

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-78065; File No. SR-NYSEArca-2016-85)

June 14, 2016

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services

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 June 1, 2016, 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 Schedule of Fees and Charges for Exchange Services (the “Fee Schedule”) to provide a second way to qualify for Tier 2 fees and credits for orders executed on the Exchange. The Exchange proposes to implement the fee change effective June 1, 2016. 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.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to provide a second way to qualify for Tier 2 fees and credits for orders executed on the Exchange.⁴ The Exchange proposes to implement the fee change effective June 1, 2016.

Currently, ETP Holders and Market Makers qualify for Tier 2 fees and credits by providing liquidity an average daily share volume per month of 0.30% or more, but less than 0.70% of United States consolidated average daily volume ("US CADV").⁵

The Exchange proposes to permit ETP Holders and Market Makers to alternatively qualify for Tier 2 fees and credits if they provide liquidity of 0.10% or more of the US CADV per month, and are affiliated with an OTP Holder or OTP Firm that provides an ADV of

⁴ The Tier 2 fees and credits are available for round lots and odd lots with a per share price [sic] \$1.00 or above.

⁵ The Exchange proposes to use the same definition [sic] US CADV for purposes of the proposed alternative to qualifying for Tier 2. Specifically, US CADV would mean the United States Consolidated Average Daily Volume for transactions reported to the Consolidated Tape, excluding odd lots through January 31, 2014 (except for purposes of Lead Market Maker pricing), and excludes volume on days when the market closes early and on the date of the annual reconstitution of the Russell Investments Indexes. Transactions that are not reported to the Consolidated Tape are not included in US CADV. See Fee Schedule, footnote 3.

electronic posted Customer and Professional Customer executions in all issues on NYSE Arca Options (excluding mini options) of at least 1.50% of total Customer equity and ETF option ADV as reported by The Options Clearing Corporation (“OCC”).⁶ The Exchange is not proposing to change the level of fees and credits applicable to Tier 2. The purpose of the proposed rule change is to adopt an alternative method for ETP Holders and Market Makers to qualify for Tier 2 fees and credits. The Exchange believes that the proposal would create an added incentive for ETP Holders and Market Makers to bring additional order flow to a public market while also providing an alternative method for ETP Holders and Market Makers to qualify for Tier 2 fees and credits. The Exchange notes that Bats BZX Exchange (“BZX”) also provides pricing that combines a participant’s equities and options trading on that exchange.⁷

The proposed changes are not otherwise intended to address any other problem, and the Exchange is not aware of any significant problem that the affected market participants 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,⁸ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) 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

⁶ The proposed change is similar to pricing tiers currently in place on the Exchange. The Exchange’s Cross Asset Tier 1 and Cross Asset Tier 2 already provide for fees and credits based on liquidity provided by an affiliated OTP Holder or OTP Firm. See Fee Schedule.

⁷ See BZX Fee Schedule at http://www.bats.com/us/equities/membership/fee_schedule/bzx/.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4) and (5).

discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposal to amend Tier 2 is reasonable because it provides ETP Holders affiliated with an NYSE Arca Options OTP Holder or OTP Firm with an additional way to qualify for Tier 2 fees and credits. The Exchange believes that the proposal to utilize a lower requirement of an ETP Holder or Market Maker providing liquidity of 0.10% or more of US CADV, rather than 0.30% or more of US CADV, is reasonable because to qualify for the proposed alternative an ETP Holder or Market Maker would also be required to be affiliated with an OTP Holder or OTP Firm and in addition, the ETP Holder's and Market Maker's affiliated OTP Holder or OTP Firm would be required to provide an ADV of electronic posted Customer and Professional Customer executions in all issues on NYSE Arca Options (excluding mini options) of at least 1.50% of total Customer equity and ETF option ADV as reported by OCC.

The Exchange believes that expanding the basis for Tier 2 to include Customer equity and ETF options ADV will better reflect the correlation between options trading and the underlying securities, which trade at the Exchange, including ETFs. In this respect, the Exchange notes that Equity and ETF Customer volume is a widely followed benchmark of industry volume and is indicative of industry market share. The Exchange believes that the proposal is equitable and not unfairly discriminatory because all ETP Holders and Market Makers would be subject to the same fee structure and be offered the same alternative to qualifying for Tier 2 fees and credits. Moreover, Tier 2 fees and credits would be available for all ETP Holders and Market Makers to satisfy, including those that are not affiliated with an NYSE Arca Options OTP Holder or OTP Firm. ETP Holders and Market Makers that are not affiliated with an NYSE Arca Options OTP Holder or OTP Firm would continue to be eligible

for Tier 2 fees and credits subject to their meeting the current requirements.

Further, the Exchange believes that the proposal is reasonable and would create an added incentive for ETP Holders and Market Makers to execute additional orders on the Exchange. The Exchange believes that the proposed change is equitable and not unfairly discriminatory because providing incentives for orders in exchange-listed securities that are executed on a registered national securities exchange (rather than relying on certain available off-exchange execution methods) would contribute to investors' confidence in the fairness of their transactions and would benefit all investors by deepening the Exchange's liquidity pool, supporting the quality of price discovery, promoting market transparency and improving investor protection.

Volume-based rebates and fees such as the ones currently in place on the Exchange, and as proposed herein, have been widely adopted in the cash equities markets and are equitable because they are open to all ETP Holders and Market Makers on an equal basis and provide additional benefits or discounts that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns, and introduction of higher volumes of orders into the price and volume discovery processes. Further, the Exchange believes that the proposed amendment to Tier 2 will provide such enhancements in market quality on both the Exchange's equity market and options market by incentivizing increased participation on both platforms.

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 the foregoing 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. Instead, the Exchange believes that the proposal to add an additional way to qualify for Tier 2 would 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. The Exchange believes that this could promote competition between the Exchange and other execution venues, including those that currently offer similar order types and comparable transaction pricing, by encouraging additional orders to be sent to the Exchange for execution.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. As a result of all of these considerations, the Exchange does not believe that the proposed changes will impair the ability of ETP Holders or competing order execution venues to maintain their competitive standing in the financial markets.

¹⁰ 15 U.S.C. 78f(b)(8).

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 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-2016-85 on the subject line.

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).

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-2016-85. 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 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-2016-85, 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

Robert W. Errett
Deputy Secretary

¹⁴ 17 CFR 200.30-3(a)(12).