

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-81268; File No. SR-NYSEARCA-2017-79)

July 31, 2017

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify 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 July 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 Substance of the Proposed Rule Change

The Exchange proposes to modify the NYSE Arca Options Fee Schedule (“Fee Schedule”) to add clarification and consistency, but the Exchange is not proposing any changes to its fees. The Exchange proposes to implement the fee change effective July 20, 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to make a number of textual changes designed to clarify and add consistency to the Fee Schedule. The Exchange is not proposing to make any substantive changes to its current fees.

Earlier this month, July 2017, the Exchange submitted a filing that included clarifying changes to certain tables regarding Market Maker incentives (the “MM Cleanup Filing”).⁴ The first sets of proposed changes are conforming changes, which are designed to align the text used in other incentive programs described in the Fee Schedule with those modified in the MM Cleanup Filing. Specifically, these conforming changes include:

- The Exchange proposes to re-locate the reference to Endnote 15 from the beginning [sic] to the end [sic] of each of the following tables: “Customer and Professional Customer Monthly Posting Credit Tiers and Qualifications for Executions in Penny Pilot Issues”; “Customer and Professional Customer Incentive Program”; and [sic] “Non-Customer Monthly Posting Credit Tiers and Qualifications for Executions in Non-Penny Pilot Issues”; “Take Fee Discount Qualification for Penny Pilot Issues”; and “Take Fee Discount Qualification for Non-Penny Pilot Issues” (the “Modified Tables”). Endnote 15 provides that the qualification thresholds set forth in the applicable tables “[i]ncludes transaction

⁴ See Securities Exchange Act Release No. 81140 (July 13, 2017), 82 FR 33194 (July 19, 2017) (SR-NYSEArca-2017-77).

volume from the OTP Holder's or OTP Firm's affiliates or its Appointed OFP or Appointed MM."⁵ Consistent with this proposed change, the Exchange proposes to remove the language that appears at the end of each of the Modified Tables providing that volume of an Appointed MM or Appointed OFP may be included because it would be duplicative of text contained in Endnote 15.

- The Exchange proposes to replace reference to “Total Industry Customer equity and ETF option average daily volume” with “TCADV” (as defined in Endnote 8)⁶ and to use this shorthand reference in the Modified Tables. Given that TCADV is defined in Endnote 8 and given that the “Customer and Professional Customer Monthly Posting Credit Tiers and Qualifications for Executions in Penny Pilot Issues” includes reference to Endnote 8, the Exchange proposes to remove the following language from this table because it is duplicative: “Qualifications based in part on Total Industry Customer equity and ETF option average daily volume (“TCADV”).”
- In each of the Modified Tables, the Exchange proposes to replace reference to “Posted Orders” with “posted interest” and any reference to “orders” with “interest” to make clear that, where applicable, liquidity may include orders or quotes.
- For consistency, the Exchange proposes to remove any capitalization from “issues” in reference to “all issues” in the Modified Tables. The Exchange also proposes to capitalize “Issues” as relates to “Penny Pilot Issues,” in the preamble

⁵ See Fee Schedule, Endnote 15.

⁶ See supra note 4, the MM Cleanup Filing (adding definition of TCADV).

to the “Customer and Professional Customer Monthly Posting Credit Tiers and Qualifications for Executions in Penny Pilot Issues,” and as relates to “non-Penny Pilot Issues,” in the preamble to the “Non-Customer Monthly Posting Credit Tiers and Qualifications for Executions in Non-Penny Pilot Issues.”

- The Exchange also proposes to add a comma and, where applicable, the word “or”, to signify an alternative qualification basis in certain of the Modified Tables as well as to remove any capitalization of the word “Plus” as relates to any alternative qualification bases in the Modified Tables.
- The Exchange also proposes to alter the language in the Modified Tables to clarify how the credits are applied, i.e., that credit is applied to “electronic executions of [the applicable] posted interest” in the applicable securities. For consistency and clarity, the Exchange proposes to add “Electronic” to, as well as to capitalize “Non-Penny,” in the table heading for the “Non-Customer Monthly Posting Credit Tiers and Qualifications for Executions in Non-Penny Pilot Issues.”
- For ease of reference, the Exchange proposes to rename the “Non-Customer Monthly Posting Credit Tiers and Qualifications for Executions in Non-Penny Pilot Issues” to “Non-Customer, Non-Penny Pilot Posting Credit Tiers.”

In addition to the foregoing, the Exchange also proposes to consistently utilize the term “Customer” to include Professional Customers, unless otherwise specified. Per the current Fee Schedule, regarding trade-related charges for standard options, the Exchange specifies that “[u]nless Professional Customer executions are specifically delineated, such executions will be

treated as Customer executions for fee purposes.”⁷ Although this language should (arguably) apply to the sections that follow, including incentive programs based on posted interest, the Exchange refers to both Customer and Professional Customer volume being counted towards the same incentives.⁸ Because the Exchange treats both Professional Customer and Customer volume the same for purposes of achieving the Customer Posting Tiers, the Exchange proposes to remove reference to Professional Customer from these sections of the Fee Schedule.”⁹

Consistent with this change, the Exchange proposes the following changes to the Customer Posting Tiers:

- The Exchange proposes to re-name the “Customer and Professional Customer Monthly Posting Credit Tiers and Qualifications for Executions in Penny Pilot Issues,” as “Customer Penny Pilot Posting Credit Tiers.” Consistent with certain of the conforming changes referenced above regarding how the applicable credits are the [sic] applied, the Exchange also proposes to modify the preamble to provide that “OTP Holders and OTP Firms meeting the qualifications below will receive the corresponding posting credit on all electronic executions of Customer posted interest in Penny Pilot Issues.” In addition, the Exchange proposes to

⁷ See Fee Schedule, NYSE Arca Options: Trade-Related Changes for Standard Options. For additional clarity, the Exchange proposes to revise this sentence to put Customer in quotations and to add reference to credits. See proposed Fee Schedule, NYSE Arca Options: Trade-Related Changes for Standard Options (providing that “[u]nless Professional Customer executions are specifically delineated, such executions will be treated as “Customer” executions for fee/credit purposes).

⁸ See *id.*, Customer and Professional Customer Monthly Posting Credit Tiers and Qualifications for Executions in Penny Pilot Issues; Customer and Professional Customer Incentive Program; and Customer and Professional Customer Posting Credit Tiers In Non Penny Pilot Issues (collectively, the “Customer Posting Tiers”).

⁹ See proposed Fee Schedule, the Customer Posting Tiers.

update cross-references to this newly named table as appears in the Firm and Broker Dealer Monthly Fee Cap.

- The Exchange proposes to add a title to signify the incentive program for “Customer and Professional Customer Posting Credit Tiers In Non Penny Pilot Issues,” which title would be “Customer Posting Credit Tiers in Non-Penny Pilot Issues.” The Exchange proposes to add a hyphen to the word “Non Penny” as appears in the table, for internal consistency. The Exchange also proposes to add a preamble to this table, which provides that “OTP Holders and OTP Firms meeting the qualifications below will receive the corresponding credit on all electronic executions of Customer posted interest in Non-Penny Pilot issues,” and to reference Endnotes 8 and 15, which describe what is included in eligible monthly volume and how that volume is calculated. Consistent with the proposed reference to Endnote 8 at the beginning of this table, which includes a description of qualifying ADV of Retail Orders of U.S. Equity Market Share on the NYSE Arca Equity Market, the Exchange proposes to remove duplicative references to Endnote 8 that appear throughout this table.
- For avoidance of doubt, the Exchange proposes to add a sentence to Endnote 8 which provides that repeats that [sic] “[u]nless Professional Customer executions are specifically delineated, such executions will be treated as “Customer” executions executions [sic] in calculating qualifications for monthly posting credits or discounts.”

The Exchange also proposes to define “Non-Customers,” as used in the Fee Schedule, to include Firms, Broker Dealers, and Market Makers.¹⁰ Consistent with this change, the Exchange proposes to utilize, as shorthand, the defined term Non-Customer in place of references to Firms, Broker Dealers and Market Makers.¹¹

Finally, the Exchange also proposes to re-locate the Market Maker Incentive For Penny Pilot Issues; the Market Maker Incentive For Non-Penny Pilot Issues; and the MM Tiers (collectively, the “MM Tables”), without altering the substance of these tables.¹² Specifically, the Exchange proposes to move the MM Tables immediately below the current Discount in Take Liquidity Fees for Professional Customer, Market Maker, Firm, and Broker Dealer Liquidity Removing Orders¹³, which would place the MM Tables Immediately before the recently modified “Market Maker Penny Pilot and SPY Posting Credit Tiers.”¹⁴ The Exchange believes moving table applicable to certain participants adjacent to each other would add to the clarity of the Fee Schedule and make it easier to navigate and comprehend.

To the extent not specifically noted herein, the Exchange has also corrected certain typographical errors (such as missing hyphens or redundant endnote markings) as well as streamlined certain text to add clarity and transparency to the Fee Schedule.

¹⁰ See proposed Fee Schedule, NYSE Arca Options: Trade-Related Changes for Standard Options (providing that “Firms, Broker Dealers, and Market Makers are collectively referred to herein as “Non-Customers”).

¹¹ See proposed Fee Schedule, Discount in Take Liquidity Fees for Professional Customer and Non-Customer Liquidity Removing Interest; Take Fee Discount Qualification for Penny Pilot Issues (providing alternative threshold of at least 2.00% of TCADV from Professional Customer and Non-Customer Liquidity Removing interest in all issues.”

¹² See supra note 4, the MM Cleanup Filing (includes modifications to the text of the MM Tables).

¹³ See supra note 10 (proposing to re-name this table).

¹⁴ See supra note 4, the MM Cleanup Filing (includes modifications to the text of the MM Tables).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁵ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,¹⁶ 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. There are no changes to actual fees in this filing.

The Exchange believes the proposed non-substantive changes to the Fee Schedule are reasonable, equitable, and not unfairly discriminatory because the changes would add clarity, transparency and internal consistency to the Fee Schedule making it easier to navigate and comprehend, which would benefit all market participants.

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,¹⁷ 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. The Exchange believes that the proposed textual changes are not intended to have any impact on competition, but instead are designed to make the Fee Schedule easier for market participants to navigate and digest, which is in the public interest.

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

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(4) and (5).

¹⁷ 15 U.S.C. 78f(b)(8).

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)¹⁸ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁹ 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)²⁰ 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:

¹⁸ 15 U.S.C. 78s(b)(3)(A).

¹⁹ 17 CFR 240.19b-4(f)(2).

²⁰ 15 U.S.C. 78s(b)(2)(B).

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-2017-79 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-2017-79. 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 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-2017-79, 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.²¹

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²¹ 17 CFR 200.30-3(a)(12).