

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-77925; File No. SR-NYSEArca-2016-78)

May 26, 2016

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 Effective June 1, 2016

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 May 23, 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services (“Fee Schedule”). The Exchange proposes to implement the fee changes on June 1, 2016. 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

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

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule, as described below, and implement the fee changes on June 1, 2016.

On February 22, 2016, the Exchange commenced the implementation of Pillar, the Exchange's new technology trading platform.⁴ Pillar is the integrated trading technology platform designed to use a single specification for connection to the equities and options markets operated by NYSE Arca and its affiliates, New York Stock Exchange LLC and NYSE MKT LLC. NYSE Arca Equities was the first trading system to migrate to Pillar. Securities traded on the Exchange were migrated to Pillar in phases. The Exchange previously filed a proposed rule change to amend its Fee Schedule to adopt references that would be applicable during the migration to Pillar.⁵ Specifically, the Exchange adopted language stating that the Fee Schedule would also apply to securities traded on Pillar during the migration. The migration of securities

⁴ See Securities Exchange Act Release Nos. 74951 (May 13, 2015), 80 FR 28721 (May 19, 2015) (Notice) and 75494 (July 20, 2015), 80 FR 44170 (July 24, 2015) (Order) (SR-NYSEArca-2015-38) ("Pillar I Filing"); 75497 (July 21, 2015), 80 FR 45022 (July 28, 2015) (Notice) and 76267 (Oct. 26, 2015), 80 FR 66951 (Oct. 30, 2015) (Order) (SR-NYSEArca-2015-56) ("Pillar II Filing"); 75467 (July 16, 2015), 80 FR 43515 (July 22, 2015) (Notice) and 76198 (Oct. 20, 2015), 80 FR 65274 (Oct. 26, 2015) (Order) (SR-NYSEArca-2015-58) ("Pillar III Filing"); and 76085 (Oct. 6, 2015), 80 FR 61513 (Oct. 13, 2015) (Notice) and 76869 (Jan. 11, 2016) (Order) (SR-NYSEArca-2015-86) ("Pillar Auction Filing").

⁵ See Securities Exchange Act Release Nos. 77124 (February 12, 2016), 81 FR 8548 (February 19, 2016) (SR-NYSEArca-2016-18); and 77588 (April 12, 2016), 81 FR 22676 (April 18, 2016) (SR-NYSEArca-2016-54) ("Pillar Fee Filings").

to Pillar is now complete and all securities are now traded on Pillar. Therefore, the Exchange now proposes to amend the Fee Schedule to remove references adopted in the Pillar Fee Filings.

Mid-Point Passive Liquidity Order – Securities \$1.00 and Greater

The Exchange currently provides per share credits under Tier 1, Tier 2 and Basic Rates⁶ for Mid-Point Passive Liquidity (“MPL”) Orders that provide liquidity based on the Average Daily Volume (“ADV”) of provided liquidity in MPL Orders for Tape A, Tape B and Tape C Securities combined (“MPL Adding ADV”). Specifically, for ETP Holders and Market Makers that have MPL Adding ADV during a billing month of at least 3 million shares, the Exchange provides a credit of \$0.0015 for Tape A securities and \$0.0020 for Tape B and Tape C securities. For ETP Holders and Market Makers with MPL Adding ADV during a billing month of at least 1.5 million shares but less than 3 million shares, the Exchange provides a credit of \$0.0015 for Tape A, Tape B and Tape C securities. For ETP Holders and Market Makers with MPL Adding ADV during a billing month of less than 1.5 million shares, the Exchange provides a credit of \$0.0010 for Tape A, Tape B and Tape C securities. The Exchange also currently charges a fee of \$0.0030 per share for MPL Orders in Tape A, Tape B and Tape C securities that remove

⁶ Tier 1 applies to ETP Holders and Market Makers (1) that provide liquidity an average daily share volume per month of 0.70% or more of the US CADV. Tier 2 applies to ETP Holders and Market Makers that provide liquidity an average daily share volume per month of 0.30% or more, but less than 0.70% of the US CADV. Basic Rates apply when tier rates do not apply. Tier 3 applies to ETP Holders and Market Makers that provide liquidity an average daily share volume per month of 0.20% or more, but less than 0.30% of the US CADV. Basic Rates apply when tier rates do not apply. US CADV means United States Consolidated Average Daily Volume for transactions reported to the Consolidated Tape, excluding odd lots through January 31, 2014 (except for purposes of Lead Market Maker pricing), and excludes volume on days when the market closes early and on the date of the annual reconstitution of the Russell Investments Indexes. Transactions that are not reported to the Consolidated Tape are not included in US CADV.

liquidity from the Exchange that are not designated as “Retail Orders.”⁷ In addition, MPL Orders removing liquidity from the Exchange that are designated as Retail Orders are not currently subject to a fee. On Pillar, Mid-Point Passive Liquidity Order is named Mid-Point Liquidity Order and with this proposed rule change, the Exchange proposes to replace references to Mid-Point Passive Liquidity Order with Mid-Point Liquidity Order in each of the Tier 1, Tier 2 and Basic Rates sections of the Fee Schedule in which fees and credits for Mid-Point Liquidity Orders are described. The Exchange is not proposing any change to the fees charged or credits provides [sic] for Mid-Point Liquidity Orders in securities priced \$1.00 and greater.

Orders designated as retail orders for securities traded on the Exchange would need to meet the requirements of Rule 7.44P(a)(3) and with this proposed rule change, the Exchange proposes to amend the Fee Schedule to replace the application of Rule 7.44 with Rule 7.44P to such securities.

Opening Auction — Securities \$1.00 and Greater

The Fee Schedule currently provides that a fee of \$0.0015 per share is charged for certain orders executed in the Opening Auction. The order types that may trade in these auctions include Market Orders and Auction-Only Orders.⁸ This fee is capped at \$20,000 per month per Equity Trading Permit ID. On Pillar, the Opening Auction is named the Early Open Auction and

⁷ Retail Orders are defined in the Fee Schedule as orders designated as retail orders and that meet the requirements of Rule 7.44P(a)(3), but that are not executed in the Retail Liquidity Program. The Retail Liquidity Program is a pilot program designed to attract additional retail order flow to the Exchange for NYSE Arca-listed securities and securities traded pursuant to unlisted trading privileges while also providing the potential for price improvement to such order flow. See Rule 7.44P. See Securities Exchange Act Release No. 71176 (December 23, 2013), 78 FR 79524 (December 30, 2013) (SR–NYSEArca–2013–107).

⁸ See NYSE Arca Equities Rule 7.31P(c). An Auction-Only order is executable during the next auction following entry of the order. If the Auction-Only Order is not executed in the auction, the balance is cancelled. Auction-Only orders are only available for auctions that take place on the Exchange and are not routed to other exchanges.

with this proposed rule change, the Exchange proposes to replace references to Opening Auction with Early Open Auction in each of the Tier 1, Tier 2 and Basic Rates sections of the Fee Schedule in which fees for trades in the Early Open Auction are described. The Exchange is not proposing any change to the fees charged for orders executed in the Early Open Auction in securities priced \$1.00 and greater.

Market Order Auction — Securities \$1.00 and Greater

The Fee Schedule currently provides that a fee of \$0.0015 per share is charged for certain orders executed in the Market Order Auction. The order types that may trade in these auctions include Market Orders and Auction-Only Orders. This fee is capped at \$20,000 per month per Equity Trading Permit ID. On Pillar, the Market Order Auction is named the Core Open Auction and with this proposed rule change, the Exchange proposes to replace references to Market Order Auction with Core Open Auction in each of the Tier 1, Tier 2 and Basic Rates sections of the Fee Schedule in which fees for trades in the Core Open Auction are described. The Exchange is not proposing any change to the fees charged for orders executed in the Core Open Auction in securities priced \$1.00 and greater.

Market Order Auction — Securities Less Than \$1.00

The Fee Schedule currently provides that a fee of 0.1% of the total dollar value will be charged for round lot and odd lot executions of securities priced below \$1.00 that take place during a Market Order Auction. On Pillar, the Market Order Auction is named the Core Open Auction and with this proposed rule change, the Exchange proposes to replace references to Market Order Auction with Core Open Auction. The Exchange is not proposing any change to the fee charged for orders executed in the Core Open Auction in securities priced below \$1.00.

Passive Liquidity Order — Securities \$1.00 and Greater

The Fee Schedule currently provides that no fee or credit is charged for Passive Liquidity Orders that provide liquidity to the Book in Tape A, Tape B or Tape C securities. The Fee Schedule further provides that a fee of \$0.0030 per share is charged for Passive Liquidity Orders that take liquidity from the Book in Tape A and Tape C securities, and a fee of \$0.0028 per share is charged for such orders that take liquidity from the Book in Tape B securities. On Pillar, Passive Liquidity Order is named Limit Non-Displayed Order and with this proposed rule change, the Exchange proposes to replace references to Passive Liquidity Order with Limit Non-Displayed Order in each of the Tier 1, Tier 2, Tier 3 and Basic Rates sections of the Fee Schedule in which fees for Limit Non-Displayed Orders are described. Additionally, the Exchange proposes to raise the fee for Limit Non-Displayed Orders in securities priced \$1.00 and greater that take liquidity in Tape B Securities to \$0.00285 per share referenced in the Tier 1, Tier 2 and Tier 3 sections of the Fee Schedule. The Exchange is not proposing any change to the fee charged for orders that take liquidity in Tape A and Tape C securities or to the rebate provided for Limit Non-Displayed Orders that add liquidity in securities priced \$1.00 and greater or to the fee for Limit Non-Displayed Orders in securities priced \$1.00 and greater that take liquidity in Tape B securities referenced in the Basic Rates section of the Fee Schedule.

Passive Liquidity Order — Lead Market Makers

For Lead Market Makers (“LMMs”),⁹ the Exchange currently provides a \$0.0015 per share credit for Passive Liquidity Orders that provide liquidity in securities for which they are registered as the LMM. On Pillar, Passive Liquidity Order is named Limit Non-Displayed Order and with this proposed rule change, the Exchange proposes to replace references to Passive

⁹ The term “Lead Market Maker” means a registered Market Maker that is the exclusive Designated Market Maker in listings for which the Exchange is the primary market. See NYSE Arca Equities Rule 1.1(ccc).

Liquidity Order with Limit Non-Displayed Order in the section of the Fee Schedule related to Market Maker Fees and Credits. The Exchange is not proposing any change to the credit provided to LMMs for Limit Non-Displayed Orders.

Post No Preference Blind Order — Lead Market Makers

For LMMs, the Exchange currently provides a \$0.0030 per share credit for orders that provide undisplayed liquidity in Post No Preference Blind (PNP B) Orders to the Book in securities for which they are registered as LMMs. On Pillar, PNP B Order is named Arca Only Order and with this proposed rule change, the Exchange proposes to replace references to PNP B Order with Arca Only Order on the Fee Schedule. The Exchange is not proposing any change to the credit provided to LMMs that provide undisplayed liquidity in securities in which they are registered as LMMs using Arca Only Orders.

Closing Auction – Securities \$1.00 and Greater

The Fee Schedule currently provides that a fee of \$0.0010 per share is charged for Market,¹⁰ Market-On-Close (“MOC”)¹¹ and Limit-On-Close (“LOC”)¹² Orders executed in a Closing Auction. The Exchange also currently charges this \$0.0010 per share fee for Auction-Only Orders that are executed in a Closing Auction, which are effectively equivalent to a MOC Order or LOC Order. The Exchange does not charge for Limit Orders that are executed in a Closing Auction. This fee is applicable to Tape A, Tape B and Tape C securities and is

¹⁰ A Market Order is an unpriced order to buy or sell a stated amount of security that is to be traded at the best price obtainable without trading through the NBBO. A Market Order must be designated Day and will be rejected on arrival or cancelled if resting if there is no contra-side NBBO. See NYSE Arca Equities Rule 7.31P(a)(1).

¹¹ A MOC Order is a Market Order that is to be traded only during the Closing Auction. See NYSE Arca Equities Rule 7.31P(c)(4).

¹² A LOC Order is a Limit Order that is to be traded only during the Closing Auction. See NYSE Arca Equities Rule 7.31P(c)(3).

referenced in Tier 1, Tier 2 and Basic Rates sections of the Fee Schedule. The Exchange proposes to raise this fee to \$0.0012 per share for Tape A, Tape B and Tape C securities referenced in the Basic Rates section only. The fee for Tape A, Tape B and Tape C securities referenced in Tier 1 and Tier 2 of the Fee Schedule remain unchanged.

Tape B Orders

The Fee Schedule currently provides that a fee of \$0.0028 per share is charged for orders that take liquidity from the Book in Tape B securities in each of Tier 1, Tier 2, Tier 3, and Cross-Asset Tier 2 sections of the Fee Schedule, and for Limit Non-Displayed Orders that take liquidity from the Book in Tape B securities in each of Tier 1, Tier 2 and Tier 3 of the Fee Schedule. The Exchange proposes to increase this fee to \$0.00285 per share.

LMM Transaction Fees

The Exchange currently charges a fee of \$0.0028 per share to LMMs for orders in primary listed securities that remove liquidity from the NYSE Arca Book. The Exchange proposes to increase this fee to \$0.00285 per share.

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

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹³ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,¹⁴ 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

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(4) and (5).

discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed changes to the Fee Schedule, which include the deletion of references to order types that have been renamed on Pillar, is reasonable, equitable and not unfairly discriminatory because the changes are intended to add clarity to the Fee Schedule and avoid investor confusion, which is in the public interest. The Exchange further believes that the proposed changes are designed to enable market participants to better understand how Exchange fees would be applicable to market participants, which should make the overall Fee Schedule more transparent and comprehensive to the benefit of the investing public. Therefore, the Exchange believes these changes will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

The Exchange believes that the proposal to raise the fee charged for Market, MOC, LOC and Auction-Only Orders executed in a Closing Auction referenced in the Basic Rates section is reasonable because the proposed rate is within a range of fees charged by other exchanges. For example, Bats BZX Exchange (“BZX”) currently charges a \$0.0010 per share fee for orders in BZX listed securities executed in a Closing Auction on that exchange.¹⁵ Additionally, NASDAQ Stock Market (“NASDAQ”) charges a fee that ranges between \$0.0008 and \$0.0015 per share for certain orders executed during the NASDAQ Closing Cross on that exchange.¹⁶ The Exchange further believes that the proposed fee increase is equitable and not unfairly discriminatory because it would apply to all Market, MOC, LOC and Auction-Only Orders executed in a Closing Auction in securities with a per share price of \$1.00 and greater.

¹⁵ See BZX Fee Schedule at http://www.bats.com/us/equities/membership/fee_schedule/bzx/.

¹⁶ See Execution Fees for the NASDAQ Closing Cross at <http://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2>.

The Exchange believes that the proposal to increase the fee charged for orders in Tape B Securities in Tier 1, Tier 2, Tier 3 and Cross-Asset Tier 2 that take liquidity from the Book, and for Limit Non-Displayed Orders that take liquidity from the Book in Tape B securities in each of Tier 1, Tier 2 and Tier 3, is reasonable because the proposed rate will continue to be lower than the fee charged by other exchanges. For example, Bats EDGX Exchange (“EDGX”) currently charges a fee of \$0.0029 per share for orders that remove liquidity in Tape B securities on that exchange,¹⁷ while NASDAQ charges a fee of \$0.0030 per share for orders that remove liquidity in Tape B securities on that exchange.¹⁸ The Exchange further believes that the proposed fee increase is equitable and not unfairly discriminatory because it would apply to all orders in Tape B Securities in Tier 1, Tier 2, Tier 3 and Cross-Asset Tier 2 that take liquidity from the Book.

The Exchange believes that it is reasonable to increase the fee charged to LMMs for orders in primary listed securities that remove liquidity from the NYSE Arca Book as this fee would be the same as the fee increase proposed by the Exchange to Tier 1, Tier 2, Tier 3 and Cross-Asset Tier 2 ETP Holders and Market Makers that take liquidity in Tape B securities. In addition, the proposed fee change is equitable and not unfairly discriminatory because it would apply uniformly to all similarly situated LMMs.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will not [sic] impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the

¹⁷ See EDGX Fee Schedule at http://www.bats.com/us/equities/membership/fee_schedule/edgx/.

¹⁸ See NASDAQ Price list at <http://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2>.

Act. With respect to the changes related to the renaming of order types on Pillar, the proposed changes are not designed to address any competitive issue but rather provide the public and investors with a Fee Schedule that is transparent. The proposed change to raise fees does not impose any burden on competition as the fee changes are consistent with the fees charged by other exchanges.¹⁹

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)²⁰ of the Act and subparagraph (f)(2) of Rule 19b-4²¹ 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)²² of the Act to determine whether the proposed rule change should be approved or disapproved.

¹⁹ See supra, notes 15 – 18.

²⁰ 15 U.S.C. 78s(b)(3)(A).

²¹ 17 CFR 240.19b-4(f)(2).

²² 15 U.S.C. 78s(b)(2)(B).

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-2016-78 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NYSEArca-2016-78. 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 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-2016-78, 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.²³

Brent J. Fields
Secretary

²³ 17 CFR 200.30-3(a)(12).