

competition, but rather will help ensure continued growth in the use of Midpoint Extended Life Orders by making such Orders attractive to members that seek to execute at the midpoint with like-minded members, while also allowing the Exchange to recoup some of the costs associated with offering the Order Type. To the extent the proposal is not successful in promoting liquidity in Midpoint Extended Life Orders, it would have no meaningful impact on competition as few transactions in Midpoint Extended Life Orders would occur.

Likewise, the Exchange believes that the new proposed supplemental credits will not place any burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues.

Moreover, the addition of the proposed credits may encourage other market venues to provide similar credits to improve their market quality. In that sense, the Exchange believes that the new credits may promote competition.

In sum, if the proposal to assess the new fee tiers for executions of Midpoint Extended Life Orders and to provide new supplemental credits for members that execute Midpoint Extended Life Orders are unattractive to market participants, it is likely that the Exchange will not gain any market share and may lose market share.

Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members 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 either solicited or received.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>16</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act.

If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule 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-NASDAQ-2018-111 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-NASDAQ-2018-111. 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 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-NASDAQ-2018-111 and should be submitted on or before February 22, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Eduardo A. Aleman,**

*Deputy Secretary.*

[FR Doc. 2019-01393 Filed 2-6-19; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-85029; File No. SR-NYSEARCA-2018-99]**

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

February 1, 2019.

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 December 26, 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](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,

<sup>17</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>16</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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, effective January 1, 2019, to provide an incentive for Market Makers to provide more competitive prices and deeper liquidity in the NYSE FANG+ Index ("NYSE FANG+"), which trades under the symbol FAANG. The Exchange also proposes to eliminate the FAANG Rebate that it currently offers Floor Brokers as it failed to achieve its intended goal of encouraging Floor Brokers to bring FAANG business to the Trading Floor.

The Exchange introduced fees and rebates for transactions in FAANG in June 2018.<sup>4</sup> Currently, the Exchange charges \$0.35 per contract, per side for non-Customer and Professional Customer FAANG transactions, whether executed manually or electronically.<sup>5</sup> However, the Exchange does not charge a fee for any FAANG transactions (i) on behalf of Customers or (ii) by Market Makers with an appointment in NYSE FANG+.<sup>6</sup> Thus, Market Makers that do not have an appointment in NYSE FANG+ are currently subject to the same fee of \$0.35 per contract, per side for non-Customer and Professional Customer FAANG transactions. The Exchange proposes to remove the requirement that a Market Maker have an appointment in FAANG to be able to transact in FAANG for free. The Exchange believes that removing this limitation would encourage Market Makers to trade in FAANG.

Concurrent with this change, the Exchange proposes to introduce credits for Market Maker organizations—specifically, NYSE Arca Options Market Makers or LMMs—that execute at least 500 total monthly contract sides that open a position on the Exchange (the "MM FAANG Credit" or "Credit").<sup>7</sup> Only those FAANG transactions marked as "open" would be eligible to be counted

towards the MM FAANG Credit. As proposed, firms that meet the minimum volume threshold would receive a MM FAANG Credit of \$5,000; provided, however, that if more than ten firms qualify for a MM FAANG Credit in a calendar month, the Credit for each qualifying firm would be a pro rata share of \$50,000. The Exchange believes the proposed MM FAANG Credit would further the Exchange's goal of encouraging trading in this new index product. In particular, the Exchange seeks to spur Market Makers to provide increased liquidity in tighter markets, which would create greater trading opportunities for all market participants.

Finally, the Exchange proposes to eliminate the FAANG Rebate that it currently offers Floor Brokers as it failed to achieve its intended goal of encouraging Floor Brokers to bring FAANG business to the Trading Floor.<sup>8</sup>

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act, 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 proposal to remove the restriction that Market Makers must have an appointment in FAANG to avoid transactions fees in this product is reasonable, equitable and not unfairly discriminatory because this proposal would encourage Market Makers to provide liquidity in FAANG, a product that was only introduced in June 2018. In addition, the proposed FAANG transaction fee change would apply equally to all Market Maker organizations that transact in FAANG.

The Exchange believes the proposal to introduce a MM FAANG Credit for executing a certain number of options contract sides on FAANG is reasonable, equitable and not unfairly discriminatory for the following reasons. First, the proposed Credit would apply equally to all Market Maker organizations that transact in FAANG. Second, the proposed Credit

would encourage Market Maker organizations to increase trading activity in FAANG. The Exchange anticipates that Market Makers seeking to reach the proposed 500 contract threshold will provide additional liquidity and trading opportunities for all market participants. The Exchange believes the proposed MM FAANG Credit is reasonable, equitable and not unfairly discriminatory because it is designed to further the Exchange's goal of encouraging transactions in FAANG, a new index product.

Finally, the Exchange believes the proposal to eliminate the FAANG Rebate that is currently offered to Floor Brokers is reasonable, equitable and not unfairly discriminatory because it would apply equally to all Floor Brokers. Further, the proposal would encourage the fair and efficient use of Exchange resources given that this incentive program failed to meet its stated goal of encouraging Floor Brokers to bring FAANG business to the Trading Floor.

*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 the proposed MM FAANG Credit for Market Maker organizations would not place an unfair burden on competition as it would apply to all similarly situated Market Makers. The Exchange also believes the proposed Credit is procompetitive as it would further the Exchange's goal of introducing new products to the marketplace and encouraging Market Makers to provide liquidity in these products, which would in turn, benefit all market participants. Market participants that do not wish to trade in FAANG are not obliged to do so.

To the extent that there is an additional competitive burden on market participants that are not eligible for the MM FAANG Credit (*i.e.*, non-Market Maker organizations), the Exchange believes that this is appropriate because the proposal would incent Market Makers to provide increased liquidity in tighter markets, which would create greater trading opportunities for all market participants. 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

<sup>4</sup> See Securities Exchange Act Release No. 83554 (June 28, 2018), 83 FR 31436 (July 5, 2018) (SR-NYSEArca-2018-49).

<sup>5</sup> See Fee Schedule, NYSE FANG+ Index (FAANG) Transaction Fees, 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). [sic]

<sup>6</sup> See *id.* The term Market Maker, as used herein, includes NYSE Arca Options Market Makers and Lead Market Makers (or LMMs).

<sup>7</sup> See proposed Fee Schedule, NYSE FANG+ Index (FAANG) Transaction Fees.

<sup>8</sup> See Securities Exchange Act Release No. 83616 (July 10, 2018), 83 FR 32929, 32929 (July 16, 2018) (SR-NYSEArca-2018-51) (adopting the FAANG Rebate for Floor Brokers to "encourage[e] Floor Brokers to bring business to the Trading Floor, which would in turn, benefit all market participants through increased liquidity and more opportunities to trade").

order flow directed to the Exchange will benefit all market participants and improve competition on the Exchange.

The proposed elimination of the FAANG Rebate currently available to Floor Brokers likewise does not impose an unfair burden on competition as it failed to achieve its intended goal of encouraging Floor Brokers to bring FAANG business to the Trading Floor and applies equally to all similarly situated Floor Brokers.

The Exchange does not believe that the proposed change will impair the ability of any market participants or competing order execution venues to maintain their competitive standing in the financial markets. Further, the proposed Rebate would be applied to all similarly situated participants (*i.e.*, Market Maker organizations), and, as such, the proposed change would not impose a disparate burden on competition either among or between classes of market participants.

*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>9</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>10</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>11</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-2018-99 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-2018-99. 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 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 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-2018-99, and should be submitted on or before February 22, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Eduardo A. Aleman,**  
Deputy Secretary.

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**BILLING CODE 8011-01-P**

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

**SECURITIES AND EXCHANGE COMMISSION**

**Proposed Collection; 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:*

Rule 206(4)-2, SEC File No. 270-217, OMB Control No. 3235-0241

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") is soliciting comments on the collection of information summarized below. The Commission plans to submit this collection of information to the Office of Management and Budget ("OMB") for extension and approval.

Rule 206(4)-2 (17 CFR 275.206(4)-2) under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 *et seq.*) governs the custody of funds or securities of clients by Commission-registered investment advisers. Rule 206(4)-2 requires each registered investment adviser that has custody of client funds or securities to maintain those client funds or securities with a broker-dealer, bank or other "qualified custodian."<sup>1</sup> The rule requires the adviser to promptly notify clients as to the place and manner of custody, after opening an account for the client and following any changes.<sup>2</sup> If an adviser sends account statements to its clients, it must insert a legend in the notice and in subsequent account statements sent to those clients urging them to compare the account statements from the custodian with those from the adviser.<sup>3</sup> The adviser also must have a reasonable basis, after due inquiry, for believing that the qualified custodian maintaining client funds and securities sends account statements directly to the advisory clients, and undergo an annual surprise examination by an independent public accountant to verify client assets pursuant to a written agreement with the accountant that specifies certain duties.<sup>4</sup> Unless client assets are maintained by an independent custodian (*i.e.*, a custodian that is not the adviser itself or a related person), the adviser also is required to obtain or receive a report of the internal controls relating to the custody of those assets

<sup>1</sup> Rule 206(4)-2(a)(1).

<sup>2</sup> Rule 206(4)-2(a)(2).

<sup>3</sup> Rule 206(4)-2(a)(2).

<sup>4</sup> Rule 206(4)-2(a)(3), (4).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

<sup>11</sup> 15 U.S.C. 78s(b)(2)(B).