

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-80285; File No. SR NYSEArca-2017-27)

March 21, 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)<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 March 10, 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 (“Fee Schedule”). The Exchange proposes to implement the fee changes effective March 10, 2017.<sup>4</sup> 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.

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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.

<sup>4</sup> The Exchange originally filed to amend the Fee Schedule on February 28, 2017 (SR-NYSEArca-2017-21) and withdrew such filing on March 10, 2017.

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 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 March 10, 2017.

Mid-Point Liquidity Order – Securities \$1.00 and Greater

A Mid-Point Liquidity Order is defined in Rule 7.31(d)(3) as a Limit Order that is not displayed and does not route, with a working price at the midpoint of the Protected Best Bid and Offer (“PBBO”).<sup>5</sup>

The Exchange currently does not charge a fee for MPL Orders in Tape A, Tape B and Tape C securities that remove liquidity from the Exchange that are designated as “Retail Orders.”<sup>6</sup> The Exchange proposes to charge a fee of \$0.0010 per share in each of Tier 1, Tier 2

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<sup>5</sup> See Rule 7.31(d)(3).

<sup>6</sup> 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 also Securities Exchange Act Release No. 71176 (December 23, 2013), 78 FR 79524 (December 30, 2013) (SR–NYSEArca–2013–107).

and Basic Rates sections of the Fee Schedule for MPL Orders that remove liquidity from the Exchange and that are designated as Retail Orders.

#### Tape B Orders

The Fee Schedule currently provides that a fee of \$0.00285 per share is charged for orders that take liquidity from the Book in Tape B securities in each of Tier 1, Tier 2, Tier 3, and Cross-Asset Tier 2 sections of the Fee Schedule, and for Limit Non-Displayed Orders<sup>7</sup> that take liquidity from the Book in Tape B securities in each of Tier 1, Tier 2 and Tier 3 of the Fee Schedule. The Exchange proposes to increase this fee to \$0.0029 per share.

#### Lead Market Maker ("LMM")<sup>8</sup> Transaction Fees

The Exchange currently charges a fee of \$0.00285 per share to LMMs for orders in primary listed securities that remove liquidity from the NYSE Arca Book. The Exchange proposes to increase this fee to \$0.0029 per share.

#### Tape C Tier 2

The Exchange proposes a new pricing tier – Tape C Tier 2 – for securities with a per share price at or above \$1.00.

As proposed, the Tape C Tier 2 would apply 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 0.20% of the US Tape C CADV for the billing month over the ETP Holder's or Market Maker's Q4 2016 Tape C Adding ADV taken as a percentage of Tape C CADV. Such ETP Holders and Market Makers would be

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<sup>7</sup> A Limit Non-Displayed Order is a Limit Order that is not displayed and does not route. See Rule 7.31(d)(2).

<sup>8</sup> The term "Lead Market Maker" is defined in Rule 1.1(ccc) to mean a registered Market Maker that is the exclusive Designated Market Maker in listings for which the Exchange is the primary market.

charged a fee of \$0.0029 per share for orders that take liquidity from the Book in Tape C Securities. For example, if an ETP Holder's Tape C Baseline % CADV during fourth quarter 2016 was 0.500%, the ETP Holder would need a Tape C Adding ADV of at least 0.700% to meet the requirements for Tape C Tier 2. For all other fees and credits, Tiered or Basic Rates apply based on a firm's qualifying levels.

The Exchange recently adopted a Tape C Tier credit of \$0.0002 per share for orders that provide liquidity to the Book.<sup>9</sup> That credit is applied in addition to the ETP Holder's or Market Maker's Tiered or Basic Rate credit(s) except that such combined credit cannot exceed \$0.0031 per share. For ETP Holders and Market Makers that would be subject to the proposed Tape C Tier 2 fee, the combined credit shall not exceed \$0.0033 per share.

The Exchange also proposes to rename the current Tape C Tier to Tape C Tier 1 to distinguish this pricing tier from the proposed new pricing tier, Tape C Tier 2.

### Cross Asset Tier 3

The Exchange proposes a new pricing tier – Cross Asset Tier 3 – for securities with a per share price at or above \$1.00.

As proposed the Cross Asset Tier 3 would apply to ETP Holders and Market Makers that (a) provide liquidity of 0.30% or more of the US CADV per month and (b) are affiliated with an OTP Holder or OTP Firm that provides an ADV of electronic posted Customer and Professional Customer executions in all issues on NYSE Arca Options (excluding mini options) of at least 0.80% of total Customer equity and ETF option ADV as reported by OCC, of which at least 0.20% of total Customer equity and ETF option ADV as reported by OCC is from Customer and Professional Customer executions in non-Penny Pilot issues on NYSE Arca Options. Such ETP

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<sup>9</sup> See Securities Exchange Act Release No. 80032 (February 13, 2017), 82 FR 11076 (February 17, 2017) (SR– NYSEArca–2017–10).

Holders and Market Makers would receive a credit of \$0.0030 per share for orders that provide liquidity to the order book in Tape A, Tape B and Tape C Securities. For all other fees and credits, Tiered or Basic Rates apply based on a firm's qualifying levels.

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,<sup>10</sup> in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,<sup>11</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.

### Mid-Point Liquidity Order

The Exchange believes that the proposed increase to the fee for executions of MPL Orders that remove liquidity and that are designated as Retail Orders is reasonable. MPL Orders provide opportunities for market participants to interact with orders priced at the midpoint of the PBBO, thus providing price improving liquidity to market participants and increasing the quality of order execution on the Exchange's market, which benefits all market participants.

Specifically, the Exchange believes that charging a fee for MPL Orders that remove liquidity from the Exchange and that are designated as Retail Orders is reasonable because the fee is substantially lower than the \$0.0030 per share (fee) for MPL orders removing liquidity from the Book that are not designated as "Retail Orders."

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<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(4) and (5).

### Tape B Orders

The Exchange believes that the proposal to increase the fee charged for orders in Tape B Securities in Tier 1, Tier 2, Tier 3 and Cross-Asset Tier 2 that take liquidity from the Book, and for Limit Non-Displayed Orders that take liquidity from the Book in Tape B securities in each of Tier 1, Tier 2 and Tier 3, is reasonable because the proposed rate will continue to be lower than the fee charged by other exchanges. For example, Bats EDGX Exchange (“EDGX”) currently charges a fee of \$0.0030 per share for orders that remove liquidity in Tape B securities on that exchange.<sup>12</sup> The Exchange further believes that the proposed fee increase is equitable and not unfairly discriminatory because it would apply to all orders in Tape B Securities in Tier 1, Tier 2, Tier 3 and Cross-Asset Tier 2 that take liquidity from the Book.

### LMM Transaction Fees

The Exchange believes that it is reasonable to increase the fee charged to LMMs for orders in primary listed securities that remove liquidity from the NYSE Arca Book as this fee would be the same as the fee increase proposed by the Exchange to Tier 1, Tier 2, Tier 3 and Cross-Asset Tier 2 ETP Holders and Market Makers that take liquidity in Tape B securities. In addition, the proposed fee change is equitable and not unfairly discriminatory because it would apply uniformly to all similarly situated LMMs.

### Tape C Tier 2

The Exchange believes that the proposal to adopt a lower fee of \$0.0029 per share for orders that take liquidity from the Book in Tape C Securities for firms that qualify for Tape C Tier 2 is reasonable because the proposed rate is lower than fees charged by other exchanges for taking liquidity in Tape C Securities, and would create an added incentive for ETP Holders and

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<sup>12</sup> See EDGX Fee Schedule at [http://www.bats.com/us/equities/membership/fee\\_schedule/edgx/](http://www.bats.com/us/equities/membership/fee_schedule/edgx/).

Market Makers to execute additional orders on the Exchange. For example, EDGX currently charges a fee of \$0.0030 per share fee for orders that take liquidity from that exchange in Tape C Securities. The Exchange further believes that the proposed fee decrease is equitable and not unfairly discriminatory because it would apply to all orders in Tape C Securities with a per share price of \$1.00 and greater that take liquidity from the Book. The Exchange believes that the proposal to raise the cap on the combined credit from \$0.0031 per share to \$0.0033 per share for ETP Holders and Market Makers that meet the requirement for proposed new Tape C Tier 2 is reasonable because it would create an added incentive for ETP Holders and Market Makers to add liquidity on the Exchange for the benefit all market participants.

### Cross Asset Tier 3

The Exchange believes the proposed Cross Asset Tier 3 is reasonable and equitably allocated because it would apply to ETP Holders and Market Makers that provide liquidity 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 Cross Asset Tier 3 is equitable because it would be available to all similarly situated ETP Holders and Market Makers on an equal basis and would provide credits that are reasonably related to the value of an exchange's market quality associated with higher volumes. The Exchange further believes that the proposed Cross Asset Tier 3 is reasonable, equitable and not unfairly discriminatory because the Exchange has previously implemented cross asset tiers, including the current Cross Asset Tier 1 and Cross Asset Tier 2.

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,<sup>13</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 proposed changes 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. 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

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<sup>13</sup> 15 U.S.C. 78f(b)(8).

impair the ability of ETP Holders or competing order execution venues to maintain their competitive standing in the financial markets. Finally, the Exchange believes the proposed fee changes do not impose any burden on competition as the fee changes are consistent with the fees charged by other exchanges.<sup>14</sup>

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>15</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>16</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>17</sup> 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:

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<sup>14</sup> See supra, note 12.

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

<sup>16</sup> 17 CFR 240.19b-4(f)(2).

<sup>17</sup> 15 U.S.C. 78s(b)(2)(B).

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-2017-27 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-2017-27. 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-2017-27 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>18</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>18</sup> 17 CFR 200.30-3(a)(12).