

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-80516; File No. SR-NYSEArca-2017-43)

April 24, 2017

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

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 20, 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 Equities Schedule of Fees and Charges for Exchange Services (“Fee Schedule”) to add a new pricing tier, the Large Order Tier, and to change pricing in Tier 3. The Exchange proposes to implement the fee changes effective April 20, 2017.⁴ 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.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ The Exchange originally filed to amend the Fee Schedule on March 31, 2017 (SR-NYSEArca-2017-34) and withdrew such filing on April 10, 2017. On April 10, 2017, the Exchange re-filed to amend the Fee Schedule (SR-NYSEArca-2017-39) and withdrew such filing on April 20, 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule, as described below, to add a new pricing tier, the Large Order Tier, and change pricing in Tier 3. The proposed fee changes would be applicable to securities with a per share price of \$1.00 or above. The Exchange proposes to implement the fee changes on April 20, 2017.

Large Order Tier

Currently, ETP Holders, including Market Makers, are charged a fee of \$0.0010 per share for Market Orders,⁵ Market-On-Close ("MOC") Orders,⁶ Limit-On-Close ("LOC") Orders⁷ and

⁵ A Market Order is an unpriced order to buy or sell a stated amount of a security that is to be traded at the best price obtainable without trading through the NBBO. See Rule 7.31(a)(1).

⁶ A MOC Order is a Market Order that is to be traded only during the Closing Auction. See Rule 7.31(c)(4).

⁷ A LOC Order is a Limit Order that is to be traded only during the Closing Auction. See Rule 7.31(c)(3).

Auction-Only Orders⁸ that are executed in the Closing Auction⁹ if the ETP Holder meets the current Tier 1, Tier 2 or Tier 3 requirements. ETP Holders that do not meet the Tier 1, Tier 2 or Tier 3 requirements are charged a fee of \$0.0012 per share for such orders, as provided in the Basic Rates section of the Fee Schedule. The Exchange is proposing a new pricing tier to incentivize large order flow to the Exchange. The proposed Large Order Tier fee of \$0.0010 per share would be applicable to ETP Holders, including Market Makers, that execute an average daily volume (“ADV”) of 1,250,000 shares or greater of Market Orders, MOC Orders, LOC Orders and Auction-Only Orders executed in the Closing Auction from orders of 650,000 shares and greater (“Large Closing Orders”) and that have a ratio of Large Closing Order shares to total shares executed during the month of at least 35%.

For example, if, in a month, an ETP Holder has an ADV of 3,000,000 shares of Market, MOC, LOC, and Auction-Only orders that are executed in the Closing Auction, of which 2,000,000 shares are from Large Closing Orders, and a total ADV of 5,000,000 shares (all volume, including but not limited to orders that add liquidity, take liquidity, are routed to and executed at other markets, and are executed in the Core Open Auction¹⁰ and Closing Auction), such ETP Holder will have a ratio of Large Closing Orders to total shares executed during the month of 40% (2,000,000 / 5,000,000). Such ETP Holder would therefore meet the proposed requirements of the Large Order Tier and the Exchange would charge this ETP Holder a fee of

⁸ An Auction-Only Order is a Limit or Market Order that is to be traded only within an auction pursuant to Rule 7.35 or routed pursuant to Rule 7.34. Any quantity of an Auction-Only Order that is not traded in the designated auction is cancelled. See Rule 7.31(c).

⁹ The Closing Auction is conducted at the end of the Core Trading Session. See Rule 7.35(d).

¹⁰ The Core Open Auction is conducted at the beginning of the Core Trading Session. See Rule 7.35(c).

\$0.0010 per share for the 2,000,000 shares from Large Closing Orders. The remaining 1,000,000 shares executed in the Closing Auction that are not from Large Closing Orders would be charged per the Exchange's current fees, i.e., \$0.0010 per share if the ETP Holder meets the Tier 1, Tier 2 or Tier 3 requirements, or \$0.0012 per share under the Basic Rates section of the Fee Schedule.

The proposed fee for Large Closing Orders is the lowest fee applicable to ETP Holders, and would be equivalent to the fee charged for Market, MOC, LOC, and Auction-Only orders that are executed in the Closing Auction if an ETP Holder meets Tier 1, Tier 2 or Tier 3 requirements. For the ETP Holder in the example above, absent the proposed fee, the ETP Holder would be charged a fee of \$0.0010 per share for Market, MOC, LOC, and Auction-Only orders that are executed in the Closing Auction if that ETP Holder met Tier 1, Tier 2 or Tier 3 requirements, or \$0.0012 per share under the Basic Rates section of the Fee Schedule.

For ETP Holders that qualify for the proposed Large Order Tier, Tiered or Basic Rates would apply to all other fees and credits, based on the ETP Holder'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.

Tier 3

The Fee Schedule currently provides, in Tier 1 and Tier 2 sections, that a fee of \$0.0010 per share is charged for Market, MOC, LOC and Auction-Only Orders executed in the Closing Auction. For Basic Rates customers, this fee is \$0.0012 per share.¹¹ Per the current Fee Schedule, Tier 3 customers are subject to the fee provided in the Basic Rates section of the Fee

¹¹ This fee for Basic Rates customers was increased to \$0.0012 per share in June 2016. See Securities Exchange Act Release No. 77925 (May 26, 2016), 81 FR 35412 (June 2, 2016) (SR-NYSEArca-2016-78) ("June Fee Filing"). Prior to the June Fee Filing, the fee for Market, MOC, LOC and Auction-Only Orders executed in the Closing Auction was \$0.0010 per share for all customers.

Schedule, or \$0.0012 per share. The Exchange proposes to modify the Tier 3 section of the Fee Schedule to include a \$0.0010 per share fee for Market, MOC, LOC and Auction-Only Orders executed in the Closing Auction for Tapes A, B and C.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹² in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,¹³ 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 Large Order Tier is reasonable and equitably allocated because it would apply to ETP Holders and Market Makers that execute large orders in the Exchange's Closing Auction 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 Large Order Tier is equitable because it would be available to all similarly situated ETP Holders and Market Makers on an equal basis and provides a fee that is reasonably related to the value of an exchange's market quality associated with higher volumes. The Exchange believes that the Large Order Tier proposal is reasonable because it provides ETP Holders with an additional way to qualify for the same \$0.0010 fee for Market, MOC, LOC, and Auction-Only orders that are charged to tiered customers.

The Exchange further believes that the proposed Large Order Tier is reasonable, equitable and not unfairly discriminatory because providing pricing tiers that favor a particular

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(4) and (5).

segment of securities or type of activity is not unusual. For example, NYSE MKT LLC provides a higher per share credit on a per transaction basis for displayed liquidity when adding liquidity in orders that originally display a minimum of 2,000 shares.¹⁴

The Exchange believes that the proposed new pricing tier would create an added incentive for ETP Holders and Market Makers to execute large orders on the Exchange. The Exchange believes that the proposed change is equitable and not unfairly discriminatory because providing a lower fee as an 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.

Tier 3 customers have always been charged a fee of \$0.0010 per share. The Exchange does not believe that there is any confusion among market participants with respect to the applicable Tier 3 fee for Market, MOC, LOC and Auction-Only Orders executed in the Closing Auction, but rather that the addition of the proposed language would serve to provide transparency in the Exchange's rules, and is an equitable allocation of reasonable fees. The Exchange believes that the addition of the proposed Tier 3 fee is consistent with Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove

¹⁴ See NYSE MKT Equities Price List, Transaction Fees and Credits For Non-ETP Securities Traded Pursuant to Unlisted Trading Privileges at https://www.nyse.com/publicdocs/nyse/markets/nyse-mkt/NYSE_MKT_Equities_Price_List.pdf. See also Securities Exchange Act Release No. 66599 (March 14, 2012), 77 FR 16302 (March 20, 2012) (SR-NYSEAmex-2012-17). The proposed Large Order Tier omits a reference to the originally displayed size like the NYSE MKT credit because auction orders on the Exchange are submitted to the auction once and do not decrement in size. While it could be possible for a market order to receive a fill and resize, the Exchange believes that this would be extremely unlikely.

impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by clarifying what fees apply for certain transactions and market participants.

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,¹⁵ 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 addition of the new Large Order Tier and the Tier 3 fee 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.

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

¹⁵ 15 U.S.C. 78f(b)(8).

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)¹⁶ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁷ 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)¹⁸ of the Act to determine whether the proposed rule change should be approved or disapproved.

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f)(2).

¹⁸ 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. Please include File Number SR-NYSEArca-2017-43 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-2017-43. 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 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-2017-43, 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.¹⁹

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¹⁹ 17 CFR 200.30-3(a)(12).