

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-81392; File No. SR-NYSEARCA-2017-89)

August 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 to Modify the Fees and Credits for Routing Certain Orders to NYSE American LLC

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 August 4, 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”) to modify the fees and credits for routing certain orders to NYSE American LLC (“NYSE American”).⁴ The Exchange also proposes to make non-substantive changes to the Fee Schedule in connection with the name change of its affiliate NYSE MKT LLC to NYSE American LLC. The Exchange proposes to implement the changes

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ On July 24, 2017, the Exchange’s affiliate, NYSE MKT LLC, transitioned to the Pillar trading platform and has been renamed NYSE American LLC. See Securities Exchange Act Release Nos. 79242 (November 4, 2016), 81 FR 79081 (November 10, 2016) (SR-NYSEMKT-2016-97); 79400 (November 25, 2016), 81 FR 86750 (December 1, 2016) (SR-NYSEMKT-2016-103); 80283 (March 21, 2017), 82 FR 15244 (March 27, 2017) (SR-NYSEMKT-2017-14); and 80748 (May 23, 2017), 82 FR 24764 (May 30, 2017) (SR-NYSEMKT-2017-20).

effective August 4, 2017.⁵ 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 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 Fee Schedule to modify the fees and credits for routing certain orders to the NYSE American. The Exchange also proposes to make non-substantive changes to the Fee Schedule in connection with the name change of its affiliate NYSE MKT LLC to NYSE American LLC.

In a recent rule filing, NYSE American proposed to modify its fee schedule for equities transactions, including changes to the rates for providing liquidity and for executions that occur in the opening and closing auction.⁶ The Exchange's current credits for routing orders to NYSE American are closely related to the NYSE American's rates, including the rates for providing liquidity, and the Exchange is proposing an adjustment to its rates to remain competitive with the

⁵ The Exchange originally filed to amend the Fee Schedule on July 24, 2017 (SR-NYSEArca-2017-81) and withdrew such filing on August 4, 2017.

⁶ See Securities Exchange Act Release No. 81228 (July 27, 2017), 82 FR 36012 (August 2, 2017) (SR-NYSEMKT-2017-43) (the "NYSE American Fee Filing").

rates of NYSE American. Specifically, for Tier 1 and Tier 2 PO⁷ and PO+⁸ Orders, the Exchange currently provides a credit of \$0.0016 per share for orders that are routed to NYSE American that provide liquidity to the NYSE American order book, which is equal to the NYSE American rebate for execution of customer orders that add liquidity to NYSE American.

A PO Order is designed to route to the primary listing market of the security underlying the order (i.e., NYSE, NASDAQ, etc.) immediately upon arrival and the order therefore does not rest on the Exchange's order book. Because such orders do not rest on the Exchange's book, the Exchange charges fees or provides credits for those orders based on the fees or credits of the destination primary listing market, which are the fees and credits that the Exchange is charged by the primary listing market that receives the order. In the NYSE American Fee Filing, NYSE American proposed to not charge a fee or provide a credit for executions of displayed orders that provide liquidity on that exchange.⁹ Accordingly, the Exchange is proposing to amend the rates for routing Tier 1 and Tier 2 PO Orders to NYSE American to reflect the rates proposed by NYSE American. As proposed, there will be no credit for such orders routed to NYSE American that provide liquidity to the NYSE American book.

⁷ A PO order is a Market or Limit Order that on arrival is routed directly to the primary listing market without being assigned a working time or interacting with interest on the NYSE Arca Book. See Rule 7.31(f)(1).

⁸ The Exchange transitioned to the Pillar trading platform in 2016 and on Pillar, the PO+ modifier in the Exchange's rules was replaced with the Primary Only Day/IOC Order, which is a Primary Only Order designated Day or IOC, as provided in current Rule 7.31(f)(1)(B). See Securities Exchange Act Release No. 76267 (October 26, 2015), 80 FR 66951 (October 30, 2015) (SR-NYSEArca-2015-56). A Primary Only Order designated Day functions similar to what was a PO+ Order. Therefore, to promote clarity to the Fee Schedule and avoid any confusion, the Exchange proposes to remove reference to PO+ Orders from the Fee Schedule.

⁹ The Exchange notes that orders that are routed to NYSE American will be displayed on that exchange. PO Orders do not provide ETP Holders the ability to add non-displayed liquidity to away markets.

The Exchange proposes to make corresponding changes to the Basic Rate pricing section of the Fee Schedule.

Additionally, in the NYSE American Fee Filing, NYSE American proposed to charge a fee of \$0.0005 per share for executions at the open or close. Accordingly, the Exchange proposes to amend the Fee Schedule to lower the Tier 1, Tier 2 and Basic Rate fee for PO Orders in Tape B securities that are routed to NYSE American that execute in the opening or closing auction, from \$0.00085 per share to \$0.0005 per share.

As noted above, the Exchange's affiliate, NYSE MKT LLC, has been renamed NYSE American LLC. Accordingly, in the Fee Schedule, under "NYSE Arca Marketplace: Trade Related Fees and Credits," under "Round Lots and Odd Lots (Per Share Price \$1.00 or Above), and "Co-location Fees," in General Notes 1 and 4, the Exchange proposes to change references to "NYSE MKT Book" to "NYSE American Book"; "NYSE MKT" to "NYSE American"; "NYSE MKT LLC" to "NYSE American LLC"; and "NYSE Amex Options" to "NYSE American Options." None of the foregoing changes are substantive.

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any problems that ETP Holders 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,¹⁰ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,¹¹ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other

¹⁰ 15 U.S.C. 78f(b).

¹¹ 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 that the proposed changes to routing credits for PO Orders that provide liquidity to NYSE American and routing fees for such orders that execute in the opening or closing auction on NYSE American are reasonable because the Exchange's rates for routing such orders are closely related to NYSE American's rates for its members, and the proposed change is consistent with the change proposed by NYSE American to not provide a rebate for providing liquidity and to charge a lower fee for executions in the opening or closing auction. While the proposed rule change would result in a decrease in the per share credit for PO Orders routed to NYSE American that provide liquidity to NYSE American, and a decrease in the per share fee for such routed orders that execute in the opening or closing auction, the Exchange would remain competitive with NYSE American as that exchange also no longer provides a credit to its members for providing liquidity and charges a lower fee for executions in the opening or closing auction. Further, the proposed change is equitable and not unfairly discriminatory because the proposed elimination of routing credits for PO Orders that provide liquidity to NYSE American and the proposed decrease of routing fees for such orders that execute in the opening or closing auction on NYSE American would apply uniformly across pricing tiers and all similarly situated ETP Holders.

The Exchange believes that the proposed rule change regarding the name change from NYSE MKT LLC to NYSE American LLC is consistent with Section 6(b) of the Act,¹² in general, and with Section 6(b)(1)¹³ in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply,

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(1).

and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. The proposed rule change would ensure that the Fee Schedule accurately reflects the name change of the Exchange's affiliate from NYSE MKT to NYSE American and the rebranding of NYSE Amex Options to NYSE American Options and would contribute to the orderly operation of the Exchange by adding clarity and transparency to the Fee Schedule.

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 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,¹⁴ 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. In particular, the proposed routing credit and fee changes would not place a burden on competition because the Exchange is lowering the credit it provides and fees it charges to ETP Holders to match the credits and fees provided by NYSE American.¹⁵

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 promotes a competitive environment.

¹⁴ 15 U.S.C. 78f(b)(8).

¹⁵ See supra note 6.

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.

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-2017-89 on the subject line.

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).

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-2017-89. 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-2017-89 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

Eduardo A. Aleman
Assistant Secretary

¹⁹ 17 CFR 200.30-3(a)(12).