

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-85696; File No. SR-NYSEArca-2019-24)

April 19, 2019

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Modify the NYSE Arca Options Fee Schedule Regarding Certain Credits

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 April 8, 2019, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II 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 April 8, 2019.<sup>4</sup> 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

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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.

<sup>4</sup> On March 28, 2019, the Exchange filed to amend the Fee Schedule for effectiveness on April 1, 2019 (SR-NYSEArca-2019-19) and withdrew such filing on April 8, 2019.

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 purpose of this filing is to modify the Fee Schedule, effective April 8, 2019, to modify the criteria for achieving various credits.

The Exchange currently provides a number of incentives for OTP Holders and OTP Firms (collectively, "OTPs") designed to encourage OTPs to direct additional order flow to the Exchange to achieve more favorable pricing and higher credits. Among these incentives are enhanced posted liquidity credits based on achieving certain percentages of NYSE Arca Equity daily activity, also known as "cross-asset pricing." Similarly, because the Exchange allows Market Makers ("MMs") to aggregate their volume executed on NYSE Arca with affiliated or Appointed Order Flow Providers ("OFPs"), MMs may encourage an increased level of activity from these participants to qualify for various incentives. As a result, NYSE Arca becomes a more attractive venue for Customer (and Professional Customer) orders offering enhanced rebates.

Pursuant to the Customer Penny Pilot Posting Credit Tiers (the "Penny Credit Tiers"), Customer and Professional Customer orders that post liquidity and are executed on the Exchange earn a base credit of \$0.25 per contract, and may be eligible for increased credits based on the participant's activity. Currently, there are 7 Penny Credit Tiers, with increasing minimum volume thresholds (as well as increasing credits) associated with each tier.

The Exchange proposes to modify the minimum volume thresholds for Tier 5, but will

not modify the \$0.48 per contract credit associated with this Tier. Specifically, the Exchange proposes to modify Tier 5 to require that an OTP achieve at least 0.22% (decreased from 0.35%) of Total Customer Average Daily Volume (“TCADV”) from Customer Posted interest in all issues, plus Executed ADV of at least 0.90% (increased from 0.80%) of U.S. Equity Market Share Posted and Executed on NYSE Arca Equity Market.<sup>5</sup> This proposed change seeks to incent OTPs to achieve this Tier by increasing trading on the equities market (while making the Tier easier to achieve based on the lower minimum threshold for options trading activity).

The Exchange also offers a Customer Incentive Program (the “Incentive Program”), which offers OTPs the ability to earn one additional credit by achieving one of the five alternative minimum thresholds. The Exchange proposes to modify one of the alternatives. Specifically, the Exchange proposes that an OTP must achieve Executed ADV of 0.90% (increased from 0.80%) of U.S. Equity Market Share Posted and Executed on NYSE Arca Equity Market to be eligible for the associated \$0.03 per contract credit (which credit is not changing). This proposed change is designed to encourage increased trading on NYSE Arca Equity Market.

## 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 that the proposed modifications to the Penny Credit Tiers and the

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<sup>5</sup> The Exchange is not modifying the alternative basis for an OTP to achieve Tier 5, which requires an OTP to achieve at least 0.75% of TCADV from Customer posted interest in all issues, plus at least 0.45% of TCADV from Market Maker Total Electronic Volume.

Incentive Program are reasonable, equitable, and not unfairly discriminatory because they are designed to encourage more participants to qualify for the various Tiers or Incentives, particularly those with a cross-asset pricing component. The Exchange believes these proposed changes should result in more order flow being directed to the Exchange, including from affiliated or Appointed OFPs. The proposed modification to Tier 5 should incent OTPs to increase trading on the equities market, while making it easier to meet the requisite volume threshold in options trading. The Exchange notes that OTPs are still eligible to qualify for Tier 5 under the existing alternative (see supra note 5) based on posted Customer volume and Market Maker Electronic volume. By continuing to provide such alternative methods to qualify for a Tier or an Incentive, the Exchange believes the opportunities to qualify for credits is increased, which benefits all participants through both increased Customer (and Professional Customer) volume and increased Market Maker activity. Further, encouraging Market Maker activity on, as well as encouraging OFPs to send higher volumes of Customer orders to, the Exchange would also contribute to the Exchange's depth of book as well as to the top of book liquidity.

To the extent that order flow that adds liquidity is increased by the proposal, market participants will increasingly compete for the opportunity to trade on the Exchange, including sending more orders to reach higher Tiers or achieve alternative Incentives. The resulting increased volume and liquidity would provide more trading opportunities and tighter spreads to the investing public and, thus, would promote just and equitable principles of trade and remove impediments to, and perfect the mechanism of, a free and open market.

The Exchange also believes the proposed changes would be available to all similarly-situated market participants on an equal and non-discriminatory basis. The Exchange believes the proposed modifications are reasonable, equitable and not unfairly discriminatory because

they encourage participants to enhance their order flow to qualify for the various incentives, including encouraging more participants to have affiliated or appointed order flow directed to the Exchange, which potential increase in order flow would benefit the investing public by improving order execution and price discovery, which promotes just and equitable principles of trade and removes impediments to, and perfects the mechanism of, a free and open market.

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 will 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 changes would encourage competition, including by attracting additional liquidity to the Exchange, which would continue to make the Exchange a more competitive venue for, among other things, order execution and price discovery. The Exchange does not believe that the proposed changes would impair the ability of any market participants or competing order execution venues to maintain their competitive standing in the financial markets. Further, the incentive would be available to all similarly-situated participants, and, as such, the proposed changes would not impose a disparate burden on competition either among or between classes of market participants and, in fact, may encourage competition.

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 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)<sup>6</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>7</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.

### 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 Number SR-NYSEArca-2019-24 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-2019-24. This file number should

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<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(f)(2).

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 Number SR-NYSEArca-2019-24 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>8</sup>

Eduardo A. Aleman  
Deputy Secretary

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<sup>8</sup> 17 CFR 200.30-3(a)(12).