

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-77281; File No. SR-NYSEArca-2016-37)

March 3, 2016

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Amending the Fees for NYSE Arca Proprietary Market Data as They Apply to Federal Agency Customers

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 February 26, 2016, 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 fees for NYSE Arca proprietary market data as they apply to Federal agency customers. The proposed rule change is available on the Exchange’s website 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

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<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.

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 NYSE Arca Equities Proprietary Market Data Fee Schedule (“Fee Schedule”), to provide that market data fees do not apply to any Federal agency for their use of NYSE Arca real-time proprietary market data products. The term “Federal agency” as used in the Fee Schedule would include all Federal agencies subject to the Federal Acquisition Regulation (FAR),<sup>4</sup> as well as any Federal agency not subject to FAR that has promulgated its own procurement rules.<sup>5</sup>

The Exchange is proposing to specify that access fees, professional user fees and non-display fees do not apply to Federal agencies for those products to which those fees apply.<sup>6</sup> The proposal is designed to allow the Exchange to provide Federal agencies with NYSE Arca real-time proprietary market data products at no cost in support of Federal agencies’ regulatory responsibilities. With the adoption of the proposed fee waiver, the Exchange is not waiving any of its contractual rights and all Federal agencies that subscribe to NYSE Arca real-time

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<sup>4</sup> FAR is the principal set of rules governing the process by which the U.S. federal government purchases goods and services.

<sup>5</sup> See 48 CFR 2.101. FAR defines “Federal agency” as “any executive agency or any independent establishment in the legislative or judicial branch of the Government (except the Senate, the House of Representatives, the Architect of the Capitol, and any activities under the Architect’s direction).” “Executive agency” is defined as “an executive department, a military department, or any independent establishment within the meaning of 5 U.S.C. 101, 102, and 104(1), respectively, and any wholly owned Government corporation within the meaning of 31 U.S.C. 9101.”

<sup>6</sup> These products are currently NYSE Arca Integrated Feed, NYSE ArcaBook, NYSE Arca BBO, NYSE Arca Trades and NYSE Arca Order Imbalances.

proprietary market data products will be required to execute the appropriate subscriber agreement, which includes, among other things, provisions against the redistribution of data.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>7</sup> in general, and Sections 6(b)(4) and 6(b)(5) of the Act,<sup>8</sup> in particular, in that it provides an equitable allocation of reasonable fees among users and recipients of the data and is not designed to permit unfair discrimination among customers, issuers, and brokers.

The Exchange believes the proposal to eliminate the access fees, display fees for professional users, and non-display fees associated with its proprietary market data products for customers that are Federal agencies is reasonable, equitable and not unfairly discriminatory because it is designed to facilitate federal government regulation without giving an undue advantage to one set of commercial users over another. The Exchange believes that it is reasonable to assess no fees to Federal agencies that subscribe to the Exchange's proprietary market data products because Federal agencies do not use the Exchange's proprietary market data for commercial gain, but only for regulatory purposes.

### 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. In setting the proposed fees, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Federal agencies that will benefit from the proposed rule change, however, do not use the Exchange's proprietary market data products for commercial purposes and do not compete with commercial users of the data.

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

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

The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all users.

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 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>11</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:

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

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

<sup>11</sup> 15 U.S.C. 78s(b)(2)(B).

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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2016-37 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2016-37. 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 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-2016-37 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.<sup>12</sup>

Robert W. Errett  
Deputy Secretary

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