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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77835; File No. SR-NYSEARCA-2016-61]

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

May 16, 2016

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on May 2, 2016, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (“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 Options Fee Schedule. 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.

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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.

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend the Fee Schedule in a number of different ways, effective May 2, 2016. Specifically, the Exchange proposes (i) to increase certain Take Liquidity Fees charged; (ii) to modify the Customer and Professional Customer Incentive Program; and (iii) to introduce a new qualification for Customer and Professional Customer Posting Credit Tiers in Non-Penny Pilot Issues, as described below.

Transaction Fees for Taking Liquidity

The Exchange proposes to modify the fees paid by Market Makers, Lead Market Makers, Firms and Broker Dealers, and Professional Customers (collectively, “Non-Customers”) for Taking Liquidity in non-Penny Pilot Issues (“Take Fees”). Specifically, the Exchange proposes

to increase the Take Fee charged to Non-Customers from \$0.99 per contract to \$1.08 per contract, which is within the range of fees charged by competing option exchanges.<sup>4</sup>

Customer and Professional Customer Incentive Program (the “Incentive Program”)

The Exchange is proposing to increase one of the credits available under the Incentive Program, which provides OTP Holders and OTP Firms (collectively, “OTPs”) five alternatives to earn additional posting credits ranging from \$0.01 to \$0.04.<sup>5</sup> Specifically, the Exchange proposes to increase from \$0.04 to \$0.05 the additional post credit available to OTPs that achieve at least 1.00% of Total Industry Customer equity and ETF option ADV (“TCADV”) from Customer and Professional Customer Posted Orders in both Penny Pilot and non-Penny Pilot Issues, of which at least 0.25% of TCADV is from Customer and Professional Customer Posted Orders in non-Penny Pilot Issues. The Exchange believes this increased credit would provide additional incentive to direct Customer and Professional Customer order flow to the Exchange, which benefits all market participants through increased liquidity and enhanced price discovery.

Customer and Professional Customer Posting Credit Tiers in Non Penny Pilot Issues (the “Posting Credit Tiers”)

Finally, the Exchange also proposes to introduce a new tier to the Posting Credit Tiers, which consist of Tier A and Tier B and provide for specified credits if specified volume

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<sup>4</sup> See, e.g., NASDAQ Options Market (“NOM”) price list, [available here](http://www.nasdaqtrader.com/Micro.aspx?id=optionsPricing), <http://www.nasdaqtrader.com/Micro.aspx?id=optionsPricing> (charging non-customers a \$1.10 per contract take liquidity fee in Non-Penny Pilot Issues).

<sup>5</sup> The Exchange proposes to remove the word “four” from the italicized comment at the bottom of the Incentive Program table to make clear that there are currently five alternatives to earn the credit. See proposed Fee Schedule, Incentive Program (“OTP Holders and OTP Firms may earn one additional Credit from the alternatives listed above”).

thresholds have been met.<sup>6</sup> The Exchange is proposing to adopt a Tier C which would provide a \$0.90 per contract credit to OTPs that meet or exceed a qualification basis of at least 1.50% of TCADV from Customer and Professional Customer Posted Orders in all Issues, of which at least 0.40% of TCADV is from Customer and Professional Customer Posted Orders in non-Penny Pilot Issues. The Exchange believes proposed Tier C would provide additional incentive to direct Customer and Professional Customer order flow to the Exchange, which benefits all market participants through increased liquidity and enhanced price discovery.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,<sup>8</sup> 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 Take Fees for Non-Customers are reasonable, equitable and not unfairly discriminatory because they are competitive with fees charged by other exchanges.<sup>9</sup> In addition, the increased Take Fees are reasonable because the fees would generate revenue that would help to support the credits offered for posting liquidity, which credits are designed to attract (and compete for) order flow to the Exchange, which provides a greater opportunity for trading by all market participants. Moreover, the Exchange believes the

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<sup>6</sup> The Exchange notes that there is a posting credit of \$0.75 associated with a Base Tier for which there is no volume requirement.

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>9</sup> See supra n. 4.

proposed change does not unfairly discriminate because it applies equally to all Non-Customers who are removing liquidity.

The Exchange also believes that the proposed increased additional credit under the Incentive Program as well as the addition of proposed Tier C to the Posting Credit Tiers are reasonable, equitable, and not unfairly discriminatory because the incentives would be available to all OTPs that execute posted electronic Customer and Professional Customer orders on the Exchange on an equal and non-discriminatory basis, in particular because they provide alternative means of achieving the same [sic] credit. The Exchange believes that providing methods for achieving the credits based on posted electronic Customer and Professional Customer Executions in both Penny Pilot and non-Penny Pilot issues is equitable and not unfairly discriminatory because it would continue to result in more OTPs qualifying for the credits and therefore reducing their overall transaction costs on the Exchange. Moreover, the Exchange believes the proposed modifications would provide additional incentives to direct Customer and Professional Customer order flow to the Exchange, which benefits all market participants through increased liquidity and enhanced price discovery.

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,<sup>10</sup> 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 continue to encourage competition, including by attracting additional liquidity to

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<sup>10</sup> 15 U.S.C. 78f(b)(8).

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 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 additional credit under the Incentive Program as well as the addition of proposed Tier C to the Posting Credit Tiers would be available to all similarly situated OTP Holders and OTP Firms that post electronic Customer and Professional Customer executions on the Exchange equally and, as such, the proposed change would not impose a disparate burden on competition either among or between classes of market participants and may, in fact, 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>11</sup> of

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

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.

#### 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-2016-61 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-2016-61. This file number should be included on the subject line if e-mail is used. To help the Commission process and

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<sup>12</sup> 17 CFR 240.19b-4(f)(2).

<sup>13</sup> 15 U.S.C. 78s(b)(2)(B).

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-2016-61 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

Robert W. Errett

Deputy Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).

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