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SECURITIES AND EXCHANGE COMMISSION  
[Release No. 34-74947; File No. SR-NYSEArca-2015-39]

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 to Reduce Fees for Routing Certain Retail Orders to Away Market Centers

May 13, 2015.

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 30, 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 Equities Schedule of Fees and Charges for Exchange Services (“Fee Schedule”) to reduce fees for routing certain retail orders to away market centers. The Exchange proposes to implement the changes on May 1, 2015. The text of 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

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<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.

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 Exchange proposes to amend the Fee Schedule to reduce fees for routing certain retail orders to away market centers. The Exchange proposes to implement the changes on May 1, 2015.

The Exchange currently charges \$0.0029 per share for all orders in Tape A Securities that are routed outside the Book to the NYSE; and \$0.0035 per share for all orders in Tape B Securities and Tape C Securities that are routed outside the Book to any away market center.

The Exchange proposes to reduce the fees for certain orders, i.e., for Primary Until 9:45 Orders<sup>4</sup> and Primary After 3:55 Orders<sup>5</sup> that are designated as retail orders and meet the requirements of Rule 7.44(a)(3), but which are not executed in the Retail Liquidity Program<sup>6</sup>

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<sup>4</sup> A Primary Until 9:45 Order is an Order entered for participation on the primary market until 9:45 am Eastern Time (6:45 am Pacific Time) after which time the order is cancelled on the primary market and entered on the NYSE Arca Book. The Primary Until 9:45 Order may be Day only and may not be designated as GTC or GTD. Orders that return to the NYSE Arca Book after routing to the primary market retain their original order attributes. See NYSE Arca Equities Rule 7.31(f)(2).

<sup>5</sup> A Primary After 3:55 Order is an Order entered for participation on the Exchange until 3:55 pm Eastern Time (12:55 pm Pacific Time) after which time the order is cancelled on the Exchange and an order is entered for participation on the primary market. The Primary After 3:55 Order may be Day only and may not be designated as GTC or GTD. Orders that route to the primary market at 3:55 pm Eastern Time retain their original order attributes. See NYSE Arca Equities Rule 7.31(f)(2) [sic].

<sup>6</sup> 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

(“Retail Orders”). Under Rule 7.44(a)(3), a Retail Order is an agency order or a riskless principal order that meets the criteria of Financial Industry Regulatory Authority, Inc. Rule 5320.03 that originates from a natural person and is submitted to the Exchange by a Retail Member Organization (“RMO”),<sup>7</sup> provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. An ETP Holder may designate an order a Retail Order either (1) by designating certain order entry ports at the Exchange as “Retail Order Ports” and attesting, in a form and/or manner prescribed by the Exchange, that all orders submitted to the Exchange via such Retail Order Ports are Retail Orders; or (2) by means of a specific tag in the order entry message.<sup>8</sup>

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unlisted trading privileges (“UTP Securities”) 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>7</sup> “RMO” is defined in Rule 7.44(a)(2) as an ETP Holder that is approved by the Exchange to submit Retail Orders. However, an order designated as a Retail Order of an RMO for purposes of the Retail Liquidity Program is separate from the designation of an order as a Retail Order for purposes of existing pricing tiers in the Fee Schedule. See Securities Exchange Act Release No. 71722 (March 13, 2014), 78 [sic] FR 15376 (March 19, 2014) (SR-NYSEArca-2014-22) (“Arca Retail Approval Order” [sic]). The proposed rule change solely concerns Retail Orders outside the Retail Liquidity Program that are currently defined in the Fee Schedule as “Retail Orders”.

<sup>8</sup> See, e.g., Securities Exchange Act Release No. 68322 (November 29, 2012), 77 FR 72425 (December 5, 2012) (SR-NYSEArca-2012-129). ETP Holders designating orders as Retail Orders by using a tag in the order entry message are required to have written policies and procedures reasonably designed to assure that it only designates orders as Retail Orders if all requirements of a Retail Order are met. The written policies and procedures require the ETP Holder to (i) exercise due diligence before entering a Retail Order to assure that entry as a Retail Order is in compliance with the requirements specified by the Exchange, and (ii) monitor whether orders entered as Retail Orders meet the applicable requirements. If the ETP Holder represents Retail Orders from another broker-dealer customer, the ETP Holder’s supervisory procedures must be reasonably designed to assure that the orders it receives from such broker-dealer customer that it designates as Retail Orders meets the definition of a Retail Order.

Specifically, the Exchange proposes to charge a fee of \$0.0010 per share for all Primary Until 9:45 Orders and Primary After 3:55 Orders that are designated as Retail Orders and that are routed to the primary listing market. The Exchange proposes to include this fee in three places in the Basic Rates section of the Fee Schedule for each of Tape A, Tape B, and Tape C securities by adding text following the existing rate for routing orders that provides “except that Primary Until 9:45 Orders and Primary After 3:55 Orders that are designated as Retail Orders and routed to the primary listing market will be charged \$0.0010 per share (fee).”

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 Section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,<sup>10</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 changes are reasonable as they are designed to attract additional retail order flow to the Exchange that include an instruction to route to the primary listing market at designated times. In addition, the proposed fees are equitable and not unfairly discriminatory because they will apply uniformly to all similarly situated ETP Holders.

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

<sup>10</sup> 15 U.S.C. 78f(b)(4) and (5).

The Exchange notes that a significant percentage of the orders of individual investors are executed over-the-counter.<sup>11</sup> While the Exchange believes that markets and price discovery optimally function through the interactions of diverse flow types, it also believes that growth in internalization has required differentiation of retail order flow from other order flow types. The proposed new fee is set at a level to incentivize ETP Holders to continue to direct a subset of Retail Orders to the Exchange, rather than to an over-the-counter market. The Exchange believes that, because Retail Orders are likely to reflect long-term investment intentions, they promote price discovery and dampen volatility. Accordingly, the presence of Retail Orders on the Exchange, or if routed, on the primary listing market for those securities, has the potential to benefit all market participants. For this reason, the Exchange believes that the proposed pricing is equitable and not unfairly discriminatory and would continue to encourage greater retail participation on the Exchange and other registered exchanges.

The pricing proposed herein is not designed to permit unfair discrimination, but instead to promote a competitive process around retail executions such that retail investors would receive

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<sup>11</sup> See Concept Release on Equity Market Structure, Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010) (“Concept Release”) (noting that dark pools and internalizing broker-dealers executed approximately 25.4% of share volume in September 2009). See also Mary Jo White, Focusing on Fundamentals: The Path to Address Equity Market Structure (Speech at the Security Traders Association 80th Annual Market Structure Conference, Oct. 2, 2013) (available on the Commission’s website) (“White Speech”); Mary L. Schapiro, Strengthening Our Equity Market Structure (Speech at the Economic Club of New York, Sept. 7, 2010) (available on the Commission’s website) (“Schapiro Speech”). In her speech, Chair White noted a steadily increasing percentage of trading that occurs in “dark” venues, which appear to execute more than half of the orders of long-term investors. Similarly, in her speech, only three years earlier, Chair Schapiro noted that nearly 30 percent of volume in U.S.-listed equities was executed in venues that do not display their liquidity or make it generally available to the public and the percentage was increasing nearly every month.

better prices. The proposed change is also equitable and not unfairly discriminatory because it would contribute to investors' confidence in the fairness of their transactions and because it would benefit all investors by deepening the Exchange's liquidity pool, supporting the quality of price discovery, promoting market transparency and improving investor protection.

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>12</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 fees would increase competition for retail order flow among execution venues and encourage additional execution opportunities on the Exchange and other registered exchanges. The Exchange believes the proposed fee change also would not impose any burden on competition among market participants. To the contrary, because Primary Until 9:45 Orders and Primary After 3:55 Orders are designed to route to the primary listing market during designated times, the Exchange believes that the proposed fee would promote inter-exchange competition by providing an incentive for ETP Holders to route such orders to the Exchange, which would also benefit the primary listing markets that would receive the orders when routed.

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

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<sup>12</sup> 15 U.S.C. 78f(b)(8).

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>13</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>14</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>15</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:

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<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(2).

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2015-39 on the subject line.

Paper comments:

- Send paper comments in triplicate to Robert W. Errett, Deputy Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2015-39. This file number should be included on the subject line if e-mail 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 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-2015-39 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

Robert W. Errett,  
Deputy Secretary.  
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<sup>16</sup> 17 CFR 200.30-3(a)(12).