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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-81601; File No. SR-NYSEARCA-2017-104]

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

September 13, 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 September 1, 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 Fees and Charges (the “Fee Schedule”) to (i) adopt an additional tiered credit applicable to Lead Market Makers (“LMMs”)⁴ and to ETP Holders and Market Makers affiliated with the LMM that provide displayed liquidity to the NYSE Arca Book in Tape B Securities; and (ii) add a second way by which an ETP Holder or Market Maker could qualify for the Step Up Tier. The Exchange proposes to implement the proposed fee change on September 1, 2017. The proposed rule change is available

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ The term "Lead Market Maker" is defined in Rule 1.1(w) to mean a registered Market Maker that is the exclusive Designated Market Maker in listings for which the Exchange is the primary market.

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 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 to adopt an additional tiered credit applicable to LMMs and to ETP Holders and Market Makers affiliated with the LMM that provide displayed liquidity to the NYSE Arca Book in Tape B Securities; and (ii) add a second way by which an ETP Holder or Market Maker could qualify for the Step Up Tier. The Exchange proposes to implement the proposed fee changes on September 1, 2017.

LMM Transaction Fees and Credits

The Exchange proposes to amend the Fee Schedule to adopt an additional tiered credit applicable to LMMs and to ETP Holders and Market Makers affiliated with the LMM that provide displayed liquidity to the NYSE Arca Book in Tape B Securities. The Exchange currently provides tier-based incremental credits for orders that provide displayed liquidity to the NYSE Arca Book in Tape B Securities. Specifically, LMMs that are registered as the LMM in Tape B Securities that have a consolidated average daily volume ("CADV") in the previous month of less than 100,000 shares, or 0.0070% of Consolidated Tape B ADV, whichever is

greater (“Less Active ETP Securities”), and the ETP Holders and Market Makers affiliated with such LMMs, currently receive an additional credit for orders that provide displayed liquidity to the Book in any Tape B Securities that trade on the Exchange.⁵ The current incremental credits and volume thresholds are as follows:

- An additional credit of \$0.0004 per share if an LMM is registered as the LMM in at least 300 Less Active ETP Securities
- An additional credit of \$0.0003 per share if an LMM is registered as the LMM in at least 200 but less than 300 Less Active ETP Securities
- An additional credit of \$0.0002 per share if an LMM is registered as the LMM in at least 100 but less than 200 Less Active ETP Securities

The number of Less Active ETP Securities for the billing month is based on the number of Less Active ETP Securities in which an LMM is registered as the LMM on the last business day of the previous month. The incremental credits also apply to ETP Holders and Market Makers affiliated with the LMM whose orders in Tape B Securities provide displayed liquidity to the NYSE Arca Book.

The Exchange proposes to adopt an additional tier pursuant to which LMMs and ETP Holders and Market Makers affiliated with the LMM that provide displayed liquidity to the NYSE Arca Book in Tape B Securities would receive an additional credit of \$0.0001 per share if the LMM is registered as the LMM in at least 75 but less than 100 Less Active ETP Securities.

For example, currently, a LMM that provides liquidity to the NYSE Arca Book in a security for which the LMM is registered as the LMM which has a CADV in the previous month

⁵ The Exchange defines “affiliate” to “mean any ETP Holder under 75% common ownership or control of that ETP Holder.” See Fee Schedule, NYSE Arca Marketplace: General.

of at least 5,000,000 shares would receive a credit of \$0.0033 per share. If that LMM is also registered as an LMM in 80 Less Active ETP Securities, the LMM would receive an incremental credit of \$0.0001 per share under the proposed new rebate structure, for a total credit of \$0.0034 per share. Additionally, if the affiliated ETP Holders and Market Makers of such LMM that provide displayed liquidity in Tape B Securities are a Tier 1 firm, they would receive a total credit of \$0.0024 per share, i.e., \$0.0023 per share Tier 1 credit for orders that provide liquidity to the NYSE Arca Book plus \$0.0001 per share for being registered as a LMM in 80 Less Active ETP Securities.

With the proposed additional tier, the Exchange hopes to provide incentives for increased trading in Less Active ETP Securities for the benefit of all market participants.

Step-Up Tier

The Exchange proposes to add a second way by which an ETP Holder or Market Maker could qualify for the existing Step Up Tier. Currently, to qualify for the Step Up Tier, ETP Holders and Market Makers, on a daily basis, measured monthly must:

- (i) directly execute providing average daily volume that is an increase of no less than 0.15% of US CADV⁶ for that month over the ETP Holder's or Market Maker's providing average daily volume in July 2016, and
- (ii) sets 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.

⁶ US CADV means United States Consolidated Average Daily Volume for transactions reported to the Consolidated Tape, excluding odd lots through January 31, 2014 (except for purposes of Lead Market Maker pricing), and excludes volume on days when the market closes early and on the date of the annual reconstitution of the Russell Investments Indexes. Transactions that are not reported to the Consolidated Tape are not included in US CADV.

ETP Holders and Market Makers that qualify for the Step Up Tier receive a \$0.0029 per share credit for orders that provide liquidity to the Book for Tape A and Tape C Securities and \$0.0028 per share credit for orders that provide liquidity to the Book for Tape B Securities.

As proposed, the Exchange would keep these qualifying requirements, and add a second way by which an ETP Holder or Market Maker could qualify for the Step Up Tier. As proposed, an ETP Holder or Market Maker could also qualify for the Step Up Tier if such ETP Holder or Market Maker, on a daily basis, measured monthly:

- (i) directly execute providing average daily volume that is an increase of no less than 0.15% of US CADV³ for that month over the ETP Holder's or Market Maker's providing average daily volume in July 2016, and
- (ii) sets a new NYSE Arca Best Bid or Offer with at least 20% in the ETP Holder's or Market Maker's Tape A providing ADV, at least 25% in the ETP Holder's or Market Maker's Tape B providing ADV, and at least 30% in the ETP Holder's or Market Maker's Tape C providing ADV, and
- (iii) directly execute taking average daily volume of at least 15 million shares.

For example, an ETP Holder that has a providing ADV of 15 million shares in the Baseline Month would be required to execute, at a minimum, an additional 9.75 million shares of providing ADV if CADV is 6.5 billion shares in the billing month, or 0.15% over the Baseline Month, for a total providing ADV of 24.75 million shares for the billing month. Further, of the 24.75 million shares, assume 10.75 million shares are in Tape A Securities, and 7 million shares are each in Tape B and Tape C Securities. The ETP Holder would be required to have a providing ADV that sets a new BBO on the Exchange of at least 2.15 million shares in Tape A

Securities, of at least 1.750 million shares in Tape B Securities, and of at least 2.1 million shares in Tape C Securities.

The Exchange believes that combining the existing providing average daily volume requirement with both specified setting Exchange Best Bid or Offer requirements, depending on whether the securities are Tape A, B, or C, and a requirement to meet certain volume of executing taking volume on the Exchange would encourage ETP Holders or Market Makers that are active traders on the Exchange to step up their provide volume to qualify for the Step Up Tier.

As an incentive for ETP Holders and Market Makers to direct their order flow to the Exchange, for the months of September 2017 and October 2017 only, the Exchange proposes adopting lower providing ADV criteria for ETP Holders and Market Makers to qualify for the Step Up Tier. For the month of September 2017 only, the ETP Holder or Market Maker would need to directly execute providing average daily volume that is an increase of no less than 0.05% of US CADV for that month over the ETP Holder's or Market Maker's providing average daily volume in July 2016.

Using the previous example, that ETP Holder would be required to execute, at a minimum, an additional 3.25 million shares of providing ADV, or 0.05% over the Baseline Month, for a total providing ADV of 18.25 million shares for that billing month. Further, of the 18.25 million shares, assume 10 million shares are in Tape A Securities, 5 million shares are in Tape B Securities and 3.25 million shares are in Tape C Securities. The ETP Holder would be required to have a providing ADV that sets a new BBO on the Exchange of at least 2 million shares in Tape A Securities, of at least 1.250 million shares in Tape B Securities, and of at least 0.975 million shares in Tape C Securities.

For the month of October 2017 only, the ETP Holder or Market Maker would need to directly execute providing average daily volume that is an increase of no less than 0.10% of US CADV for that month over the ETP Holder's or Market Maker's providing average daily volume in July 2016. For the months on and after November 2017, ETP Holders and Market Makers would need to meet the new proposed qualifying requirement of 0.15% of CADV.

Using the previous example, that ETP Holder would be required to execute, at a minimum, an additional 6.5 million shares of providing ADV, or 0.10% over the Baseline Month, for a total providing ADV of 21.5 million shares for the billing month. Further, of the 21.5 million shares, assume 12 million shares are in Tape A Securities, 7 million shares are in Tape B Securities and 2.5 million shares are in Tape C Securities. The ETP Holder would be required to have a providing ADV that sets a new BBO on the Exchange of at least 2.4 million shares in Tape A Securities, of at least 1.75 million shares in Tape B Securities, and of at least 0.75 million shares in Tape C Securities.

Because the goal of the Step-Up Tier is to incentivize ETP Holders and Market Makers to increase the orders sent directly to NYSE Arca and therefore provide liquidity that supports the quality of price discovery and promotes market transparency, the Exchange believes that the proposed new qualifying requirement for the Step Up Tier will provide an additional incentive for ETP Holders or Market Makers that are active traders on the Exchange to increase the orders sent to the Exchange that would provide liquidity.

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

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 that the proposed additional tier for Less Active ETP Securities is reasonable because the proposed credit of \$0.0001 per share that would apply if an LMM is registered as the LMM in at least 75 but less than 100 Less Active ETP Securities would relate to displayed liquidity to the NYSE Arca Book in Tape B Securities, which would be identical to the type of volume to which the credit would apply.

The Exchange believes it is equitable and not unfairly discriminatory to establish an additional tier applicable to LMMs and to ETP Holders and Market Makers affiliated with the LMM, as all LMMs have the ability to qualify for the proposed rebate, and rebates would be provided equally to qualifying participants.

The proposed fee change is intended to encourage LMMs to promote price discovery and market quality in Less Active ETP Securities for the benefit of all market participants. The Exchange believes the proposed additional tier to the current rebate structure would allow LMMs that are registered as the LMM in a fewer number of Less Active ETP Securities to qualify for a rebate. The Exchange believes the proposed credit is reasonable and appropriate in that it is based on the amount of business transacted on the Exchange. The Exchange believes that providing the proposed additional credit to ETP Holders and Market Makers that are affiliated

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4) and (5).

with a LMM that add liquidity in Tape B Securities to the Exchange is reasonable because the Exchange believes that by providing increased rebates to affiliated ETP Holders and Market Makers of a LMM, more LMMs will register to quote and trade in Less Active ETP Securities. The Exchange further believes the proposed incremental credit for adding liquidity is also reasonable because it will encourage liquidity and competition in Tape B Securities quoted and traded on the Exchange. Moreover, the Exchange believes that the proposed fee change will incentivize LMMs to register as an LMM in Less Active ETP Securities and thus, add more liquidity in these and other Tape B Securities to the benefit of all market participants. The Exchange also believes the lower requirement of the additional tier is reasonable because it may allow a greater number of LMMs and their affiliated ETP Holders and Market Makers to qualify for the proposed additional credit.

The Exchange believes the proposed incremental credit is equitable and not unfairly discriminatory because it is open to all ETP Holders and Market Makers affiliated with a LMM on an equal basis and provides a discount that is reasonably related to the value to the Exchange's market quality associated with higher volumes. The Exchange further believes that the proposed incremental rebate is not unfairly discriminatory because it is consistent with the market quality and competitiveness of benefits associated with the proposed fee program and because the magnitude of the additional rebate is not unreasonably high in comparison to the rebate paid with respect to other displayed liquidity-providing orders. The Exchange does not believe that it is unfairly discriminatory to offer increased rebates to LMMs as LMMs are subject to additional requirements and obligations (such as quoting requirements) that other market participants are not.

The Exchange also believes that allowing ETP Holders to receive enhanced credits based on activities of their affiliates is reasonable, equitable and not unfairly discriminatory because the Exchange believes that ETP Holders affiliated with LMMs may qualify to earn enhanced credits in recognition of their shared economic interest, which includes the heightened obligations and costs imposed on LMMs. ETP Holders unaffiliated with LMMs do not share the same type of economic interests. Further, ETP Holders not affiliated with a LMM have an opportunity to establish such affiliation by several means, including but not limited to, a business combination or the establishment of their own market making operation, which each unaffiliated firm has the potential to establish.

The Exchange believes that the proposed second way to qualify for the Step-Up Tier is equitable because it is open to all market participants on an equal basis and provides credits that are reasonably related to the value to an exchange's market quality associated with higher volumes. As stated above, the Exchange believes that the Step-Up Tier incentivizes market participants to increase the orders sent directly to NYSE Arca that would provide liquidity. Additional order flow that provides liquidity supports the quality of price discovery and promotes market transparency. The Exchange believes that adding a second way to qualify for the Step Up Tier would benefit market participants that already are active traders on the Exchange and whose increased order flow provides meaningful added levels of liquidity, thereby contributing to the depth and market quality on the Exchange. In addition, by offering a second way to qualify for the Step-Up Tier, the Exchange believes more market participants that are active traders on the Exchange may provide increased liquidity-providing order flow and more market participants would be eligible to receive the proposed credits for their orders.

Further, the Exchange believes that the proposal is reasonable and would create an added incentive for ETP Holders and Market Makers to execute additional orders on the Exchange. The Exchange believes it is reasonable to require ETP Holders and Market Makers' providing ADV set a new BBO on the Exchange of at least 20% of their Tape A providing ADV, at least 25% of their Tape B providing ADV, and at least 30% of their Tape C providing ADV as it would create an incentive for ETP Holders and Market Makers to improve displayed quotes on the Exchange, which would benefit all market participants. The Exchange believes that the proposed change is equitable and not unfairly discriminatory because providing incentives for orders that are executed on a registered national securities exchange 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 further believes it is reasonable to require ETP Holders or Market Makers to also directly execute taking average daily volume of at least 15 million shares because it would provide an incentive for market participants that are active traders on the Exchange to increase orders that provide liquidity on the Exchange, thereby further promoting price discovery on the Exchange.

The Exchange believes that adopting lower providing ADV criteria for September 2017 and October 2017 is reasonable because it may allow a greater number of ETP Holders and Market Makers to qualify for the proposed credits while also providing ETP Holders and Market Makers the opportunity to gradually increase their activity in order to qualify for the Step Up Tier. The Exchange believes that adopting lower providing ADV criteria for September 2017 and October 2017 is also equitable and not unfairly discriminatory because the lower criteria would apply uniformly to all ETP Holders and Market Makers during September 2017 and

October 2017.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition. 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,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 proposed fee change would encourage increased participation by LMMs in the trading of ETP securities generally and Less Active ETP Securities, in particular. The proposed change would also 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 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 this proposal promotes a 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.

⁹ 15 U.S.C. 78f(b)(8).

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.

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-2017-104 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.

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(2).

¹² 15 U.S.C. 78s(b)(2)(B).

All submissions should refer to File Number SR-NYSEARCA-2017-104. 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-2017-104 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

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Secretary

¹³ 17 CFR 200.30-3(a)(12).

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