

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-96682; File No. SR-NYSEARCA-2023-02)

January 17, 2023

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Its NYSE Arca Equities Fees and Charges

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 January 3, 2023, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II 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 its NYSE Arca Equities Fees and Charges (the “Fee Schedule”) with respect to certain regulatory fees related to the Central Registration Depository (“CRD” or “CRD system”), which are collected by the Financial Industry Regulatory Authority, Inc. (“FINRA”). The Exchange proposes to implement the fee change on January 3, 2023. 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

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 Exchange proposes to amend the Fee Schedule with respect to certain regulatory fees collected by FINRA for use of CRD.⁴ The Exchange proposes to implement the fee changes effective January 3, 2023.

FINRA collects and retains certain regulatory fees via CRD for the registration of associated persons of Exchange ETP Holders that are not FINRA members (“Non-FINRA ETP Holders”).⁵ CRD fees are user-based, and there is no distinction in the cost incurred by FINRA if the user is a FINRA member or a Non-FINRA ETP Holder.

FINRA recently amended two of the fees assessed for use of the CRD system.⁶

Accordingly, the Exchange proposes to amend the Fee Schedule to mirror the fees assessed by

⁴ CRD is the central licensing and registration system for the U.S. securities industry. The CRD system enables individuals and firms seeking registration with multiple states and self-regulatory organizations to do so by submitting a single form, fingerprint card, and a combined payment of fees to FINRA. Through the CRD system, FINRA maintains the qualification, employment, and disciplinary histories of registered associated persons of broker-dealers.

⁵ The Exchange originally adopted fees for use of the CRD system in 2005 and amended those fees in 2013 and 2022. See Securities Exchange Act Release No. 51641 (May 2, 2005), 70 FR 24155 (May 6, 2005) (SR-PCX-2005-49); Securities Exchange Act Release No.68588 (January 4, 2013), 78 FR 2473 (January 11, 2013) (SR-NYSEArca-2012-143); Securities Exchange Act Release No. 93900 (January 5, 2022), 87 FR 1451 (January 11, 2022) (SR-NYSEArca-2021-104). While the Exchange lists these fees in its Fee Schedule, it does not collect or retain these fees.

⁶ See Securities Exchange Act Release No. 90176 (October 14, 2020), 85 FR 66592 (October 20, 2020) (SR-FINRA-2020-032).

FINRA, which will be implemented concurrently with the amended FINRA fee as of January 2023.⁷ Specifically, the Exchange proposes to amend the Fee Schedule to modify the fee charged to Non-FINRA ETP Holders for additional processing of each initial or amended Form U4, Form U5 or Form BD that includes the initial reporting, amendment, or certification of one or more disclosure events or proceedings from \$110 to \$155⁸ and the fee for processing and posting to the CRD system each set of fingerprints submitted electronically to FINRA, plus any other charge that may be imposed by the U.S. Department of Justice for processing each set of fingerprints, from \$15 to \$20.⁹

The Exchange notes that the proposed change is not otherwise intended to address any other issues surrounding regulatory fees, and the Exchange is not aware of any problems that ETP Holders would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Section 6(b)(4)¹¹ of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges. The Exchange also believes that the proposed rule change is consistent with Section

⁷ The Exchange notes that it has only adopted the CRD system fees charged by FINRA to Non-FINRA ETP Holders when such fees are applicable. In this regard, certain FINRA CRD system fees and requirements are specific to FINRA members, but do not apply to NYSE Arca-only ETP Holders. Non-FINRA ETP Holders have been charged CRD system fees since 2005. See note 5, supra. ETP Holders that are also FINRA members are charged CRD system fees according to Section 4 of Schedule A to the FINRA By-Laws.

⁸ See Section (4)(b)(3) of Schedule A to the FINRA By-laws.

⁹ See Section (4)(b)(4) of Schedule A to the FINRA By-laws.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4).

6(b)(5) of the Act,¹² in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed fee change is reasonable because the fee will be identical to that adopted by FINRA as of January 2023 for use of the CRD system to submit an initial or amended Form U4, Form U5 or Form BD that includes the initial reporting, amendment, or certification of one or more disclosure events or proceedings and the posting to CRD each set of fingerprints submitted electronically to FINRA. The costs of operating and improving the CRD system are similarly borne by FINRA when a Non-FINRA ETP Holder uses the CRD system; accordingly, the fees collected for such use should, as proposed by the Exchange, mirror the fees assessed to FINRA members. In addition, as FINRA noted in amending its fees, it believes that its proposed pricing structure is reasonable and correlates fees with the components that drive its regulatory costs to the extent feasible. The Exchange further believes that the change is reasonable because it will provide greater specificity regarding the CRD system fees that are applicable to Non-FINRA ETP Holders. All similarly situated ETP Holders are subject to the same fee structure, and every ETP Holder must use the CRD system for registration and disclosure. Accordingly, the Exchange believes that the fees collected for such use should likewise increase in lockstep with the fees assessed to FINRA members, as is proposed by the Exchange.

¹² 15 U.S.C. 78f(b)(5).

The Exchange also believes that the proposed fee change provides for the equitable allocation of reasonable fees and other charges, and does not unfairly discriminate between customers, issuers, brokers, and dealers. The fee applies equally to all individuals and firms required to report information the CRD system, and the proposed change will result in the same regulatory fees being charged to all ETP Holders required to report information to CRD and for services performed by FINRA regardless of whether such ETP Holders are FINRA members. Accordingly, the Exchange believes that the fee collected for such use should increase in lockstep with the fee adopted by FINRA as of January 2023, as is proposed by the Exchange.

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

In accordance with Section 6(b)(8) of the Act,¹³ 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. Specifically, the Exchange believes that the proposed change will reflect fees that will be assessed by FINRA as of January 2023 and will thus result in the same regulatory fees being charged to all ETP Holders required to report information to the CRD system and for services performed by FINRA, regardless of whether or not such ETP Holders are FINRA members.

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.

¹³ See 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)¹⁴ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁵ 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)¹⁶ 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-2023-02 on the subject line.

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f)(2).

¹⁶ 15 U.S.C. 78s(b)(2)(B).

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-2023-02. 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 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-2023-02, 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.¹⁷

Sherry R. Haywood,
Assistant Secretary.

¹⁷ 17 CFR 200.30-3(a)(12).