

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-80032; File No. SR-NYSEARCA-2017-10)

February 13, 2017

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend 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 January 30, 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 Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services. The Exchange proposes to implement the fee changes effective February 1, 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 places

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule, as described below, and implement the fee changes on February 1, 2017.

Tape B Tiers

Currently, a Tape B Tier 1 credit of \$0.0030 per share⁴ applies to ETP Holders and Market Makers, that, on a daily basis, measured monthly, directly execute providing volume in Tape B Securities during the billing month ("Tape B Adding ADV") that is equal to at least 0.40% of US Tape B CADV over the ETP Holder's second quarter 2015 Tape B Adding ADV taken as a percentage of Tape B CADV ("Tape B Baseline % CADV").

The Exchange proposes to revise the threshold such that, to qualify for the Tape B Tier 1 credit, providing volume executed by ETP Holders and Market Makers would no longer be measured against the ETP Holder's Tape B baseline % CADV and would instead be based on such ETP holder directly executing providing volume in Tape B Securities that is equal to at least 1.50% of US Tape B CADV for the billing month.

The Exchange is not proposing any change to the level of Tape B Tier 1 credits.

Secondly, the Exchange proposes to introduce an alternative method of qualifying for Tape B Tier 2 credits. Currently, a Tape B Tier 2 credit of \$0.0028 per share⁵ applies to ETP

⁴ Under the Basic Rate, ETP Holders receive a credit of \$0.0020 per share for Tape B orders that provide liquidity to the Book.

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Holders and Market Makers, that, on a daily basis, measured monthly, directly execute Tape B Adding ADV that is equal to at least 0.20% of the US Tape B CADV over the ETP Holder's or Market Maker's Tape B Baseline % CADV. As proposed, ETP Holders and Market Makers could alternatively qualify for the Tape B Tier 2 credit by directly executing Tape B Adding ADV that is equal to at least 1.0% of the US Tape B CADV. The Exchange believes that, by providing for an additional method of qualifying for Tape B Tier 2, this proposed change will provide a greater incentive to attract additional liquidity in Tape B Securities so as to qualify for the Tape B Tier 2 credit.

The Exchange is not proposing any change to the level of Tape B Tier 2 credits.

Tape C Tier

The Exchange proposes to introduce a new pricing tier level – Tape C Tier – for securities with a per share price above \$1.00.

As proposed, a new Tape C Tier credit of \$0.0002 per share⁶ would be applicable to 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 equal to at least 0.10% of US Tape C CADV over the ETP Holder's or Market Maker's fourth quarter 2016 Tape C Adding ADV taken as a percentage of Tape C CADV.⁷ For example, if an ETP Holder's Tape C Baseline % CADV during fourth quarter 2016 was 0.500%, the ETP Holder would need

⁶ Under the Basic Rate, ETP Holders receive a credit of \$0.0020 per share for Tape C orders that provide liquidity to the Book.

⁷ The Exchange proposes to use the same definition of US CADV for purposes of the proposed Tape C Tier. Specifically, U.S. CADV means 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 U.S. CADV. See Fee Schedule, Footnote 3.

a Tape C Adding ADV of at least 0.600% in order to qualify for the proposed Tape C Tier credit of \$0.0002 per share (i.e., 0.500% Tape C Baseline % CADV plus 0.100% of the US Tape C CADV for the billing month).⁸ The credit provided under the proposed Tape C Tier would be in addition to the ETP Holder's Tiered or Basic Rate credit(s); provided, however, that such combined credit would not be permitted to exceed \$0.0031 per share.

Finally, for ETP Holders that qualify for the proposed new Tape C Tier, Tiered or Basic Rates would apply to all other fees and credits, based on a firm's qualifying levels, and if an ETP Holder qualifies for more than one tier in the Fee Schedule, the Exchange would apply the most favorable rate available under such tiers.

Deletion of the "P" Modifier

On April 30, 2015, the Exchange filed the first of a number of proposed rule changes (the "first Pillar filing") to adopt new equity trading rules to reflect the implementation of Pillar, the Exchange's new integrated trading technology platform designed to use a single specification for connecting to the equities and options markets operated by NYSE Arca and its affiliates, New York Stock Exchange LLC and NYSE MKT LLC.⁹ The Commission approved the first Pillar filing, including the interim use of the "P" modifier.¹⁰ The Exchange also previously filed a

⁸ The Exchange recognizes that a firm that becomes an ETP Holder or Market Maker after the Baseline Month would have a Tape C Baseline ADV of zero. In this regard, a new ETP Holder or Market Maker would need to have a Tape C Adding ADV during the billing month of no less than 0.100% of US Tape C CADV for the \$0.0002 per share credit to apply.

⁹ See Securities Exchange Act Release No. 74951 (May 13, 2015), 80 FR 28721 (May 19, 2015) (SR-NYSEArca-2015-38) (notice of filing of proposed rule change adopting new equity trading rules relating to trading sessions, order ranking and display, and order execution, and the use of the "P" modifier).

¹⁰ See Securities Exchange Act Release No. 75494 (July 20, 2015), 80 FR 44170 (July 24, 2015) (SR-NYSEArca-2015-38) (approval of proposed rule change adopting new equity trading rules relating to trading sessions, order ranking and display, and order execution, and the use of "P" modifier).

proposed rule change to amend its Fee Schedule to adopt references that would be applicable during the migration to Pillar,¹¹ including the adoption of the “P” modifier, where applicable, to the Fee Schedule.¹²

Once the migration of securities to Pillar was completed, the Exchange filed a proposed rule change to amend the Fee Schedule to remove references adopted in the Pillar Fee Filings,¹³ with exception to references to the “P” modifier as the “P” modified rules remained in effect at that time. The Exchange has since amended its rules to, among other things, delete the “P” modifier,¹⁴ and now proposes to delete references to the “P” modifier from the Fee Schedule.

Deletion of Obsolete Fee Language

In September 2016, the Exchange filed a proposed rule change to adopt a new Step Up pricing tier.¹⁵ 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. The Exchange previously filed a proposed rule change 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 2016,¹⁶ and now 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 October

¹¹ See Securities Exchange Act Release Nos. 77124 (February 12, 2016), 81 FR 8548 (February 19, 2016) (SR-NYSEArca-2016-18); and 77588 (April 12, 2016), 81 FR 22676 (April 18, 2016) (SR-NYSEArca-2016-54) (“Pillar Fee Filings”).

¹² Id.

¹³ See Securities Exchange Act Release No. 77925 (May 26, 2016), 81 FR 35412 (June 2, 2016) (SR-NYSEArca-2016-78).

¹⁴ See Securities Exchange Act Release No. 79078 (October 11, 2016), 81 FR 71559 (October 17, 2016) (SR-NYSEArca-2016-135).

¹⁵ 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”).

¹⁶ See Securities Exchange Act Release No. 79054 (October 5, 2016), 81 FR 70473 (October 12, 2016) (SR-NYSEArca-2016-137).

2016 as that language is now obsolete.

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any significant problems that 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,¹⁷ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,¹⁸ 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.

Tape B Tiers

The Exchange believes the proposed changes to the Tape B Tiers are reasonable and equitably allocated because they would apply to ETP Holders and Market Makers that provide liquidity to the Exchange and are designed to incentivize these market participants to increase the orders sent directly to the Exchange and therefore provide liquidity that supports the quality of price discovery and promotes market transparency. The Exchange believes the Tape B Tiers are equitable because they are open to all similarly situated ETP Holders and Market Makers on an equal basis and provide credits that are reasonably related to the value of an exchange's market quality associated with higher volumes.

The Exchange believes that the proposed thresholds for qualifying for Tape B Tiers are reasonable because they are designed to encourage increased trading activity on the NYSE Arca equity market. The Exchange believes it is reasonable, equitable and not unfairly discriminatory

¹⁷ 15 U.S.C. 78f(b).

¹⁸ 15 U.S.C. 78f(b)(4) and (5).

to require ETP Holders and Market Makers to meet the higher threshold to qualify for the Tape B Tier 1 credit because doing so would result in a higher credit paid to such participants.

Further, ETP Holders and Market Makers that do not meet the proposed threshold for the Tape B Tier 1 can also avail themselves to the Tape B Tier 2 credit, which while providing for a lower credit, also has lower requirements to qualify for such credit. Further, pursuant to this proposed rule change, ETP Holders and Market Makers will now be able to alternatively qualify for the Tape B Tier 2 credit.

The proposed new method of qualifying for the Tape B Tier 2 credit is also equitable and not unfairly discriminatory because it would be available to all ETP Holders and Market Makers on an equal and non-discriminatory basis. In this regard, the Exchange notes that ETP Holders and Market Makers that do not meet the proposed alternative method would continue to have the opportunity to qualify for the Tape B Tier 2 credit by satisfying the existing requirement, which would not change as a result of this proposal.

Tape C Tier

The Exchange believes the proposed Tape C Tier is reasonable and equitably allocated because it would apply to ETP Holders and Market Makers that provide liquidity in Tape C Securities to the Exchange and is designed to incentivize these market participants to increase the orders sent directly to the Exchange and therefore provide liquidity that supports the quality of price discovery and promotes market transparency. The Exchange believes the new Tape C Tier is equitable because it would be available to all similarly situated ETP Holders and Market Makers on an equal basis and provides a credit that is reasonably related to the value of an exchange's market quality associated with higher volumes. The Exchange further believes that the proposed Tape C Tier is reasonable, equitable and not unfairly discriminatory because the

Exchange has previously implemented pricing tiers that target a particular segment of securities, such as Tape A and Tape B Securities.

The Exchange further believes that it is equitable and not unfairly discriminatory that the proposed \$0.0002 credit under the Tape C Tier would not be permitted to exceed \$0.0031 per share when combined with other credits available to ETP Holders under other tiers specified in the Fee Schedule because the ETP Holders that qualify for these specified tiers would already receive a higher credit for such executions.

The Exchange believes that the proposed rule change regarding Tape B and Tape C credits 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. The Exchange believes that the proposed amendment to Tape B

Tiers and the introduction of Tape C Tier will provide such enhancements in market quality on the Exchange's equity market by incentivizing increased participation.

Deletion of the "P" Modifier

The Exchange believes that the proposed changes to the Fee Schedule to delete the "P" modifier from rules referenced in the Fee Schedule is reasonable, equitable and not unfairly discriminatory because the changes are intended to add clarity to the Fee Schedule and avoid investor confusion, which is in the public interest. The "P" modifier, which is no longer necessary, was intended to distinguish the Pillar trading rules from the now obsolete rules during the transitional period to a single trading platform and a single set of rules governing trading, would remove impediments to and perfect the mechanism of a national market system because these proposed changes would add greater clarity to the Exchange's rules and promote market transparency and efficiency.

Deletion of Obsolete Fee Language

The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to delete reference to obsolete fees from the Fee Schedule. The Step Up Tier Filing adopted lower requirements for ETP Holders and Market Makers to qualify for the Step Up Tier credits for the month of October 2016. Given that October 2016 has now passed, the Exchange believes deletion of the outdated language will bring clarity to the Fee Schedule.

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,¹⁹ 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 revise the threshold to qualify for Tape B credits and the addition of a new Tape C credit 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.

With respect to the changes related to the renaming of order types [sic] on Pillar, the proposed changes are not designed to address any competitive issue but rather provide the public and investors with a Fee Schedule that is transparent.

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

¹⁹ 15 U.S.C. 78f(b)(8).

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)²⁰ of the Act and subparagraph (f)(2) of Rule 19b-4²¹ 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)²² 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:

²⁰ 15 U.S.C. 78s(b)(3)(A).

²¹ 17 CFR 240.19b-4(f)(2).

²² 15 U.S.C. 78s(b)(2)(B).

- 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-2017-10 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-2017-10. 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-2017-10 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.²³

Eduardo A. Aleman
Assistant Secretary

²³ 17 CFR 200.30-3(a)(12).