

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-80665; File No. SR-NYSEArca-2017-51)

May 11, 2017

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending 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 May 1, 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 adopt a new pricing tier, Tape C Tier 3. The Exchange proposes to implement the fee changes effective May 1, 2017. 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.

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

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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.

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, and implement the fee changes on May 1, 2017.

The Exchange proposes to introduce a new pricing tier level – Tape C Tier 3 – for securities with a per share price of \$1.00 or above.

As proposed, a new Tape C Tier 3 credit of \$0.0002 per share<sup>4</sup> for orders that provide liquidity in Tape C Securities would be applicable to ETP Holders and Market Makers, that, on a daily basis, measured monthly, (1) directly execute providing volume in Tape C Securities during the billing month (“Tape C Adding ADV”) that is equal to at least 0.40% of US Tape C CADV<sup>5</sup> over the ETP Holder’s or Market Maker’s fourth quarter 2016 Tape C Adding ADV taken as a percentage of Tape C CADV (“Tape C Baseline % CADV”), and (2) execute providing volume in Tape B Securities during the billing month that is equal to at least 3.5% of Tape B CADV. For example, if an ETP Holder’s Tape C Baseline % CADV was 0.500%, the ETP Holder would need a Tape C Adding ADV of at least 0.900% and a Tape B Adding ADV of

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

<sup>5</sup> The Exchange proposes to use the same definition of US CADV for purposes of the proposed Tape C Tier 3. Specifically, US 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 US CADV. See Fee Schedule, Footnote 3.

at least 3.5% of Tape B CADV in order to qualify for the proposed Tape C Tier 3 credit of \$0.0002 per share (i.e., 0.500% Tape C Baseline % CADV plus 0.400% of the US Tape C CADV for the billing month).<sup>6</sup> The credit provided under the proposed Tape C Tier 3 would be in addition to the ETP Holder's Tiered or Basic Rate credit(s).

Under the proposed new Tape C Tier 3, ETP Holders and Market Makers would also be charged a fee of \$0.0029 per share for orders that take liquidity from the Book in Tape C Securities. For all other fees and credits, Tiered or Basic Rates apply based on a firm's qualifying levels.

For ETP Holders that qualify for the proposed new Tape C Tier 3, Tiered or Basic Rates would apply to all other fees and credits, based on the 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. The proposed Tape C Tier 3 provides an incremental credit, similar to current Tape C Tier 1 and Tape C Tier 2 pricing tiers, and therefore, the Exchange proposes to adopt rule text within each of the Tape C tiers to note that ETP Holders and Market Makers can only qualify for one of the Tape C incremental credits. ETP Holders and Market Makers that qualify, for example, for the proposed Tape C Tier 3 credit cannot also qualify for either the Tape C Tier 1 incremental credit or the Tape C Tier 2 incremental credit. Using the above example, if an ETP Holder's Tape C Baseline % CADV was 0.500%, and the ETP Holder had a Tape C Adding ADV of at least 0.900% and a Tape B Adding ADV of at least 3.5% of Tape B CADV, the ETP Holder would meet the requirements of Tape C Tier 1, Tape C

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<sup>6</sup> 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 0.400% of US Tape C CADV, in addition to the Tape B Adding ADV of at least 3.5% of Tape B CADV, for the \$0.0002 per share credit to apply.

Tier 2 and the proposed Tape C Tier 3. As proposed, however, the ETP Holder would only receive the \$0.0002 incremental credit for adding liquidity and the \$0.0029 for taking liquidity associated with the proposed Tape C Tier 3 pricing tier; the ETP Holder would not be entitled to the Tape C Tier 1 and Tape C Tier 2 pricing tiers.

Additionally, the Exchange recently adopted a Tape C Tier 2 pricing tier that references the applicability of a \$0.0002 per share credit to ETP Holders and Market Makers that qualify for that pricing tier.<sup>7</sup> The \$0.0002 per share incremental credit is in addition to a [sic] ETP Holder's or Market Maker's Tiered or Basic Rate credit(s) except that the combined credit is not to exceed \$0.0033 per share. The reference to the \$0.0033 per share cap is currently found in the Tape C Tier 1 pricing tier. The Exchange proposes to relocate the cap language from the Tape C Tier 1 pricing tier to the Tape C Tier 2 pricing tier which the Exchange believes is a more appropriate place for it on the Fee Schedule. The proposed relocation of the rule text will not result in any change to the manner in which the credit is applied.

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>8</sup> in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,<sup>9</sup> in particular, because it provides for the equitable allocation of reasonable dues, fees, and other

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<sup>7</sup> See Securities Exchange Act Release No. 80285 (March 21, 2017), 82 FR 15249 (March 27, 2017) (SR– NYSEArca–2017–27).

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

<sup>9</sup> 15 U.S.C. 78f(b)(4) and (5).

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 Tape C Tier 3 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 3 is equitable because the proposed new tier would be available to all similarly situated ETP Holders and Market Makers on an equal basis and the proposed new tier 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 3 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 also believes that the requirement to execute providing volume in Tape B Securities during the billing month that is equal to at least 3.5% of Tape B CADV for the proposed Tape C Tier 3 is reasonable as it would provide incentives for adding liquidity in Tape B Securities and strengthen market quality in Tape B Securities. The Exchange further believes that the requirement to execute providing volume in Tape B Securities for the proposed Tape C Tier 3 is equitable and not unfairly discriminatory because it would apply uniformly to all similarly situated ETP Holders and Market Makers.

The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to permit ETP Holders and Market Makers to qualify for just one Tape C pricing tiers [sic]. As noted above, 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. This method of billing is reasonable because it results in the application of the most beneficial fees and credits for which an ETP [sic] qualifies when an ETP Holder qualifies for more than one pricing tier.

The Exchange believes that the proposed rule change regarding 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.

The Exchange believes that relocating rule text related to the \$0.0033 per share cap from the Tape C Tier 1 pricing tier to the Tape C Tier 2 pricing tier removes impediments to and perfects the mechanism of a free and open market by providing clarity and adding transparency to the Exchange's rules. The Exchange also believes that relocating the rule text would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased transparency. The Exchange believes the proposed amendment to the Fee Schedule is both reasonable and equitable because ETP Holders and Market Makers would benefit from clear guidance in the rule text describing the manner in which the Exchange's fees and credits would be assessed.

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 introduction of Tape C Tier 3 will provide such enhancements in market quality on the Exchange's equity market by incentivizing increased participation.

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,<sup>10</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 addition of new Tape C credits 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.

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

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<sup>10</sup> 15 U.S.C. 78f(b)(8).

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 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)<sup>11</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>12</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>13</sup> of the Act to determine

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(2).

<sup>13</sup> 15 U.S.C. 78s(b)(2)(B).

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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2017-51 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-2017-51. 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-2017-51, 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>14</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).