<sup>26</sup> Based on the Participants' statements, the Commission believes the proposal to amend Section VII(C)(1) of the Plan is consistent with with Section 11A of the Act.

Second, the Participants propose to amend Section I of Appendix A of the Plan to revise the definition of which ETPs are eligible to be included in the list of Tier 1 NMS Stocks under the Plan by deleting the following language: "To ensure that ETPs that track similar benchmarks but that do not meet this volume criterion do not become subject to pricing volatility when a component security is the subject of a Trading Pause, non-leveraged ETPs that have traded below this volume criterion, but that track the same benchmark as an ETP that does meet the volume criterion, will be deemed eligible to be included as a Tier 1 NMS Stock." The Participants note that based on experience thus far with the Plan, certain thinly traded ETPs with wide quotes that are included as Tier 1 NMS Stocks because they track an index of an ETP that meets the volume criterion are triggering Trading Pauses.<sup>27</sup> These Trading Pauses are triggered because of bids or offers that cross the Price Band rather than because of an execution of a trade in the underlying security. This results in certain ETPs that have not traded during the day triggering Trading Pauses and requiring a reopening auction process, despite the lack of trading in that security.<sup>28</sup> The amendment to Section I of Appendix A will reduce the potential for certain thinly-traded NMS Stock in Tier 1 that have not experienced any trading volatility to be halted and then have to go through a reopening auction process. Based on the Participants' statements, the Commission believes that the proposal to amend Section I of

<sup>26</sup> The Participants noted that Primary Listing Exchanges will be filing proposed rule changes with the Commission to update their respective closing procedures to address the ability to permit additional interest to be entered for the purpose of a closing auction if there is a Trading Pause declared near the end of Regular Trading Hours. See Notice, *supra* note 4.

<sup>27</sup> The Participants noted that since the initial date of Plan operations through to July 8, 2013, there have been 32 Trading Pauses in NYSE Arca-listed securities triggered pursuant to the Plan. These Trading Pauses have been in only ten NMS Stocks, some more than once a day, and all are ETPs with less than \$2,000,000 notional ADV. The symbols are BXDB, BDG, GIY, VIOO, BOS, SAGG, IELG, IESM, HUSE, and GMTB. See *id.*

<sup>28</sup> See *id.*

Appendix A of the Plan is consistent with Section 11A of the Act.

The Commission reiterates its expectation that the Participants will continue to monitor the scope and operation of the Plan and study the data produced during that time with respect to such issues, and will propose any modifications to the Plan that may be necessary or appropriate.<sup>29</sup> Similarly, the Commission expects that the Participants will propose any modifications to the Plan that may be necessary or appropriate in response to the data being gathered by the Participants during the pilot period, including any proposed changes to thinly-traded NMS Stocks in Tier 2 that have not experienced any trading volatility.

Therefore, the Commission finds that the Fifth Amendment to the Plan is consistent with Section 11A of the Act<sup>30</sup> and Rule 608 thereunder.<sup>31</sup>

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 11A of the Act<sup>32</sup> and Rule 608 thereunder,<sup>33</sup> that the Fifth Amendment to the Plan (File No. 4-631) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>34</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013-24019 Filed 10-1-13; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-70520; File No. SR-NYSEARCA-2013-94]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services Regarding Calculation of the Mid-Point Passive Liquidity Order Tier

September 26, 2013.

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

<sup>29</sup> See Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012).

<sup>30</sup> 15 U.S.C. 78k-1.

<sup>31</sup> 17 CFR 242.608.

<sup>32</sup> 15 U.S.C. 78k-1.

<sup>33</sup> 17 CFR 242.608.

<sup>34</sup> 17 CFR 200.30-3(a)(29).

<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.

September 17, 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 the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services (the "Fee Schedule") regarding calculation of the Mid-Point Passive Liquidity ("MPL") Order Tier. The Exchange proposes to implement the fee change on October 1, 2013. The text of the proposed rule change is available on the Exchange's Web site 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 amend the Fee Schedule regarding calculation of the MPL Order Tier.<sup>4</sup> The Exchange proposes to implement the fee change on October 1, 2013.

Under the MPL Order Tier, MPL Orders that provide liquidity to the Exchange receive a credit of \$0.0020 per share for Tape A, B and C Securities. As specified in the Fee Schedule, the MPL

<sup>4</sup> See Securities Exchange Act Release No. 69926 (July 3, 2013), 78 FR 41154 (July 9, 2013) (SR-NYSEARCA-2013-67). A Passive Liquidity ("PL") Order is an order to buy or sell a stated amount of a security at a specified, undisplayed price. See Rule 7.31(h)(4). An MPL Order is a PL Order executable only at the midpoint of the Protected Best Bid and Offer. See Rule 7.31(h)(5).

Order Tier currently applies to ETP Holders, including Market Makers, that execute an average daily volume ("ADV") of MPL Orders during the month that is 0.0775% or more of U.S. consolidated ADV ("CADV").<sup>5</sup> For all other fees and credits, Tiered or Basic Rates apply based on a firm's qualifying levels.<sup>6</sup>

The Exchange proposes to specify that the 0.0775% threshold includes only MPL Orders that provide liquidity, whereas the Fee Schedule currently specifies that it includes executed MPL Orders, which could also include MPL Orders that remove liquidity. For example, if U.S. CADV during a month is 6.5 billion shares across Tapes A, B and C, an ETP Holder would need to execute an ADV of at least 5,037,500 shares of providing MPL Orders during the month in order to qualify for the applicable MPL Order Tier credit of \$0.0020 per share, in which case the ETP Holder's executions of MPL Orders that provided liquidity would receive a credit of \$0.0020 per share for Tape A, B and C Securities. Under this example, an ETP Holder that executed an ADV of less than 5,037,500 shares of providing MPL Orders during the month would not qualify for the MPL Order Tier and, therefore, the ETP Holder's executions of MPL Orders that provided liquidity would receive a credit of \$0.0015 per share for Tape A, B and C Securities.

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,<sup>7</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(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 change is reasonable because the proposed specification would result

in the MPL Order Tier threshold relating only to volume that provides liquidity, which would be identical to the type of volume to which the corresponding credit would apply. The Exchange also believes that the proposed change is reasonable because the MPL Order Tier and corresponding credit of \$0.0020 per share would continue to incentivize ETP Holders to submit additional MPL Orders that provide liquidity on the Exchange. This would continue to increase the liquidity available on the Exchange and, therefore, potential price improvement to incoming marketable orders submitted to the Exchange. In this regard, MPL Orders allow for additional opportunities for passive interaction with trading interest on the Exchange and are designed to offer potential price improvement to incoming marketable orders submitted to the Exchange.<sup>9</sup> The Exchange also believes that the proposed change is equitable and not unfairly discriminatory because the MPL Order Tier would continue to be available to all ETP Holders to qualify for and would apply equally to providing MPL Orders from all ETP Holders in all Tape A, B and C Securities traded on the Exchange.

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>10</sup> 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 Exchange believes that the proposed change would continue to encourage competition, including by attracting additional liquidity to the Exchange, which would continue to make the Exchange a more competitive venue for, among other things, order execution and price discovery. All ETP Holders have the ability to submit MPL Orders, and ETP Holders could readily choose to submit additional liquidity-providing MPL Orders in order to qualify for the MPL Order Tier. The Exchange does not believe that the proposed change will impair the ability

of ETP Holders or competing order execution venues to maintain their competitive standing in the financial markets.

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 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 rule 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)<sup>11</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>12</sup> 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)<sup>13</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:

### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

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

<sup>12</sup> 17 CFR 240.19b-4(f)(2).

<sup>13</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>5</sup> U.S. 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.

<sup>6</sup> For ETP Holders that do not satisfy the MPL Order Tier threshold, an MPL Order that provides liquidity receives a credit of \$0.0015 per share for Tape A, B and C Securities. A \$0.0030 fee applies to MPL Orders in Tape A, B and C Securities that remove liquidity.

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

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

<sup>9</sup> See, e.g., Securities Exchange Act Release No. 54511 (September 26, 2006), 71 FR 58460, 58461 (October 3, 2006) (SR-PCX-2005-53).

<sup>10</sup> 15 U.S.C. 78f(b)(8).

• Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR–NYSEARCA–2013–94 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–2013–94. 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–2013–94 and should be submitted on or before October 23, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Kevin M. O'Neill,**  
Deputy Secretary.

[FR Doc. 2013–24011 Filed 10–1–13; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70511; File No. SR–EDGX–2013–35]

### Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend EDGX Rule 11.13, Clearly Erroneous Executions

September 26, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> notice is hereby given that on September 25, 2013, EDGX Exchange, Inc. (the “Exchange” or “EDGX”) filed with the Securities and Exchange Commission (“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 is filing with the Commission a proposal to extend a pilot program related to Rule 11.13, entitled “Clearly Erroneous Executions.” The Exchange also proposes to remove certain references to individual stock trading pauses contained in Rule 11.13(c)(4). The Exchange has designated this proposal as non-controversial and provided the Commission with the notice required by Rule 19b–4(f)(6)(iii) under the Act.<sup>3</sup> All of the changes described herein are applicable to EDGX Members. The text of the proposed rule change is available on the Exchange's Internet Web site at [www.directedge.com](http://www.directedge.com), at the Exchange's principal office, and at the Public Reference Room of the Commission.

#### 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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in

sections A, B and C below, of the most significant aspects 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 purpose of this filing is to extend the effectiveness of the Exchange's current rule applicable to Clearly Erroneous Executions and to remove references to individual stock trading pauses described in Rule 11.13(c)(4).

Portions of Rule 11.13, explained in further detail below, are currently operating as a pilot program set to expire on September 30, 2013.<sup>4</sup> The Exchange proposes to extend the pilot program to April 8, 2014.

On September 10, 2010, the Commission approved, on a pilot basis, changes to Exchange Rule 11.13 to provide for uniform treatment: (1) of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (2) in the event transactions occur that result in the issuance of an individual stock trading pause by the primary listing market and subsequent transactions that occur before the trading pause is in effect on the Exchange.<sup>5</sup> The Exchange also adopted additional changes to Rule 11.13 that reduced the ability of the Exchange to deviate from the objective standards set forth in Rule 11.13,<sup>6</sup> and in 2013, adopted a provision designed to address the operation of the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the “Limit Up-Limit Down Plan” or the “Plan”).<sup>7</sup> The Exchange believes the benefits to market participants from the more objective clearly erroneous executions rule should continue on a pilot basis through April 8, 2014, which is one year following the commencement of operations of the Plan. The Exchange believes that continuing the pilot during this time will protect against any unanticipated consequences. Thus, the Exchange believes that the protections of the Clearly Erroneous Rule should continue while the industry gains

<sup>4</sup> Securities Exchange Act Release No. 68814 (February 1, 2013), 78 FR 9086 (February 7, 2013) (SR–EDGX–2013–06).

<sup>5</sup> Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010) (SR–EDGX–2010–03).

<sup>6</sup> *Id.*

<sup>7</sup> See Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the “Limit Up-Limit Down Release”); see also Exchange Rule 11.13(i).

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

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> 17 CFR 240.19b–4(f)(6)(iii).

<sup>14</sup> 17 CFR 200.30–3(a)(12).