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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85311; File No. SR-NYSEARCA-2019-10]

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 to Introduce a New Pricing Tier, Step Up Tier 4

March 14, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 1, 2019, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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 (“Fee Schedule”) to introduce a new pricing tier, Step Up Tier 4. The Exchange proposes to implement the fee change effective March 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

¹ 15 U.S.C. 78s(b)(1).

² 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 to introduce a new pricing tier, Step Up Tier 4. The Exchange proposes to implement the fee change effective March 1, 2019.

The Exchange currently has a Step Up Tier pursuant to which qualifying ETP Holders and Market Makers receive a credit of \$0.0030 per share for orders that provide displayed liquidity to the Book in Tape A Securities, \$0.0023 per share for orders that provide displayed liquidity to the Book in Tape B Securities, and \$0.0031 per share for orders that provide displayed liquidity to the Book in Tape C Securities if such ETP Holders and Market Makers directly execute providing average daily volume ("ADV") per month of 0.50% or more, but less than 0.70% of the US CADV and directly execute providing ADV 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 ADV in Q1 2018.³

The Exchange also has a Step Up Tier 2 pricing tier pursuant to which ETP Holders and Market Makers receive a credit of \$0.0028 per share for orders that provide displayed liquidity to the Book in Tape A and Tape C Securities, and \$0.0022 per share for orders that provide displayed liquidity to the Book in Tape B Securities if such ETP Holders and Market Makers directly execute providing ADV per month of 0.22% or more, but less than 0.30% of the US

³ See Securities Exchange Act Release No. 83032 (April 11, 2018), 83 FR 16909 (April 17, 2018) (SR-NYSEArca-2018-20).

CADV and directly execute providing ADV that is an increase of no less than 0.06% of US CADV for that month over the ETP Holder's or Market Maker's providing ADV in May 2018.⁴

More recently, the Exchange adopted the Step Up Tier 3 pricing tier pursuant to which ETP Holders and Market Makers receive a credit of \$0.0025 per share for orders that provide displayed liquidity to the Book in Tape A and Tape C Securities, and \$0.0022 per share for orders that provide displayed liquidity to the Book in Tape B Securities if such ETP Holders and Market Makers directly execute providing ADV per month of 0.15% or more, but less than 0.20% of the US CADV and directly execute providing ADV that is an increase of no less than 0.075% of US CADV for that month over the ETP Holder's or Market Maker's providing ADV in May 2018.⁵

The Exchange proposes a new pricing tier - Step Up Tier 4 - for securities with a per share price of \$1.00 or above. As proposed, ETP Holders and Market Makers would qualify for the new Step Up Tier 4 if they directly execute providing ADV per month that is an increase of no less than 0.70% of US CADV for that month over the ETP Holder's or Market Maker's providing ADV in January 2019, taken as a percentage of US CADV. ETP Holders and Market Makers that qualify for Step Up Tier 4 would receive a credit of \$0.0031 per share for orders that provide displayed liquidity to the Book in Tape A Securities and a credit of \$0.0032 per share for orders that provide displayed liquidity to the Book in Tape B and Tape C Securities. ETP Holders and Market Makers that qualify for the Step Up Tier 4 credit in Tape C Securities shall

⁴ See Securities Exchange Act Release No. 83418 (June 12, 2018), 83 FR 28282 (June 18, 2018) (SR-NYSEArca-2018-41).

⁵ See Securities Exchange Act Release No. 84103 (September 12, 2018), 83 FR 47216 (September 18, 2019) (SR-NYSEArca-2018-66).

not receive any additional incremental Tape C Tier credits for providing displayed liquidity under Tape C Tiers.⁶

For all other fees and credits, tiered or basic rates apply based on a firm's qualifying levels.

For example, assume an ETP Holder or Market Maker has an adding ADV of 0.10% of US CADV in all securities in the baseline month of January 2019 and Tape C adding ADV of 0.05% of the US Tape C CADV in Tape C Securities. Further assume that the same ETP Holder or Market Maker has an adding ADV of 1.10% of US CADV in all securities and Tape C adding ADV of 0.30% of the US Tape C CADV in the billing month. The ETP Holder or Market Maker in the above example would qualify for the proposed Step Up Tier 4 with an adding ADV step up of 1.00% of US CADV (i.e., 1.10% US CADV minus the 0.10% adding of US CADV baseline) and would therefore receive the proposed \$0.0032 per share credit in Tape B and Tape C Securities and \$0.0031 per share credit in Tape A Securities. Further, since the ETP Holder or Market Maker in the above example also meets the qualifications of the current Tape C Tier 2 pricing tier with an adding ADV of 0.25% of Tape C CADV above the 0.05% adding Tape C CADV baseline, meeting the Tape C Tier 2 step up requirement of 0.20%, the ETP Holder or Market Maker in the above example would be charged a lower \$0.0029 per share fee for orders that take liquidity from the Book in Tape C Securities (instead of the \$0.0030 per share fee as provided in the Basic Rates section) but would not receive the additional \$0.0002 per share credit for orders that provide liquidity to the Book in Tape C Securities.

⁶ ETP Holders and Market Makers that meet the requirements would continue to qualify for the \$0.0029 per share (fee) for orders that take liquidity from the Book in Tape C Securities pursuant to Tape C Tier 2 and Tape C Tier 3, if they meet the requirements of those tiers.

The goal of the proposed Step Up Tier 4 pricing tier is to incentivize ETP Holders and Market Makers 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 proposed pricing tier, which adopts a higher threshold than the existing Step Up pricing tiers, i.e., Step Up Tier 1, Step Up Tier 2 and Step Up Tier 3, is intended to allow ETP Holders and Market Makers to achieve rebates that are not currently available, e.g, the proposed \$0.0032 per share credit in Tape B Securities. Since the proposed new pricing tier has a singular requirement for ETP Holders and Market Makers, i.e., providing an increased ADV over the ETP Holder's or Market Maker's baseline ADV, the Exchange believes that the proposed new pricing tier would provide an incentive for ETP Holders and Market Makers to meet this higher step up tier requirement by directing more of their order flow to the Exchange in order to receive the higher credit.

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 Step Up Tier 4 pricing tier will serve as an incentive to market participants 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

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4) and (5).

believes the proposed pricing tier, which adopts a higher threshold, is reasonable and equitable because it would allow ETP Holders and Market Makers that directly execute providing ADV per month that is an increase of no less than 0.70% of US CADV to receive increased credits that were not previously available. Moreover, the addition of the Step Up Tier 4 would benefit market participants whose increased order flow provides meaningful added levels of liquidity thereby contributing to the depth and market quality on the Exchange. The Exchange believes that the proposed new Step Up Tier 4 is not unfairly discriminatory because it is open to all ETP Holders and Market Makers, on an equal basis, that add liquidity at or below the proposed Step Up Tier 4 requirement. Further, the Exchange believes the proposed pricing tier would incentivize ETP Holders and Market Makers that meet the current Tier 1 requirement of 0.70% of US CADV to send more of their orders to the Exchange to qualify for increased credits under the proposed new Step Up Tier 4 pricing tier. The proposed pricing tier would also serve as an incentive to ETP Holders and Market Makers that do not currently meet the requirement of other pricing tiers on the Exchange to increase the level of orders sent directly to NYSE Arca in order to qualify for the proposed new pricing tier and receive the higher credits associated with Step Up Tier 4. The proposed pricing tier would apply equally to all ETP Holders and Market Makers as each would be required to execute providing ADV per month that is an increase of no less than 0.70% of US CADV over their January baseline taken as a percentage of US CADV, regardless of whether an ETP Holder or Market Maker currently meets the requirement of another pricing tier.

The Exchange believes that the proposed fee 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.

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 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 proposal to add a new pricing tier 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 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.

Finally, 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

⁹ 15 U.S.C. 78f(b)(8).

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.

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.

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).

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-2019-10 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-2019-10. 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. 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-2019-10, 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

Eduardo A. Aleman,
Deputy Secretary.

¹³ 17 CFR 200.30-3(a)(12).

[FR Doc. 2019-05210 Filed: 3/19/2019 8:45 am; Publication Date: 3/20/2019]