

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-83828; File No. SR-NYSEARCA-2018-58)

August 10, 2018

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the NYSE Arca Equities Fees and Charges to Introduce a New Pricing Tier

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 1, 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 amend the NYSE Arca Equities Fees and Charges (“Fee Schedule”) to introduce a new pricing tier, Retail Order Step-Up Tier 2. The Exchange proposes to implement the fee change effective August 1, 2018. 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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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, as described below, to introduce a new pricing tier, Retail Order Step-Up Tier 2, for securities with a per share price of \$1.00 or above.

The Exchange currently has a Retail Order Step-Up Tier pursuant to which ETP Holders, including Market Makers, that execute an ADV of Retail Orders⁴ with a time-in-force designation of Day that add or remove liquidity during the month that is an increase of 0.12% or more of the U.S. CADV above their April 2018 ADV taken as a percentage of U.S. CADV receive a credit of \$0.0033 per share when such orders provide liquidity to the book during the month in Tape A, Tape B and Tape C Securities. Retail Orders with a time-in-force designation of Day that remove liquidity from the Book are not charged a fee.⁵

⁴ A Retail Order is an agency order that originates from a natural person and is submitted to the Exchange by an ETP Holder, provided that no change is made to the terms of the order to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. See Securities Exchange Act Release No. 67540 (July 30, 2012), 77 FR 46539 (August 3, 2012) (SR-NYSEArca-2012-77).

⁵ See Securities Exchange Act Release No. 83268 (May 17, 2018), 83 FR 23983 (May 23, 2017) (SR-NYSEArca-2018-34).

To encourage even greater participation from ETP Holders and promote additional liquidity in Retail Orders, the Exchange proposes a new pricing tier - Retail Order Step-Up Tier 2.⁶

As proposed, a new Retail Order Step-Up Tier 2 credit of \$0.0035 per share for Retail Orders that provide displayed liquidity during the month in Tape A, Tape B and Tape C Securities would apply to ETP Holders, including Market Makers, that provide liquidity an average daily share volume per month of 1.10% or more of the U.S. CADV, and execute an ADV of Retail Orders with a time-in-force designation of Day that add or remove liquidity during the month that is an increase of 0.35% or more of the U.S. CADV above their April 2018 ADV taken as a percentage of U.S. CADV. Retail Orders with a time-in-force designation of Day that remove liquidity from the Book will not be charged a fee.

Additionally, if an ETP Holder qualifies for the new Retail Order Step-Up Tier 2, that ETP Holder would also receive a credit of \$0.0035 per share for orders (not just Retail Orders) that provide displayed liquidity to the order book in Tape C Securities, and an incremental credit of \$0.0002 per share for orders that provide non-displayed liquidity⁷ to the order book in Tape C Securities. The proposed incremental credit would be in addition to the ETP Holder's or Market Maker's Tiered or Basic Rate credit(s). Such ETP Holders and Market Makers would also pay a fee of \$0.0027 per share for orders that take liquidity from the order book in Tape C Securities.

⁶ The Exchange proposes a non-substantive amendment to the Fee Schedule to rename the current Retail Order Step-Up Tier as “Retail Order Step-Up Tier 1.”

⁷ The following orders provide non-displayed liquidity to the order book: Limit Non-Displayed Order, Mid-Point Liquidity (“MPL”) Order and Tracking Order. See Rule 7.31-E(d)(2), (3) and (4).

For all other fees and credits, tiered or basic rates apply based on a firm's qualifying levels.

For example, assume an ETP Holder averages 1 million shares in Retail Orders with a time-in-force designation of Day that add or remove liquidity per day in April, or 0.015% of U.S. CADV, where U.S. CADV was 6.6 billion shares.

If that ETP holder then averages 24.25 million shares in Retail Orders with a time-in-force designation of Day that add or remove liquidity in the billing month, or 0.367% of U.S. CADV, where U.S. CADV was also 6.6 billion shares, that ETP Holder would qualify for the proposed Retail Order Step-Up Tier 2 because it would have met the requirement of the proposed new pricing tier, i.e., an increase of at least 0.35% of the U.S. CADV over the ETP Holder's April 2018 ADV taken as a percentage of U.S. CADV, or 0.352% (0.367% in the billing month over 0.015% in the baseline month).

Also assume that same ETP holder averages 5 million shares in Retail Orders that remove liquidity in Tape A Securities, of which 100,000 shares are in Retail Orders with a time-in-force designation of Day. As a result, 4.9 million shares in Retail Orders that remove liquidity would be subject to the Tape A fee for removing liquidity of \$0.0030 per share while the 100,000 shares in Retail Orders with a time-in-force designation of Day would not be charged a fee.

Further assume that the same ETP Holder qualified for the MPL Order credit of \$0.0020 per share for MPL Orders that add liquidity in Tape C Securities, a Tracking Order Tier 1 credit of \$0.0015 per share, and no fee or credit for Limit Non-Displayed Orders. That ETP holder would receive in Tape C Securities a credit for \$0.0022 per share for MPL Orders that add liquidity (\$0.0020 + \$0.0002 Retail Order Step-Up Tier 2

credit), a credit of \$0.0017 per share for Tracking Orders (\$0.0015 + \$0.0002 Retail Order Step-Up Tier 2 credit) and a credit of \$0.0002 per share for Limit Non-Displayed Orders (no fee/credit + \$0.0002 Retail Order Step-Up Tier 2 credit).

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 it is reasonable to add the proposed Retail Order Step-Up Tier 2 because the Exchange believes it would encourage participation from a greater number of ETP Holders, which would promote additional liquidity in Retail Orders. In this regard, an ETP Holder that does not qualify for the proposed higher credit and lower fees could still be eligible for the pricing for its Retail Orders that provide liquidity under the current Retail Order Tier, the Retail Order Step-Up Tier 1, or under Basic Rates. The proposed new Retail Order Step-Up Tier 2 would create an added financial incentive for ETP Holders to bring additional retail flow to a public market. The proposed new pricing tier is also reasonable because it would reduce the costs of ETP Holders that represent retail flow and potentially also reduce costs to their customers.

The Exchange believes that the proposed modification to adopt an incremental credit and lower take fee for Tape C Securities is reasonable, fair, and equitable. The

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4) and (5).

proposed credit is designed to encourage increased trading of Retail Orders by ETP Holders and Market Makers in Tape C Securities while the decreased fee to ETP Holders and Market Makers would further incent liquidity to the Exchange and provide an incentive to ETP Holders to provide liquidity that supports the quality of price discovery and promotes market transparency. 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 offering the same credit of \$0.0035 per share in Tape C Securities for orders that provide displayed liquidity as Retail Orders that provide displayed liquidity is reasonable and equitable as it would provide an incentive to ETP Holders to provide displayed liquidity that supports the quality of price discovery, improves quoting, and promotes market transparency. The Exchange believes the proposed incremental credit for adding non-displayed liquidity is also reasonable because it will encourage liquidity and competition in Tape C securities traded on the Exchange. The Exchange believes charging lower fees for orders in Tape C Securities that remove liquidity from the order book will also incentivize ETP Holders to increase the orders sent to the Exchange. The Exchange believes that recalibrating the fees for taking liquidity will attract additional order flow and liquidity to the Exchange, thereby contributing to price discovery on the Exchange and benefiting investors generally.

The Exchange also believes the proposed Retail Order Step-Up Tier 2 is equitable and not unfairly discriminatory because it is available to all ETP Holders and Market Makers on an equal basis and provides discounts that are reasonably related to the value to the Exchange's market quality associated with higher volumes. The Exchange does not

believe that it is unfairly discriminatory to offer increased credits and lower fees to ETP Holders and Market Makers as these participants would be subject to additional volume requirements.

The Exchange believes that it is reasonable that only Retail Orders with a time-in-force designation of Day that add or remove liquidity would count toward qualifying for the Retail Order Step-Up Tier 2. This would largely result in the type of orders to which the corresponding credit applies being the same as the volume that counts toward qualification - i.e., only Retail Orders with a time-in-force designation of Day. The Exchange believes that the proposed requirements to provide liquidity of an average daily share volume per month of 1.10% or more of the U.S. CADV and execute an ADV of Retail Orders with a time-in-force of Day that add or remove liquidity during the month that is an increase of 0.35% or more of U.S. CADV above the ETP Holder's April 2018 ADV taken as a percentage of U.S. CADV are reasonable because they are within ranges that the Exchange believes would continue to incentivize ETP Holders to submit Retail Orders to the Exchange in order to qualify for the proposed credit.

The Exchange believes that the proposed rule change is equitable and not unfairly discriminatory because maintaining or increasing the proportion of Retail 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. This aspect of the proposed rule change also is consistent with the Act because all similarly

situated ETP Holders would pay the same rate, as is currently the case, and because all ETP Holders would be eligible to qualify for the rates by satisfying the related threshold, where applicable. Furthermore, the submission of Retail Orders is optional for ETP Holders, in that an ETP Holder could choose whether to submit Retail Orders and, if it does, the extent of its activity in this regard.

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,¹⁰ 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 rule 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 comparable transaction pricing, by encouraging additional orders to be sent to the Exchange for execution. The Exchange also believes that the proposed rule change is consistent with the Act because it strikes an appropriate balance between fees and credits, which will encourage submission of orders to the Exchange, thereby promoting competition.

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

¹⁰ 15 U.S.C. 78f(b)(8).

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 to attract order flow to the Exchange. 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)¹¹ of the Act and subparagraph (f)(2) of Rule 19b-4¹² 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

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(2).

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)¹³ 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-2018-58 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-2018-58. 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

¹³ 15 U.S.C. 78s(b)(2)(B).

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 Number SR-NYSEARCA-2018-58 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.¹⁴

Brent J. Fields
Secretary

¹⁴ 17 CFR 200.30-3(a)(12).