

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal 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 No. SR-NASDAQ-2017-035 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 No. SR-NASDAQ-2017-035. 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 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 No. SR-NASDAQ-2017-035 and should be submitted on or before May 9, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80441; File No. SR-NYSEARCA-2017-35]

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

April 12, 2017.

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 3, 2017, 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 change effective April 3, 2017. 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 amend the Fee Schedule effective April 3, 2017. Specifically, the Exchange proposes to adjust certain fees and to modify certain incentives and qualifications by broadening the base of order flow and trading activity to make the different qualifications more achievable to a variety of market participants.

Currently, the Exchange charges all participants a fee for orders that are executed by taking liquidity from the disseminated market ("Take Liquidity Fee," or "Take Fee"), and offers credits (or reduced fees) for executions resulting from posting trading interest that is included in the disseminated market ("Post Liquidity" credit). For non-Customers, the Exchange currently charges a per contract Take Fee of \$1.08 for executions in non-Penny pilot issues.<sup>4</sup> The Exchange proposes to increase this Take Fee to \$1.10 per contract, which is within the range of fees charged by competing option exchanges.<sup>5</sup>

The Exchange also currently provides a Post Liquidity per contract credit of \$0.28 to Lead Market Makers ("LMMs") and NYSE Arca Market Makers for executions in Penny Pilot Issues. The Exchange proposes to increase the Post Liquidity credit for LMMs to \$0.32 per contract. The Exchange also proposes that the \$0.04 per contract increase in the Post Liquidity credit would also be available to LMMs that are eligible to receive any other posting credits for executions in Penny Pilot Issues—namely eligible volume per the "Market Maker Monthly Posting Credit Tiers and Qualifications for Executions in Penny Pilot Issues and SPY" (the "MM Posting Tiers"). For instance, if an LMM qualifies for the Super Tier in the MM Posting Tiers, the LMM would receive a total per contract credit for executions in Penny Pilot issues in their LMM appointment of \$0.37, plus the \$0.04

<sup>4</sup> The Exchange notes that for purposes of this fee filing, "non-Customers" include: Lead Market Makers, NYSE Arca Market Makers, Firm and Broker Dealers and Professional Customers.

<sup>5</sup> See e.g., NASDAQ Options Market—Fees and Rebates, available here, <http://www.nasdaqtrader.com/Micro.aspx?id=optionsPricing> and Bats BZX Options Exchange Fee Schedule, available here, [https://www.bats.com/us/options/membership/fee\\_schedule/bzx/](https://www.bats.com/us/options/membership/fee_schedule/bzx/).

<sup>10</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.

Post Liquidity credit, for a combined per contract credit of \$0.41.

The Exchange also proposes to offer a \$0.02 per contract Take Liquidity Discount for executions in Non-Penny Pilot Issues for non-Customers that achieve at least 0.65% of Total Industry Customer equity and ETF option ADV (“TCADV”) from non-Customer liquidity removing orders in all issues. The proposed discount is similar to the existing discount that is available for executions in Penny Issues and includes transaction volume from the OTP Holder’s or OTP Firm’s affiliates or its Appointed OFFP or Appointed MM.

The Exchange also provides various incentives to OTP Holders and OTP Firms (“OTPs”) to achieve enhanced posted liquidity credits, some of which are based on achieving certain percentages of NYSE Arca Equity daily activity, also known as “cross-asset pricing.” The Exchange proposes to replace one of the alternative qualifications for the Super Tier II in the MM Posting Tiers with a new cross-asset pricing credit by achieving a level of options activity and achieving a level of NYSE Arca Equity activity.<sup>6</sup>

Specifically, as proposed, an OTP would qualify for Super Tier II if the OTP achieves at least 0.20% of ICADV from Market Maker posted orders in all issues, plus ETP Holder and Market Maker posted volume in Tape B Securities (“Tape B Adding ADV”) that is at least 1.50% of US Tape B consolidated average daily volume (“CADV”) for the billing month executed on NYSE Arca Equity Market. The credit applicable to Super Tier II would remain the same (*i.e.*, \$0.42 per contract).<sup>7</sup> The Exchange believes that by providing the proposed alternative qualification basis for posted orders in Penny Pilot issues from Market Makers would encourage an increased level of activity in all issues, which in turn encourages tighter market spreads and

increased liquidity, which benefits all market participants.

Finally, the Exchange proposes to add clarification to Endnote 8, which describes transactions for qualifications for the various credits or discounts. The Exchange proposes to modify the Endnote such that the transactions for qualification referenced in Endnote 8 would be for various credits and discounts. Further, the Exchange proposes to add a clarifying sentence that “references to Market Maker volumes and executions are inclusive of transactions in issues in the Market Maker’s LMM appointment” and an additional statement that “references to LMM transactions apply solely to transactions in the LMM’s appointment.”

## 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 fee increase is reasonable, equitable, and not unfairly discriminatory because it applies to all non-Customer Take Liquidity transactions in non-Penny Pilot issues and is within the range of fees charged by competing option exchanges.<sup>10</sup>

The Exchange also believes the proposed enhanced credit for posted liquidity for LMMs in Penny Pilot issues is reasonable, equitable, and not unfairly discriminatory because LMMs have heightened obligations for issues in their allocation that do not apply to other market participants. Moreover, LMMs must continue to meet their obligations despite market fluctuations and ebbs and flows in trading activity, while other market participants may rapidly add or drop interest in an issue.

The Exchange believes the proposed Take Fee Discount and modification to Super Tier II of the MM Posting Tiers are reasonable, equitable, and not unfairly discriminatory because the changes would be available to all similarly-situated market participants on an equal and non-discriminatory basis. The Exchange believes the creation of a Take Fee discount in non-

Penny Pilot Issues available to Lead Market Makers, Market Makers, Firms, Broker Dealers and Professional Customers is reasonable, equitable, and not unfairly discriminatory because it is applicable to all participants other than Customers, who pay a much lower Take Liquidity Fee.

Modifications to the Market Maker Monthly Posting Credit Tiers and Qualifications for Penny Pilot Issues and SPY are equitable and not unfairly discriminatory because the changes to the Super Tier II for Market Makers and Lead Market Makers would apply to all Market Makers and Lead Market Makers on an equal and non-discriminatory basis. Further, they are not unfairly discriminatory because other non-Customer participants do not have the burden of Market Making obligations.

In addition, the proposed changes are designed to incent market participants to increase the orders sent directly to the Exchange and therefore provide liquidity that supports the quality of price discovery and promotes market transparency to the benefit of all market participants. Further, the proposed modifications are reasonable, equitable, and non-discriminatory because they would allow qualification through activity combined with activity of affiliates or Appointed OFFP, including activity on the NYSE Arca Equity Market. Thus, the Exchange believes the proposed modifications are reasonable, equitable and not unfairly discriminatory because they encourage more participants to qualify for the various incentives, including encouraging more participants to have affiliated or appointed order flow directed to the Exchange.

The Exchange believes the proposed modification to Endnote 8 is reasonable, equitable and not unfairly discriminatory because the proposed change is intended to clarify that the calculations for qualifications for monthly posting would be determined for credits and discounts, rather than credits or discounts.

Finally, the Exchange believes the proposed non-substantive change to the alternative qualification basis for achieving Super Tier II is reasonable, equitable, and not unfairly discriminatory because it would add clarity, transparency and internal consistency to the Fee Schedule.<sup>11</sup>

For these reasons, the Exchange believes that the proposal is consistent with the Act.

<sup>6</sup> The Exchange proposes to eliminate the current Super Tier II qualification basis that requires an OTP to achieve 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.

<sup>7</sup> At [sic] The Exchange is not proposing any substantive change to the alternative qualification basis for achieving Super Tier II, which requires 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. However, the Exchange proposes to replace reference in this tier to “Penny Pilot and Non-Penny Pilot Issues” to “all Issues,” which should add clarity, transparency and internal consistency to the Fee Schedule.

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

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

<sup>10</sup> See *supra* note 5.

<sup>11</sup> See *supra* note 7.

### *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 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 changes would encourage competition, including by attracting additional liquidity 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 does not believe that the proposed change would impair the ability of any market participants or competing order execution venues to maintain their competitive standing in the financial markets. Further, the incentive would be available to all similarly-situated participants, and, as such, the proposed change would not impose a disparate burden on competition either among or between classes of market participants and may, in fact, encourage competition.

The Exchange believes that the proposed enhanced credits for LMMs would not impose an unfair burden on competition because the LMMs have heightened obligations for issues in their allocation that do not apply to other 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)<sup>12</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>13</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>14</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

### **IV. Solicitation of Comments**

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#### *Electronic Comments*

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- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2017-35 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-2017-35. 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-2017-35, and should be submitted on or before May 9, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Eduardo A. Aleman,**  
*Assistant Secretary.*

[FR Doc. 2017-07753 Filed 4-17-17; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

### **Sunshine Act Meeting**

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold a closed meeting on Thursday, April 20, 2017 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(7), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matter at the closed meeting.

Acting Chairman Piwowar, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting will be:

- Institution and settlement of injunctive actions;
- Institution and settlement of administrative proceedings;
- Resolution of litigation claims;
- Litigation matters; and
- Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed; please

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(2).

<sup>14</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>15</sup> 17 CFR 200.30-3(a)(12).