

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-75434; File No. SR-NYSEArca-2015-57)

July 13, 2015

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Adding a Pricing Tier Applicable to Orders of ETP Holders for Tape A, Tape B and Tape C Securities that are Eligible to be Routed Away from the Exchange

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹, and Rule 19b-4² thereunder, notice is hereby given that, on June 30, 2015, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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 add a pricing tier applicable to orders of ETP Holders for Tape A, Tape B and Tape C Securities that are eligible to be routed away from the Exchange. The Exchange proposes to implement the changes on July 1, 2015. The text of 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 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 add a pricing tier applicable to orders of ETP Holders for Tape A, Tape B and Tape C Securities that are eligible to be routed away from the Exchange (“Routable Orders”).³ The Exchange proposes to implement the fee change on July 1, 2015.

The Exchange proposes a new pricing tier called Routable Retail Order Tier pursuant to which ETP Holders would receive a credit of \$0.0032 per share for their Routable and non-Routable Orders in Tape A and Tape C Securities that provide liquidity on the Exchange, and a credit of \$0.0030 per share for their Routable and non-Routable Orders in Tape B Securities that provide liquidity on the Exchange, if such ETP Holders, including Market Makers, (1) provide liquidity of 0.20% or more of U.S. consolidated average daily volume (“U.S. CADV”) during the billing month across all Tapes, (2) maintain a ratio during the billing month across all Tapes of executed Routable Orders that provide liquidity to total executed provide liquidity of 55% or more, and (3) execute an average daily volume (“ADV”) of Retail Orders⁴ that provide liquidity

³ ETP Holders are able to include an instruction with their orders to determine whether the order will be eligible to route to an away exchange (e.g., to execute against trading interest with a better price than on the Exchange) or, for example, be cancelled if routing would otherwise occur.

⁴ Retail Orders are defined in the Fee Schedule as orders designated as retail orders and that meet the requirements of Rule 7.44(a)(3), but that are not executed in the Retail Liquidity Program. The Retail Liquidity Program is a pilot program designed to attract additional retail order flow to the Exchange for NYSE Arca-listed securities and securities traded pursuant to unlisted trading privileges while also providing the potential for price improvement to such order flow. See Rule 7.44. See Securities Exchange Act Release No. 71176 (December 23, 2013), 78 FR 79524 (December 30, 2013) (SR-NYSEArca-2013-107).

during the billing month that is 0.10% or more of the U.S. CADV. For all other fees and credits, Tiered or Basic Rates apply based on a firm's qualifying levels.

For example, if U.S. CADV during the month is 6.45 billion shares, the ETP Holder would need to provide liquidity of at least 12.9 million shares to satisfy the first threshold (i.e., providing liquidity of 0.20% or more of U.S. CADV during the month), which can include Retail Orders, as well as non-Retail Orders. Additionally, based on a minimum of 12.9 million shares of required provide liquidity, the ETP Holder would need to execute at least 7.095 million Routable Orders that provide liquidity during the month (i.e., maintaining a ratio of executed Routable Orders that provide liquidity to total executed orders of 55% or more). Finally, the ETP Holder would need to execute an ADV of at least 6.45 million Retail Orders that provide liquidity during the month (i.e., executing an ADV of Retail Orders that provide liquidity during the billing month that is 0.10% or more of U.S. CADV).

In connection with the adoption of the Routable Retail Order Tier, the Exchange proposes to revise the Tape B Step Up Tier, Tape C Step Up Tier and Tape C Step Up Tier 2.

Currently, ETP Holders and Market Makers, that, on a daily basis, measured monthly, directly execute providing volume in Tape B Securities during a billing month ("Tape B Adding ADV") that is equal to at least 0.275% of the U.S. Tape B Consolidated Average Daily Volume ("Tape B CADV") for the billing month over the ETP Holder's or Market Maker's May 2013 Tape B Adding ADV taken as a percentage of Tape B CADV ("Tape B Baseline % CADV") receive a credit of \$0.0004 per share for orders that provide liquidity to the Exchange in Tape B Securities, which is in addition to the ETP Holder's Tiered or Basic Rate credit(s). The Exchange proposes to specify in the Fee Schedule that ETP Holders that qualify for the Routable Retail Order Tier would not be eligible to qualify for the Tape B Step Up Tier. The Exchange

believes that the credit of \$0.0030 per share is sufficient that an ETP Holder that qualifies for the Routable Retail Order Tier should not also receive the increased credits applicable to the Tape B Step Up Tier. Similar to Retail Order Tier ETP Holders, Cross-Asset Tier ETP Holders⁵ and Market Makers, who are currently ineligible to qualify for the Tape B Step Up Tier, the Exchange proposes to exclude Routable Retail Order Tier ETP Holders from also qualifying for the Tape B Step Up Tier.

Additionally, ETP Holders and Market Makers, that, on a daily basis, measured monthly, directly execute providing volume in Tape C Securities during the billing month (“Tape C Adding ADV”) that is at least the greater of (a) the ETP Holder’s or Market Maker’s January 2012 Tape C Adding ADV (“Tape C Baseline ADV”) plus 0.10% of US Tape C CADV3 for the billing month or (b) the ETP Holder’s or Market Maker’s Tape C Baseline ADV plus 20%, subject to the ETP Holders’ and Market Makers’ total providing liquidity in Tape A, Tape B, and Tape C Securities increasing in an amount no less than 0.03% of US CADV over their January 2012 providing liquidity receive a lower fee of \$0.0029 per share for orders that take liquidity from the Book in Tape C Securities. The Exchange proposes to specify in the Fee Schedule that ETP Holders that qualify for the Routable Retail Order Tier would not be eligible to qualify for the Tape C Step Up Tier. The Exchange believes that the credit of \$0.0032 per share is sufficient that an ETP Holder that qualifies for the Routable Retail Order Tier should not also receive the reduced fee applicable to the Tape C Step Up Tier. Similar to Retail Order Tier ETP Holders, Routable Order Tier ETP Holders and Market Makers, who are currently ineligible to qualify for

⁵ The restriction for Cross-Asset Tier ETP Holders from qualifying for the Tape B Step Up Credit is scheduled to be implemented on July 1, 2015, subject to the Commission’s publication of the notice for immediate effectiveness of SR-NYSE Arca-2015-55, filed by the Exchange on June 24, 2015 (“July Fee Filing”). Exhibit 5 of the instant filing reflects the rule text proposed in the July Fee Filing.

the Tape C Step Up Tier, the Exchange proposes to exclude Routable Retail Order Tier ETP Holders from also qualifying for the Tape C Step Up Tier.

Finally, ETP Holders and Market Makers, that, on a daily basis, measured monthly, directly execute Tape C Adding ADV during the billing month that is at least 2 million shares greater than the ETP Holder's or Market Maker's Tape C Adding ADV during Q2 2012, subject to the ETP Holder's or Market Maker's combined providing ADV in Tape A, Tape B, and Tape C Securities during the billing month as a percentage of CADV3 being no less than during Q2 2012 receive a credit of \$0.0002 per share, which is in addition to the ETP Holder's Tiered or Basic Rate credit(s). The Exchange proposes to specify in the Fee Schedule that ETP Holders that qualify for the Routable Retail Order Tier would not be eligible to qualify for the Tape C Step Up Tier 2. The Exchange believes that the credit of \$0.0030 per share is sufficient that an ETP Holder that qualifies for the Routable Retail Order Tier should not also receive the increased credits applicable to the Tape C Step Up Tier 2. Similar to Retail Order Tier ETP Holders, Routable Order Tier ETP Holders and Market Makers, who are currently ineligible to qualify for the Tape C Step Up Tier 2, the Exchange proposes to exclude Routable Retail Order Tier ETP Holders from also qualifying for the Tape C Step Up Tier 2.

The Exchange believes that the proposal would create an added incentive for ETP Holders to bring additional order flow to a public market.

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

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁶ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,⁷ 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 fee change is reasonable because the proposed Routable Retail Order Tier would contribute to incentivizing ETP Holders to submit additional orders on the Exchange that are eligible to be routed away from the Exchange. The Exchange believes the proposed fee change would increase the liquidity available on the Exchange because, if a Routable Order were routed and returned unexecuted, the order would be available for execution on the Exchange. Therefore, the Exchange believes that Routable Orders add to the quality of the Exchange's market because they may provide liquidity on the Exchange of a longer duration. The Routable Retail Order Tier therefore would support the quality of price discovery and promote market transparency, thereby benefiting all market participants. In this regard, the Exchange believes that the rate proposed for the Routable Retail Order Tier is reasonable because it takes into account the amount of Routable Orders that an ETP Holder would be required to execute on the Exchange during a month. The Exchange believes the proposed fee change is reasonable, equitable and not unfairly discriminatory because the Routable Retail Order Tier pricing would apply to executions of Tape A, Tape B and Tape C Securities, and the Exchange notes that these credits are available on other tiers (e.g., \$.0032

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4) and (5).

credit for Tape A and C Securities with Arca's Routable Tier, and \$0.0030 credit for Tape B Securities with Cross-Asset Tier). Furthermore, the Exchange believes it is reasonable and equitable to apply the Routable Retail Order Tier to Routable and non-Routable Orders of a qualifying ETP Holder because this would create a further incentive for ETP Holders to submit Routable Orders to the Exchange. This is also true because the thresholds applicable to the Routable Retail Order Tier pertain to liquidity that consists of Routable Orders as well as the overall liquidity of an ETP Holder, including non-Routable Orders.

Furthermore, the Exchange believes that the proposed Routable Retail Order Tier is equitable and not unfairly discriminatory because all ETP Holders have the ability to designate their orders as Routable Orders. Additionally, the proposed credit of \$0.0032 per share in Tape A and Tape C Securities, and \$0.0030 per share in Tape B Securities, for Routable Orders that provide liquidity to the Exchange would be available to all ETP Holders that qualify for the Routable Retail Order Tier. The proposed thresholds are also equitable and not unfairly discriminatory because they are based on objective criteria and the same criteria would be applicable to all ETP Holders.

The Exchange believes that prohibiting Routable Retail Order Tier ETP Holders from qualifying for the Tape B Step Up Tier is reasonable, equitable and not unfairly discriminatory because ETP Holders that qualify for the Routable Retail Order Tier would already receive a higher credit of \$0.0030 before the Tape B Step Up Credit, which is higher than other tiers with the Tape B Step Up credit. For example, Tier 1 ETP Holders that qualify for Tape B Step Up Tier would receive a Tier 1 credit of \$0.0023 plus a Tape B Step Up credit of \$0.0004 for a total credit of \$0.0027, compared with the standalone Routable Retail Order Tier credit of

\$0.0030. The Exchange notes that Retail Order ETP Holders, Cross-Asset Tier ETP Holders and Market Makers currently do not qualify for Tape B Step Up Tier credit.

The Exchange further believes that prohibiting Routable Retail Order Tier ETP Holders from qualifying for the Tape C Step Up Tier is reasonable, equitable and not unfairly discriminatory because ETP Holders that qualify for the Routable Retail Order Tier would already receive a higher credit of \$0.0032 before the Tape C Step Up Credit, which is higher than other tiers that can qualify for the Tape C Step Up credit. For example, Tier 1 ETP Holders that qualify for Tape C Step Up Tier would receive a Tier 1 credit of \$0.0030 for orders that provide liquidity, plus a lower Tape C Step Up fee of \$0.0029 for orders that take liquidity from the Book in Tape C Securities, compared with the standalone Routable Retail Order Tier credit of \$0.0032 for orders that provide liquidity and a fee of \$0.0030 share for orders that take liquidity from the Book in Tape C Securities. The Exchange notes that Retail Order ETP Holders, Routable Order Tier ETP Holders and Market Makers currently do not qualify for Tape C Step Up Tier credit.

Finally, the Exchange believes that prohibiting Routable Retail Order Tier ETP Holders from qualifying for the Tape C Step Up Tier 2 is reasonable, equitable and not unfairly discriminatory because ETP Holders that qualify for the Routable Retail Order Tier would already receive a higher credit of \$0.0032 before the Tape C Step Up 2 Credit, which is higher than other tiers with the Tape C Step Up 2 credit. For example, Tier 1 ETP Holders that qualify for Tape C Step Up 2 Tier would receive a Tier 1 credit of \$0.0030 plus a Tape C Step Up 2 credit of \$0.0002 for a total credit of \$0.0032, which is comparable to the standalone Routable Retail Order Tier credit of \$0.0032. The Exchange notes that Retail Order ETP Holders,

Routable Order Tier ETP Holders and Market Makers currently do not qualify for Tape C Step Up Tier 2 credit.

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,⁸ 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 will encourage competition, including by attracting additional liquidity to the Exchange, which will make the Exchange a more competitive venue for, among other things, order execution and price discovery. In general, ETP Holders impacted by the proposed change may readily adjust their trading behavior to maintain or increase their credits or decrease their fees in a favorable manner, and will therefore not be disadvantaged in their ability to compete. Specifically, an ETP Holder could qualify for the proposed new Routable Retail Order Type by providing sufficient liquidity to satisfy the applicable proposed volume requirements. Additionally, all ETP Holders have the ability to designate their orders as Routable Orders and therefore any ETP Holder could qualify for the proposed Routable Retail Order Tier by satisfying the proposed liquidity thresholds.

Finally, 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

⁸ 15 U.S.C. 78f(b)(8).

other exchanges. For the reasons described above, the Exchange believes that the proposed rule change 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)⁹ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁰ 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)¹¹ 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

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(2).

¹¹ 15 U.S.C. 78s(b)(2)(B).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2015-57 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-2015-57. 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-2015-57 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.¹²

Brent J. Fields
Secretary

¹² 17 CFR 200.30-3(a)(12).