

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-80440; File No. SR-NYSEArca-2017-38)

April 12, 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 April 5, 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 April 5, 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 Exchange proposes to modify Lead Market Maker (“LMM”) Rights Fees (“Rights Fee”) to encourage OTP Firms acting as LMMs to add more issues to their allocation. The Exchange proposes to implement the fee change effective April 5, 2017.

The LMM Rights Fee is charged “on a per issue basis to the OTP Firm acting as LMM in the issue.”⁴ Currently, the Exchange charges a Rights Fee on each issue in a LMM’s allocation, with rates based on the Average National Daily Customer Contracts (“CADV”). The monthly Rights Fee ranges from \$25 per month to \$3,000 per month. Under the current Fee Schedule, the more active an issue is, the higher the Rights Fee, as set forth below:

Average National Daily Customer Contracts	Monthly Issue Fee
0 to 100	\$25
101 to 1,000	\$35
1,001 to 2,000	\$75
2,001 to 5,000	\$200
5,001 to 15,000	\$750
15,001 to 100,000	\$1,500
Over 100,000	\$3,000

LMM Rights Fee Discount

Currently, the Exchange provides an LMM Rights Fee Discount applicable to each issue in an LMM’s appointment with a CADV above 5, 000 based on the amount of monthly (i) total

⁴ See Fee Schedule, Endnote 2, available [here](https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf), https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf.

electronic volume and/or (ii) total posted volume executed by an LMM in the Market Maker range relative to other Market Makers appointed in that issue (the “Discount”).⁵ This Discount was designed to incent LMMs that already transact a significant amount of business on the Exchange and trade competitively in their issues to achieve one of the Discounts as well as to incent LMMs to apply for new issue allocation.

The Exchange proposes to modify and expand the Discount. First, the Exchange proposes to make the Discount available to LMMs with issues in their appointment with a CADV above 2,000. The Exchange also proposes to modify the amount of the Discount available as set forth in the table below (with new text underlined and existing text to be deleted in brackets):

⁵ See Securities and Exchange Act Release No. 77885 (May 23, 2016), 81FR 33716 (May 27, 2016) (SR-NYSEArca-2016-75) (immediately effective filing that provides how the Discount is applied). The Exchange notes that total posted volume executed by an LMM refers to the total volume executed from posted liquidity.

LMM Ranking	Discount to LMM Rights Fee
1 st in total electronic volume	50%
2 nd in total electronic volume	[25%] <u>40%</u>
3 rd [or lower ranking] <u>in total electronic volume</u>	[N/A] <u>30%</u>
<u>4th or lower ranking in total electronic volume</u>	<u>N/A</u>
1 st in total posted volume	50%
2 nd in total posted volume	[25%] <u>40%</u>
3 rd [or lower ranking] <u>in total posted volume</u>	[N/A] <u>30%</u>
<u>4th or lower ranking in total posted volume</u>	<u>N/A</u>

Under the proposal, as with the current Discount, each month the LMM in an issue would be ranked against non-LMM Market Makers that quote and trade in that LMM's issue. For each issue, each month, if the LMM achieves the highest total electronic volume (or total posted volume) amongst all Market Makers, the LMM would continue to receive a 50% discount to its Rights Fee. In addition, as proposed, for each issue, each month, if the LMM achieves the second highest total electronic volume (or total posted volume) amongst all Market Makers, the LMM would receive a 40% discount to its Rights Fee (raised from 25%). The Exchange also proposes to introduce an additional discount of 30% for an LMM that achieves the third highest total electronic volume (or total posted volume) amongst all Market Makers. An LMM that achieves the fourth highest or lower total electronic volume (or total posted volume) would not be eligible for a Discount. The Exchange believes the proposed discounts would incent LMMs [sic] to compete against non-LMM Market Makers to reduce its own Rights Fee. For example, if

one or more non-LMM Market Makers were ranked first, second, and third in (i) total electronic volume and (ii) total posted volume, the LMM would not receive a discount to its Rights Fee. However, when the LMM achieves one or both of the top volume rankings, the LMM would be eligible for a reduction. As is the case today, the Discounts would be cumulative and the same LMM would be eligible to achieve the discount for each monthly volume category.⁶ To illustrate how the cumulative discount applies, the Fee Schedule currently provides that “if an LMM was 1st in Total Electronic Volume, and 2nd in Total Posting Volume, the LMM would achieve a 75% discount in that issue.” To reflect the proposed rule change, the Exchange proposes to amend the current text in the Fee Schedule by replacing the LMM’s ranking from 2nd to 3rd in Total Posting Volume and replacing the percentage of discount that the LMM would achieve from 75% to 80%. As proposed, the resulting text on the Fee Schedule would provide that “For example, if an LMM was 1st in Total Electronic Volume, and 3rd in Total Posting Volume, the LMM would achieve an 80% discount in that issue.”

The Exchange believes that the proposed discounts may incent LMMs that already transact a significant amount of business on the Exchange to quote and trade competitively in their issues to achieve the highest (or second or third highest) monthly ranking in total electronic volume and total posted volume. The Exchange also believes the proposed changes may generate interest in LMMs to apply for new issue allocations, which would increase not only an LMM’s volume, but would also encourage liquidity on the Exchange to the benefit of all market participants.

⁶ As is the case today Discount would be applied before the Exchange considered whether the LMM was eligible for the 50% discount on its aggregate Rights Fees across all issues (i.e., if the LMM traded at least 50,000 contracts CADV, of which 10,000 such contracts are in its LMM appointment). See *id.* See also Fee Schedule, Endnote 2, [available here, https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf](https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf).

Cap on LMM Rights Fees

The Exchange also currently offers a cap on the LMM Rights Fee (the “Cap”). Specifically, the Exchange caps at 50 issues the Rights Fee it charges OTP Firms for issues with a CADV of 0 to 100 contracts (“First Tier”). The Exchange does not charge for any First Tier issues in the LMM’s allocation that exceed 50 issues. The Exchange also caps at 100 issues the Rights Fee it charges for issues with a CADV of 101 to 1000 (“Second Tier”). The Exchange does not charge for any Second Tier issues in the LMM’s allocation that exceed 100 issues.

The Exchange proposes to modify the Cap to encourage LMMs to add issues to their appointments. Specifically, the Exchange proposes to reduce the Cap from 100 issues to 50 issues on the Rights Fee it charges OTP Firms for issues in the Second Tier. The Exchange would not charge for any Second Tier issues in the LMM’s allocation that exceed 50 issues. The Exchange also proposes to cap at 50 issues the Rights Fee it charges for issues with a CADV of 1,001 to 2000 (“Third Tier”). The Exchange would not charge for any Third Tier issues in the LMM’s allocation that exceed 50 issues. The practical impact of this Cap would be that the maximum LMM Rights Fee charged to an OTP Firm for issues trading in the Second Tier would be \$1,750 (i.e., \$35 x 50) and the maximum Rights Fee charged to an OTP Firm for issues trading in the Third Tier would be \$3,750 (i.e., \$75 x 50). For example, an OTP Firm acting as an LMM with 55 issues that trade in the Second Tier, and another 130 that trade in the Third Tier, would be charged an LMM Rights fee of \$5,500 (\$1,750 (the max charged for Second Tier issues) plus \$3,750 (the max charged for Third Tier issues)).

The Exchange is proposing to set the Cap the [sic] Second and Third Tiers at the same amount (i.e., at 50 issues) as the First Tier, which the Exchange believes would reduce confusion and provide a commensurate benefit across the three lowest Tiers. The Exchange believes that

the proposed modification to the Cap would increase interest of OTP Firms acting as LMMs in adding to their allocation issues in the First, Second, and Third Tiers.

The Exchange does not believe that the proposed modification to the Cap would hinder an LMM's ability to achieve any of the existing discounts applicable to the Rights Fees; rather, to the extent that the Cap encourages an OTP Firm acting as an LMM to increase the number of issues in its allocation, the proposal may increase an LMM's chances of achieving existing discounts (i.e., to achieve the 50% discount on the Rights Fee an LMM needs to trade 10,000 electronic contracts ADV in its appointment).⁷

The Exchange is not proposing any other changes to the Rights Fee at this time.

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 (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 discriminate between customers, issuers, brokers or dealers.

The Exchange believes the proposed modification to the Discount is reasonable, equitable and not unfairly discriminatory for a number of reasons. First, all LMMs trading issues with similar activity levels would be eligible to achieve the discount (e.g., those LMMs trading issues with a CADV of 2,001 or above). The Exchange notes that there is only one LMM per issue, and only LMMs are subject to the Rights Fee. Under the proposal, each month the LMM in an issue would be ranked against non-LMM Market Makers that quote and trade in that LMM's

⁷ See supra note 6.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4) and (5).

issue. Because the non-LMM Market Makers are not subject to the Rights Fee, the modified Discount would not disadvantage Market Makers. Instead, the proposal would operate to incent each LMM to achieve First, Second, or Third ranking in monthly volume – both total electronic and total posted – for each issue, relative to non-LMM Market Makers, to reduce its own Rights Fee. In addition, the Discount, as modified, would reduce the overhead costs of LMM firms that are most actively trading in the issues, which reduced costs would enhance the ability of LMMs to provide liquidity to the benefit of all market participants.

The Exchange believes that the proposed modification to the Cap is reasonable, equitable and not unfairly discriminatory for a number of reasons. First, all LMMs trading in the First, Second and Third Tier issues would have the same incentive to add the affected issues to their allocation and would, in turn, be eligible to realize the same benefit. Second, the proposal would encourage OTP Firms acting as LMMs to add lower-volume issues to their appointments, which would provide greater opportunities for OTP Firms to achieve volume incentives on the Exchange without adding to their Rights Fees. In turn, the Cap, as modified, would reduce the overhead costs of OTP Firms that are most actively trading in the affected issues, which reduced costs would enhance the ability of LMMs to provide liquidity to the benefit of all market participants. Further, the Exchange believes that having a broader range of products available on the Exchange would benefit all market participants by increasing liquidity on the Exchange and offering more opportunities to trade.

The changes to the Rights Fee Discounts and the changes to the LMM Rights Fee caps are reasonable, equitable and not unfairly discriminatory as they apply to all similarly situated LMMs. The Exchange believes it is reasonable, equitable and not unfairly discriminatory to put a cap on lower tier issues, as it is designed to encourage LMMs to apply for lower volume issues

in their LMM appointment. Application of volume based discounts to rights fees in the lower tier issues would not encourage increased business on the Exchange, as there is much less competition amongst Market Makers because of the lower volumes. By providing a cap on fees as an alternative method of reducing the overhead cost of being an LMM in the lower volume issues, the Exchange has proposed an equitable and appropriate method to encourage LMMs to select lower volume issues.

Additionally, applying volume based incentives for higher volume tier issues is reasonable, equitable, and not unfairly discriminatory, because it applies to issues where there is more overall competition, and encourages tighter markets and greater liquidity in the more active issues, which benefits all market participants by attracting more order flow to the Exchange.

The Exchange also believes that the proposed modification [sic] to the Cap are not unfairly discriminatory because they apply solely to LMMs (non-LMMs are not subject to this Fee) and would not disadvantage Market Makers.

Finally, the Exchange 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,¹⁰ the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange believes that the proposal would not impose an unfair burden on competition because the proposed Rights Fees would more closely align with the economic

¹⁰ 15 U.S.C. 78f(b)(8).

benefit of being LMM in a given issue. Because the non-LMM Market Makers are not subject to the Rights Fee, the proposed Discount and Cap would not disadvantage Market Makers. Instead, the Discount, as modified, would operate to incentivize each LMM to achieve first, second or third ranking in monthly volume for each issue, relative to non-LMM Market Makers [sic] to reduce its own Rights Fee. The Exchange believes that this proposal would encourage LMMs to quote and trade competitively in their issues and would reduce the burden on competition among LMMs in the most actively-traded issues because LMMs that achieve the discounts would have reduced overhead.

The Exchange also believes that the Cap, as modified, would not impose an unfair burden on competition because it would encourage more OTP Firms acting as LMMs to add the lower-volume issues to their allocation, which would increase liquidity and offer more trading opportunities to market participants.

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. 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)¹¹ of

¹¹ 15 U.S.C. 78s(b)(3)(A).

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-2017-38 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-2017-38. This file number should be included on the subject line if e-mail is used. To help the Commission process and review

¹² 17 CFR 240.19b-4(f)(2).

¹³ 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-2017-38, 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

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¹⁴ 17 CFR 200.30-3(a)(12).