

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-80838; File No. SR-NYSEArca-2017-61)

June 1, 2017

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend 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 May 31, 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”) with respect to the Lead Market Maker (“LMM”) Rights Fee. The Exchange proposes to implement the fee change effective June 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to modify the calculation of the threshold for qualification for the LMM Rights Fee discount.

The LMM Rights Fee is charged “on a per issue basis to the OTP Firm acting as LMM in the issue.”⁴ The Exchange charges a Rights Fee on each issue in a LMM’s allocation, with rates based on the Average National Daily Customer Contracts. LMMs are also able to achieve a 50% discount to their total monthly LMM Rights Fee by achieving an average daily volume (“ADV”) of 50,000 contracts, of which at least 10,000 are within its LMM Appointment (the “Discount”).⁵

The Exchange proposes to replace the static minimum contract thresholds of 50,000 and 10,000 with market share criteria expressed as a percentage of Total Industry Customer Equity and exchange traded fund (“ETF”) option ADV (“TCADV”).⁶ The Exchange believes this proposed modification would enable Market Makers to achieve the Discount more consistently, despite monthly or seasonal fluctuations in industry volume. The Exchange is not proposing to

⁴ See Fee Schedule, available here, https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf (NYSE Arca General Options and Trading Permit (OTP) Fee, Lead Market Maker Rights Fee).

⁵ See *id.*, endnote 2.

⁶ The volume thresholds are based on Market Makers’ volume transacted electronically as a percentage of total industry Customer equity and ETF options volumes as reported by the Options Clearing Corporation (the “OCC”). Total industry Customer equity and ETF option volume is comprised of those equity and ETF contracts that clear in the Customer account type at OCC and does not include contracts that clear in either the Firm or Market Maker account type at OCC or contracts overlying a security other than an equity or ETF security. See OCC Monthly Statistics Reports, available here, <http://www.theocc.com/webapps/monthly-volume-reports>.

adjust the source of the qualifying volume for each component of the Discount, as this criterion will remain the same.

Specifically, the Exchange proposes the market share requirements for achieving the Discount as follows: “An LMM with daily contract volume traded electronically of at least 0.40% Total Industry Customer equity and ETF option ADV (‘TCADV’), of which 0.08% TCADV are within its LMM appointment, will be charged 50% of the monthly Lead Market Maker Rights Fee.”⁷ The Exchange notes that the TCADV percentages proposed are a rough equivalent to the existing 50,000 and 10,000 ADV contract thresholds, based on TCADV for the First Quarter of 2017.

The Exchange is not proposing any changes to the amount of the LMM Rights Fees or any of the other available per issue discounts to the LMM Rights Fee.

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 that modifying the qualification calculation for the Discount from a static monthly contract amount to a percentage of TCADV is reasonable, equitable, and not unfairly discriminatory because it would make the Discount more consistently achievable as the calculation will be more aligned with fluctuations in overall monthly industry volume. The

⁷ See proposed Fee Schedule, endnote 2.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4) and (5).

Exchange believes the proposed change is not unfairly discriminatory because the proposed benchmark of TCADV is tied to the amount of monthly volume executed on the Exchange, which would incentivize and reward consistent order flow month-to-month. The Exchange notes that other options exchanges likewise utilize percentages of market share as a benchmark in determining eligibility for monthly [sic] certain credits or rebates.¹⁰ The Exchange also believes the proposed change would help to prevent LMMs from achieving the Discount only during periods of heavy volumes or from being penalized (i.e., not achieving the Discount) during months of overall lower volumes on the Exchange. The Exchange notes that there is only one LMM per issue, and only LMMs are subject to the LMM Rights Fee, therefore the proposed discount is not unfairly discriminatory.

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,¹¹ the Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. By adjusting the qualifications to a market share basis rather than per contract volume levels, the Exchange believes the proposed change encourages

¹⁰ See, e.g., Fee Schedule, supra note 4 (Customer and Professional Customer Monthly Posting Credit Tiers and Qualifications for Executions in Penny Pilot Issues and Customer and Professional Customer Posting Credit Tiers In Non Penny Pilot Issues, both based on percentage of TCADV); NASDAQ Options Market fee schedule, available at, <http://www.nasdaqtrader.com/Micro.aspx?id=optionsPricing> (NOM Market Maker Rebate to Add Liquidity in Penny Pilot Options based on total industry customer equity and ETF option ADV contracts per day in a month); BATS Options Exchange fee schedule, available at, http://www.batsoptions.com/support/fee_schedule/ (Market Maker and Non-BATS Market Maker Penny Pilot Add Volume Tiers Market Maker and Non-BATS Market Maker Non Penny Pilot Add Volume Tiers, both based on percentage of total consolidated monthly volume calculated).

¹¹ 15 U.S.C. 78f(b)(8).

competition without undue burden by being based on a share of overall business rather than a static volume amount.

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)¹² of the Act and subparagraph (f)(2) of Rule 19b-4¹³ 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)¹⁴ of the Act to determine whether the proposed rule change should be approved or disapproved.

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(2).

¹⁴ 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-2017-61 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-2017-61. 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-2017-61, 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.¹⁵

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¹⁵ 17 CFR 200.30-3(a)(12).