

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-88009; File No. SR-NYSEArca-2020-06)

January 21, 2020

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Schedule of Fees and Charges to Remove the Ineligibility for Certain Discounts

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 10, 2020, 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, 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 its Schedule of Fees and Charges to remove the ineligibility for certain discounts when an issuer transfers an Exchange Traded Product or Structured Product off the Exchange (except to an Exchange affiliate) in a trailing 12-month period. The Exchange proposes to implement the fee changes effective January 10, 2020. 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.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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.

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 its Schedule of Fees and Charges to remove the ineligibility for certain discounts when an issuer transfers an Exchange Traded Product (“ETP”) or Structured Product off the Exchange (except for transfers to an Exchange affiliate) in a trailing 12-month period.

The proposed change responds to the current extremely competitive environment for ETP listings in which issuers can readily favor competing venues or transfer their listings if they deem fee levels at a particular venue to be excessive, or discount opportunities available at other venues to be more favorable. The Exchange’s current annual fees for ETPs are based on the number of shares outstanding per issuer and provide incentives for issuers to list multiple series of certain securities on the Exchange. In response to the competitive environment for listings, the Exchange adopted a competitive pricing structure that combines higher minimum annual fees for certain securities with discounts for issuers that list multiple ETPs and Structured Products.⁴

⁴ “Exchange Traded Products” are defined in footnote 3 of the current Schedule of Fees and Charges. “Structured Products” are defined in footnote 4 of the current Schedule of Fees and Charges.

The proposed change is designed to encourage more issuers to qualify for the discounts and enhance competition among issuers and listing venues by removing ineligibility for certain discounts when an issuer transfers a Product off the Exchange (except for transfers to an Exchange affiliate) in a trailing 12-month period.

The Exchange proposes to implement the fee changes effective January 10, 2020.

Proposed Rule Change

Currently, the Exchange offers non-mutually exclusive “Fund Family” and “High Volume Products” discounts for ETPs and Structured Products that are set forth in Section 9 of the Schedule of Fees and Charges. Eligibility for the discounts is subject to the limitation that an issuer that transfers a Product off the Exchange (except for transfers to an Exchange affiliate) in a trailing 12-month period beginning January 1, 2020 is ineligible for either or both discounts for the following calendar year. The Exchange proposes to remove this limitation from the Schedule of Fees and Charges.

The purpose of the proposed change is to encourage more issuers to qualify for the discounts by removing the restriction on achieving or retaining them. Although the limitation is a reasonable attempt to incentivize issuers to maintain listings on the Exchange and discourage transfers to and from the Exchange solely for the purpose of securing one or more discounts, the Exchange believes that removing the limitation outweighs those considerations because it would result in more issuers qualifying for and retaining discounts while enhancing competition among issuers and listing venues, to the benefit of all market participants. The proposed change described above is not otherwise intended to address other issues, and the Exchange is not aware of any significant problems that 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,⁵ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,⁶ 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 Proposed Change is Reasonable

As discussed above, the Exchange operates in a highly competitive market for the listing of ETPs. Specifically, ETP issuers can readily favor competing venues or transfer listings if they deem fee levels at a particular venue to be excessive, or discount opportunities available at other venues to be more favorable. The Exchange's current annual fees for ETPs are based on the number of shares outstanding per issuer and provide incentives for issuers to list multiple series of certain securities on the Exchange. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."⁷

The Exchange believes that the ongoing competition among the exchanges with respect to new listings and the transfer of existing listings among competitor exchanges demonstrates

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4) & (5).

⁷ See Regulation NMS, 70 FR at 37499.

that issuers can choose different listing markets in response to fee changes. Accordingly, competitive forces constrain exchange listing fees. Stated otherwise, changes to exchange listing fees can have a direct effect on the ability of an exchange to compete for new listings and retain existing listings.

Given this competitive environment, the Exchange believes that the proposed change is a reasonable attempt to encourage more issuers to qualify for discounts that the Exchange offers by removing restrictions on achieving or retaining them, thereby enhancing competition among issuers and listing venues.

The Proposal is an Equitable Allocation of Fees

The Exchange believes the proposal equitably allocates its fees among its market participants. In the prevailing competitive environment, issuers can readily favor competing venues or transfer listings if they deem fee levels at a particular venue to be excessive, or discount opportunities available at other venues to be more favorable. The proposed removal of the limitation on discounts for ETPs and Structured Products is equitable because it would apply uniformly to all issuers and to all ETPs and Structured Products listed on the Exchange either generically or pursuant to a rule filing with the Commission. For the same reasons, the proposal neither targets nor will it have a disparate impact on any particular category of market participant.

The Proposal is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. In the prevailing competitive environment, issuers are free to list elsewhere if they believe that alternative venues offer them better value. The Exchange believes it is not unfairly discriminatory to remove an

eligibility restriction on issuers transferring Products off the Exchange because removal of the restriction would apply to and potentially benefit all issuers equally.

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 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,⁸ 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, as discussed above, the Exchange believes that the proposed change would encourage competition by removing an incentive for issuers not to transfer Products off of the Exchange (except to an Exchange affiliate) in a trailing 12-month period, which the Exchange believes will enhance competition among issuers and listing venues, to the benefit of investors. As noted, the market for listing services is extremely competitive. Issuers have the option to list their securities on these alternative venues based on the fees charged and the value provided by each listing exchange. Because issuers have a choice to list their securities on a different national securities exchange, the Exchange does not believe that the proposed change impose a burden on competition.

Intramarket Competition. The proposed change is designed to remove a restriction in order to encourage more issuers to qualify for and retain discounts that the Exchange offers. Removal of the restriction would be apply [sic] to and potentially benefit all issuers equally, and, as such, the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

⁸ 15 U.S.C. 78f(b)(8).

Intermarket Competition. The Exchange operates in a highly competitive listings market in which issuers can readily choose alternative listing venues. In such an environment, the Exchange must adjust its fees and discounts to remain competitive with other exchanges competing for the same listings. Because competitors are free to modify their own fees and discounts in response, and because issuers may readily adjust their listing decisions and practices, the Exchange does not believe its proposed change can impose any burden on intermarket competition.

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)⁹ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁰ 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)¹¹ of the Act to determine whether the proposed rule change should be approved or disapproved.

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(2).

¹¹ 15 U.S.C. 78s(b)(2)(B).

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-2020-06 on the subject line.

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-2020-06. 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-2020-06 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.¹²

J. Matthew DeLesDernier
Assistant Secretary

¹² 17 CFR 200.30-3(a)(12).