

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-80029; File No. SR-NYSEArca-2017-12)

February 13, 2017

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Options Fee Schedule

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 February 7, 2017, 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 Options Fee Schedule (“Fee Schedule”). The Exchange proposes to implement the fee change effective February 7, 2017. 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

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 purpose of this filing is to amend the Fee Schedule effective February 7, 2017. Specifically, the Exchange proposes to introduce a Market Maker posting incentive that applies to transactions in non-Penny Pilot Issues.

Currently, the Exchange offers various incentives that apply to Market Maker posted orders in Penny Pilot issues. Among these are the Market Maker Incentive ("Penny Incentive"),⁴ and the Market Maker Monthly Posting Credit Tiers for executions in Penny Pilot Issues and SPY (the "Credit Tiers"). The Credit Tiers offer increasing incentives applied to posted orders in Penny Pilot issues, qualified by increased levels of market share. One of the Credit Tiers, designated the Super Tier, applies a posting credit of \$0.37 to posted order transactions in Penny Pilot issues, and a \$0.39 credit to posted order transactions in SPY. Market Makers qualify for the Super Tier in one of two ways: (1) by achieving at least 0.55% of Total Industry Customer equity and ETF option ADV ("TCADV") from Market Maker Posted Orders in All Issues, or (2) by achieving at least 1.60% of TCADV from all orders in Penny Pilot Issues, all account types, with at least 0.80% of TCADV from Posted Orders in Penny Pilot Issues (the "Super Tier qualification levels").

⁴ The Penny Incentive offers a \$0.41 credit applied to posted electronic Market Maker executions in Penny Pilot Issues to any Market Maker that, together with its affiliates or Appointed OFPs, achieve at least 0.75% of TCADV from Customer Posted Orders in both Penny Pilot and non-Penny Pilot Issues and an ADV from Market Maker Posted Orders equal to 0.70% of TCADV.

The Exchange proposes to adopt an additional incentive program based on the Super Tier qualification levels that would apply to posted volume in non-Penny Pilot issues (the “Non-Penny Incentive”). As proposed, a Market Maker would be eligible for a \$0.55 credit for Posted Electronic Market Maker Executions in Non-Penny Pilot Issues provided the Market Maker achieved (1) at least 0.55% of TCADV from Market Maker Posted Orders in All Issues, or (2) at least 1.60% of TCADV from all orders in Penny Pilot Issues, all account types, with at least 0.80% of TCADV from Posted Orders in Penny Pilot Issues. The Exchange believes that adopting this additional incentive would encourage Market Makers to achieve a higher level of posted orders in all issues, which in turn encourages tighter market spreads and increased liquidity to the benefit of all market participants. The proposed incentive would be referred to as the “Market Maker Incentive For Non-Penny Pilot Issues.”

The Exchange notes that, like the existing Penny Incentive, the calculations for the qualification thresholds for the proposed Non-Penny Incentive would apply solely to electronic executions and would include transaction volume from the Market Maker’s affiliates or its Appointed OFP. Further, Qualified Contingent Cross (“QCC”) orders are neither posted nor taken; thus, QCC transactions would not be included in the calculation of posted or taken execution volumes. The calculations would not include volume from mini-option transactions, nor would they include volume from Complex Order transactions. Orders routed to another market for execution would not be included in the calculation of taking volume.

To avoid potential confusion and to distinguish the proposed program from the existing Penny Incentive, the Exchange proposes to re-name the Market Maker Incentive to the “Market Maker Incentive in Penny Pilot Issues.” The Exchange believes this proposed change would add clarity and consistency to the Fee Schedule.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁵ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,⁶ 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 Non-Penny Incentive is reasonable, equitable, and not unfairly discriminatory because it would be available to all Market Makers on an equal and non-discriminatory basis, in particular because it offers alternative means to achieve the same credit. The Exchange believes that adopting the proposed Incentive is equitable and not unfairly discriminatory because it would encourage more Market Makers to qualify for the credit, including encouraging Market Makers to have affiliated or appointed order flow directed to the Exchange. The Exchange believes that attracting additional order flow to the Exchange would enhance market quality and would benefit all market participants by offering greater price discovery, increased transparency, and an increased opportunity to trade on the Exchange. Further, encouraging Market Makers to send higher volumes of orders to the Exchange would also contribute to the Exchange's depth of book as well as to the top of book liquidity.

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,⁷ the Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4) and (5).

⁷ 15 U.S.C. 78f(b)(8).

in furtherance of the purposes of the Act. Instead, the Exchange believes that the proposed change would continue to encourage competition, including by attracting additional liquidity to the Exchange, which would continue to make the Exchange a more competitive venue for, among other things, order execution and price discovery. The Exchange does not believe that the proposed change would impair the ability of any market participants or competing order execution venues to maintain their competitive standing in the financial markets. Further, the incentive would be available to all similarly situated Market Makers, and, as such, the proposed change would not impose a disparate burden on competition either among or between classes of market participants and should encourage competition.

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 other 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 degree to which fee changes in this market may impose any burden on competition is extremely limited. For the reasons described above, the Exchange believes that the proposed rule change reflects this 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)⁸ of the

⁸ 15 U.S.C. 78s(b)(3)(A).

Act and subparagraph (f)(2) of Rule 19b-4⁹ 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)¹⁰ 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-2017-12 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-2017-12. This file number should be included on the subject line if e-mail is used. To help the Commission process and review

⁹ 17 CFR 240.19b-4(f)(2).

¹⁰ 15 U.S.C. 78s(b)(2)(B).

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-2017-12, 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.¹¹

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Assistant Secretary

¹¹ 17 CFR 200.30-3(a)(12).