

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-83554; File No. SR-NYSEArca-2018-49)

June 28, 2018

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)<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 June 27, 2018, 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”). The Exchange proposes to implement the fee change effective June 27, 2018. 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 it received on the proposed rule change. The text of those statements may be examined at the

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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.

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 purpose of this filing is to modify the Fee Schedule, effective 27, 2018, to introduce fees for the newly listed options on the NYSE FANG+ Index (“NYSE FANG+”), which will trade under the symbol FAANG.

The Exchange proposes that for fee purposes transactions in FAANG options would not be treated as adding or removing liquidity, but rather that all transactions, both manual and electronic, be charged by account status.

As proposed, the Exchange would charge \$0.35 per contract, per side for non-Customer and Professional Customer NYSE FANG+ transactions, whether executed manually or electronically.<sup>4</sup> However, the Exchange would not charge a fee for any FAANG transactions (i) on behalf of Customers or (ii) by Market Makers with an appointment in NYSE FANG+.<sup>5</sup> Market Makers that do not have an appointment in NYSE FANG+ will be subject to the same fee of \$0.35 per contract, per side for non-Customer and Professional Customer NYSE FANG+ transactions. Further, the Exchange would not impose the Lead Market Maker Rights Fees upon allocation in options on NYSE FANG+.<sup>6</sup> The Exchange notes that volume in NYSE FANG+ would be included in calculations to qualify for any volume-based incentives currently being

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<sup>4</sup> See proposed Fee Schedule, NYSE FANG+ Index (FAANG) Transaction Fees.

<sup>5</sup> See id. The term Market Maker, as used herein, includes NYSE Arca Options Market Makers and Lead Market Makers (or LMMs).

<sup>6</sup> See proposed Fee Schedule, Endnote 2 (providing that “[t]he Lead Market Maker Rights Fee does not apply to options on the NYSE FANG+ Index (FAANG)”).

offered on the Exchange, including (but not limited to) the Non-Customer, Non-Penny Pilot Posting Tiers (as applicable) and the Firm and Broker Dealer Monthly Fee Cap.<sup>7</sup>

The Exchange believes the proposed fees for NYSE FANG+ would further the Exchange's goal of introducing new products to the marketplace by encouraging trading in this index, in particular by encouraging Market Makers to make a market in these products, which would in turn, benefit market participants.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act, 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 the proposal to implement fees for options on NYSE FANG+ is reasonable, equitable and not unfairly discriminatory for the following reasons. The Exchange believes the proposed fees, which apply equally to electronic and manual (open outcry) transactions, on behalf of non-Customers and Professional Customers, on the one hand, and Customers, on the other hand, to be reasonable and equitable because the proposed differentiation among market participants for NYSE FANG+ fees is consistent with the manner in which the Exchange distinguishes among market participants for fee purposes in other contexts.<sup>8</sup> The Exchange believes that not imposing fees for NYSE FANG+ transactions on

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<sup>7</sup> See proposed Fee Schedule, Endnote 8 (providing that “[a]ny volume in options on NYSE FANG+ (FAANG) would be included in calculations to qualify for any volume-based incentives currently being offered on the Exchange”).

<sup>8</sup> See, e.g., Fee Schedule, TRANSACTION FEE FOR MANUAL EXECUTIONS - PER CONTRACT (providing that non-Customers (i.e., NYSE Arca Options Market Makers,

benefit of Customers is likewise reasonable, equitable and not unfairly discriminatory because Customer order flow enhances liquidity on the Exchange for the benefit of all market participants. Specifically, Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in the activity of Market Makers in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

The Exchange believes that applying the same fee on all non-Customer and Professional Customer NYSE FANG+ option transactions, other than those by Market Makers with an appointment in NYSE FANG+, is non-discriminatory because it applies to all similarly situated participants on an equal basis that opt to trade the product. Moreover, the decision to transact in NYSE FANG+ (or, for Market Makers, to seek an appointment) is voluntary. The Exchange believes that allowing Market Makers with an appointment in NYSE FANG+ to transact in the product free of charge is not unfairly discriminatory because Market Makers have heightened obligations that are not applicable to other non-Customer and Professional Customer market participants.<sup>9</sup> It is also non-discriminatory because all Market Makers may apply for an appointment in NYSE FANG+ options. Further, encouraging Market Makers to seek an appointment in, and thus provide continuous quotes in, NYSE FANG+ would add liquidity to the market and provide market participants -- both Customer and non-Customer alike -- increased opportunities to trade options on NYSE FANG+. The Exchange believes that exempting transactions in NYSE FANG+ from the monthly Rights Fees would likewise encourage trading

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Firms and Broker Dealers) and Professional Customers are charged a total \$0.25 per contract for manual executions, while Customers are charged \$0.00 per contract for manual executions).

<sup>9</sup> See, e.g., Rules 6.82-O, 6.37A-O, 6.37B-O (setting forth heightened quoting obligations).

in NYSE FANG+ options, which increase in the availability of such options would benefit all market participants.

Further, the proposal to include any volume in NYSE FANG+ in the calculations to qualify for any volume-based incentives offered on the Exchange would further the Exchange's goal of introducing new products to the marketplace by encouraging trading in these products. To the extent that the proposed change incentivizes any market participants to direct their order flow to the Exchange, all market participants would benefit from increased liquidity and trading opportunities on the Exchange. Finally, the Exchange notes that offering market participants incentives to trade in certain newly offered products is not new or novel.<sup>10</sup>

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act, the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed transaction fees for NYSE FANG+ would not place an unfair burden on competition as it would apply to all similarly situated non-Customer/non-Market Maker participants. The Exchange also believes the proposed pricing for NYSE FANG+ is procompetitive as it would further the Exchange's goal of introducing new products to the marketplace and encouraging Market Makers to make a market in these products, which would in turn, benefit market participants. Market participants that do not wish to trade in or seek an appointment in NYSE FANG+ are not obliged to do so.

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<sup>10</sup> See, e.g., Securities Exchange Act Release No. 77294 (March 4, 2016), 81 FR 12775 (March 10, 2016) (SR-NYSEArca-2016-40) (addressing the treatment of Binary Return Derivatives -- or ByRDs -- and exempting such transactions from all Exchange fees to encourage trading in the product).

The Exchange does not believe that the proposed change will impair the ability of any market participants or competing order execution venues to maintain their competitive standing in the financial markets. Further, the fees would be applied to all similarly situated participants (i.e., non-Customers and Professional Customers), and, as such, the proposed change would not impose a disparate burden on competition either among or between classes of market participants.

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 whether the proposed rule change should be approved or disapproved.

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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).

#### 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 No. SR-NYSEArca-2018-49 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 No. SR-NYSEArca-2018-49. 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.

Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-NYSEArca-2018-49, 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).