

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-90266; File No. SR-NYSEArca-2020-93)

October 23, 2020

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

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 October 20, 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 the NYSE Arca Equities Fees and Charges (“Fee Schedule”) to reduce the gross FOCUS fee charged to ETP Holders, effective January 1, 2021. 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 places

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 its Fee Schedule to reduce the gross FOCUS fee from \$0.075 per \$1,000 Gross FOCUS Revenue to \$0.069 per \$1,000 Gross FOCUS Revenue, effective January 1, 2021.⁴

Background

Generally, the Exchange may only use regulatory fees “to fund the legal, regulatory and surveillance operations” of the Exchange.⁵

Consistent with the foregoing, the Exchange currently charges each ETP Holder a monthly regulatory fee of \$0.075 per \$1,000 of gross revenue reported on its FOCUS Report (“Gross FOCUS Fee”).⁶ The revenue collected pursuant to the Gross FOCUS Fee funds the performance of the Exchange’s regulatory activities with respect to ETP Holders, including surveillance operations expenses. More specifically, the revenue generated by the Gross FOCUS Fee funds a material portion, but not all, of the Exchange’s expenses related to third-party service providers and technology and other expenses related to market surveillance.

⁴ The Exchange proposes to immediately reflect the proposed change in its Price List but not implement the proposed rate change until January 1, 2021.

⁵ See NYSE Arca, Inc. Bylaws, Art. II, Sec. 2.03 (Dividends; Regulatory Fees and Penalties). The Exchange considers surveillance operations of its ETP Holders part of regulatory operations.

⁶ FOCUS is an acronym for Financial and Operational Combined Uniform Single Report. FOCUS Reports are filed periodically with the Securities and Exchange Commission (the “Commission” or “SEC”) as SEC Form X-17A-5 pursuant to Rule 17a-5 under the Act.

The Exchange has sought to perform its regulatory functions in an effective and efficient manner. For example, beginning January 2021, the Exchange anticipates that it will have fully transitioned from its existing third-party surveillance system to a lower-cost, cloud-based surveillance solution. Consistent with these anticipated cost savings, the Exchange will be decreasing the Gross FOCUS Fee by approximately 8%.

Proposed Rule Change

Consistent with the anticipated reduced regulatory costs the Exchange proposes to reduce the rate of the Gross FOCUS Fee by approximately 8% from \$0.075 per \$1,000 of gross revenue to \$0.069 per \$1,000 of gross revenue, effective January 1, 2021. The Exchange proposes this reduction to reflect cost savings associated with its move to more cost-effective surveillance and regulatory solutions. The Exchange notes that the Gross FOCUS Fee has remained unchanged since February 2013.⁷

The Exchange will continue to monitor the amount of revenue collected from the Gross FOCUS Fee to ensure that it, in combination with its other regulatory fees and fines, does not exceed regulatory costs. The Exchange expects to monitor regulatory costs and revenues on an annual basis, at a minimum. If the Exchange determines that regulatory revenues exceed regulatory costs, the Exchange would adjust the Gross FOCUS Fee downward by submitting a fee change filing to the Commission.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of

⁷ See Securities Exchange Act Release No. 69059 (March 7, 2013), 78 FR 16019 (March 13, 2013) (SR-NYSEArca-2013-23).

Section 6(b)⁸ of the Act, in general, and Section 6(b)(4) and (5)⁹ of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Proposal is Reasonable

The Exchange believes the proposed fee change is reasonable because it would help ensure that revenue collected from the Gross FOCUS Fee does not exceed a material portion of the Exchange's regulatory costs. The Exchange has targeted the Gross FOCUS Fee to generate revenues that would be less than or equal to the Exchange's regulatory costs, which is consistent with both Rule 129 and the Commission's view that regulatory fees be used for regulatory purposes. As noted above, the principle that the Exchange may only use regulatory fees "to fund the legal, regulatory, and surveillance operations" of the Exchange is reflected in the Exchange's operating agreement.¹⁰ In this regard, the Gross FOCUS Fee has been calculated to recover a material portion, but not all, of the Exchange's expenses related to third-party service providers and technology and other expenses related to market surveillance. The Exchange accordingly believes reducing the Gross FOCUS Fee is fair and reasonable.

The Proposal is an Equitable Allocation of Fees

The Exchange believes its proposal is an equitable allocation of fees among its market participants. The Exchange believes that the proposed Gross FOCUS Fee reduction would benefit all ETP Holders because all ETP Holders would pay the same rate per \$1,000 of gross

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4) and (5).

¹⁰ See note 5, supra.

revenue. For the same reasons, the proposed fee reduction neither targets nor will it have a disparate impact on any particular category of market participant. All similarly-situated ETP Holders would be eligible to qualify for the lower Gross FOCUS Fee. Thus, the Exchange believes the decreased Gross FOCUS Fee would be equitably allocated in that it is charged to all ETP Holders equally.

The Proposed Fee is not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. The proposed reduction of the Gross FOCUS Fee would benefit all similarly-situated market participants on an equal and non-discriminatory basis. Moreover, the proposal neither targets nor will it have a disparate impact on any particular category of market participant. The proposed fee change is designed to pass along regulatory cost savings, which would apply to and benefit all ETP Holders equally.

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

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. 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.

Intramarket Competition. The Exchange believes the proposed fee change would not impose an undue burden on competition as it is charged to all ETP Holders to support the Exchange's regulatory program, including its surveillance program. The Exchange believes that the proposed Gross FOCUS Fee would not place certain market participants at an unfair disadvantage because all ETP Holders would pay the same rate per \$1,000 of gross revenue.

For the same reasons, the proposed fee reduction neither targets nor will it have a disparate impact on any particular category of market participant. All similarly-situated ETP Holders would be eligible to qualify for the lower Gross FOCUS Fee.

Intermarket Competition. The proposed fee change is not designed to address any competitive issues. Rather, the proposed change is designed to help the Exchange adequately fund its regulatory surveillance while seeking to ensure that total regulatory revenues do not exceed total regulatory costs.

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 the 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.

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).

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-2020-93 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-2020-93. 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-2020-093 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

J. Matthew DeLesDernier
Assistant Secretary

¹⁴ 17 CFR 200.30-3(a)(12).