

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-79597; File No. SR-NYSEArca-2016-165)

December 19, 2016

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services

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 December 13, 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 NYSE Arca Equities Schedule of Fees and Charges for Exchange Services (“Fee Schedule”). The Exchange proposes to implement the fee change effective December 13, 2016.<sup>4</sup> The proposed 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

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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.

<sup>4</sup> The Exchange originally filed to amend the Fee Schedule on December 2, 2016 (SR-NYSEArca-2016-162) and withdrew such filing on December 13, 2016.

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 to amend the volume criteria for the Exchange's tiered-rebate structure applicable to Lead Market Makers ("LMMs")<sup>5</sup> and to ETP Holders and Market Makers affiliated with the LMM that provide liquidity in Tape B securities to the NYSE Arca Book. The Exchange proposes to implement the fee change effective December 13, 2016.

The Exchange currently provides tier-based incremental credits for orders that provide displayed liquidity to the NYSE Arca Book in Tape B Securities.<sup>6</sup> Specifically, LMMs that are registered as the LMM in Tape B securities that have a consolidated average daily volume ("CADV") in the previous month of less than 100,000 shares ("Less Active ETP Securities"), and the ETP Holders and Market Makers affiliated with such LMMs, currently receive an incremental credit for orders that provide displayed liquidity to the Book in any Tape B Securities that trade on the Exchange.<sup>7</sup> The current incremental credits and volume thresholds

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<sup>5</sup> The term "Lead Market Maker" is defined in Rule 1.1(ccc) to mean a registered Market Maker that is the exclusive Designated Market Maker in listings for which the Exchange is the primary market.

<sup>6</sup> See Securities Exchange Act Release No. 76084 (October 6, 2015), 80 FR 61529 (October 13, 2015) (SR-NYSEArca-2015-87).

<sup>7</sup> The Exchange defines "affiliate" to "mean any ETP Holder under 75% common ownership or control of that ETP Holder." See Fee Schedule, NYSE Arca Marketplace: General, Section II(c).

are as follows:

- An additional credit of \$0.0004 per share if an LMM is registered as the LMM in at least 300 Less Active ETP Securities
- An additional credit of \$0.0003 per share if an LMM is registered as the LMM in at least 200 but less than 300 Less Active ETP Securities
- An additional credit of \$0.0002 per share if an LMM is registered as the LMM in at least 100 but less than 200 Less Active ETP Securities

The number of Less Active ETP Securities for the billing month is based on the number of Less Active ETP Securities in which an LMM is registered as the LMM on the last business day of the previous month.

The Exchange proposes to amend the volume criteria for Less Active ETP Securities. As proposed, a Less Active ETP Security would be a Tape B Security that has a CADV in the previous month of less than 100,000 shares, or 0.0070% of Consolidated Tape B ADV, whichever is greater. The Exchange is proposing to expand the manner by which LMMs that are registered as the LMM in Tape B Securities, and the ETP Holders and Market Makers affiliated with such LMMs, would qualify for the incremental credit.

The Exchange is not proposing any change to the level of the incremental credits and volume thresholds noted above that are payable to LMMs and to ETP Holders and Market Makers affiliated with the LMM.

The Exchange is proposing to amend the current criteria for securities to qualify as Less Active ETP Securities by expanding it to the greater of a numerical threshold or a percentage threshold based upon the average daily traded volume of the relevant security, for several reasons. The percentage threshold will adjust each calendar month based on the U.S. average

daily consolidated share volume in Tape B Securities for that month, while the numerical threshold remains unchanged from month to month, thereby providing a consistent floor against which to measure volume in a Tape B Security. The Exchange believes that the proposed approach will provide a straightforward way to float volume tiers, while maintaining a minimum threshold. The Exchange notes that the combined approach will allow tiers to move in sync with consolidated volume during months with high volumes while maintaining a numerical threshold. The Exchange believes that this will continue to provide an incentive for LMMs to act as an LMM for less active issues during months with higher market volumes when the 100,000 share threshold would be harder to obtain. While the percentage threshold will result in lower maximum share volume requirement when consolidated volumes are lower, it will also result in higher maximum share volume requirement when consolidated volumes are higher. Such higher and lower consolidated volumes will have a similar impact on the maximum share requirements; however, the minimum share requirement will remain unchanged at 100,000 shares.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,<sup>9</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 proposed fee change is intended to encourage LMMs and ETP Holders and Market Makers affiliated with such LMMs to promote price discovery and market quality in Less Active ETP Securities for the benefit of all market participants.

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

<sup>9</sup> 15 U.S.C. 78f(b)(4) and (5).

The Exchange believes the proposed amendment to the volume criteria for Less Active ETP Securities is equitable and not unfairly discriminatory because it would continue to apply to all LMMs and ETP Holders and Market Makers affiliated with such LMM on an equal basis. The Exchange further believes that the proposed rule change is not unfairly discriminatory because it is consistent with the market quality and competitiveness benefits associated with the proposed fee program.

The Exchange further believes that the proposed amendment to the criteria to qualify for the incremental credits is reasonable, equitable and not unfairly discriminatory as it will result in more LMMs and ETP Holders and Market Makers affiliated with such LMMs to qualify for the increased credits and therefore reduce their overall transaction costs on the Exchange.

Further, the Exchange believes that the proposal is reasonable and would create an added incentive for these market participants to execute additional orders on the Exchange and thereby qualify for the incremental credits. The Exchange believes that the proposed change is equitable and not unfairly discriminatory because providing incentives for orders in exchange-listed securities that are executed on a registered national securities exchange (rather than relying on certain available off-exchange execution methods) would contribute to investors' confidence in the fairness of their transactions and would benefit all investors by deepening the Exchange's liquidity pool, supporting the quality of price discovery, promoting market transparency and improving investor protection.

Volume-based rebates such as the ones currently in place on the Exchange have been widely adopted in the cash equities markets and are equitable because they are open to all LMMs and ETP Holders and Market Makers affiliated with such LMMs on an equal basis and provides

additional benefits that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity.

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 believes that the proposed rule change would not 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 encourage increased participation by LMMs in the trading of ETP securities generally and Less Active ETP Securities, in particular. The proposed change would also encourage the submission of additional liquidity to a public exchange, thereby promoting price discovery and transparency and enhancing order execution opportunities for ETP Holders and Market Makers affiliated with LMMs.

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 this proposal promotes a 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.

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

### 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
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR- NYSEArca-2016-165 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.

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<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).

All submissions should refer to File Number SR- NYSEArca-2016-165. 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-2016-165 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>14</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).