



SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-81140; File No. SR-NYSEArca-2017-77]

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

July 13, 2017.

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 July 10, 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 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 July 10, 2017.⁴ The proposed rule change is available on the Exchange’s website 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

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ The Exchange originally filed to amend the Fee Schedule on July 3, 2017 (SR-NYSEArca-2017-74) and withdrew such filing on July 10, 2017.

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend the Fee Schedule to offer an incentive for Market Makers to post liquidity in the SPDR S&P 500 ETF Trust ("SPY"). The Exchange also proposes a number of textual changes designed to clarify certain aspects of the Fee Schedule.

Currently, Market Makers receive a \$0.28 per contract credit for executions against Market Maker posted liquidity in Penny Pilot Issues and Lead Market Makers ("LMMs") may receive an additional \$.04 per contract credit (for a total of \$0.32 per contract credit) for posted liquidity in Penny Pilot Issues that are in the LMM's appointment.⁵ Similarly, Market Makers may receive a \$0.28 per contract credit for executions against Market Maker posted liquidity in SPY.⁶ The Exchange currently offers additional incentives (i.e., enhanced credits) to Market Makers to post liquidity.⁷

⁵ See Fee Schedule, Transaction Fee for Electronic Executions, Per Contract. See also Market Maker Monthly Posting Credit Tiers and Qualifications for Executions in Penny Pilot Issues and SPY (the "MM Tiers").

⁶ See Fee Schedule, the MM Tiers, Base Rate.

⁷ See *id.* See, e.g., the Market Maker Incentive for Penny Pilot Issues (which provides a \$0.41 per contract credit for executions of Market Maker posted interest provided the Market Maker achieves at least 0.75% of total industry Customer equity and ETF option average daily volume ("TCADV") from Customer posted interest (e.g., from the Market Maker's affiliate of Appointed Order Flow Provider) in all issues and an ADV from Market Maker posted interest equal to 0.70% of TCADV).

The Exchange proposes to add a new incentive to encourage Market Makers to post interest in SPY. Specifically, the Exchange proposes to offer any Market Maker that has posted interest of at least 0.20% of TCADV in SPY during a calendar month, a per contract credit of \$0.45 for electronic executions against such posted interest.⁸ As is the case today, a Market Maker that qualifies for more than one available credit will always receive the highest rebate applicable to a transaction. For example, a Market Maker that is eligible to receive both the \$0.41 per contract credit via the Market Maker Incentive For Penny Pilot Issues as well as the proposed \$0.45 per contract credit via the Market Maker Incentive for SPY would receive the latter (higher) credit.

The Exchange also proposes to make the following textual changes to the Fee Schedule regarding Market Maker incentives, which are designed to make the Fee Schedule easier to navigate and comprehend:

- The Exchange proposes to re-locate the reference to Endnote 15 from the beginning to the end of each of the following tables: the Market Maker Incentive For Penny Pilot Issues; the Market Maker Incentive For Non-Penny Pilot Issues; and the MM Tiers (collectively, the “MM Tables”). Endnote 15 defines an Appointed Market Maker (“MM”) and an Appointed Order Flow Provider (“OFP”).
- The Exchange proposes to add a sentence to the beginning of Endnote 15 to make clear that the qualification thresholds set forth in the MM Tables “[i]ncludes transaction volume from the OTP Holder’s or OTP Firm’s affiliates or its Appointed OFP or Appointed MM.”⁹ Consistent with this proposed change, the Exchange proposes to

⁸ See proposed Fee Schedule, Market Maker Incentive for SPY (including reference to Endnote 8, which sets forth the calculations for monthly posting credits).

⁹ See proposed Fee Schedule, Endnote 15.

remove the language that appears at the end of each of the MM Tables providing that volume of an Appointed MM or Appointed OFP may be included because it would be duplicative of the proposed new next in Endnote 15.

- The Exchange proposes to modify Endnote 8 to define Total Industry Customer equity and ETF option average daily volume as “TCADV” and to use this shorthand reference in each of the MM Tables.
- The Exchange proposes to clarify how the credit for each of the MM Tables is applied, i.e., that it is applied to “electronic executions of Market Maker posted interest” in the applicable securities. Consistent with this change, the Exchange proposes to delete the current language that provides the credit is applied to “Posted Electronic Market Maker Executions” in the applicable securities.
- In each of the MM Tables, the Exchange proposes to replace reference to “Posted Orders” with “posted interest” and “orders” with “interest” to make clear that, where applicable, liquidity may include orders or quotes.
- In the fee table for Market Maker Incentive for Penny Pilot Issues, the Exchange proposes to replace reference to “both Penny and Non-Penny Issues” with “all issues.”
- For consistency, the Exchange proposes to remove the capitalization from “Non-Penny,” as appears in the Market Maker Incentive For Non-Penny Pilot Issues, and to remove any capitalization from “all” and “issues” in reference to “all issues” in the MM Tables.
- For ease of reference, the Exchange proposes to rename the Market Maker Monthly Posting Credit Tiers and Qualifications for Executions in Penny Pilot Issues and SPY (i.e., the MM Tiers) to “MARKET MAKER PENNY PILOT AND SPY POSTING CREDIT TIERS,” and to add the following preamble, followed by reference to Endnotes

8 and 15 (as modified herein): “OTP Holders and OTP Firms meeting the qualifications below will receive the corresponding credit on electronic executions of Market Maker posted interest in Penny Pilot issues and SPY.” The Exchange also proposes to update a cross reference to the MM Tiers to reflect the modified name.¹⁰

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,¹² 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 providing an enhanced incentive for executions against posted liquidity in SPY is reasonable, equitable, and not unfairly discriminatory because, among other things, it may encourage greater participation in SPY – which is consistently the most active options issue nationally. The proposed SPY incentive would also provide an additional means for Market Makers to qualify for credits for posting volume on the Exchange. By encouraging activity in SPY, the Exchange believes that opportunities to qualify for other rebates are increased, which benefits all participants through increased Market Maker activity. The Exchange also believes that encouraging a higher level of trading volume in SPY should increase opportunities for OTP Holders and OTP Firms (“OTPs”) to achieve credits available through existing incentive programs, such as the MM Tiers, which provides OTPs the ability to achieve per contract credit for electronic executions of posted Market Maker interest in SPY and other

¹⁰ See proposed Fee Schedule, Transaction Fee for Electronic Executions, Per Contract.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(4) and (5).

Penny Pilot names by combining the volume of the OTP with volume of their affiliates or Appointed Market Maker. To the extent that order flow, which adds liquidity, is increased by the proposal, OTPs will be encouraged to compete for the opportunity to trade on the Exchange, including by sending additional order flow to the Exchange to achieve higher tiers or enhanced rebates. The resulting increased volume and liquidity would benefit all Exchange participants by providing more trading opportunities and tighter spreads.

The Exchange also believes the proposed SPY incentive is not unfairly discriminatory to non-Market Markers (i.e., Customers, Professionals Customers, Firms and Broker-Dealers) because such market participants are not subject to the obligations that apply to Market Makers. The Exchange believes the proposed incentive is reasonable, equitable and not unfairly discriminatory because encouraging Market Makers to direct more volume to the Exchange would also contribute to the Exchange's depth of book as well as to the top of book liquidity.

The Exchange also notes that the proposed credit for posting in SPY is reasonable, equitable, and not unfairly discriminatory as it is consistent with credits offered to Market Makers by other options exchanges.¹³

The Exchange believes that the proposed textual modifications are reasonable, equitable, and not unfairly discriminatory because the proposed changes would add clarity, transparency and internal consistency to the Fee Schedule making it easier to navigate and comprehend, which is in the public interest.

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

¹³ See, e.g., MIAX Pearl Fee Schedule, Section 1.a., Transaction Rebates/Fees, Exchange Rebates/Fees – Add/Remove Tiered Rebates/Fees, [available here](http://www.miaxoptions.com/sites/default/files/page-files/MIAX_PEARL_Fee_Schedule_06072017.pdf), http://www.miaxoptions.com/sites/default/files/page-files/MIAX_PEARL_Fee_Schedule_06072017.pdf (providing an alternative basis to achieve a \$0.47 per contract credit in Penny Pilot Issues based on a specified level of SPY volume).

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

In accordance with Section 6(b)(8) of the Act,¹⁴ 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 not impose an unfair burden on non-Market Makers because such market participants are not subject to the heightened obligations that apply to Market Makers. The Exchange notes that the proposed textual changes are not intended to have any impact on competition, but instead are designed to make the Fee Schedule easier for market participants to navigate and digest, which is in the public interest.

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.

¹⁴ 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)¹⁵ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁶ 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)¹⁷ 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 e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2017-77 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.

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f)(2).

¹⁷ 15 U.S.C. 78s(b)(2)(B).

All submissions should refer to File Number SR-NYSEArca-2017-77. 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 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-NYSEArca-2017-77, 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.¹⁸

Jill M. Peterson,

Assistant Secretary.

¹⁸ 17 CFR 200.30-3(a)(12).

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