

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-85035; File No. SR-NYSEARCA-2018-101)

February 1, 2019

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 Regarding Credits Applicable to Lead Market Makers and to ETP Holders and Market Makers Affiliated with the LMM that Provide Displayed Liquidity to the NYSE Arca Book in Tape B Securities

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 26, 2018, 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 Fees and Charges (the “Fee Schedule”) regarding credits applicable to Lead Market Makers (“LMMs”)<sup>4</sup> and to ETP Holders and Market Makers affiliated with the LMM that provide displayed liquidity to the NYSE Arca Book in Tape B Securities. The Exchange proposes to implement the proposed fee change on January 2, 2019. 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.

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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 term “Lead Market Maker” is defined in Rule 1.1(w) to mean a registered Market Maker that is the exclusive Designated Market Maker in listings for which the Exchange is the primary market.

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 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 regarding credits applicable to LMMs<sup>5</sup> and to ETP Holders and Market Makers affiliated with the LMM that provide displayed liquidity to the NYSE Arca Book in Tape B Securities. The Exchange proposes to implement the proposed fee change on January 2, 2019.

The Exchange currently provides tier-based incremental credits for orders that provide displayed liquidity to the NYSE Arca Book in Tape B Securities. 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, or 0.0070% of Consolidated Tape B ADV, whichever is greater (“Less Active ETP Securities”), and the ETP Holders and Market Makers affiliated with such LMMs, currently receive an additional credit for orders that provide

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

displayed liquidity to the Book in any Tape B Securities that trade on the Exchange.<sup>6</sup> The current incremental credits and volume thresholds 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
- An additional credit of \$0.0001 per share if an LMM is registered as the LMM in at least 75 but less than 100 Less Active ETP Securities

The incremental credits also apply to ETP Holders and Market Makers affiliated with the LMM whose orders in Tape B Securities provide displayed liquidity to the NYSE Arca Book.

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 manner by which it determines how many Less Active ETP Securities in which an LMM is registered as the LMM. As proposed, the number of Less Active ETP Securities for the billing month would be based on the number of Less Active ETP Securities in which an LMM is registered as the LMM on the average of the first and last business day of the previous month. The Exchange would no longer make this determination based solely on the number of Less Active ETP Securities in which an LMM is registered as the LMM on just the last business day of the previous month.

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<sup>6</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.

For example, assume a LMM has 95 Less Active ETP Securities on the last day of the previous month. Further assume that same LMM has 115 Less Active ETP Securities on the first day of that same previous month. For purposes of this pricing tier, the LMM had 105 Less Active ETP Securities (the average of 95 and 115 Less Active ETP Securities) for the previous month and would therefore qualify for an additional credit of \$0.0002 per share as that LMM is registered as the LMM in at least 100 but less than 200 Less Active ETP Securities.

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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,<sup>7</sup> in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,<sup>8</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 Exchange believes that the proposed rule change to amend the manner by which the Exchange would determine how many Less Active ETP Securities in which an LMM is registered as the LMM is reasonable because it is intended to reduce the impact of relying on one day to count an LMM's registration in Less Active ETP Securities. The Exchange believes that expanding the date for determining registration to also include the first day of the previous billing month would provide greater diversity of calculating LMM registration in Less Active

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

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

ETP Securities and would reduce the impact to LMMs from relying on one day registration in Less Active ETP Securities. Further, a LMM that loses registration in Less Active ETP Securities after the first day of the previous billing month would have the remainder of the month to register for additional Less Active ETP Securities to make up for any loss of Less Active ETP Securities for that billing month.

The Exchange believes it is equitable and not unfairly discriminatory to amend the manner by which the Exchange would determine how many Less Active ETP Securities in which an LMM is registered as the LMM, as the proposed change would apply to all qualifying participants on an equal basis.

The proposed rule change is intended to encourage LMMs to promote price discovery and market quality in Less Active ETP Securities for the benefit of all market participants. Moreover, the Exchange believes that the proposed fee change would incentivize LMMs to register as an LMM in Less Active ETP Securities and thus, add more liquidity in these and other Tape B Securities to the benefit of all market participants.

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>9</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 fee change would encourage increased participation by LMMs in the trading of ETP securities

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<sup>9</sup> 15 U.S.C. 78f(b)(8).

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.

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>10</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>11</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

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(2).

Commission shall institute proceedings under Section 19(b)(2)(B)<sup>12</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-2018-101 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-2018-101. 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

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<sup>12</sup> 15 U.S.C. 78s(b)(2)(B).

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.

Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEARCA-2018-101, and should be submitted on or before [insert date 15 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

Eduardo A. Aleman  
Deputy Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).