

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-81573; File No. SR-NYSEARCA-2017-97)

September 11, 2017

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the NYSE Arca Equities Fees and Charges

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 August 29, 2017, 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 Fees and Charges (the “Fee Schedule”) to adopt a cap, for August and September 2017, on monthly fees for the use of ports connecting to NYSE Arca that are added after August 18, 2017. The Exchange proposes to implement the changes on August 29, 2017.⁴ 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

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ The Exchange originally filed to amend the Fee Schedule on August 18, 2017 (SR-NYSEArca-2017-91) and withdrew such filing on August 29, 2017.

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

In connection with the introduction of new gateways on August 21, 2017, the Exchange proposes to amend its Fee Schedule to adopt a cap, for August and September 2017, on monthly fees for the use of ports connecting to NYSE Arca that are added after August 18, 2017.

The Exchange currently makes ports available that provide connectivity to the Exchange’s trading systems (i.e., ports for the entry of orders and/or quotes (“order/quote entry ports”)) and charges \$550 per port per month.⁵ The Exchange also currently makes ports available for drop copies and charges \$550 per port per month.⁶

In order to facilitate an ETP Holder’s transition to the Exchange’s new gateways on August 21, 2017, the Exchange proposes to add to its Fee Schedule that, for the billing months of August and September 2017, the total charge per firm for order/quote entry ports and drop copy ports will be capped at the total number of such ports that the firm has activated at the start of trading on August 18, 2017, the last trading day prior to the introduction of the new gateways.

⁵ Port fees are not applicable to ports used for the Exchange’s Risk Management Gateway service. Further, no fee applies to ports in the backup datacenter that are not utilized during the relevant month. No fee applies to ports in the backup datacenter that are utilized when the primary datacenter is unavailable. However, if a port in the backup datacenter is utilized when the primary datacenter is available, then the fee shall apply.

⁶ No fee applies to ports in the backup datacenter if configured such that it is duplicative of another drop copy port of the same user. Only one fee per drop copy port applies, even if the port receives drop copies from multiple order/quote entry ports and/or drop copies for activity on both NYSE Arca Equities and NYSE Arca Options.

This cap would have the effect of waiving the port fees, for August and September 2017, of any new, additional ports that an ETP Holder may use.

Additionally, the Exchange proposes that, effective October 1, 2017, the monthly fees for ports activated after August 18, 2017, would be prorated to the number of trading days in a billing month, including any scheduled early closing days, that a port is connected to the Exchange.⁷

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

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Sections 6(b)(4) of the Act,⁹ 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 Exchange believes that the proposed cap for August and September 2017 is reasonable because the proposed cap would allow ETP Holders a transition period to adjust to

⁷ The NASDAQ Stock Market LLC (“NASDAQ”) prorates Order Entry Port fees for the first month for new requests for ports. See NASDAQ Price List at <https://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2>.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4).

the new gateways.¹⁰ Further, to the extent that an ETP Holder needs an increasing number of ports to maintain or expand its activity on the Exchange, the Exchange believes without the proposed cap ETP Holders may be inhibited from growing their activity on the Exchange. As a general principal, the Exchange believes that greater participation on the Exchange by ETP Holders improves market quality for all market participants. Thus, the proposed cap balances the Exchange's desire to improve market quality against the need to cover costs to support connectivity to the Exchange. Finally, the Exchange believes that the proposed cap constitutes an equitable allocation of fees because all similarly situated ETP Holders would be eligible for the cap.

The Exchange further believes the proposal to charge fees for ports activated after August 18, 2017 on a prorated basis based on the number of trading days in a billing month the port is connected to the Exchange is fair and reasonable because it would allow all Exchange participants to subscribe to the most effective connectivity according to their trading requirements and as a result will only be assessed fees for the connectivity they utilize during any trading month beginning October 1, 2017.¹¹ The Exchange's proposal to pro-rate port fees is also equitable since it would apply equally to all ETP Holders that connect to the Exchange. As noted above, NASDAQ currently charges new order entry ports on a prorated basis for the first month of service. The Exchange notes, however, that fees for ports activated before August 21, 2017 would not be pro-rated. The Exchange believes it is fair, equitable and not unfairly

¹⁰ The terms "gateway" and "ports" are used interchangeably. Activating a port, for instance, essentially means establishing a connection to a gateway.

¹¹ Billing for ports is based on the number of ports on the third business day prior to the end of the month. The level of activity with respect to a particular port does not affect the assessment of monthly fees, so even if a particular port that is available to a participant is not used, the participant is still billed for that port. See Securities Exchange Act Release No. 66110 (January 5, 2012), 77 FR 1766 (January 11, 2012) (SR-NYSEArca-2012-01).

discriminatory to charge flat fees for ports activated before August 21, 2017 as such ports are expected to be phased out within a short period of time after the introduction of the new gateways. The Exchange believes the proposed proration of fees for ports activated after August 18, 2017 would serve as an incentive to ETP Holders to fully transition to the new gateways even though the Exchange would continue to provide ETP Holders with the ability to connect to the Exchange through ports activated before August 21, 2017. The Exchange further notes that billing for ports activated before August 21, 2017 will continue to be based on the number of ports on the third business day prior to the end of the month consistent with the Exchange's billing policy, and so firms that cancel ports before the third business day prior to the end of the month will not be billed for those ports.

The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act¹² in that the proposed rule change is designed 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 and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers. In particular, the Exchange believes that the Exchange's pro-rating of port fees is consistent with Section 6(b)(5) of the Act since all ETP Holders would receive the benefit of being charged only for the connectivity utilized during any trading month beginning October 2017. As noted above, to the extent an ETP Holder continues to use ports activated before August 21, 2017 to connect to the Exchange during October 2017 and any subsequent months, the Exchange believes it is fair, equitable and not unfairly discriminatory to continue to charge flat fees for such ports until such time that connection to the Exchange through the use of old ports is no longer available

¹² 15 U.S.C. 78f(b)(5).

which the Exchange expects to occur within a short period of time after the introduction of the new gateways.

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,¹³ the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act in that it is simply designed to set forth the Exchange's adoption of a fee cap and pro-rata billing for ports without any change to the fees currently charged by the Exchange for the use of ports to connect to the Exchange's trading systems. ETP Holders may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed change will impair the ability of ETP Holders to maintain their competitive standing in the financial markets. The Exchange believes that fees for connectivity are constrained by the robust competition for order flow among exchanges and non-exchange markets. Further, excessive fees for connectivity, including port fees, would serve to impair an exchange's ability to compete for order flow rather than burdening competition. The Exchange also does not believe the proposed rule change would impact intramarket competition as it would apply to all ETP Holders equally that connect to the Exchange through the use of new ports. To the extent an ETP Holder continues to use ports activated before August 21, 2017 to connect to the Exchange during October 2017 and any subsequent months, the Exchange believes the

¹³ 15 U.S.C. 78f(b)(8).

proposed rule change would not impact intramarket competition as given that the Exchange would provide all ETP Holders the ability to connect to the Exchange through ports that are activated before August 21, 2017 and through ports that are activated after August 18, 2017.

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)¹⁴ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁵ 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)¹⁶ 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:

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f)(2).

¹⁶ 15 U.S.C. 78s(b)(2)(B).

- 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-2017-97 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-2017-97. 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-2017-97 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.¹⁷

Eduardo A. Aleman
Assistant Secretary

¹⁷ 17 CFR 200.30-3(a)(12).