comply with a Trading Permit Holder's best execution obligations.

When placing an order with a Trading Permit Holder, customers may specifically instruct the Trading Permit Holder to route the order to a particular market for execution.[22] Proposed Interpretation and Policy .06 addresses situations where the customer has, on an unsolicited basis, specifically instructed the Trading Permit Holder to route that customer's order to a particular market for execution.[23] Under those circumstances, the Trading Permit Holder will not be required to make a best execution determination beyond that specific instruction; however, the Interpretation and Policy mandates that Trading Permit Holders process that customer's order promptly and in accordance with the terms of the order. The Interpretation and Policy also makes clear that where a customer has directed the Trading Permit Holder to route an order to another specific broker-dealer that is also a Trading Permit Holder, the exception will not apply to the receiving Trading Permit Holder to which the order was directed.[24]

Proposed Interpretation and Policy .07 codifies a Trading Permit Holder's obligation when it undertakes a regular and rigorous review of execution quality likely to be obtained from different market centers. These obligations are set forth and explained in various Commission releases and NASD *Notices to Members*.[25]

III. Commission's Findings

After careful review of the proposed rule change the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to self-regulatory organization.[26] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[27] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change is designed to protect customer orders by establishing requirements governing the trading ahead of customer orders by member firms and governing best execution and interpositioning with respect to the handling of customer orders. By CBOE aligning its customer protection rules with those of FINRA and other exchanges,[28] the Commission believes that the proposed rule change will help reduce the complexity of the customer order protection rules for those CBOE firms that also are subject to the customer protection rules of FINRA and other exchanges. Furthermore, the Commission believes that the proposed rules will help assure the protection of customer orders without imposing undue regulatory costs on industry participants.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[29] that the proposed rule change (SR–CBOE–2013–027), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–10876 Filed 5–7–13; 8:45 am]

BILLING CODE 8011–01–P

[22] When the order is for an NMS security, these orders are often referred to as ''directed orders.'' *See* 17 CFR 242.600(b)(19). Of note, directed orders are excluded from the order routing statistics required to be produced under Rule 606 of SEC Regulation NMS. *See* 17 CFR 242.606.

[23] The Interpretation and Policy also clarifies that a Trading Permit Holder's best execution obligations extend to all customer orders and is intended to avoid the potential misimpression that the paragraph limits the scope of the rule's requirements.

[24] For example, if a customer of Trading Permit Holder Firm A directs Trading Permit Holder Firm A to route an order to Trading Permit Holder Firm B, Trading Permit Holder Firm B will continue to have best execution obligations to that customer order received from Trading Permit Holder Firm A.

[25] *See, e.g.,* Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996) and NASD Notice to Members 01–22 (April 2001).

[26] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[27] 15 U.S.C. 78f(b)(5).

[28] *See* notes 5 and 6 *supra.*

[29] 15 U.S.C. 78s(b)(2).

[30] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69495; File No. SR–FICC–2013–04]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change to the Government Securities Division Rules and the Mortgage-Backed Securities Division Clearing Rules in Connection With the Implementation of the Foreign Account Tax Compliance Act (FATCA)

May 2, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 22, 2013, the Fixed Income Clearing Corporation (''FICC'') 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 substantially prepared by FICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule changes consist of modifications to the Rulebook of the Government Securities Division (''GSD'') and the Clearing Rules of the Mortgage-Backed Securities Division (''MBSD'') (collectively, the ''Rules'') of FICC in connection with implementation of sections 1471 through 1474 of the Internal Revenue Code of 1986, as amended, that were enacted as part of the Foreign Account Tax Compliance Act, and the Treasury Regulations or other official interpretations thereunder (collectively ''FATCA'').

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC 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. FICC has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.[3]

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

[2] 17 CFR 240.19b–4.

[3] The Commission has modified the text of the summaries prepared by the clearing agency.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Background

FATCA was enacted on March 18, 2010, as part of the Hiring Incentives to Restore Employment Act, and became effective, subject to transition rules, on January 1, 2013. The U.S. Treasury Department finalized and issued various implementing regulations (''FATCA Regulations'') on January 17, 2013. FATCA's intent is to curb tax evasion by U.S. citizens and residents through their use of offshore bank accounts. FATCA generally requires foreign financial institutions (''FFIs'') [4] to become ''participating FFIs'' by entering into agreements with the Internal Revenue Service (''IRS''). Under these agreements, FFIs are required to report to the IRS information on U.S. persons and entities that have (directly or indirectly) accounts with these FFIs. If an FFI does not enter into such an agreement with the IRS, FATCA will impose a 30% withholding tax on U.S.-source interest, dividends and other periodic amounts paid to such ''nonparticipating FFI'' (''Income Withholding''), as well as on the payment of gross proceeds arising from the sale, maturity or redemption of securities or any instrument yielding U.S.-source interest and dividends (''Gross Proceeds Withholding,'' and, together with Income Withholding, ''FATCA Withholding''). The 30% FATCA Withholding taxes will apply to payments made to a nonparticipating FFI acting in any capacity, including payments made to a nonparticipating FFI that is not the beneficial owner of the amount paid and acting only as a custodian or other intermediary with respect to such payment. To the extent that U.S.-source interest, dividend, and other periodic amount or gross proceeds payments are due to a nonparticipating FFI in any capacity, a U.S. payor, such as FICC, transmitting such payments to the nonparticipating FFI will be liable to the IRS for any amounts of FATCA Withholding that the U.S. payor should, but does not, withhold and remit to the IRS. For the reasons described below, FICC is not in a position to accept this liability and, by making the proposed rule changes set forth herein, is implementing preventive measures to protect itself against such liability.

In addition, under FATCA, a U.S. payor, such as FICC, could be required to deduct Income Withholding with regard to a participating FFI if either: (x) the participating FFI makes a statutory election to shift its withholding responsibility under FATCA to the U.S. payor; or (y) the U.S. payor is required to ignore the actual recipient and treat the payment as if made instead to certain owners, principals, customers, account holders or financial counterparties of the participating FFI. FICC is not in a position to accept this burden shift and, by making the proposed rule changes set forth herein, is implementing preventive measures to protect itself against such a burden.

As an alternative to FFIs entering into individual agreements with the IRS, the U.S. Treasury Department provided another means of complying with FATCA for FFIs which are resident in Non-U.S. jurisdictions that enter into intergovernmental agreements (''IGA'') with the United States.[5] Generally, such a jurisdiction (''FATCA Partner'') would pass laws to eliminate the conflicts of law issues that would otherwise make it difficult for FFIs in its jurisdiction to collect the information required under FATCA and transfer this information, directly or indirectly, to the United States. An FFI resident in a FATCA Partner jurisdiction would either transmit FATCA reporting to its local competent tax authority, which in turn would transmit the information to the IRS, or the FFI would be authorized/required by FATCA Partner law to enter into an FFI agreement and transmit FATCA reporting directly to the IRS. Under both IGA models, payments to such FFIs would not be subject to FATCA Withholding so long as the FFI complies with the FATCA Partner's laws mandated in the IGA.

Under the FATCA Regulations, (A) beginning January 1, 2014, FICC will be required to do Income Withholding on any payments made to any nonparticipating FFI approved for membership by FICC as of such date or thereafter, (B) beginning July 1, 2014, FICC will be required to do Income Withholding on any payments made to any nonparticipating FFI approved for membership by FICC prior to January 1, 2014 and (C) beginning January 1, 2017, FICC will be required to do Gross Proceeds Withholding on all nonparticipating FFIs, regardless when any such FFI's membership was approved.

Preparing for Implementation of FATCA

In preparation for FATCA's implementation, FFIs are being asked to identify their expected FATCA status as a condition of continuing to do business. Customary legal agreements in the financial services industry already contain provisions allocating the risk of any FATCA Withholding tax that will need to be collected, and requiring that, upon FATCA's effectiveness, foreign counterparties must certify (and periodically recertify) their FATCA status using the relevant tax forms that the IRS has announced it will provide.[6] Advance disclosure by an FFI client or counterparty would permit a withholding agent to readily determine whether it must, under FATCA, withhold on payments it makes to the FFI. If an FFI fails to provide appropriate compliance documentation to a withholding agent, such FFI would be presumed to be a nonparticipating FFI and the withholding agent will be obligated to withhold on certain payments.

As it applies to FICC specifically, FATCA will require FICC to deduct FATCA Withholding on payments to certain members arising from certain transactions processed by FICC on behalf of such members.[7] Because FATCA treats any entity holding financial assets for the account of others as a ''financial institution,'' FICC believes that almost all of its members which are treated as non-U.S. entities for federal income tax purposes, including those members that are U.S. branches of non-U.S. entities, will likely be FFIs under FATCA (collectively, ''FFI Members'').[8] As such, FICC will be liable to the IRS for any failures to withhold correctly under FATCA on payments made to its FFI Members.

In light of this, FICC has evaluated its existing systems and services to determine whether and how it may comply with its FATCA obligations. As a result of this evaluation, FICC has determined that its existing systems currently cannot process the new FATCA Withholding obligations with regard to the securities transactions processed by it, as no similar withholding obligation of this

[4] Non-U.S. financial institutions are referred to as ''foreign financial institutions'' or ''FFIs'' in the FATCA Regulations.

[5] As of the date of this proposed rule change filing, the United Kingdom, Mexico, Ireland, Switzerland, Spain, Norway Denmark, Italy and Germany have signed or initialed an IGA with the United States. The U.S. Treasury Department has announced that it is engaged in negotiations with more than 50 countries and jurisdictions regarding entering into an IGA.

[6] For example, credit agreements now routinely require foreign lenders to agree to provide certifications of their FATCA status under approved IRS forms to U.S. borrowers, and subscription agreements for alternative investment funds that are anticipated to earn U.S.-source income are routinely requiring similar covenants.

[7] FFI Members resident in IGA countries, that are compliant with the terms of applicable IGAs, should not be subject to FATCA Withholding.

[8] Currently, only a small percentage of the Corporation's members are treated as non-U.S. entities for federal income tax purposes.

magnitude has ever been imposed upon it to date, and FICC has therefore not built its systems to support such an obligation.

Further, the vast majority of the transactions that are processed at FICC are processed through its netting and settlement systems at its GSD and MBSD divisions (the ''Systems''). At GSD, the netting and settlement system service provides centralized, automated clearance and guaranteed settlement of eligible U.S. Treasury bills, notes, bonds, strips and book-entry non-mortgage-backed agency securities. Through netting, the GSD establishes a single net long or short position for each participant's daily trading activity in a given security. The participant's net position is the difference between all long and all short positions in a given security.

At MBSD, the mortgage-backed securities trades entering the MBSD clearing and settlement systems are settled using either the Settlement Balance Order system (SBO) or the Trade-for-Trade system (TFTD). The SBO settlement system is MBSD's trade netting system, which nets by automatically pairing off settlement obligations with like terms, such as MBS product, coupon rate, maturity and settlement date, on a multilateral basis, i.e., regardless of contra party identity, resulting in the fewest possible number of receive/deliver obligations. Through the Trade-for-Trade settlement system, members are given the opportunity to settle individual trades on a gross basis, as originally executed, following matching and comparison of each trade. Further netting is accomplished through MBSD's CCP Pool Netting service (''Pool Netting''). Members submit pool details (''Pool Instructs'') into the Pool Netting system for bilateral matching versus their counterparties' submissions. As many of the matched Pool Instructs as possible are then netted by the Pool Netting system. For pools that meet all the criteria, FICC steps in as the central counter-party to settle the net pool obligations with its members.

FICC believes that each division's net settlement functionality could make FATCA Withholding virtually impossible, or, at the very least, would create onerous efficiency and liquidity issues for both FICC and its membership. Undertaking FATCA Withholding, given FICC's settlement functionality, could require FICC in certain circumstances to resort to a draw on FICC's clearing fund for GSD or MBSD, as applicable (''Clearing Fund'') in order to fund FATCA Withholding taxes with regard to nonparticipating FFI Members in non-FATCA Partner jurisdictions whenever the net credit owed to such FFI Member is less than the 30% FATCA tax. For example, if a nonparticipating FFI (in a non-FATCA Partner jurisdiction) is owed a $100M payment from the sale of U.S. securities, but such nonparticipating FFI is in a net debit position at the end of that day because of FICC's net settlement functionality, there would be no payment to this FFI Member from which FICC can withhold. In this example, FICC would likely need to fund the $30M FATCA Withholding tax until such time as the FFI Member can reimburse FICC and, as FICC has no funds for this purpose, it would likely require a draw on the Clearing Fund.[9] FICC would need to consider an increase in the amount of cash required to be deposited into the Clearing Fund, either by FFI Members or perhaps all of its members, which would reduce such member's liquidity and could have significant systemic effects. The amount of the FATCA Withholding taxes would be removed from market liquidity, which could lead to increased risk of member failure and increased financial instability.

For the reasons explained above and the following additional reasons, FICC is proposing amendments to its Rules (detailed below) to implement preventive measures that would generally require all of FICC's (i) existing members that are treated as Non-U.S. entities for federal income tax purposes and (ii) any applicants applying to become members that are treated as Non-U.S. entities for federal income tax purposes to be participating FFIs:

- Undertaking FATCA Withholding by FICC (even if possible) would make it economically unfeasible for affected FFI Members to engage in transactions involving U.S. securities. It would likely also quickly cause a significant negative impact on such FFI Members' liquidity because such withholding taxes would be imposed on the very large sums that FICC pays to such FFI Members. Furthermore, members would be burdened with extra costs and the negative impact on liquidity caused by the likely need to substantially increase the amount of cash required to be deposited into the Clearing Fund.
- The cost of implementing a FATCA Withholding system for a small number of nonparticipating FFI Members would be substantial and disproportionate to the related benefit. Under the Model I IGA form and its executed versions with various FATCA Partners, FICC would not be required to withhold with regard to FFI residents in such FATCA Partner jurisdictions. Accordingly, FICC's withholding obligations under FATCA would effectively be limited to nonparticipating FFI Members in non-FATCA Partner jurisdictions. Since the cost of developing and maintaining a complex FATCA Withholding system would be passed on to FICC's members at large, it may burden members that otherwise comply with, or are not subject to, FATCA Withholding.
- As briefly noted above, if the proposed rule changes were not to take effect, in order to avoid counterparty credit risk, FICC would likely require each of the nonparticipating FFI Members in non-FATCA Partner jurisdictions to make initial or additional cash deposits to the Clearing Fund as collateral for the approximate potential FATCA tax liability of such nonparticipating FFI Member or otherwise adjust required deposits to the Clearing Fund. The amount of such deposits, which could amount to billions of dollars, would be removed from market liquidity.
- From the nonparticipating FFI Member's perspective, having 30% of its payments withheld and sent to the IRS would have a severe negative impact on such nonparticipating FFI Member's financial status. In many cases, the gross receipts would be for client accounts, and the nonparticipating FFI Member would need to make such accounts whole. Without receipt of full payment for its dispositions, the nonparticipating FFI Member would not have sufficient assets to fund its client accounts.
- The proposed rule changes set forth herein should not create business issues or be onerous to FICC's membership because requiring FFIs to certify (and to periodically recertify) their FATCA status, and imposing the costs of non-compliance on them, are becoming standard market practice in the United States, separate and apart from membership in FICC.

Proposed Rule Changes

Managing the risks inherent in executing securities transactions is a key component of FICC's business. The globalization of financial markets, the

[9] We note that the FATCA Regulations provide that ''clearing organizations'', which settle money on a net basis, may withhold on a similar net basis for FATCA purposes. However, it is unclear whether certain amounts being netted at the Corporation would qualify for the special FATCA netting rule. Even if the end of day net settlement amount would qualify as the correct amount to do FATCA Withholding on, the liquidity risks described herein are still present. This is because the sheer volume of the Corporation's net daily payments among the Corporation and members means that withholding FATCA tax from such net settlement payments, in any material proportion, would likely reduce liquidity and thus increase financial instability.

trading of more complex instruments and the application of new technology all make risk management more critical and challenging. FICC's ''risk tolerances'' (i.e., the levels of risk FICC is prepared to confront, under a range of possible scenarios, in carrying out its business functions) are determined by the Board of Directors, in consultation with the Group Chief Risk Officer. FICC uses a combination of risk management tools, including strict criteria for membership, to mitigate the risks inherent in its business.

In line with its risk management focus, FICC has determined that compliance with FATCA, such that FICC shall not be responsible for FATCA Withholding, should be a general membership requirement (A) for all applicants seeking membership at GSD or MBSD, as applicable, that are treated as non-U.S. entities for federal income tax purposes, and (B) for all existing FFI Members.[10] In connection therewith, FICC proposes to amend its Rules as follows:

• Amend GSD Rule 1 and MBSD Rule 1 to add ''FATCA'', ''FATCA Certification'', ''FATCA Compliance Date''[11], ''FATCA Compliant'' and ''FFI Member'', as defined terms;

• Amend GSD Rule 2A, Section 2(a)(v) and MBSD Rule 2A, Section 1 to (1) require foreign members to certify to FICC that they are FATCA Compliant and (2) add FATCA Compliance as a qualification requirement for any applicant that will be an FFI Member;

• Amend GSD Rule 2A Section 5 and MBSD Rule 2A Section 3 to add that each applicant must complete and deliver a FATCA Certification to FICC as part of its membership application unless FICC has waived this requirement with regard to membership type;

• Amend GSD Rule 2A Section 6 and MBSD Rule 2A Section 4 to add FATCA Compliance as a qualification requirement for any applicant that will be an FFI Member;

• Amend GSD Rule 3, Section 7 and MBSD Rule 3, Section 6 to specify that failure to be FATCA Compliant creates a duty upon an FFI Member (both new and existing) to inform FICC;

• Amend GSD Rule 3, Section 9 and MBSD Rule 3, Section 8 to require that all FFI Members (both new and existing), in general: (i) Agree not to conduct any transaction or activity through FICC if such FFI Member is not FATCA Compliant, (ii) certify and, as required under the timelines set forth under FATCA, periodically recertify, to FICC that they are FATCA Compliant; and (iii) indemnify FICC for any losses sustained by FICC resulting from such FFI Member's failure to be FATCA Compliant.

• FICC believes the proposed rule changes are consistent with the requirements of the Exchange Act. In particular, the proposed rule changes are consistent with Section 17A(b)(3)(F) of the Exchange Act[12] because they promote the prompt and accurate clearing and settlement of securities transactions by eliminating an uncertainty in payment settlement that would arise if FICC were subject to FATCA Withholding obligations under FATCA. The proposed rule changes are also consistent with Section 17A(b)(3)(D) of the Exchange Act[13] because they provide for the equitable allocation of reasonable dues, fees, and other charges among FICC's members. Specifically, the proposed rule changes allow FICC to comply with FATCA Regulations without developing and maintaining a complex FATCA Withholding system, the cost of which, as discussed above, would be would be passed on to FICC's members at large for the benefit of a small number of nonparticipating FFI Members.

(B) Clearing Agency's Statement on Burden on Competition

FICC does not believe that the proposed rule change will have any negative impact, or impose any burden, on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments relating to the proposed rule changes have not yet been solicited or received. FICC will notify the Commission of any written comments received by FICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be 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 Exchange 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.* Please include File Number SR–FICC–2013–04 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–FICC–2013–04. 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 FICC and on FICC's Web site (*http://www.dtcc.com/legal/rule_filings/*

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[10] FICC may grant a waiver under certain circumstances, provided, however, that FICC will not grant a waiver if it causes FICC to be obligated to withhold under FATCA on gross proceeds from the sale or other disposition of any property.

[11] Although Income Withholding with regard to FFI Members approved for membership by the Corporation prior to January 1, 2014 is first required under FATCA beginning July1, 2014, the proposed amendments to the GSD Rules and MBSD Rules would require such existing FFI Members to be FATCA compliant approximately 60 days prior to July 1, 2014 in order for the Corporation to comply with its disciplinary and notice processes as set forth in its Rules.

[12] 12 U.S.C. 78q–1(b)(3)(F).

[13] 12 U.S.C. 78q–1(b)(3)(D).

ficc/2013.php). 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–FICC–2013–04 and should be submitted on or before May 29, 2013.

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

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–10847 Filed 5–7–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69503; File No. SR–NYSEArca–2013–44]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Schedule of Fees and Charges for Exchange Services To Amend Step Up Tier 2 to Reduce the Volume Threshold Requirements Needed To Be Eligible for The Tier

May 2, 2013.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on April 22, 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 its Schedule of Fees and Charges for Exchange Services ("Fee Schedule") to amend Step Up Tier 2 to reduce the volume threshold requirements needed to be eligible for the tier. The Exchange proposes to implement the changes on May 1, 2013. The text of the proposed rule change is available on the Exchange's Web site 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

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 its Fee Schedule to amend Step Up Tier 2 to reduce the volume threshold requirements needed to be eligible for the tier. The Exchange proposes to implement the changes on May 1, 2013.

Currently, in order to qualify for Step Up Tier 2, an ETP Holder on a daily basis, measured monthly, must directly execute providing volume on NYSE Arca in an amount that is an increase of no less than 0.12% of U.S. consolidated average daily volume ("US CADV") in Tape A, Tape B, and Tape C securities for that month over the ETP Holder's average daily providing volume in June 2011 (the "Baseline Month"), subject to a minimum increase of 12 million average daily providing shares. The Exchange proposes to reduce the eligibility requirement for Step Up Tier 2 to no less than 0.10% of US CADV for the month over the ETP Holder's average daily providing volume in the Baseline Month, subject to a minimum increase of 10 million average daily providing shares. The Exchange does not propose to amend the credits for Step Up Tier 2.

By way of example, if an ETP Holder executed an average daily providing volume of 5 million shares in the Baseline Month, then to qualify for Step Up Tier 2 in a month where US CADV is 11 billion shares, that ETP Holder would need to increase its average daily providing volume by at least 11 million shares, or 0.10% of that month's US CADV, for a total average daily providing volume of at least 16 million shares.[4]

The Exchange notes that the proposed fee change will reverse the Step Up Tier 2 fee changes that became operative on April 1, 2013.[5] The Exchange is proposing the Step Up Tier 2 fee change because the previous fee change did not result in the anticipated increase in orders sent to the Exchange. As previously explained,[6] the goal of the Step Up Tiers is to incent ETP Holders to increase the orders sent directly to the Exchange and therefore provide liquidity that supports the quality of price discovery and promotes market transparency. In the Step Up Tiers Release, the Exchange explained that the Step Up Tiers were expected to benefit ETP Holders whose increased order flow provided added levels of liquidity (thereby contributing to the depth and market quality on the Exchange) but who are still not eligible for Tier 1, 2 or 3, or Investor Tier 1 or 2.[7] For similar reasons, the Exchange believes that lowering the volume requirements needed to be eligible for Step Up Tier 2 will allow a greater number of ETP Holders to qualify for the tier, which will in turn incent ETP Holders to increase the orders sent directly to the Exchange and therefore provide liquidity that supports the quality of price discovery and promotes market transparency. The Exchange believes that this especially is the case given that the $0.0029 credit for providing liquidity in Tape A and Tape C securities under Step Up Tier 2 is substantially higher than the credits for Tape A and Tape C securities under the Basic Rates ($0.0021) and Tier 3 ($0.0025).

The proposed changes are not otherwise intended to address any other problem, and the Exchange is not aware of any significant problem that the affected market participants would have in complying with the proposed changes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with

[14] 17 CFR 200.30–3(a)(12).

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

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] In addition, those ETP Holders that did not directly provide volume to NYSE Arca in the Baseline Month will be treated as having an average daily providing volume of zero for the Baseline Month. With respect to the increased percentage of US CADV, the volume requirements to reach Step Up Tier 2's pricing levels will adjust each calendar month based on the US CADV for that given month.

[5] *See* Securities Exchange Act Release No. 69305 (April 4, 2013), 78 FR 21443 (April 10, 2013) (SR–NYSEArca–2013–32).

[6] *See* Securities Exchange Act Release No. 64820 (July 6, 2011), 76 FR 40974 (July 12, 2011) (SR–NYSEArca–2011–41) ("Step Up Tiers Release").

[7] *Id.* at 76 FR 40975.