

Act¹⁵ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹⁶ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange stated that waiver of the operative delay will allow the Exchange to immediately provide Users with additional control over their orders in the context of a national market system where quotations may lock or cross orders posted to the BATS Book and to facilitate executions on the Exchange consistent with User instructions.¹⁷ The Commission believes the waiver of the operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.¹⁸

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 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 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. Please include File Number SR-BYX-2015-49 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-BYX-2015-49. 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 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; 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-BYX-2015-49, and should be submitted on or before January 7, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Robert W. Errett,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76627; File No. SR-NYSEArca-2015-118]

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

December 11, 2015.

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 December 1, 2015, 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 Schedule"). The Exchange proposes to implement the fee changes effective December 1, 2015. The proposed rule change is available on the Exchange's Web site 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 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.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

¹⁵ 17 CFR 240.19b-4(f)(6).

¹⁶ 17 CFR 240.19b-4(f)(6)(iii).

¹⁷ The Exchange further stated that it will provide Members with reasonable advance notice of the proposed rule change's implementation date.

¹⁸ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁹ 17 CFR 200.30-3(a)(12).

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 amend the Fee Schedule in a number of different ways, effective December 1, 2015. Specifically, the Exchange proposes (i) to increase certain Take Liquidity Fees charged; (ii) to introduce an alternative qualification for Market Maker Monthly Posting Credit Tiers and Qualifications For Executions in Penny Pilot Issues and SPY; and (iii) to modify the Take Fee Discount Qualification, as described below.

Transaction Fees for Taking Liquidity

The Exchange proposes to modify the fees paid by Market Makers, Lead Market Makers, Firms and Broker Dealers, and Professional Customers (collectively, "Non-Customers") for Taking Liquidity in non-Penny Pilot Issues ("Take Fees"). Currently, Non-Customers pay Take Fees ranging from \$0.92 to \$0.94 per contract for electronic executions, depending on account type. The Exchange proposes to charge the same rate to all Non-Customers, and to raise that fee to \$0.99 per contract, which is within the range of fees charged by competing option exchanges.⁴

The Exchange also proposes to increase the Take Liquidity Fee for Customers in Penny Pilot issues from \$0.47 to \$0.49, which is within the range of fees charged by competing option exchanges.⁵

Take Liquidity Discount for Certain Market Participants

The Exchange proposes modifications to the Discount in Take Liquidity Fees for Professional Customer, Market Maker, Firm and Broker Dealer Liquidity Removing Orders (the "Take Fee Discount") for OTPs. Currently, the Take Fee Discount is applied if the OTP achieves one of two alternative qualifications, either: At least 1.00% of Total Industry Customer equity and exchange traded fund ("ETF") option average daily volume ("ADV") from Customer and Professional Customer Posted Orders in all Issues; or at least

⁴ For example, BOX assesses fees greater than \$1.00 to non-Customers for executions against Public Customer interest in non-penny pilot options. See BOX Options fee schedule, available here, http://boxexchange.com/assets/BOX_Fee_Schedule.pdf.

⁵ See, e.g., NASDAQ Options Market ("NOM") price list, available here, <http://www.nasdaqtrader.com/Micro.aspx?id=optionsPricing> (charging customers a \$0.50 take liquidity fee in Penny Pilot issues).

2.00% of Total Industry Customer equity and ETF option ADV from Professional Customer, Market Maker, Firm, and Broker Dealer Liquidity Removing Orders in all Issues. The Take Fee Discount applied to orders meeting either qualification is \$0.04 in Penny Pilot issues only. The Exchange proposes to reduce the Take Fee Discount in Penny Pilot issues to \$0.02 and to institute a \$0.05 Take Fee Discount in non-Penny Pilot issues.

Market Maker Monthly Posting Credit and Qualifications for Executions in Penny Pilot Issues and SPY ("Posting Tiers")

Finally, the Exchange proposes to add an alternative qualification basis to achieve Super Tier II of the Posting Tiers.

Currently, a Market Maker may qualify for Super Tier II if it achieves at least 1.60% of Total Industry Customer equity and ETF option ADV from Market Maker orders in all issues, with at least 0.90% of Total Industry Customer equity and ETF option ADV from Market Maker Posted Orders in Penny Pilot and Non-Penny Pilot Issues.⁶ The Exchange proposes that a Market Maker may also qualify for Super Tier II if it achieves at least 1.60% of Total Industry Customer equity and ETF option ADV from Customer and Professional Customer orders in all issues, with at least 1.20% of Total Industry Customer equity and ETF option ADV from Customer and Professional Customer Posted Orders in all issues. If a Market Maker achieves either qualification basis, it would receive the \$0.42 posting credit for executions in penny issues or SPY.

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

⁶ 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>.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4) and (5).

facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes the proposed Take Fees for Non-Customers are reasonable, equitable and not unfairly discriminatory because they are competitive with fees charged by other exchanges and are designed to attract (and compete for) order flow to the Exchange, which provides a greater opportunity for trading by all market participants.⁹ In addition, the increased Take Fees are reasonable because the fees would generate revenue that would help to support the credits offered for posting liquidity, which are available to all market participants. Moreover, the Exchange believes the proposed change would not unfairly discriminate because it applies equally to all Non-Customers who are removing liquidity. The increased Take Fees for Customers in Penny Pilot issues are reasonable because the proposed fees would generate revenue that would help to support the credits and other incentives offered for posting liquidity, and they are not unfairly discriminatory because the fees for Customers are still at a rate lower than that charged to non-Customers. In addition, the Exchange believes the proposed Take Fees for Customers are reasonable, equitable and not unfairly discriminatory because they are competitive with fees charged by other exchanges and are designed to attract (and compete for) order flow to the Exchange, which provides a greater opportunity for trading by all market participants.¹⁰

The Exchange believes the changes to the Take Fee Discount for Non-Customers are reasonable, equitable and non-discriminatory because it would apply to both Penny Pilot and non-Penny Pilot issues, which would incent OTPs to execute large volumes of orders on the Exchange, which benefits all market participants through increased liquidity and enhanced price discovery. The Exchange believes the Take Fee Discount is reasonable, equitable, and not unfairly discriminatory because it continues to apply to all participants other than Customers, who pay a much lower Take Liquidity Fee, and because it is available to all firms that provide Customer and Professional Customer orders. The Exchange also notes that the proposed Take Fee Discount is consistent with those offered on competing options exchanges.¹¹

⁹ See *supra* n. 4.

¹⁰ See *supra* n. 5.

¹¹ See, e.g., BATS Options Exchange fee schedule (Non-Customer Penny Pilot Take Volume Tiers),

The Exchange believes that the proposed change to the Posting Tiers, specifically adding an alternative basis to achieve Super Tier II, is reasonable, equitable and not unfairly discriminatory because it would impact all similarly situated OTPs that post electronic Customer (and Professional Customer) executions on the Exchange equally, and provides a reasonable alternative to qualify for Super Tier II posting credit.

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,¹² 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 incentive would continue to encourage competition, including by attracting additional liquidity and a wider variety of business to the Exchange, which would continue to make the Exchange a more competitive venue for, among other things, order execution and price discovery. The Exchange also believes the proposed fee modifications would not impose an undue burden on competition because the changes offset an increase in fees for some transactions with a variety of means to achieve credits and discounts. The Exchange does not believe that the proposed changes would impair the ability of any market participants or competing order execution venues to maintain their competitive standing in the financial markets.

The increases in Take Liquidity fees would impact all affected order types (*i.e.*, Professional Customers, Firm, Broker Dealers) in issues at the same rate. The proposed change to Super Tier II is designed to attract additional volume, in particular posted electronic Customer (and Professional Customer) executions, to the Exchange, which would promote price discovery and transparency in the securities markets thereby benefitting competition in the industry. As stated above, the Exchange believes that the proposed change would impact all similarly situated OTPs that post electronic Customer (and Professional Customer) executions on the Exchange equally, and as such, the proposed change 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.

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)¹³ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁴ 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)¹⁵ 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. Please include File Number SR-NYSEArca-2015-118 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.

All submissions should refer to File Number SR-NYSEArca-2015-118. 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 Section, 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 will also 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-2015-118 and should be submitted on or before January 7, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Robert W. Errett,

Deputy Secretary.

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available here, http://www.batsoptions.com/support/fee_schedule/.

¹² 15 U.S.C. 78f(b)(8).

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(2).

¹⁵ 15 U.S.C. 78s(b)(2)(B).

¹⁶ 17 CFR 200.30-3(a)(12).