

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-78479; File No. SR-NYSEArca-2016-105)

August 4, 2016

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Options Fee Schedule

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 July 29, 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 amend the NYSE Arca Options Fee Schedule (“Fee Schedule”). The Exchange proposes to implement the fee change effective August 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 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 15 U.S.C. 78a.

³ 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 purpose of this filing is to add the concepts of “Appointed OFP” and “Appointed MM” to the Exchange’s Fee Schedule, effective August 1, 2016, which would increase opportunities for firms to qualify for various volume tier discounts and rebates.

Specifically, the Exchange proposes to allow NYSE Arca Market Makers (“Marker Makers”) to designate an Order Flow Provider (“OFP”)⁴ as its “Appointed OFP” and to likewise allow OFPs to designate a Market Maker as its “Appointed MM.”⁵ As proposed, OTP Holders and OTP Firms (each, an “OTP”; collectively, “OTPs”) would effectuate the designation – of an Appointed OFP or Appointed MM – by each sending an email to the Exchange.⁶ The Exchange would view corresponding emails as acceptance of such an appointment and would only recognize one such designation for each party once every 12-months, which designation would remain in effect unless or until the Exchange receives an email from either party indicating that the appointment has been terminated.⁷ The Exchange believes that this requirement would impose a measure of exclusivity and would enable both parties to rely upon each other’s, and potentially increase, transaction volumes executed on the Exchange, which is beneficial to all Exchange participants.

⁴ See Rule 6.1A(a)(21) (defining OFP as any OTP Holder that submits, as agent, orders to the Exchange).

⁵ See proposed Endnote 15 to Fee Schedule.

⁶ See id.

⁷ See id.

The Exchange proposes to allow an OTP to opt to combine its volume with that of its Appointed OFP/Appointed MM to qualify for the various incentive programs offered on the Exchange. First, an OTP with an Appointed OFP/Appointed MM would be able to aggregate certain of its volumes with that of its Appointed OFP/Appointed MM for purposes of qualifying for certain posting credits available in the Customer and Professional Customer Monthly Posting Credit Tiers and Qualifications for Executions in Penny Pilot Issues (“Customer Posting Tiers”) and Market Maker Monthly Posting Credit Tiers and Qualifications for Executions in Penny Pilot Issues and SPY (“Market Maker Posting Tiers”).⁸ Currently, an OTP can only aggregate its volume with that of its affiliate(s).⁹ The concept of Appointed OFP/Appointed MM would apply in those instances where an OTP qualifies for a favorable fee by calculating qualifying volume through combining its transactions with that of Appointed OFP/Appointed MM. However, an OTP that has both an Appointed OFP/Appointed MM and any affiliate(s) may only aggregate volumes with one of these two, not both. Thus, the Exchange proposes to modify the Fee Schedule to provide that in calculating qualifications for monthly posting credits, “the Exchange would include the activity of either (i) affiliates or (ii) an Appointed OFP/Appointed MM.”¹⁰ To make clear that the volume of any affiliate(s) or an Appointed OFP/Appointed MM may be included in the monthly calculations for achieving any of the tiers, the Exchange proposes to

⁸ See id.

⁹ See Fee Schedule, available here, https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf (explicitly providing that OTPs may combine volumes with affiliates to take advantage of Tiers 2 and 5 of the Customer Posting Tiers, and the Super Tier of the Market Maker Posting Tiers). See also Endnote 8 citing Rule 1.1(a) (defining an affiliate as being a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified).

¹⁰ See proposed Endnote 8 to Fee Schedule Fee.

remove the asterisks from Tiers 2 and 5 of the Customer Posting Tiers and the Super Tier of the Market Maker Posting Tiers, as well as the corresponding asterisk at the bottom of each table.

In addition to the Customer Posting Tiers and the Market Maker Posting Tiers, as proposed, volumes of an Appointed OFP/Appointed MM (or, of any affiliate(s)) would also be applied in calculating whether an OTP achieved credits or rebates available through the Exchange's other incentive programs, including (i) the Customer and Professional Customer Incentive Program; (ii) the Market Maker Incentive Program; (iii) the Customer and Professional Customer Posting Credit Tiers In Non Penny Pilot Issues; and (iv) the Discount in Take Liquidity Fees for Professional Customer, Market Maker, Firm, and Broker Dealer Liquidity Removing Orders. In this regard, Exchange proposes to add language making clear that the calculations for achieving the monthly volume thresholds would include transaction volume from any of an OTP's affiliates or its Appointed MM or Appointed OFP (as applicable), which would add clarity and transparency to the Fee Schedule. As noted above, an OTP that has both an Appointed OFP/Appointed MM and any affiliate(s) may only aggregate volumes with one of these two, not both.¹¹

The Exchange also proposes to add reference to Endnote 8, as modified, to the beginning of each of the incentive programs discussed herein to make clear how the Exchange calculates the qualifications for monthly posting credits and discounts.¹² Given the proposal to refer to Endnote 8 at the beginning of each incentive program, the Exchange proposes to delete

¹¹ See id.

¹² See id. The Exchange has added the word "discount" to the first sentence of Endnote 8 to make clear that the calculation for monthly qualification also applies to the Discount in Take Liquidity Fees for Professional Customer, Market Maker, Firm, and Broker Dealer Liquidity Removing Orders. See proposed Endnote 8 to Fee Schedule Fee.

references to Endnote 8 that appear elsewhere in the text regarding the incentives, which would eliminate redundancy and add clarity to the Fee Schedule.¹³

The Exchange does not propose to modify any of the volume qualifications or the associated credits and discounts for the various incentive programs at this time.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁴ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,¹⁵ 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 proposal is reasonable, equitable and not unfairly discriminatory for the following reasons. First, the proposal would be available to all Market Makers and OFPs and the decision to be designated as an “Appointed OFP” or “Appointed MM” would be completely voluntary and an OTP may elect to accept this appointment or not. In addition, the proposed changes would enable firms that are not currently eligible for certain credits or discounts to avail themselves of these credits/discounts as well increase opportunities for firms that are currently eligible for certain credits/discounts to potentially achieve a higher tier, thus qualifying to higher credits. The Exchange believes these proposed changes would incent firms to direct their order flow to the Exchange. Specifically, the proposed changes would enable any Market Maker – not just those with affiliates – to pool certain volumes to potentially qualify its Appointed OFP for

¹³ For example, the Exchange proposes to delete reference to Endnote 8 from Tiers 4 and 7 of the Customer Posting Tiers.

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(4) and (5).

credits/discounts available on the Exchange. Moreover, the proposed change would allow any OFP, by virtue of designating an Appointed MM, to aggregate certain of its own volumes with the activity of its Appointed MM, which would enhance the OFP's potential to qualify for additional credits and discounts. The Exchange believes these proposed changes would incent Appointed OFPs and OFPs with an Appointed MM to direct their order flow to the Exchange, which additional liquidity would benefit all market participants (including those market participants that are not currently affiliated and/or opt not to become an Appointed OFP) by providing more trading opportunities and tighter spreads. The Exchange also notes that the proposed changes are reasonable as other exchanges have adopted similar concepts for their own affiliate-based incentive programs.¹⁶

Similarly, the proposal, which would permit the opportunity for both parties to rely upon each other's, and potentially increase, transaction volumes, are reasonable, equitable and not unfairly discriminatory because it may encourage market making firms to participate in the Exchange's Market Maker Incentive Program or the Market Maker Posting Tiers, which potential increase in order flow, capital commitment and resulting liquidity on the Exchange would benefit all market participants by expanding liquidity, providing more trading opportunities and tighter spreads.

¹⁶ See NYSE Amex Options Fee Schedule, [available here, https://www.nyse.com/publicdocs/nyse/markets/amex-options/NYSE_Amex_Options_Fee_Schedule.pdf](https://www.nyse.com/publicdocs/nyse/markets/amex-options/NYSE_Amex_Options_Fee_Schedule.pdf) (allowing aggregation of volume to qualify for the Amex Customer Engagement ("ACE") Program); Chicago Board Options Exchange, Inc. ("CBOE") fee schedule, [available here, https://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf](https://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf) (allowing aggregation of volume to qualify for credits available under an Affiliated Volume Plan or "AVP"); Bats BZX Exchange, Inc.'s ("BZX") fee schedule, [available here, https://batstrading.com/support/fee_schedule/bzx/](https://batstrading.com/support/fee_schedule/bzx/) (allowing aggregation of volume to qualify for tiered pricing); NASDAQ Options Market LLC ("NOM") fee schedule, [available here, http://www.nasdaqtrader.com/Micro.aspx?id=OptionsPricing](http://www.nasdaqtrader.com/Micro.aspx?id=OptionsPricing) (allowing aggregation of volume to qualify for various pricing incentives).

The proposal is also reasonable, equitable and not unfairly discriminatory because the Exchange would only process one designation of an “Appointed OFP” or “Appointed MM” per year, which requirement would impose a measure of exclusivity while allowing both parties to rely upon each other’s, and potentially increase, transaction volumes executed on the Exchange to the benefit of all Exchange participants.

Finally, the Exchange believes the proposal to make clarifying changes to the incentive programs, including to make clear that the volumes of affiliates or an Appointed OFP/ Appointed MM would apply to all tiers and that the calculations for achieving the monthly volume posting credits and discounts are set forth in Endnote 8, would add transparency and internal consistency to the Fee Schedule, which would make it easier for market participants to navigate and comprehend.

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, 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. The Exchange believes that the proposed changes are pro-competitive as they would increase opportunities for additional firms to qualify for various credits and discounts, which may increase intermarket and intramarket competition by incenting Appointed OFPs and Appointed MMs to direct their orders to the Exchange, thereby increasing the volume of contracts traded on the Exchange and enhancing the quality of quoting. Enhanced market quality and increased transaction volume that results from the anticipated increase in order flow directed to the Exchange would benefit all market participants and improve competition on the Exchange. Moreover, the clarifying changes are pro-competitive to the

extent the changes add transparency and internal consistency to the Fee Schedule, which would make it easier for market participants to navigate and comprehend.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. 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)¹⁷ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁸ 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)¹⁹ of the Act to determine whether the proposed rule change should be approved or disapproved.

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f)(2).

¹⁹ 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-2016-105 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-2016-105. 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-2016-105, 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.²⁰

Robert W. Errett
Deputy Secretary

²⁰ 17 CFR 200.30-3(a)(12).