



8011-01
SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-81134; File No. SR-NYSEARCA-2017-72)

July 12, 2017

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services to Adopt a New Pricing Tier, Tape A and Tape C 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 June 30, 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 Equities Schedule of Fees and Charges for Exchange Services (“Fee Schedule”) to adopt a new pricing tier, Tape A and Tape C Tier. The Exchange proposes to implement the fee changes effective July 3, 2017. 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 Exchange proposes to amend the Fee Schedule, as described below, and implement the fee changes on July 3, 2017.

The Exchange proposes to introduce a new pricing tier – Tape A and Tape C Tier – for securities with a per share price of \$1.00 or above.

As proposed, a new Tape A and Tape C Tier credit of \$0.0028 per share for orders that provide liquidity in Tape A and Tape C Securities would be applicable to ETP Holders and Market Makers, that, on a daily basis, measured monthly, (1) directly execute providing volume in Tape A Securities during the billing month (“Tape A Adding ADV”) that is at least 2 million shares ADV over the ETP Holder’s or Market Maker’s first quarter 2017 Tape A Adding ADV, (2) directly execute providing volume in Tape C Securities during the billing month (“Tape C Adding ADV”) that is at least 2 million shares ADV over the ETP Holder’s or Market Maker’s first quarter 2017 Tape C Adding ADV, and (3) meet the requirements of Tape B Tier 2.⁴ For example, if an ETP Holder’s Tape A Baseline during the first quarter of 2017 was 5 million shares ADV and the ETP Holder’s Tape C Baseline during the first quarter of 2017 was 3 million shares, the ETP Holder would need a Tape A Adding ADV of at least 7 million shares

⁴ Tape B Tier 2 requires that ETP Holders and Market Makers on a daily basis, measured monthly, directly execute providing volume that is either (1) equal to at least 1.0% of the US Tape B CADV or (2) equal to at least 0.20% of the US Tape B ADV [sic] for the billing month over the ETP Holder’s or Market Maker’s Q2 2015 Tape B Adding ADV taken as a percentage of Tape B CADV. See Tape B Tier 2, Schedule of Fees.

and a Tape C Adding ADV of at least 5 million shares and meet the requirements of Tape B Tier 2 to qualify for the proposed credit of \$0.0028 per share in Tape A and Tape C Securities in the billing month.⁵

For ETP Holders that qualify for the proposed new Tape A and Tape C Tier, Tiered or Basic Rates would apply to all other fees and credits, based on the firm's qualifying levels, and if an ETP Holder qualifies for more than one tier in the Fee Schedule, the Exchange would apply the most favorable rate available under such tiers.

Additionally, the Exchange recently adopted the Tape C Tier 3 pricing tier that references the applicability of a \$0.0002 per share credit to ETP Holders and Market Makers that qualify for that pricing tier.⁶ The Exchange proposes to make a non-substantive change to the Tape C Tier 3 pricing tier by adding the word "directly" in front of "execute" in the second prong of the pricing tier. The proposed change is intended to provide consistency within the pricing tier and the Fee Schedule generally. The Exchange is not proposing any other change to Tape C Tier 3.

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any significant problems that market participants would have in complying with the proposed changes.

⁵ The Exchange recognizes that a firm that becomes an ETP Holder or Market Maker after the Baseline Month [sic] would have a Tape A and Tape C Baseline ADV of zero. In this regard, a new ETP Holder or Market Maker would need to have a Tape A Adding ADV and Tape C Adding ADV during the billing month of 2 million shares, in addition to meeting the Tape B Tier 2 requirements, for the \$0.0028 per share credit to apply.

⁶ See Securities Exchange Act Release No. 80285 [sic] (May 11, 2017), 82 FR 22687 (May 17, 2017) (SR-NYSEArca-2017-51).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,⁸ 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 proposed Tape A and Tape C Tier is reasonable and equitably allocated because it would apply to ETP Holders and Market Makers that provide liquidity in Tape A, Tape B and Tape C Securities to the Exchange and is designed to incentivize these market participants to increase the orders sent directly to the Exchange and therefore provide liquidity that supports the quality of price discovery and promotes market transparency. The Exchange believes the new Tape A and Tape C Tier is equitable because the proposed new tier would be available to all similarly situated ETP Holders and Market Makers on an equal basis and the proposed new tier provides a credit that is reasonably related to the value of an exchange's market quality associated with higher volumes. The Exchange currently provides a comparable credit for orders that provide liquidity in Tape B Securities to ETP Holders and Market Makers that meet the requirements of Tape B Tier 2 and with this proposed rule change, the Exchange would extend the availability of a similar credit to ETP Holders and Market Makers in Tape A and Tape C Securities.

The Exchange further believes that the proposed Tape A and Tape C Tier is reasonable, equitable and not unfairly discriminatory because the Exchange has previously implemented pricing tiers that target a particular segment of securities. For example, to qualify for the Step

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4) and (5).

Up Tier, ETP Holders and Market Makers are required to set a new NYSE Arca Best Bid or Offer with at least 25% in each of the ETP Holder's or Market Maker's Tape A, Tape B and Tape C providing ADV.

The Exchange also believes that the requirement to execute providing volume in Tape A and Tape C Securities during the billing month that is at least 2 million shares ADV over the ETP Holder's and Market Maker's first quarter 2017 adding ADV in each of Tape A and Tape C Securities is reasonable as it would provide incentives for adding liquidity in Tape A and Tape C Securities and strengthen market quality in those securities. The Exchange further believes that the requirement to execute providing volume in Tape A and Tape C Securities for the proposed Tape A and Tape C Tier is equitable and not unfairly discriminatory because it would apply uniformly to all similarly situated ETP Holders and Market Makers.

The Exchange believes that the proposed rule change regarding Tape A and Tape C credits would create an added incentive for ETP Holders and Market Makers to execute additional orders on the Exchange. The Exchange believes that the proposed change is equitable and not unfairly discriminatory because providing incentives for 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.

The Exchange believes that the non-substantive change to add the word "directly" in front of "execute" in current Tape C Tier 3 pricing tier removes impediments to and perfects the mechanism of a free and open market by providing clarity and adding transparency to the

Exchange's rules. The Exchange believes the proposed amendment to the Fee Schedule is both reasonable and equitable because ETP Holders and Market Makers would benefit from clear guidance in the rule text describing the manner in which the Exchange's fees and credits would be assessed.

Volume-based rebates and fees such as the ones currently in place on the Exchange, and as proposed herein, have been widely adopted in the cash equities markets and are equitable because they are open to all ETP Holders and Market Makers on an equal basis and provide additional benefits or discounts that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns, and introduction of higher volumes of orders into the price and volume discovery processes. The Exchange believes that the proposed introduction of Tape A and Tape C Tier will provide such enhancements in market quality on the Exchange's equity market by incentivizing increased participation.

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,⁹ 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 addition of the proposed new credit 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

⁹ 15 U.S.C. 78f(b)(8).

promote competition between the Exchange and other execution venues, including those that currently offer similar order types and comparable transaction pricing, by encouraging additional orders to be sent to the Exchange for execution.

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 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 with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. 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)¹⁰ of the Act and subparagraph (f)(2) of Rule 19b-4¹¹ thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(2).

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)¹² 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-2017-72 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-2017-72. 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

¹² 15 U.S.C. 78s(b)(2)(B).

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-2017-72 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.¹³

Jill M. Peterson
Assistant Secretary

¹³ 17 CFR 200.30-3(a)(12).

