SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78892; File No. SR–NYSEArca–2016–128]

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

September 21, 2016.

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 September 8, 2016, 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 (the ''Fee Schedule'') to adopt a new pricing tier and a new execution fee. The Exchange proposes to implement the fee changes effective September 8, 2016.[4] 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.

[4] The Exchange originally filed to amend the Fee Schedule on August 31, 2016 (SR–NYSEArca–2016–125) and withdrew such filing on September 8, 2016.

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 adopt a new pricing tier and a new execution fee. The Exchange proposes to implement the fee changes effective September 8, 2016.

Step Up Tier

The Exchange proposes a new pricing tier—Step Up Tier—for securities with a per share price of $1.00 or above.

As proposed, a new Step Up Tier credit of $0.0029 per share for providing liquidity in Tape A and Tape C Securities and $0.0028 per share for providing liquidity in Tape B Securities would apply to ETP Holders and Market Makers that, on a daily basis, measured monthly

(i) directly execute providing average daily volume (''ADV'') on NYSE Arca in an amount that is an increase of no less than 0.15% of United States consolidated average daily volume (''US CADV'') [5] in Tape A, Tape B and Tape C Securities for that month over the ETP Holder's or Market Maker's providing ADV in July 2016 (''Baseline Month''), and

(ii) set a new Best Bid or Offer (''BBO'') on the Exchange with at least 40% of the ETP Holder's or Market Maker's providing ADV.

For example, an ETP Holder who has a providing ADV of 15 million shares in the Baseline Month would be required to execute, at a minimum, an additional 9.75 million shares of providing ADV if CADV is 6.5 billion shares in the billing month, or 0.15% over the Baseline Month, for a total providing ADV of 24.75 million shares for the billing month. Further, of the 24.75 million shares, at least 9.9 million shares, or 40% of providing ADV of 24.75 million shares, would need to set a new BBO on the Exchange.

As an incentive for ETP Holders and Market Makers to direct their order flow to the Exchange, for the months of September 2016 and October 2016 only, the Exchange proposes adopting lower providing ADV criteria for ETP Holders and Market Makers to qualify for the proposed credit. For the billing month of September 2016 only, the proposed Step Up credit would apply to ETP Holders and Market Makers that, on a daily basis, measured monthly

(i) directly execute providing ADV on NYSE Arca in an amount that is an increase of no less than 0.045% of US CADV in Tape A, Tape B and Tape C Securities for that month over the ETP Holder's or Market Maker's providing ADV in the Baseline Month, and

(ii) set a new BBO on the Exchange with at least 40% of the ETP Holder's or Market Maker's providing ADV.

For example, using the previous example, an ETP Holder who has a providing ADV of 15 million shares in the Baseline Month would be required to execute, at a minimum, an additional 2.925 million shares of providing ADV if CADV is 6.5 billion shares in the billing month, or 0.045% over the Baseline Month, for a total providing ADV of 17.925 million shares for the billing month. Further, of the 17.925 million shares, at least 7.170 million shares, or 40% of providing ADV of 17.925 million shares, would need to set a new BBO on the Exchange.

For the billing month of October 2016 only, the proposed Step Up credit would be applicable to ETP Holders and Market Makers that, on a daily basis, measured monthly

(i) directly execute providing ADV on NYSE Arca in an amount that is an increase of no less than 0.09% of US CADV in Tape A, Tape B and Tape C Securities for that month over the ETP Holder's or Market Maker's providing ADV in the Baseline Month, and

(ii) set a new BBO on the Exchange with at least 40% of the ETP Holder's and Market Maker's providing ADV.

Using the previous example again, an ETP Holder who has a providing ADV of 15 million shares in the Baseline Month would be required to execute, at a minimum, an additional 5.85 million shares of providing ADV if CADV is 6.5 billion shares in the billing month, or 0.09% over the Baseline Month, for a total providing ADV of 20.850 million shares for the billing month. Further, of the 20.850 million shares, at least 8.340 million shares, or 40% of providing ADV of 20.850 million shares, would need to set a new BBO on the Exchange.

The Exchange notes that if an ETP Holder or Market Maker qualifies for more than one tier in the Fee Schedule, the Exchange would apply the most favorable rate available under such tiers.

The goal of the Step-Up Tier is to incentivize ETP Holders and Market Makers to increase the orders sent

[5] The Exchange proposes to use the same definition of US CADV for purposes of the proposed Step Up pricing tier. Specifically, US CADV would mean the United States Consolidated Average Daily Volume for transactions reported to the Consolidated Tape, excluding odd lots through January 31, 2014 (except for purposes of Lead Market Maker pricing), and excludes volume on days when the market closes early and on the date of the annual reconstitution of the Russell Investments Indexes. Transactions that are not reported to the Consolidated Tape are not included in US CADV. *See* Fee Schedule, footnote 3.

directly to NYSE Arca and therefore provide liquidity that supports the quality of price discovery and promotes market transparency. The Exchange notes that Step Up pricing tiers are not novel. Bats BZX Exchange (''BZX'') currently provides Step-Up credits to participants on that exchange as an incentive to attract order flow to that exchange.[6]

Execution Fee

The Exchange proposes a new execution fee for participation in an Early Open Auction, Core Open Auction, Trading Halt Auction and Closing Auction. The proposed fee would apply to securities with a per share price of $1.00 or above.

The Exchange's Fee Schedule currently includes fees applicable to executions that result from Market Orders, Auction-Only Orders, Market-On-Close Orders and Limit-On-Close Orders (''Auction Orders''). All other executions (''Non-Auction Orders'') executed in an Early Open Auction, Core Open Auction, Trading Halt Auction and Closing Auction are not currently charged a fee by the Exchange. The Exchange proposes to add a fee of $0.0006 per share that would apply to Non-Auction Orders executed in an Early Open Auction, Core Open Auction, Trading Halt Auction and Closing Auction.

The Exchange notes the proposed fee is similar to the fee charged by the NASDAQ Stock Market LLC (''NASDAQ'') for Continuous Book[7] orders executed on NASDAQ for the NASDAQ Opening Cross and the NASDAQ Closing Cross. NASDAQ currently charges a fee of $0.00085 per share for Continuous Book orders in both Opening and Closing Crosses.[8]

The proposed changes are not otherwise intended to address any other problem, and the Exchange is not aware of any significant problem that the affected market participants 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,[9] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[10] 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 proposal does not constitute an inequitable allocation of fees, as all similarly situated market participants will be subject to the same fees and credits and access to the Exchange's market is offered on fair and non-discriminatory terms.

The Exchange believes that the proposed Step-Up Tier is equitable because it is open to all ETP Holders and Market Makers on an equal basis and provides credits that are reasonably related to the value to an exchange's market quality associated with higher volumes. As stated above, the Exchange believes that the Step-Up Tier may incentivize market participants to increase the orders sent directly to NYSE Arca and therefore provide liquidity that supports the quality of price discovery and promotes market transparency. Moreover, the addition of the Step-Up Tier would benefit market participants whose increased order flow provides meaningful added levels of liquidity thereby contributing to the depth and market quality on the Exchange. In addition, by offering a Step-Up Tier the Exchange believes more market participants may provide increased order flow and more market participants would be eligible to receive the proposed credits for their orders.

Further, the Exchange believes that the proposal is reasonable and would create an added incentive for ETP Holders and Market Makers to execute additional orders on the Exchange. The Exchange believes it is reasonable to require that at least 40% of the ETP Holders and Market Makers providing ADV set a new BBO on the Exchange as it would create an incentive for ETP Holders and Market Makers to improve displayed quotes on the Exchange, which would benefit all market participants. The Exchange believes that the proposed change is equitable and not unfairly discriminatory because providing incentives for orders that are executed on a registered national securities exchange would contribute to investors' confidence in the fairness of their transactions and would benefit all investors by deepening the Exchange's liquidity pool, supporting the quality of price discovery, promoting market transparency and improving investor protection.

The Exchange believes that adopting lower providing ADV criteria for September 2016 and October 2016 is reasonable because it may allow a greater number of ETP Holders and Market Makers to qualify for the proposed credits while also providing ETP Holders and Market Makers the opportunity to gradually increase their activity in order to qualify for the proposed credits. The Exchange believes that adopting lower providing ADV criteria for September 2016 and October 2016 is also equitable and not unfairly discriminatory because the lower criteria would apply uniformly to all ETP Holders and Market Makers during September 2016 and October 2016.

Volume-based rebates such as the ones currently in place on the Exchange, and as proposed herein, have been widely adopted in the cash equities markets and are equitable because they are open to all ETP Holders and Market Makers on an equal basis and provide additional benefits or discounts that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns, and introduction of higher volumes of orders into the price and volume discovery processes.

The Exchange believes that the proposed execution fee for Non-Auction Orders participating in an Early Open Auction, Core Open Auction, Trading Halt Auction and Closing Auction is consistent with an equitable allocation of a reasonable fee and not unfairly discriminatory. As noted above, Non-Auction Orders executed in an Early Open Auction, Core Open Auction, Trading Halt Auction and Closing Auction are not currently charged a fee by the Exchange. The Exchange believes the proposed fee is reasonable because Non-Auction Orders receive a substantial benefit from executions within the various auctions on the Exchange. For example, the Exchange's closing auction is a recognized industry benchmark.[11] Moreover, the proposed fee is equitably allocated because the fee would apply to all market participants that benefit from such orders participating in the auctions. Similarly, the proposed fee is not unfairly discriminatory because it would apply to all Non-Auction Orders executed in the auctions resulting in a benefit to market quality that such orders would

[6] *See* Step-Up Tiers and Cross-Asset Step-Up Tiers on the BZX Fee Schedule at *https://www.batstrading.com/support/fee_schedule/bzx/*.

[7] Continuous Book includes all quotes and extended hours orders eligible to participate in the NASDAQ Opening Cross and NASDAQ Closing Cross. *See* NASDAQ Crossing Network at *http://nasdaqtrader.com/Trader.aspx?id=PriceListTrading2*.

[8] *Id.*

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4) and (5).

[11] For example, the pricing and valuation of certain indices, funds, and derivative products require primary market prints.

provide. The Exchange believes the proposal to adopt a fee for Non-Auction Orders executed in an Early Open Auction, Core Open Auction, Trading Halt Auction and Closing Auction is reasonable, equitably allocated and not unfairly discriminatory because the proposed fee would apply to all market participants that participate in the auctions and receive an execution. Moreover, the Exchange does not believe that the proposed fee would negatively impact participation in the auctions. ETP Holders and Market Makers that do not want to be subject to the proposed fee would simply cancel their orders and thus can elect to not participate in the auctions.

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 the foregoing 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 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 proposal to add a new pricing tier would encourage the submission of additional liquidity to a public exchange, thereby promoting price discovery and transparency and enhancing order execution opportunities for ETP Holders and Market Makers. The Exchange believes that this could promote competition between the Exchange and other execution venues, including those that currently offer similar order types and comparable transaction pricing, by encouraging additional orders to be sent to the Exchange for execution. Further, the proposed new fee for executions in an Early Open Auction, Core Open Auction, Trading Halt Auction and Closing Auction is reflective of the value of executions that take place within the various auctions on the Exchange on a daily basis.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. As a result of all of these considerations, the Exchange does not believe that the proposed changes will impair the ability of ETP Holders 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 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–4[14] 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–2016–128 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–NYSEArca–2016–128. 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–2016–128 and should be submitted on or before October 18, 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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[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).