

Sale Period. Accordingly, the proposal is designed to incentivize and reward aggressive displayed quoting by market participants, which would remove impediments to and perfect the mechanism of a free and open market and national market system by contributing to the market quality of the Exchange and the national market system in general. In this regard, the Exchange believes that this proposed change would have positive impact on the Exchange's market, on the Exchange's members, and on investors generally by promoting the display of aggressively-priced liquidity on a registered exchange.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not designed to address any competitive issue but rather to promote the additional display of aggressively-priced liquidity on the Exchange by allowing interest that sets a new Exchange BBO to be considered setting interest even if other orders react and re-price based on such interest setting a new Exchange BBO.

#### *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 Exchange has filed the proposed rule change pursuant to section 19(b)(3)(A)(iii) of the Act<sup>15</sup> and Rule 19b-4(f)(6) thereunder.<sup>16</sup> Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>17</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>18</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

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>19</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-NYSE-2016-28 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. All submissions should refer to File Number SR-NYSE-2016-28. 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-NYSE-2016-28 and should be submitted on or before May 10, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

**Robert W. Errett,**  
*Deputy Secretary.*

[FR Doc. 2016-08968 Filed 4-18-16; 8:45 am]

BILLING CODE 8011-01-P

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-77610; File No. SR-NYSEArca-2016-55]

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

April 13, 2016.

Pursuant to section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on April 1, 2016, 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 Options Fee Schedule ("Fee

<sup>20</sup> 17 CFR 200.30-3(a)(12).

<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.

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

<sup>16</sup> 17 CFR 240.19b-4(f)(6).

<sup>17</sup> 17 CFR 240.19b-4(f)(6).

<sup>18</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>19</sup> 15 U.S.C. 78s(b)(2)(B).

Schedule”). The Exchange proposes to implement the fee change effective April 1, 2016. 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 the Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

The purpose of this filing is to modify a criterion used for Lead Market Makers and Market Makers (collectively, “Market Makers”) to qualify for the Super Tier level of the Monthly Posting Credit Tiers For Executions in Penny Pilot Issues and SPY (the “Posting Tiers”). The Exchange proposes to implement the fee change effective April 1, 2016.

Currently, Market Makers qualify for the Posting Tiers by achieving certain percentages of Total Industry Customer Equity and exchange traded fund (“ETF”) option ADV (“ICADV”).<sup>4</sup> The Posting Tiers include the Select, Super and Super II tiers and the volume requirements to achieve each are as follows:<sup>5</sup>

- **Select Tier:** A Market Maker achieve at least 0.25% of ICADV from Market Maker Posted Orders in both Penny Pilot and non-Penny Pilot issues;

- **Super Tier:** A Market Maker achieve either (i) at least 0.65% of ICADV from Market Maker Posted Orders in both Penny Pilot and non-Penny Pilot issues or (ii) at least 1.60% of ICADV from all orders in Penny Pilot Issues, all account types, with at least 0.80% of ICADV from Posted Orders in Penny Pilot Issues. As is the case today, in calculating the Super Tier, the Exchange will include the ADV of the Market Maker’s affiliate(s); and

- **Super Tier II:** A Market Maker must achieve at least 1.60% of ICADV from Market Maker Posted Orders, and at least 0.90% of ICADV from Posted Orders from both Penny Pilot and non-Penny Pilot issues.<sup>6</sup>

The Exchange is proposing to modify one of the alternative criteria to qualify for the Super Tier, by reducing the percentages of ICADV from 0.65% of ICADV to 0.55% of ICADV from Market Maker Posted Orders in All Issues.<sup>7</sup> The Exchange believes this modification would encourage more Market Makers to achieve Super Tier, which in turn would improve the Posted Markets in all issues.

The Exchange is not proposing any changes to the amount of the Posting Credits for any of the tiers.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of sections 6(b)(4) and (5) of the Act,<sup>9</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 believes that the proposed change to the Super Tier is reasonable, equitable, and not unfairly discriminatory because it is designed to encourage Market Makers to achieve the Super Tier by posting volume on the Exchange, which additional liquidity would benefit all participants by offering greater price discovery, increased transparency, and an increased opportunity to trade on the Exchange. The Exchange believes that modifying the Super Tier qualification is also not unfairly discriminatory as it

applies to all Market Makers and may enable more Market Makers to meet the Super Tier on a more consistent basis because, as proposed, the threshold has been lowered slightly.

The Exchange also believes that the proposed change to the qualification criteria is reasonable equitable, and not unfairly discriminatory, as the Posting Credits are intended to encourage quoting at the National Best Bid and Offer (“NBBO”) which in turn benefits both Customers and non-Customers by having narrower spreads available for execution.

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>10</sup> the Exchange does not believe that the proposed rule change will 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 change would encourage competition, including by attracting a wider variety of business to the Exchange, which would make the Exchange a more competitive venue for, among other things, order execution and price discovery. Moreover, because the proposed change to the Super Tier continues to be based on the amount of business conducted on the Exchange, it would apply equally to similarly-situated Market Makers and would not impose a disparate burden on competition either among or between classes of market participants.

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.

<sup>4</sup> The volume thresholds are based on Market Makers’ volume transacted electronically as a percentage of total industry Customer equity and ETF options volumes as reported by the Options Clearing Corporation (the “OCC”). Total industry Customer equity and ETF option volume is comprised of those equity and ETF contracts that clear in the Customer account type at OCC and does not include contracts that clear in either the Firm or Market Maker account type at OCC or contracts overlying a security other than an equity or ETF security. See OCC Monthly Statistics Reports, available here, <http://www.theocc.com/webapps/monthly-volume-reports>.

<sup>5</sup> The Exchange notes that there is a posting credit of \$0.28 associated with a Base Tier for which there is no volume requirement.

<sup>6</sup> The Commission notes that a Market Maker alternatively can qualify for Super Tier II by achieving at least 1.60% of ICADV from Customer and Professional Customer orders, with at least 1.20% of ICADV from Customer and Professional Customer Posted Orders in all Issues.

<sup>7</sup> See *supra* n. 4.

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

<sup>9</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>10</sup> 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)<sup>11</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>12</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>13</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-2016-55 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-2016-55. 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-2016-55, and should be submitted on or before May 10, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Robert W. Errett,**

*Deputy Secretary.*

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32070; 812-14450]

### Newtek Business Services Corp.; Notice of Application

April 13, 2016.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 23(a), 23(b) and 63 of the Act; under sections 57(a)(4) and 57(i) of the Act and rule 17d-1 under the Act permitting certain joint transactions otherwise prohibited by section 57(a)(4) of the Act; and under section 23(c)(3) of the Act for an exemption from section 23(c) of the Act.

**SUMMARY OF THE APPLICATION:** Newtek Business Services Corp. ("Applicant" or "Company") requests an order that would permit Applicant to (a) issue restricted shares of its common stock ("Restricted Stock") as part of the compensation package for certain participants in its 2015 Stock Incentive Plan (the "Plan"), (b) withhold shares of the Applicant's common stock or purchase shares of Applicant's common

stock from participants to satisfy tax withholding obligations relating to the vesting of Restricted Stock or the exercise of options to purchase shares of Applicant's common stock ("Options"), and (c) permit participants to pay the exercise price of Options with shares of Applicant's common stock.

**FILING DATES:** The application was filed on April 28, 2015, and amended on October 28, 2015 and February 9, 2016.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 9, 2016, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. Applicant, 212 West 35th Street, 2nd Floor, New York, New York 10001.

**FOR FURTHER INFORMATION CONTACT:** Jill Ehrlich, Senior Counsel, at (202) 551-6819, or Mary Kay Frech, Branch Chief, at (202) 551-6821 (Chief Counsel's Office, Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

**APPLICANT'S REPRESENTATIONS: 1.** Applicant is an internally managed closed-end investment company that has elected to be regulated as a business development company ("BDC") under the Act.<sup>1</sup> Applicant represents that it is

<sup>1</sup> Applicant was incorporated under the laws of the state of New York in June 1999 as Whitestone Holdings, Inc., completed an initial public offering in September 2000, and changed its name to Newtek Business Services, Inc. in November 2002. In November 2014, Newtek Business Services, Inc. merged with and into Newtek Business Services Corp. (the "Reincorporation Transaction") for the purpose of reincorporating in the state of Maryland.

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(2).

<sup>13</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>14</sup> 17 CFR 200.30-3(a)(12).