

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76629; File No. SR-NYSEARCA-2015-120]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services

December 11, 2015.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on December 1, 2015, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (“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”). The Exchange proposes to implement the change on December 1, 2015. The proposed rule change is available on the Exchange’s Web site at [www.nyse.com](http://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 Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange proposes to amend the Routable Retail Order Tier (“Routable Retail”) applicable to Tape A and C Securities on the Fee Schedule. Currently, the Routable Retail pricing tier provides ETP Holders, including Market Makers, that (1) provide liquidity of 0.20% or more of the US consolidated average daily volume (“CADV”) during a billing month across all Tapes, (2) maintain a ratio during a billing month across all Tapes of executed provide liquidity that is eligible to route away from the Exchange (“Routable Orders”)<sup>4</sup> to total executed provide liquidity of 55% or more, and (3) execute an ADV of Retail Orders<sup>5</sup> that provide liquidity during the month that is 0.10% or more of the US CADV, with a credit of \$0.0032 per share for Routable and non-Routable Orders in Tape A and Tape C Securities that provide liquidity to the Book and a fee of \$0.0030 per share [sic] and \$.0029 per share for Routable and non-Routable Orders in Tape C Securities, respectively [sic], that take liquidity from the Book.<sup>6</sup>

The Exchange proposes to lower the per share credit for Routable and non-Routable Orders in Tape A and Tape C Securities that provide liquidity to the Book to \$0.0030 per share. The Exchange proposes to implement the change on December 1, 2015.

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

##### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with

<sup>4</sup> ETP Holders are able to include an instruction with their orders to determine whether the order will be eligible to route to an away exchange (e.g., to execute against trading interest with a better price than on the Exchange) or, for example, be cancelled if routing would otherwise occur.

<sup>5</sup> Retail Orders are defined in the Fee Schedule as orders designated as retail orders and that meet the requirements of Rule 7.44(a)(3), but that are not executed in the Retail Liquidity Program. The Retail Liquidity Program is a pilot program designed to attract additional retail order flow to the Exchange for NYSE Arca-listed securities and securities traded pursuant to unlisted trading privileges while also providing the potential for price improvement to such order flow. See Rule 7.44. See Securities Exchange Act Release No. 71176 (December 23, 2013), 78 FR 79524 (December 30, 2013) (SR-NYSEARCA-2013-107).

<sup>6</sup> See Basic Rate. Basic Rates are applicable when tier rates do not apply.

Section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,<sup>8</sup> 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’s proposal to lower the rebate for Routable and non-Routable Orders in Tape A and Tape C Securities that provide liquidity to the Book is reasonable because the Exchange believes that despite the decrease, ETP Holders, including Market Makers, will continue to be incentivized to bring Retail Orders to earn the \$0.0030 per share rebate. The Exchange further believes that the proposed fee change is equitable and not unfairly discriminatory because the lowered rebate would apply to all similarly situated ETP Holders, including Market Makers, equally. Additionally, the Exchange believes that the per share credits for Routable and non-Routable Orders that provide liquidity are fair, equitable and not unfairly discriminatory because they are consistent with rebate differentiation that exists today at other exchanges.

The Exchange believes that the proposed rebate is competitive with rebates provided by other exchanges and is therefore reasonable and equitably allocated to those participants that direct orders to the Exchange rather than to a competing exchange. 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,<sup>9</sup> 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 will continue to encourage competition and attract liquidity to the Exchange, which will make the Exchange a more competitive venue for, among other things, order execution and price discovery. The Exchange does not believe that the proposed changes represent a significant departure from

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>9</sup> 15 U.S.C. 78f(b)(8).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

pricing offered by the Exchange's competitors. Additionally, ETP Holders, including Market Makers, may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of ETP Holders, including Market Makers, or competing venues to maintain their competitive standing in the financial markets.

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 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.

**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)<sup>10</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>11</sup> 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)<sup>12</sup> 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEARCA-2015-120 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-2015-120. This file number should be included on the subject line if email 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 Web site (<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 Web site 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-2015-120 and should be submitted on or before January 7, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Robert W. Errett,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

**Submission for OMB Review Comment Request**

*Upon Written Request Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549-2736.

*Extension:*

Form F-80, OMB Control No. 3235-0404, SEC File No. 270-357.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Form F-80 (17 CFR 239.41) is a registration form used by large, publicly-traded Canadian issuers to register securities that will be offered in a business combination, exchange offer or other reorganization requiring the vote of shareholders of the participating companies. The information collected is intended to make available material information upon which shareholders and investors can make informed voting and investment decisions. The information provided is mandatory and all information is made available to the public upon request. Form F-80 takes approximately 2 hours per response and is filed by approximately 4 issuers for a total annual reporting burden of 8 hours (2 hours per response × 4 responses). The estimated burden of 2 hours per response was based upon the amount of time necessary to compile the registration statement using the existing Canadian prospectus plus any additional information required by the Commission.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following Web site, [www.reginfo.gov](http://www.reginfo.gov). Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: [Shagufta.Ahmed@omb.eop.gov](mailto:Shagufta.Ahmed@omb.eop.gov); and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon,

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(2).

<sup>12</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>13</sup> 17 CFR 200.30-3(a)(12).