



8011-01p
SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-85888; File No. SR-NYSEARCA-2019-37)

May 17, 2019

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 Adopt a Higher Credit for the Tier 2 Pricing 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 May 10, 2019, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) 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 (“Fee Schedule”) to adopt a higher credit for the Tier 2 pricing tier. The Exchange proposes to implement the fee changes effective May 10, 2019.⁴ 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.

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ The Exchange originally filed to amend the Fee Schedule on April 30, 2019 (SR-NYSEArca-2019-31) and withdrew such filing on May 10, 2019.

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 a higher credit for Tier 2. The Exchange proposes to implement the fee changes effective May 10, 2019.

The Exchange proposes to adopt a higher credit for a current pricing tier - Tier 2 - for securities with a per share price \$1.00 or above.

Currently, a Tier 2 credit of \$0.0029 per share for orders in Tape A and Tape C Securities that provide liquidity to the Book, and a credit of \$0.0022 per share for orders in Tape B Securities⁵ that provide liquidity to the Book, applies to ETP Holders and Market Makers that either (1) provide liquidity an average daily share volume per month of 0.30% or more, but less than 0.70% of the US CADV or (2) provide liquidity of 0.10% or more of the US CADV per month, and are affiliated with an OTP Holder or OTP Firm that provides an ADV of electronic posted Customer and Professional Customer executions in all issues on NYSE Arca Options

⁵ An additional credit applies to ETP Holders and Market Makers affiliated with LMMs that provide displayed liquidity to the Book based on the number of Less Active ETP Securities in which the LMM is registered as the LMM. See LMM Transaction Fees and Credits on the Fee Schedule for the applicable tiered credits.

(excluding mini options) of at least 1.50% of total Customer equity and ETF option ADV as reported by The Options Clearing Corporation (“OCC”).

The Exchange proposes to adopt a higher credit of \$0.0031 per share for orders that provide liquidity in Tape A and Tape C Securities, and \$0.0024 per share for orders that provide liquidity in Tape B Securities. The proposed higher credit would be applicable for orders that provide displayed liquidity to the Book for ETP Holders and Market Makers that meet the requirements of Tier 2 described above and, for the billing month, (1) execute providing volume equal to at least 0.30% of US CADV, (2) execute removing volume equal to at least 0.285% of US CADV, and (3) execute Market-On-Close and Limit-On-Close Orders executed in a Closing Auction of at least 0.075% of US CADV.

For example, assume an ETP Holder posts an order for 1,000 shares that provides liquidity to the Book. Assume further that 600 shares, from the 1,000 shares that are posted and therefore are adding liquidity, trade against an incoming order which would be removing liquidity. The 600 share execution would be a product of two orders interacting, one that provided liquidity and the contra order that removed liquidity. The remaining 400 shares of that ETP Holder’s adding order would remain posted on the Book. The 600 shares of the adding order that executed and added liquidity would count towards the executed adding volume requirement of 0.30% of US CADV, the first prong of the requirement. The 400 shares of that adding order that remain unexecuted would not count towards the requirement.

Further, assume the same ETP Holder sends an Immediate or Cancel (“IOC”) order of 1,000 shares to the Exchange, of which 600 shares execute against an order that was already resting on the Book. The 600 share execution would be a product of two orders interacting, one that provided liquidity and the contra order that took liquidity. The 400 shares remaining of that

IOC order that did not immediately execute would cancel back to the ETP Holder that submitted the 1,000 share order. The 600 shares of the IOC order that executed and removed liquidity would count towards the executed removing volume requirement of 0.285% of US CADV, the second prong of the requirement. The 400 shares of that IOC order that did not execute and was canceled would not count towards the requirement.

Additionally, assume an ETP Holder sends a Market-On-Close (“MOC”) order of 2,000 shares to the Exchange for execution in the Closing Auction. Further assume that 1,200 shares of that MOC order executed in the Closing Auction, and the remaining 800 shares did not execute and were canceled after the Closing Auction. The 1,200 shares of that MOC order that executed and traded in the Closing Auction would count towards the Market-On-Close and Limit-On-Close Orders executed in a Closing Auction requirement of at least 0.075% of US CADV, the third prong of the requirement. The 800 shares of that MOC order that were canceled would not count towards the requirement.

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.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁶ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,⁷ 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.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4) and (5).

The Exchange believes that the proposed modification to adopt a higher Tier 2 credit is reasonable because the proposed credit is designed to encourage increased trading by ETP Holders and Market Makers. The Exchange notes that ETP Holders and Market Makers that do not meet the requirements to qualify for the higher credit may still qualify for current Tier 2 credits if they meet the Tier 2 requirements. The Exchange further believes that the higher credit will encourage ETP Holders and Market Makers to provide higher volumes of MOC and Limit-On-Close (“LOC”) Orders, which will contribute to the quality of the Exchange’s Closing Auction and provide ETP Holders and Market Makers that submit MOC and LOC Orders greater opportunity for execution.

The Exchange further believes the proposed higher credit is reasonable and appropriate in that it is based on the amount of business transacted on the Exchange. The Exchange believes the proposed increased credit for adding liquidity is also reasonable because it will encourage liquidity and competition in securities quoted and traded on the Exchange.

The Exchange also believes the proposed higher credit is equitable and not unfairly discriminatory because it is open to all ETP Holders and Market Makers on an equal basis and provides discounts that are reasonably related to the value to the Exchange's market quality associated with higher volumes. The Exchange further believes that the proposed increased credit is not unfairly discriminatory because the magnitude of the additional credit is not unreasonably high in comparison to the credit paid with respect to other displayed liquidity-providing orders. For example, for ETP Holders and Market Makers that provide liquidity an average daily share volume per month of 0.70% or more of the US CADV receive a Tier 1 credit of \$0.0031 per share for orders that provide liquidity in Tape A Securities, \$0.0023 per share for

orders that provide liquidity in Tape B Securities, and \$0.0032 per share for orders that provide liquidity for Tape C Securities.

The Exchange does not believe that it is unfairly discriminatory to offer increased credits to ETP Holders and Market Makers as these participants would be subject to additional volume requirements.

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,⁸ 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 adopt incremental credits for an existing pricing tier would encourage the submission of additional liquidity to a public exchange, thereby promoting price discovery and transparency and

⁸ 15 U.S.C. 78f(b)(8).

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 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 change 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)⁹ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁰ thereunder, because it establishes a due, fee, or other

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(2).

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-2019-37 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-2019-37. 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

¹¹ 15 U.S.C. 78s(b)(2)(B).

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-2019-37 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
Deputy Secretary

¹² 17 CFR 200.30-3(a)(12).

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