

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-83410; File No. SR-NYSEArca-2018-42)

June 12, 2018

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the NYSE Arca Equities Fees and Charges to Extend the Effectiveness of the Decommission Extension Fee until September 2018

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 June 1, 2018, 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 Equities Fees and Charges (the “Fee Schedule”) to extend the effectiveness of the Decommission Extension Fee until September 2018. 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

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

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 Exchange currently charges a Decommission Extension Fee that applies to ETP Holders for the use of certain ports used to connect to NYSE Arca.⁴ The Decommission Extension Fee was adopted for a three-month period from March 2018 through May 2018 (the “extension period”) at a rate of \$2,450 per port per month. The Exchange proposes to amend the Fee Schedule to extend the effectiveness of the Decommission Extension Fee for an additional four months, until September 2018. The Exchange also proposes to charge incrementally higher fees for each of the additional months before use of ports subject to the proposed fee is decommissioned. The Exchange proposes to make the fee change effective June 1, 2018.

ETP Holders enter orders and instructions by using communication protocols that map to the order types and modifiers described in Exchange rules. The Exchange currently makes ports available that provide connectivity to the Exchange’s trading systems (i.e., ports for the entry of orders and/or quotes (“order/quote entry ports”)) using Pillar phase I protocols (“phase I ports”) and Pillar phase II protocols (“phase II ports”) and charges \$550 per port per month.⁵ Phase II ports are part of the Exchange’s efforts to upgrade its connectivity. Phase I ports are legacy

⁴ See Securities Exchange Act Release No. 81901 (October 19, 2017), 82 FR 49426 (October 25, 2017) (SR-NYSEArca-2017-121).

⁵ Port fees are not applicable to ports used for the Exchange’s Risk Management Gateway service. Further, no fee applies to ports in the backup datacenter that are not utilized during the relevant month. No fee applies to ports in the backup datacenter that are utilized when the primary datacenter is unavailable. However, if a port in the backup datacenter is utilized when the primary datacenter is available, then the fee would apply.

connections used by ETP Holders to communicate with the Exchange. The Exchange also currently makes ports available for drop copies and charges \$550 per port per month.⁶

On August 21, 2017, the Exchange notified ETP Holders to transition all connections to the Exchange through the use of phase II ports by the close of trading on February 28, 2018.⁷ Notwithstanding prior notice to ETP Holders to migrate fully to phase II ports by the end of February 2018, the Exchange determined to continue to make phase I ports available through the end of May 2018 to allow ETP Holders additional time to transition to phase II ports should an ETP Holder choose to do so. ETP Holders that use phase I ports during the extension period are currently subject to the Decommission Extension Fee.

The Decommission Extension Fee was adopted by the Exchange as an incentive for ETP Holders to fully transition to the phase II ports within an initial six-month transition period before the fee became effective so the Exchange would not have to maintain and support both phase I ports and phase II ports at the end of the transition period. In addition, to the extent that ETP Holders did not fully transition to phase II ports within the initial six-month transition period, the Decommission Extension Fee was intended to cover the Exchange's costs associated with continued support of phase I ports, including costs to maintain servers and their physical location, monitoring order activity, and other support, that are separate from the costs in maintaining phase II ports. Because continued support for phase 1 ports requires the Exchange

⁶ No fee applies to ports in the backup datacenter if configured such that it is duplicative of another drop copy port of the same user. Only one fee per drop copy port applies, even if the port receives drop copies from multiple order/quote entry ports and/or drop copies for activity on both NYSE Arca Equities and NYSE Arca Options.

⁷ See Trader Update at https://www.nyse.com/publicdocs/nyse/markets/nyse/Pillar_Update_NYSE_American_A_RCA_NYSE_Tapes_B_and_C.pdf. On June 22, 2017, the Exchange provided ETP Holders with notice that the phase II ports would be available on August 21, 2017. See Trader Update at https://www.nyse.com/publicdocs/nyse/notifications/trader-update/Pillar_Phase_II_Update_Native_gateways_June_16_2017.pdf.

to dedicate resources, the Exchange adopted the Decommission Extension Fee for the use of such ports during the extension period.

The Exchange now proposes to expand the extension period until the close of trading on September 28, 2018, the last trading day of the month (the “new extension period”). A small number of ETP Holders have not transitioned to phase II ports and have informed the Exchange of their need for additional time to do so. Therefore, during the new extension period, ETP Holders that continue to connect to the Exchange through phase I ports would be charged the Decommission Extension Fee, as follows: \$2,450 per port per month for the month of June 2018; \$2,950 per port per month for the month of July 2018; \$3,450 per port per month for the month of August 2018; and \$3,950 per port per month for the month of September 2018. The Decommission Extension Fee would be charged in addition to the existing port fees currently set forth in the Fee Schedule. The Exchange expects all ETP Holders to transition to the use of phase II ports by the end of the new extension period and that phase I ports would be fully decommissioned at that time.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Sections 6(b)(4) of the Act,⁹ 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. In particular, the proposed rule change, including the adoption of graduated fees, is reasonable because it proposes to make a reasonable accommodation by providing ETP Holders additional time, at their request, to transition to phase

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4).

II ports while incentivizing such ETP Holders to transition to phase II ports to avoid being charged the Decommission Extension Fee. Additionally, the Exchange believes that the Decommission Extension Fee for ETP Holders that choose to continue to connect to the Exchange through the use of phase I ports through the new extension period, which is scheduled to end at the close of trading on September 28, 2018, is equitable and not unfairly discriminatory because the fee would continue to apply equally to all ETP Holders that choose to connect to the Exchange through the use of such ports during the new extension period. As noted above, the Exchange would continue to incur ongoing costs in maintaining phase I ports during the new extension period, including costs to maintain servers and their physical location, monitoring order activity, and other support, with no real benefit. Due to the fixed costs incurred by the Exchange to support phase I ports during the new extension period, the Exchange believes that it is fair and reasonable to charge increased fees to cover the costs of such support during the new extension period because of the small number of ETP Holders that have not transitioned to phase II ports.

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

In accordance with Section 6(b)(8) of the Act,¹⁰ the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act in that it is simply designed to set forth the Exchange's continued assessment of a fee during the new extension period to provide an incentive to ETP Holders to transition to phase II ports. The Exchange believes that fees for connectivity are constrained by the robust competition for order flow among exchanges and non-exchange markets. Further, excessive fees for connectivity, including

¹⁰ 15 U.S.C. 78f(b)(8).

port fees, would serve to impair an exchange's ability to compete for order flow rather than burdening competition. The Exchange also does not believe the proposed rule change would impact intramarket competition as it would apply to all ETP Holders equally that connect to the Exchange through the use of such ports.

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)¹¹ of the Act and subparagraph (f)(2) of Rule 19b-4¹² 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)¹³ 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:

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(2).

¹³ 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. Please include File Number SR-NYSEArca-2018-42 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-2018-42. 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.

Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to

make available publicly. All submissions should refer to File Number SR-NYSEArca-2018-42, 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.¹⁴

Eduardo A. Aleman
Assistant Secretary

¹⁴ 17 CFR 200.30-3(a)(12).