

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-80920; File No. SR-NYSEArca-2017-64)

June 14, 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)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on June 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 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 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Cross-Asset Tier 2 and Cross-Asset Tier 3 pricing in the Fee Schedule. Specifically, for Cross-Asset Tier 2, for securities with a per share price \$1.00 or above, the Exchange proposes to: (1) reduce the volume threshold requirement to be eligible for the tier, and (2) remove the alternate way to qualify for the Cross-Asset Tier 2 pricing. Further, for Cross-Asset Tier 3, for securities with a per share price \$1.00 or above, the Exchange proposes to adopt an incremental credit. The Exchange proposes to implement the fee changes effective June 1, 2017.

Cross-Asset Tier 2

Currently, Cross-Asset Tier 2 fees and credits apply to ETP Holders and Market Makers that provide liquidity an average daily volume share per month of 0.30% or more of the US Consolidated Average Daily Volume ("CADV"), and are affiliated with an OTP Holder or OTP Firm that provides an ADV of electronic posted executions for the account of a market maker in Penny Pilot issues on NYSE Arca Options (excluding mini options) of at least 0.75% of total Customer equity and ETF option ADV as reported by the Options Clearing Corporation ("OCC"). ETP Holders, including Market Makers, can currently alternatively qualify for the Cross-Asset Tier 2 fees and credits if they provide liquidity an ADV share per month of 0.40% or more of the US CADV, and are affiliated with an OTP Holder or OTP Firm that provides an ADV of electronic posted executions for the account of a market maker in Penny Pilot issues on NYSE Arca Options (excluding mini options) of at least 0.65% of total Customer equity and

ETF option ADV, as reported by OCC. Such ETP Holders and Market Makers currently receive a credit of \$0.0031 per share for orders that provide liquidity to the order book in Tape A Securities; a credit of \$0.0030 per share for providing liquidity to the order book and a fee of \$0.0029 per share for taking liquidity from the order book in Tape B Securities; and a credit of \$0.0032 per share for providing liquidity to the order book and a fee of \$0.0030 per share for taking liquidity from the order book in Tape C Securities.

The Exchange proposes to reduce the current 0.75% of total Customer equity and ETF option ADV requirement on NYSE Arca Options (excluding mini options) to 0.55% of total Customer equity and ETF option ADV requirement on NYSE Arca Options (excluding mini options). The Exchange also proposes to replace the words “Penny Pilot” with “all” within the text of current Cross Asset Tier 2 criteria. This proposed change to the rule would make the options volume requirement, in terms of which options issues are used for purposes of calculating the requirement, consistent with the requirements currently found in Cross-Asset Tier 1 and Cross-Asset Tier 3. The Exchange is not proposing any change to the 0.30% or more of the US CADV requirement, or to the level of fees and credits currently applicable to Cross-Asset Tier 2.

The Exchange also proposes to remove the current alternative method to qualify for the fees and credits for the Cross-Asset Tier 2 pricing as the alternative method has not had a meaningful effect of incentivizing order flow to the Exchange as originally designed. The Exchange notes that ETP Holders that previously qualified for fees and credits under the alternate method may achieve the same range of fees and credits by satisfying the revised threshold proposed to current Cross-Asset Tier 2.

Cross-Asset Tier 3

Currently, the Exchange provides ETP Holders and Market Makers with 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 if such ETP Holders and Market Makers (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.

The Exchange proposes to adopt an incremental credit of \$0.0004 per share for orders that provide liquidity to the order book in Tape C Securities that would be payable to ETP Holders and Market Makers who meet the requirements of Cross-Asset Tier 3 and execute providing volume in Tape C Securities during the billing month equal to at least 0.35% of Tape C CADV. ETP Holders and Market Makers that qualify for the proposed incremental Tape C credit shall not qualify for any fees or credits under Tape C Tier 1, Tape C Tier 2, and Tape C Tier 3.

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,⁴ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,⁵ 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.

Cross-Asset Tier 2

The Exchange believes the proposed amendments to Cross-Asset Tier 2 are reasonable and equitably allocated because they would apply to ETP Holders and Market Makers equally and are designed to incentivize these market participants to send their orders to the Exchange and therefore provide liquidity that supports the quality of price discovery and promotes market transparency. The Exchange believes the Cross-Asset Tier 2 pricing tier is equitable because it is applicable to all similarly situated ETP Holders and Market Makers on an equal and non-discriminatory basis and provides fees and credits that are reasonably related to the value of an exchange's market quality associated with higher volumes.

The Exchange believes that the proposed revised threshold for qualifying for Cross-Asset Tier 2 is reasonable because it is designed to encourage increased trading activity on the NYSE Arca options market. The Exchange believes it is reasonable, equitable and not unfairly discriminatory to require ETP Holders and Market Makers to meet the revised threshold to qualify for Cross-Asset Tier 2 because doing so would allow ETP Holders and Market Makers to more easily qualify for the fees and credits applicable to such participants.

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(4) and (5).

The Exchange believes that the proposed modification to eliminate the alternate method to qualify for Cross-Asset Tier 2 is reasonable, fair, and equitable because the alternate method was not providing the desired result of incentivizing ETP Holders and Market Makers to increase their participation on the NYSE Arca equity and option markets. Therefore, eliminating the alternative method will have a negligible effect on order flow and market behavior. The Exchange believes the proposed change is not unfairly discriminatory because it will apply equally to all participants. Further, as described above, the Exchange notes that ETP Holders and Market Makers that previously qualified for the fees and credits under the alternative method would achieve the same fees and credits by satisfying what the Exchange believes to be similar or lower criteria as the existing and revised Cross-Asset Tier 2 discussed above. Specifically, the proposed 0.55% of total Customer equity and ETF option ADV requirement in all issues on NYSE Arca Options (excluding mini options) is lower than the 0.65% of total Customer equity and ETF option ADV requirement in Penny Pilot issues on NYSE Arca Options (excluding mini options) under the alternative method that the Exchange is proposing to eliminate. Similarly, the current 0.30% or more of the US CADV requirement is lower than the 0.40% or more of the US CADV requirement for the alternative method that the Exchange is proposing to eliminate.

The Exchange believes the proposed change to replace the words “Penny Pilot” with “all” issues within the text of current Cross Asset Tier 2 is reasonable, equitable and not unfairly discriminatory. This proposed change to the rule would make the options volume requirement, in terms of which options issues are used for purposes of calculating the requirement, consistent with the requirements currently found in Cross-Asset Tier 1 and Cross-Asset Tier 3, and would therefore provide consistency and clarity to the Fee Schedule.

The Exchange believes that the proposal is equitable and not unfairly discriminatory because all ETP Holders would be subject to the same fee structure. Moreover, the Cross-Asset Tier 2 fees and credits are available for all ETP Holders to satisfy, except for those ETP Holders that are not affiliated with an NYSE Arca Options OTP Holder or OTP Firm. ETP Holders that are not affiliated with an NYSE Arca Options OTP Holder or OTP Firm are still eligible for fees and credits by means other than the Cross-Asset Tier. NASDAQ similarly charges certain fees based on both equity and options volume.⁶

Cross-Asset Tier 3

The Exchange believes that the proposed modification to add the additional Tape C credit of \$0.0004 per share for ETP Holders and Market Makers that execute providing volume in Tape C Securities during the billing month equal to at least 0.35% of Tape C CADV is reasonable, fair, and equitable because the because it is designed to encourage increased trading activity in Tape C Securities. The Exchange notes that ETP Holders and Market Makers that do not execute providing volume of at least 0.35% of Tape C CADV in the billing month can still qualify for Cross-Asset Tier 3 if they meet the Cross-Asset Tier 3 requirements.

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.

⁶ See NASDAQ Rule 7018.

The Exchange further believes the proposed incremental credit is reasonable and appropriate in that it is based on the amount of business transacted on the Exchange. The Exchange believes the proposed incremental credit for adding liquidity is also reasonable because it will encourage liquidity and competition in Tape C securities quoted and traded on the Exchange.

The Exchange believes the proposed incremental credits are equitable and not unfairly discriminatory because they are open to all ETP Holders and Market Makers on an equal basis and provide discounts that are reasonably related to the value to the Exchange's market quality associated with higher volumes. The Exchange further believes that the proposed incremental rebate is not unfairly discriminatory because the magnitude of the additional rebate is not unreasonably high in comparison to the rebate paid with respect to other displayed liquidity-providing orders. The Exchange does not believe that it is unfairly discriminatory to offer increased rebates to ETP Holders and Market Makers as these participants would be subject to additional volume requirements in Tape C Securities.

The Exchange believes that prohibiting Cross-Asset Tier 3 ETP Holders and Market Makers from qualifying for the Tape C Tier 1, Tape C Tier 2, and Tape C Tier 3 tiers is reasonable, equitable and not unfairly discriminatory because ETP Holders and Market Makers that qualify for Cross-Asset Tier 3 and execute providing volume in Tape C Securities during the billing month equal to at least 0.35% of Tape C CADV would already receive an incremental Tape C credit of \$0.0004 before the Tape C Tier 1, Tape C Tier 2, and Tape C Tier 3 tiers, which is as equal to or higher than the those credits associated with the Tape C tiers.

Further, with regards to Cross-Asset pricing in general, the Exchange believes that the proposal is reasonable and would continue to directly relate to the activity of an ETP Holder and

the activity of an affiliated OTP Holder or OTP Firm on NYSE Arca Options, thereby encouraging increased trading activity on both the NYSE Arca equity and option markets. In this regard, the proposal is designed to bring additional posted order flow to NYSE Arca Options, so as to provide additional opportunities for all OTP Holders and OTP Firms to trade on NYSE Arca Options.

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 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,⁷ 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 change 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.

Further, the proposal to amend the requirements to qualify for Cross-Asset Tier 2 and Cross-Asset Tier 3 will not place an undue burden on competition because both tiers would remain available for all ETP Holders to satisfy, except those ETP Holders that are not affiliated

⁷ 15 U.S.C. 78f(b)(8).

with an NYSE Arca Options OTP Holder or OTP Firm. ETP Holders that are not affiliated with an NYSE Arca Options OTP Holder or OTP Firm are eligible for similar fees and credits by others means than the Cross-Asset pricing tiers.

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 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)⁸ of the Act and subparagraph (f)(2) of Rule 19b-4⁹ thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(2).

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)¹⁰ 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-2017-64 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-2017-64. 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

¹⁰ 15 U.S.C. 78s(b)(2)(B).

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-2017-64 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.¹¹

Eduardo A. Aleman
Assistant Secretary

¹¹ 17 CFR 200.30-3(a)(12).