

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-84971; File No. SR-NYSEArca-2018-95)

December 26, 2018

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

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 December 21, 2018, 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Options Fee Schedule (“Fee Schedule”). The Exchange proposes to implement the fee change effective January 1, 2019. 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 received on the proposed rule change. The text of those statements may be examined at the

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 modify the Fee Schedule to extend for another year the prepayment incentive program for Floor Broker organizations (each a “Floor Broker”) that the Exchange introduced in April 2018 (the “FB Prepay Program” or “Program”).⁴

Pursuant to the FB Prepay Program, the Exchange offered Floor Brokers that operate on the Exchange a 10% discount on their “Eligible Fixed Costs” (described in the table below) if Floor Brokers prepaid such costs for April through December 2018.

ELIGIBLE FIXED COSTS
OTP TRADING PARTICIPANT RIGHTS
FLOOR BROKER ORDER CAPTURE DEVICE - MARKET DATA FEES
FLOOR BOOTHS
TELEPHONES
OPTIONS FLOOR ACCESS FEE
WIRE SERVICES
VENDOR EQUIPMENT ROOM/CABINET FEE

The Exchange proposes to extend the FB Prepay Program and offer Floor Brokers the opportunity to prepay their annual Eligible Fixed Costs for 2019, with certain modifications. First, the Exchange proposes to eliminate Telephone charges and the Vendor Equipment

⁴ See Exchange Act Release No.83074 (April 20, 2018), 83 FR 18374 (April 26, 2018) (SR-NYSEArca-2018-24). See also Fee Schedule, FLOOR BROKER FIXED COST PREPAYMENT INCENTIVE PROGRAM (the “FB Prepay Program”), available [here](https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf), https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf.

Room/Cabinet Fee (“Cabinet Fee”) from the list of Eligible Fixed Costs in the 2019 Program. As noted in a recent filing, the Exchange plans to modify the Fee Schedule in connection with the relocation of the Trading Floor early next year, including changing the way Floor Brokers pay for telephone service and eliminating the Cabinet Fee.⁵ Thus, the Exchange proposes to remove these items from the list of Eligible Fixed Costs in an effort to prevent Floor Brokers from overpaying for 2019 based on November 2018 costs that would include these items. Second, the Exchange proposes to modify the benchmarks utilized to assess eligibility for the Percentage Growth Incentive.⁶ The Exchange proposes to continue to offer participants in the FB Prepay Program the opportunity to qualify for larger discounts (i.e., more than 10% of the 2019 Eligible Fixed Costs) through the Percentage Growth Incentive (the “Incentive”), which is designed to encourage Floor Brokers to increase their average daily volume (“ADV”) in billable manual contract sides by certain percentages (correlated with Tiers) as measured against one of two benchmarks.⁷

⁵ See SR-NYSEArca-2018-80 (filed on December 13, 2018).

⁶ To participate in the 2019 FB Prepay Program, Floor Brokers would have to notify the Exchange in writing by emailing optionsbilling@nyse.com, indicating a commitment to submit prepayment, by no later than December 31, 2018. The email to enroll in the Program would have to originate from an officer of the Floor Broker organization and, except as provided for below, represents a binding commitment through the end of 2019. To participate in the Program, prepayment for the balance of the year must be received by the close of business on January 31, 2019. See proposed Fee Schedule, FLOOR BROKER FIXED COST PREPAYMENT INCENTIVE PROGRAM (the “FB Prepay Program”). “Participating Floor Broker organizations that qualify for the Percentage Growth Incentive will receive their 2019 rebate in January 2020.” See *id.*

⁷ The Percentage Growth Incentive would continue to exclude Customer volume, Firm Facilitation and Broker Dealer facilitating a Customer trades, and QCCs. Any volume calculated to achieve the Firm and Broker Dealer Monthly Fee Cap and the Limit of Fees on Options Strategy Executions, will likewise be excluded from the Percentage Growth Incentive because fees on such volume is already capped and therefore does not increase billable manual volume. See Fee Schedule, FLOOR BROKER FIXED COST PREPAYMENT INCENTIVE PROGRAM, *supra* note 4.

For the 2019 FB Prepay Program, the Exchange proposes to modify the first benchmark by requiring a minimum 11,000 contract sides (up from 10,000) in billable ADV and proposes to modify the second benchmark by requiring 110% of the Floor Broker's total billable manual ADV in contract sides (up from 100%) during the second half of 2017 – i.e., July through December 2017. The Exchange is not modifying the percentages (correlated with Tiers 1-3) against which the benchmarks are measured.⁸ The Exchange notes that Equity Option Industry ADV for 2018 is up 24% as compared to Equity Option Industry ADV for the last six months of 2017 (and the three years prior). Thus, in this climate, the Exchange believes it is appropriate to apply a nominal increase in the first benchmark -- from a minimum of 10,000 ADV to 11,000 ADV. Similarly, given that 2018 options industry volume has been elevated and the Exchange cannot predict whether volumes for 2019 will continue at the same pace, the Exchange believes it is appropriate to continue to use ADV from the latter half of 2017 as the alternative benchmark, with a nominal increase of 10% over the current requirement. The Exchange notes that the changes to the Program are designed to encourage those Floor Brokers that enrolled in the Program for 2018 to reenroll for 2019 as well as to attract Floor Brokers that have not yet participated.

As proposed, a Floor Broker that commits to the Program for 2019 would be invoiced in January 2019 for its estimated Eligible Fixed Costs, through the end of 2019, less 10%. The estimated annual Eligible Fixed Costs (i.e., for January through December 2019) for each participating Floor Broker would be based on that Floor Broker's November, 2018 invoice for such costs.

⁸ See id.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,¹⁰ 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 proposal to extend the FB Prepayment Program as modified is reasonable, equitable and not unfairly discriminatory for the following reasons. First, the Program is optional and Floor Brokers can elect to participate (or elect not to participate). In addition, the Exchange is continuing to offer two alternative means to achieve the same enhanced discount to ensure that Floor Brokers that are new to the Exchange (and therefore have no historical ADV from 2017) could nonetheless participate in the Program. The Exchange notes that Equity Option Industry ADV for 2018 is up 24% as compared to Equity Option Industry ADV for the last six months of 2017 (and the three years prior). Thus, in this climate, the Exchange believes it is appropriate to apply a nominal increase in the first benchmark -- from a minimum of 10,000 ADV to 11,000 ADV. Similarly, given that 2018 options industry volume has been elevated and the Exchange cannot predict whether volumes for 2019 will continue at the same pace, the Exchange believes it is appropriate to continue to use ADV from the latter half of 2017 as the alternative benchmark, with a nominal increase of 10% over the current requirement. The Exchange notes that the changes to the Program are designed to encourage those Floor Brokers that enrolled in the Program for 2018 to reenroll for 2019 as well as to attract Floor Brokers that have not yet participated.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4) and (5).

The Exchange believes the proposed changes to the FB Program would continue to incent Floor Brokers to increase their billable volume executed in open outcry on the Exchange in an effort to achieve the Incentive (the percentages for which remain unchanged), which would benefit all market participants by expanding liquidity and providing more trading opportunities, even to those market participants that have not committed to the Program. Regardless of which benchmark a participating Floor Broker's growth is measured against, all Floor Broker's that opt to participate and seek to achieve the Incentive would be required to increase volume executed on the Exchange in order to receive the enhanced discount. Thus, the Exchange believes the proposed Program, is reasonable, equitable and not unfairly discriminatory to others.

The Exchange believes the proposal to continue to offer the Percentage Growth Incentive for 2019 based on ADV in contract sides in 2019 is reasonable, equitable and not unfairly discriminatory because, just as under the existing program, this Incentive is designed to encourage Floor Brokers to increase their ADV in billable manual contract sides by certain percentages (correlated with Tiers) as measured against the two available benchmarks.

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 would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed changes to the FB Prepayment Program may increase both inter-market and intra-market competition by incenting participants to direct their orders to the Exchange, which would enhance the quality of quoting and may increase the volume of contracts traded on the Exchange. To the extent that there is an additional competitive burden on non-Exchange participants, the Exchange believes that this is appropriate because the proposal should incent market participants

to direct additional order flow to the Exchange, and thus provide additional liquidity that enhances the quality of its markets and increases the volume of contracts traded here. To the extent that this purpose is achieved, all of the Exchange's market participants should benefit from the improved market liquidity. Enhanced market quality and increased transaction volume that results from the anticipated increase in order flow directed to the Exchange would benefit all market participants and improve competition on the Exchange.

Given the robust competition for volume among options markets, many of which offer the same products, implementing programs to attract order flow, such as the proposed changes to the FB Prepayment Program, are consistent with the above-mentioned goals of the Act.

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)¹¹ of the Act and subparagraph (f)(2) of Rule 19b-4¹² 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

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(2).

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)¹³ 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-2018-95 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-2018-95. 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

¹³ 15 U.S.C. 78s(b)(2)(B).

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 such 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-2018-95, 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.¹⁴

Eduardo A. Aleman
Deputy Secretary

¹⁴ 17 CFR 200.30-3(a)(12).

[FR Doc. 2019-00478 Filed: 1/30/2019 8:45 am; Publication Date: 1/31/2019]