

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-85094; File No. SR-NYSEARCA-2019-05)

February 11, 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

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 January 31, 2019, 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”). The Exchange proposes to implement the proposed fee change on February 1, 2019. 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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule regarding the Exchange’s tiered-rebate structure applicable to Lead Market Makers (“LMMs”)⁴ and to ETP Holders and Market Makers affiliated with the LMM that provide displayed liquidity in Tape B Securities to the NYSE Arca Book. The Exchange proposes to implement the proposed fee change on February 1, 2019.

The Exchange currently provides tier-based incremental credits for orders that provide displayed liquidity in Tape B Securities to the NYSE Arca Book.⁵ 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 displayed liquidity to the

⁴ 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.

⁵ See Securities Exchange Act Release Nos. 76084 (October 6, 2015), 80 FR 61529 (October 13, 2015) (SR-NYSEArca-2015-87); and 79597 (December 19, 2016), 81 FR 94460 (December 23, 2016) (SR-NYSEArca-2016-165).

Book in any Tape B Securities that trade on the Exchange.⁶ 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 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 average of the first and last business day of the previous month.

The Exchange proposes to amend the CADV 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 0.010% of Consolidated Tape B ADV, whichever is greater.

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.

⁶ 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.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Sections 6(b)(4) of the Act,⁸ in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange members and issuers and other persons using its facilities. The Exchange also believes the proposed rule change furthers the objectives of Section 6(b)(5) of the Act,⁹ in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest [sic] is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes that the proposed change to the CADV criteria for Less Active ETP Securities is consistent with Section 6(b)(4) and 6(b)(5) of the Act in that it is fair, equitable and not unfairly discriminatory because it would apply equally to all LMMs and to ETP Holders and Market Makers affiliated with the LMM. All LMMs and ETP Holders and Market Makers affiliated with the LMM are subject to the same fee schedule, and access to the Exchange is offered on terms that are not unfairly discriminatory. The Exchange further believes that the proposed rule change is not

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4).

⁹ 15 U.S.C. 78f(b)(5).

unfairly discriminatory because it is consistent with the market quality and competitiveness benefits associated with the fee program.

The Exchange believes that the proposed change to the CADV criteria for Less Active ETP Securities is consistent with Section 6(b)(5) of the Act in that it promotes equitable access to the Exchange for all market participants. To the extent that LMM volume is increased by the proposed rule change, market participants will increasingly compete for the opportunity to trade on the Exchange including sending more orders to the Exchange. The resulting volume and liquidity would benefit all market participants by providing more trading opportunities and tighter spreads.

The specific CADV criteria is set based upon business determinations and an analysis of current volume levels. 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.

The CADV criteria is intended to continue to incentivize LMMs and ETP Holders and Market Makers affiliated with the LMM to increase the orders they send to the Exchange for the benefit of all market participants. Increasing the number of orders sent to the Exchange would in turn provide tighter and more liquid markets, and therefore attract more business overall. The proposed rule change is intended to encourage participation from a greater number of LMMs, which would promote price discovery and market quality in Less Active ETP Securities for the benefit of all market participants. Additionally, 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,¹⁰ 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. The incremental credits applicable to Less Active ETP Securities is intended to promote narrower spreads and encourage the posting of liquidity, and thus promote better prices. The proposed rule change should 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. Additionally, the proposed rule change should allow the Exchange to continue to attract and compete for order flow in Tape B Securities with other exchanges. However, this competition does not create an undue burden on competition but rather offers all market participants the opportunity to receive the benefit of competitive pricing.

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

¹⁰ 15 U.S.C. 78f(b)(8).

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)¹¹ of the Act and subparagraph (f)(2) of Rule 19b-4¹² 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)¹³ 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

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(2).

¹³ 15 U.S.C. 78s(b)(2)(B).

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-2019-05 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-2019-05. 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. 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-2019-05 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.¹⁴

Eduardo A. Aleman
Deputy Secretary

¹⁴ 17 CFR 200.30-3(a)(12).