

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-79054; File No. SR-NYSEArca-2016-137)

October 5, 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 to Revise the Requirements For the Current Step Up Tier

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 September 29, 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 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 revise the requirements for the current Step Up Tier. The Exchange proposes to implement the fee change effective October 3, 2016. 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.

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

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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.

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 to revise the requirements for the current Step Up Tier. The Exchange proposes to implement the fee change effective October 3, 2016.

Step Up Tier

The Exchange recently adopted a Step Up Pricing Tier.<sup>4</sup> Currently, ETP Holders and Market Makers qualify for a Step Up Tier credit of \$0.0029 per share for providing liquidity in Tape A and Tape C Securities and \$0.0028 per share for providing liquidity in Tape B Securities. The Step Up Tier credits apply to ETP Holders and Market Makers that, on a daily basis, measured monthly,

- (i) directly execute providing average daily volume ("ADV") on NYSE Arca in an amount that is an increase of no less than 0.15% of United States consolidated average daily volume ("US CADV") in Tape A, Tape B and Tape C Securities for that month over the ETP Holder's or Market Maker's providing ADV in July 2016 ("Baseline Month"), and
- (ii) set a new Best Bid or Offer ("BBO") on the Exchange with at least 40% of the ETP Holder's or Market Maker's providing ADV.

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<sup>4</sup> See Securities Exchange Act Release No. 78892 (September 21, 2016), 81 FR 66315 (September 27, 2016) (SR-NYSEArca-2016-128) (the "Step Up Tier Filing").

As an incentive for ETP Holders and Market Makers to direct their order flow to the Exchange, for the months of September 2016 and October 2016 only, the Exchange adopted lower providing ADV criteria for ETP Holders and Market Makers to qualify for the Step Up Tier credits. For the billing month of September 2016 only, the Step Up Tier credit applied to ETP Holders and Market Makers that, on a daily basis, measured monthly,

- (i) directly executed providing ADV on NYSE Arca in an amount that was an increase of no less than 0.045% of US CADV in Tape A, Tape B and Tape C Securities for that month over the ETP Holder's or Market Maker's providing ADV in the Baseline Month, and
- (ii) set a new BBO on the Exchange with at least 40% of the ETP Holder's or Market Maker's providing ADV.<sup>5</sup>

As proposed in the Step Up Tier Filing, for the billing month of October 2016 only, the Step Up credit would be applicable to ETP Holders and Market Makers that, on a daily basis, measured monthly,

- (i) directly execute providing ADV on NYSE Arca in an amount that is an increase of no less than 0.09% of US CADV in Tape A, Tape B and Tape C Securities for that month over the ETP Holder's or Market Maker's providing ADV in the Baseline Month, and
- (ii) set a new BBO on the Exchange with at least 40% of the ETP Holder's and Market Maker's providing ADV.

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<sup>5</sup> The Step Up Tier Filing adopted lower requirements for ETP Holders and Market Makers to qualify for the Step Up Tier credits for the months of September 2016 and October 2016. Given this proposed rule change would become effective October 3, 2016 and would no longer be applicable for September 2016, the Exchange proposes to delete from the Fee Schedule reference to the Step Up Tier credits applicable to ETP Holders and Market Makers for the month of September 2016.

The Exchange proposes to revise the requirement for the Step Up Tier that would be applicable to ETP Holders and Market Makers, with a lower requirement for October 2016, to provide market participants with an incentive to direct their orders to the Exchange.

The Exchange is proposing a change to the second part of the current Step Up Tier by requiring ETP Holders and Market Makers to set a new BBO on the Exchange with at least 25% in each of the ETP Holder's or Market Maker's Tape A, Tape B and Tape C providing ADV. Specifically, as proposed, the Step Up Credit would be applicable to ETP Holders and Market Makers that, on a daily basis, measured monthly,

- (i) directly execute providing ADV on NYSE Arca in an amount that is an increase of no less than 0.15% of US CADV in Tape A, Tape B and Tape C Securities for that month over the ETP Holder's or Market Maker's providing ADV in the Baseline Month, and
- (ii) set a new BBO on the Exchange with at least 25% in each of the ETP Holder's or Market Maker's Tape A, Tape B and Tape C providing ADV.

The Exchange is not proposing any change to the first part of the Step Up Tier or to the level of credits payable under the Step Up Tier.

To illustrate, an ETP Holder who has a providing ADV of 15 million shares in the Baseline Month would be required to execute, at a minimum, an additional 9.75 million shares of providing ADV if CADV is 6.5 billion shares in the billing month, or 0.15% over the Baseline Month, for a total providing ADV of 24.75 million shares for the billing month. Further, of the 24.75 million shares, assume 10.75 million shares are in Tape A Securities, and 7 million shares are each in Tape B and Tape C Securities. The ETP Holder would be required to have a providing ADV that sets a new BBO on the Exchange of at least 2.6875 million shares in Tape A

Securities, and 1.750 million shares each in Tape B and Tape C Securities.

For the billing month of October 2016 only, the Step Up credit would be applicable to ETP Holders and Market Makers that, on a daily basis, measured monthly,

- (i) directly execute providing ADV on NYSE Arca in an amount that is an increase of no less than 0.09% of US CADV in Tape A, Tape B and Tape C Securities for that month over the ETP Holder's or Market Maker's providing ADV in the Baseline Month, and
- (ii) set a new BBO on the Exchange with at least 25% in each of the ETP Holder's or Market Maker's Tape A, Tape B and Tape C providing ADV.

The Exchange believes revising the requirement for ETP Holders and Market Makers to set a new BBO on the Exchange with at least 25% in each of the ETP Holder's or Market Maker's Tape A, Tape B and Tape C providing ADV should allow a greater number of participants to qualify for the credit and will also encourage ETP Holders and Market Makers to provide liquidity across more symbols traded on the Exchange to the benefit of all market participants who trade on the Exchange.

The Exchange notes that if an ETP Holder or Market Maker qualifies for more than one tier in the Fee Schedule, the Exchange would apply the most favorable rate available under such tiers.

The goal of the Step-Up Tier when adopted by the Exchange in September 2016 was to incentivize ETP Holders and Market Makers to increase the orders sent directly to NYSE Arca and therefore provide liquidity that supports the quality of price discovery and promotes market transparency. The Exchange believes the proposed change to the Step Up Tier furthers that goal by encouraging ETP Holders and Market Makers to direct their order flow in more securities

traded on the Exchange rather than just a subset of securities.

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,<sup>6</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>7</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 proposal does not constitute an inequitable allocation of fees, as all similarly situated market participants will be subject to the same fees and credits and access to the Exchange's market is offered on fair and non-discriminatory terms.

The Exchange believes that amendments [sic] to the Step Up Tier is reasonable, equitable and not unfairly discriminatory because the proposed amendment would continue to directly relate to the activity of ETP Holders and Market Makers and would apply uniformly to all similarly situated ETP Holders and Market Makers that send orders to the Exchange. The Exchange further believes that lowering the level for setting a new BBO on the Exchange from 40% to 25% of adding ADV is reasonable because it may allow a greater number of ETP Holders and Market Makers to qualify for the Step up Tier credits. The Exchange believes adopting separate BBO requirements for each of Tape A, Tape B and Tape C securities is reasonable because it would create an incentive for ETP Holders and Market Makers to improve

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<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(4) and (5).

displayed quotes on the Exchange for securities in each Tape, which would benefit all market participants in securities of each tape.

As the Exchange noted in the Step Up Tier Filing, the Exchange believes that the Step-Up Tier is intended to provide market participants with an incentive to increase the orders sent directly to NYSE Arca and thereby provide liquidity that supports the quality of price discovery and promotes market transparency. The Exchange believes the proposed amendment to the Step Up Tier will continue to provide market participants with the incentive to direct their order flow to the Exchange. Moreover, the amendment to the Step Up Tier would benefit market participants whose targeted order flow would provide meaningful added levels of liquidity thereby contributing to the depth and market quality on the Exchange. In addition, the Exchange believes the proposed amendment to the Step Up Tier should result in more market participants providing order flow and therefore more market participants would be eligible to receive the credits for their orders.

The Exchange believes that adopting lower providing ADV criteria for October 2016 is reasonable because it may allow a greater number of ETP Holders and Market Makers to qualify for the proposed credits while also providing ETP Holders and Market Makers the opportunity to gradually increase their activity in order to qualify for the credits. The Exchange believes that adopting lower providing ADV criteria for October 2016 is also equitable and not unfairly discriminatory because the lower criteria would apply uniformly to all ETP Holders and Market Makers during October 2016.

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 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.

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,<sup>8</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 proposal to amend the Step Up Tier would continue to 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

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

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.

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>9</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>10</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 Commission shall institute proceedings under Section 19(b)(2)(B)<sup>11</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

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<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

<sup>11</sup> 15 U.S.C. 78s(b)(2)(B).

#### 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-2016-137 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-2016-137. 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-2016-137 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>12</sup>

Brent J. Fields  
Secretary

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