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SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-80990; File No. SR-NYSEARCA-2017-67)

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

June 21, 2017

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 June 9, 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 Options Fee Schedule (“Fee Schedule”). 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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 amend the Fee Schedule to modify the criteria for achieving various credits, including by broadening the qualifying order flow and trading activity, to make the different qualifications more achievable to a variety of market participants.

Currently, the Exchange 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." In addition, certain of the qualifications for achieving these incentives are more tailored to specific activity (i.e., posting in Penny Pilot issues only, or cross-asset pricing based only on levels of Retail Orders on the NYSE Arca Equity Market). Similarly, because the Exchange allows Order Flow Providers ("OFP"s) to aggregate their volume executed on NYSE Arca with affiliated or Appointed Market Makers, OFPs may encourage an increased level of activity from these participants to qualify for various incentives, including higher credits for Customers or Professional Customer orders. As a result, NYSE Arca becomes a more attractive venue for Customer (and Professional Customer) orders offering enhanced rebates. To further incent OFPs to direct order flow to the Exchange, the Exchange proposes to allow participants to combine their Customer activity with their Market Maker activity in an effort to achieve certain enhanced rebates.

Pursuant to the Customer and Professional Customer Monthly Posting Credit Tiers and Qualifications for Executions in Penny Pilot Issues (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, with the ability to earn increased credits based on the participant’s activity. There are currently seven Penny Credit Tiers with associated qualifications. The Exchange is not proposing any change to Penny Credit Tiers 1 through 5.

Regarding current Penny Credit Tier 6, an OTP is eligible to achieve a credit of \$0.48 per contract, provided the OTP has (i) at least 0.35% of Total Industry Customer equity and ETF option ADV (“TCADV”) from Customer and Professional Customer Posted Orders in all Issues, and (ii) Executed ADV of 0.80% of U.S. Equity Market Share Posted and Executed on NYSE Arca Equity Market. The Exchange proposes to add an alternative qualification basis to Tier 6, which would enable an OTP to qualify for the \$0.48 per contract credit, provided the OTP has (i) at least 0.50% of TCADV from Customer and Professional Customer Posted orders in all Issues, and (ii) at least 0.45% of TCADV from Market Maker Total Electronic Volume.

Additionally, the Exchange proposes to rename current Penny Credit Tier 7 as Tier 8, and to add a new Tier 7 with an associated credit of \$0.49 per contract. As proposed, OTPs may qualify for the new Tier 7 by achieving a level of at least 0.50% of TCADV from Customer and Professional Customer Posted orders in all Issues, plus at least 0.60% of TCADV from Market Maker Total Electronic Volume.

The Exchange is also proposing a small clarifying change to the Penny Credit Tiers by replacing “Total Industry Customer equity and ETF option average daily volume” with “TCADV” and explaining the abbreviation with a note at the bottom of the table referenced by an asterisk in the table header.

Next, the Exchange proposes to modify the Customer and Professional Customer Incentive Program (the “Incentive Program”) by replacing two of the possible incentives that are based solely on Market Maker Posted Orders with new incentives that combine a level of Market Maker Total Electronic Volume and Customer and Professional Customer volume. Specifically, the Exchange proposes to no longer provide an additional \$0.01 per contract credit for OTPs that achieve an ADV from Market Maker Posted Orders equal to 0.80% of TCADV. Instead, the Exchange proposes to offer an additional \$0.01 per contract credit incentive for an OTP that achieves at least 0.50% of TCADV from Customer and Professional Customer Posted Orders in all Issues, plus an ADV from Market Maker Posted Orders in Penny Pilot Issues equal to at least 0.30% of Total Industry Customer equity and ETF option ADV. The Exchange notes that an OTP that achieves this incentive would be qualified for Penny Credit Tier 3 (which requires an OTP achieve at least 0.40% of TCADV from Customer and Professional Customer Posted Orders in all Issues).⁴ The Exchange also proposes to replace the current additional \$0.02 per contract rebate available under the Incentive Program, earned by achieving an ADV from Market Maker Posted Orders equal to 1.40% of TCADV, with a new \$0.03 per contract rebate that is earned by achieving an ADV from Market Maker Total Electronic Volume of at least 0.60% of TCADV, plus at least 0.10% of TCADV from Customer and Professional Customer Posted Orders in non-Penny Pilot Issues. By encouraging additional activity from affiliated or Appointed Market Makers, the Exchange hopes to encourage a broader spectrum of business and, in turn, to increase liquidity and opportunities to trade on the Exchange.

⁴ The Exchange notes that the qualifying OTP would be eligible to receive both the \$0.45 per contract credit available for achieving Tier 3 as well as the \$0.01 per contract credit available for achieving the proposed threshold in the Incentive Program.

The Exchange is also proposing modifications to the Customer and Professional Customer Posting Credit Tiers in Non-Penny Pilot Issues (“Non-Penny Credit Tiers”) that would enable OTPs to include volume from an affiliated or Appointed Market Maker to achieve these Tiers. There are currently four Non-Penny Tiers Credit Tiers. The Exchange is not proposing any change to Non-Penny Credit Tiers A or B. The Exchange proposes to rename current Tier C to Tier D and to add a new Tier C. As proposed, new Tier C will be achieved by meeting at least 0.50% TCADV from Customer and Professional Customer Posted Order executions in all Issues, plus an ADV from Market Maker Total Electronic Volume equal to 0.45% of TCADV. OTPs that qualify for proposed Tier C will receive a credit of \$0.94 per contract. Additionally, the Exchange proposes to designate the current Non-Penny Credit Tier D as Tier F, and introduce a new Tier E. As proposed, new Tier E will be achieved by meeting at least 0.50% of TCADV from Customer and Professional Customer posted orders in all issues, plus an ADV from Market Maker Total Electronic Volume equal to 0.60% of TCADV. OTPs that qualify for proposed Tier E will receive a credit of \$1.00 per contract.

The Exchange also proposes to amend endnote 8 of the Fee Schedule to clarify make clear [sic] that the Exchange is adopting the term “Market Maker Total Electronic Volume,” which is calculated on the same basis as Customer volumes, in that Electronic Complex Order Executions, QCC Transactions, and executions of orders routed to another market are not included. By defining long standing practice, the Exchange believes this adds clarity to the calculation of Market Maker Total Electronic Volume, and is consistent with the treatment of Customer volumes. Complex strategies carry no market making obligations beyond making markets for simple executions in the component legs of the strategy; for this reason they are not included in Total Electronic Market Maker Volume. Similarly, QCCs are negotiated transactions

that neither post nor take liquidity, and therefore QCCs do not interact with Market Makers quotes. Market Maker orders routed to another market do not contribute to activity on NYSE Arca, and are therefore not included.

The Exchange is also correcting two minor typographical errors within the Fee Schedule, placing a hyphen between “Non” and “Penny” in the header of “Customer and Professional Customer Posting Credit Tiers In Non Penny Pilot Issues”, and removing an underlined space in “Credit Applied to Posted Electronic Customer _ and Professional Customer Executions in Penny Pilot Issues”, which should add clarity to the Fee Schedule.

Finally, given the proposed increase in the number of Penny Credit Tiers from seven to eight, the Exchange proposes to make clear that OTPs that achieve Tier 6, 7, or 8, (rather than just Tier 6 or 7) will be capped at \$65,000 under the Firm and Broker Dealer Monthly Fee Cap.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁵ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,⁶ 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 providing alternative qualifications for the Penny and Non-Penny Credit Tiers and the Incentive Program is reasonable, equitable, and not unfairly discriminatory because, among other things, it increases the methods of qualifying for greater credits through the inclusion of affiliated or appointed Market Maker volume. The proposed

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4) and (5).

changes would also provide additional means (via the proposed new Tiers) for OTPs to qualify for credits for posting volume on the Exchange. By providing alternative methods to qualify for a Tier or an Incentive, the Exchange believes the opportunities to qualify for rebates is increased, which benefits all participants through both increased Customer (and Professional Customer) volume and increased Market Maker activity. The Exchange notes that allowing participants to aggregate volume is not new or novel.⁷ To the extent that order flow which 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 rebates. The resulting increased volume and liquidity will benefit all Exchange participants by providing more trading opportunities and tighter spreads.

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 more participants to qualify for the various incentives, including encouraging more participants to have affiliated or appointed order flow directed to the Exchange. Further, encouraging Market Makers to send higher volumes of orders to the Exchange would also contribute to the Exchange's depth of book as well as to the top of book liquidity.

The credits are also reasonable as they are within the current range of credits on posted Customer and Professional Customer orders.

⁷ See e.g., NASDAQ Options Market—Fees and Rebates, Section 2, [available here](http://www.nasdaqtrader.com/Micro.aspx?id=optionsPricing), <http://www.nasdaqtrader.com/Micro.aspx?id=optionsPricing> (providing for qualification of tiers/rebates on the basis of customer and market maker volume); Bats BZX Options Fee Schedule, fn 1, Customer Penny Pilot Add Tiers, [available here](https://www.bats.com/us/options/membership/fee_schedule/bzx/), https://www.bats.com/us/options/membership/fee_schedule/bzx/ (same).

Finally, the Exchange believes the proposed non-substantive changes to the Fee Schedule are reasonable, equitable, and not unfairly discriminatory because it would add clarity, transparency and internal consistency to the Fee Schedule.

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,⁸ 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 change 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 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

⁸ 15 U.S.C. 78f(b)(8).

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)⁹ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁰ 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)¹¹ 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-2017-67 on the subject line.

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(2).

¹¹ 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-2017-67. 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-2017-67, 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.¹²

Eduardo A. Aleman,

¹² 17 CFR 200.30-3(a)(12).

Assistant Secretary.

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