

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-74604; File No. SR-NYSEArca-2015-20)

March 30, 2015

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Schedule of Fees and Charges for Exchange Services to Specify that Affiliated Exchange ETP Holders May Request that the Exchange Aggregate Its Eligible Activity with Activity of the ETP Holder's Affiliates for Purposes of Charges or Credits Based on Volume

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 March 18, 2015, 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 and II 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 its Schedule of Fees and Charges for Exchange Services ("Fee Schedule") to specify that affiliated Exchange ETP Holders (or "members") may request that the Exchange aggregate its eligible activity with activity of the ETP Holder's affiliates for purposes of charges or credits based on volume. The text of 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.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule to specify that affiliated ETP Holders may request that the Exchange aggregate their eligible activity with activity of its ETP Holder affiliates for purposes of charges or credits based on volume. The proposed rule change is based on NASDAQ Stock Market LLC (“NASDAQ”) Rule 7027, NASDAQ Options Market LLC (“NOM”) Rules at Chapter XV, and the NASDAQ OMX PHLX LLC (“PHLX”) Pricing Schedule.<sup>4</sup>

As proposed, for purposes of applying any provision of the Exchange’s Price List where the charge assessed, or credit provided, by the Exchange depends on the volume of a member organization’s activity, an ETP Holder may request that the Exchange aggregate its eligible

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<sup>4</sup> Effective December 1, 2014, NASDAQ amended Rule 7027 to harmonize the treatment of aggregation of affiliate activity of affiliated members to be consistent with the rules governing NOM and PHLX. See Securities Exchange Act Release No. 72966 (Sept. 3, 2014), 79 FR 53473 (Sept. 9, 2014) (SR-NASDAQ-2014-083). NOM and PHLX also amended their respective rules to harmonize the process by which it collects information from its members for purposes of aggregating member activity between its equity and options markets. See Securities Exchange Act Release Nos. 72967 (Sept. 2, 2014), 79 FR 53471 (Sept. 9, 2014) (SR-NASDAQ-2014-082) and 72969 (Sept. 3, 2014), 79 FR 53485 (Sept. 9, 2014) (SR-PHLX-2014-56).

activity with activity of such ETP Holder's affiliates.<sup>5</sup> The Exchange further proposes that an ETP Holder requesting aggregation of eligible affiliate activity would be required to (1) certify to the Exchange the affiliate status of ETP Holders whose activity it seeks to aggregate prior to receiving approval for aggregation, and (2) inform the Exchange immediately of any event that causes an entity to cease being an affiliate. The Exchange would review available information regarding the entities and reserves the right to request additional information to verify the affiliate status of an entity. As further proposed, the Exchange would approve a request, unless it determines that the certificate is not accurate.<sup>6</sup>

The Exchange also proposes that if two or more ETP Holders become affiliated on or prior to the sixteenth day of a month, and submit the required request for aggregation on or prior to the twenty-second day of the month, an approval of the request would be deemed to be effective as of the first day of that month. If two or more ETP Holders become affiliated after the sixteenth day of a month, or submit a request for aggregation after the twenty-second day of the month, an approval of the request would be deemed to be effective as of the first day of the next calendar month.<sup>7</sup> The Exchange believes that this requirement, which is also similar to requirements of other exchanges,<sup>8</sup> would be a fair and objective way to apply the aggregation rule to fees and streamline the billing process.

The Exchange further proposes to provide that for purposes of applying any provision of the Price List where the charge assessed, or credit provided, by the Exchange depends upon the volume of a ETP Holder's activity, references to an entity would be deemed to include the entity

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<sup>5</sup> See Exhibit 5 for proposed language to be added to the Fee Schedule. The Exchange notes that this language is similar to that found in NASDAQ Rule 7027.

<sup>6</sup> See NASDAQ Rule 7027(a)(1)

<sup>7</sup> See NASDAQ Rule 7027(a)(2).

<sup>8</sup> See supra note 7.

and its affiliates that have been approved for aggregation.<sup>9</sup> In addition, the Exchange proposes to provide that ETP Holders may not aggregate volume where the Price List specifies that aggregation is not permitted.<sup>10</sup>

Finally, the Exchange proposes that for purposes of the Fee Schedule, the term “affiliate” would mean any member organization under 75% common ownership or control of that member organization.<sup>11</sup>

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>12</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>13</sup> in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among ETP Holders and issuers and other persons using any facility or system with the Exchange operates or controls and because it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

The Exchange further believes that the proposed rule change is reasonable because it establishes a manner for the Exchange to treat affiliated ETP Holders for purposes of assessing charges or credits that are based on volume. The provision is equitable because all ETP Holders seeking to aggregate their activity are subject to the same parameters, in accordance with a

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<sup>9</sup> See supra note 5.

<sup>10</sup> For example, the Price List specifies whether quoting and trading activity relating to Supplemental Liquidity Provider activity may be aggregated.

<sup>11</sup> See supra note 5.

<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(4) and (5).

standard that recognizes an affiliation as of the month's beginning or close in time to when the affiliation occurs, provided the member organization submits a timely request. Moreover, the proposed billing aggregation language, which would lower the Exchange's administrative burden, is substantially similar to aggregation language adopted by other exchanges.<sup>14</sup>

The Exchange further notes that the proposal would serve to reduce disparity of treatment between ETP Holders with regard to the pricing of different services and reduce any potential for confusion on how activity can be aggregated. The Exchange believes that the proposed rule change avoids disparate treatment of ETP Holders that have divided their various business activities between separate corporate entities as compared to ETP Holders that operate those business activities within a single corporate entity. The Exchange further notes that the proposed rule change is reasonable and is designed to remove impediments to and perfect the mechanism of a free and open market by harmonizing the manner by which the Exchanges permits ETP Holders to aggregate volume with other exchanges. In particular, the Exchange notes that NASDAQ, PHLX and BX all have the same standard that the Exchange is proposing to adopt.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,<sup>15</sup> 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. As stated above, the proposed rule change, which applies equally to all ETP Holders, is intended to reduce the Exchange's administrative burden in applying volume price discounts for firms which have requested aggregation with that of an affiliate ETP Holder, and is substantially similar to rules adopted by other exchanges. Because the market for order execution and routing is extremely

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<sup>14</sup> See supra note 4.

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

competitive, ETP Holders may readily opt to disfavor the Exchange if they believe that alternatives offer them better value. The Exchange does not believe the proposed changes will impair the ability of ETP Holders or competing order execution venues to maintain their competitive standing in the financial markets.

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>16</sup> and Rule 19b-4(f)(6) thereunder.<sup>17</sup> Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.<sup>18</sup>

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>16</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>17</sup> 17 CFR 240.19b-4(f)(6).

<sup>18</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

Commission shall institute proceedings 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-2015-20 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-2015-20. 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 such filing will also 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-2015-20 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>19</sup>

Brent J. Fields  
Secretary

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<sup>19</sup> 17 CFR 200.30-3(a)(12).