

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-92400; File No. SR-NYSEArca-2021-60)

July 14, 2021

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)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on July 1, 2021, 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 (1) eliminate an alternative credit applicable under Tier 2 pricing tier, and (2) eliminate the Tracking Order Tier 1 and Tracking Order Tier 2 pricing tiers. The Exchange proposes to implement the fee changes effective July 1, 2021. The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

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 the Fee Schedule to (1) eliminate an alternative credit applicable under Tier 2 pricing tier, and (2) eliminate the Tracking Order Tier 1 and Tracking Order Tier 2 pricing tiers. The Exchange proposes to implement the fee changes effective July 1, 2021.

Currently, a Tier 2 credit of \$0.0029 per share for orders in Tape A and Tape C Securities that provide liquidity to the Book, and a credit of \$0.0022 per share for orders in Tape B Securities<sup>4</sup> that provide liquidity to the Book, applies to ETP Holders<sup>5</sup> that either (1) provide liquidity an average daily share volume per month of 0.30% or more, but less than 0.70% of the US CADV or (2) provide liquidity of 0.10% or more of the US CADV per month, and are affiliated with an OTP Holder or OTP Firm that provides an ADV of electronic posted Customer and Professional Customer executions in all issues on NYSE Arca Options (excluding mini options) of at least 1.50% of total Customer equity and ETF option ADV as reported by The Options Clearing Corporation (“OCC”). In May 2019, the Exchange adopted a higher credit of

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<sup>4</sup> An additional credit applies to ETP Holders and Market Makers affiliated with LMMs that provide displayed liquidity to the Book based on the number of Less Active ETP Securities in which the LMM is registered as the LMM. See LMM Transaction Fees and Credits on the Fee Schedule for the applicable tiered credits.

<sup>5</sup> All references to ETP Holders in connection with this proposed fee change include Market Makers.

\$0.0031 per share for orders that provide liquidity in Tape A and Tape C Securities, and \$0.0024 per share for orders that provide liquidity in Tape B Securities. The higher credit is applicable for orders that provide displayed liquidity to the Book for ETP Holders and Market Makers that meet the requirements of Tier 2<sup>6</sup> and, for the billing month, (1) execute providing volume equal to at least 0.30% of US CADV, (2) execute removing volume equal to at least 0.285% of US CADV, and (3) execute Market-On-Close and Limit-On-Close Orders executed in a Closing Auction of at least 0.075% of US CADV.<sup>7</sup>

The Exchange proposes to eliminate the higher credit of \$0.0031 per share for orders that provide liquidity in Tape A and Tape C Securities, and \$0.0024 per share for orders that provide liquidity in Tape B Securities and remove it from the Fee Schedule. The Exchange has observed that not a single ETP Holder has qualified for the higher credit over the last six months. Given that the higher credit adopted by the Exchange has not served to meaningfully increase activity on the Exchange, the Exchange has determined to eliminate it from the Fee Schedule. The Exchange is not proposing any other change to the Tier 2 pricing tier.

Additionally, the Exchange proposes to eliminate the Tracking Order Tier 1 and Tracking Order Tier 2 pricing tiers.

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<sup>6</sup> To qualify for Tier 2, ETP Holders and Market Makers must provide liquidity an average daily share volume per month of 0.30% or more, but less than 0.70% of the US CADV or (a) provide liquidity an average daily share volume per month of 0.25% or more, but less than 0.70% of the US CADV, (b) execute removing volume in Tape B Securities equal to at least 0.40% of US Tape B CADV, and (c) are affiliated with an OTP Holder or OTP Firm that provides an ADV of electronic posted Customer and Professional Customer executions in all issues on NYSE Arca Options (excluding mini options) of at least 0.25% of total Customer equity and ETF option ADV as reported by OCC. See Tier 2, Fee Schedule.

<sup>7</sup> See Securities Exchange Act Release No. 85888 (May 17, 2019), 84 FR 23821 (May 23, 2019) (SR-NYSEArca-2019-37).

The Exchange adopted volume-based tiers applicable to Tracking Orders<sup>8</sup> in 2009 in order to incentivize the use of this order type and attract liquidity to the Exchange.<sup>9</sup> Currently, Tracking Order Tier 1 currently offers ETP Holders a credit of \$0.0015 per share for Tracking Orders that result in executions on the Exchange with an average daily share volume per month greater than or equal to 10 million shares. Additionally, Tracking Order Tier 2 currently offers ETP Holders a credit of \$0.0012 per share for Tracking Orders that result in executions on the Exchange with an average daily share volume per month between 5 million shares and 9,999,999 shares. Finally, Tracking Order Tier 3 currently offers ETP Holders a credit of \$0.001 per share for Tracking Orders that result in executions on the Exchange with an average daily share volume per month between 1 million shares and 4,999,999 shares.<sup>10</sup>

No ETP Holder has qualified for the Tracking Order Tier 1 and Tracking Order Tier 2 pricing tiers in the last six months. Given that the pricing incentives offered under these tiers have not served to meaningfully increase activity on the Exchange or attract order flow in any meaningful way, the Exchange proposes to eliminate the Tracking Order Tier 1 and Tracking Order Tier 2 pricing tiers and remove them from the Fee Schedule. Given that the Tracking Order functionality continues to be available on the Exchange, the Exchange proposes to retain Tracking Order Tier 3, which provides the minimum level of credit for the use of Tracking

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<sup>8</sup> See NYSE Arca Rule 7.31-E(d)(4). A Tracking Order is an order to buy (sell) with a limit price that is not displayed, does not route, must be entered in round lots and designated Day, and trades only with an order to sell (buy) that is eligible to route.

<sup>9</sup> See Securities Exchange Act Release No. 60944 (November 5, 2009), 74 FR 58668 (November 13, 2009) (SR-NYSEArca-2009-99). See also Securities Exchange Act Release No. 66379 (February 10, 2012), 77 FR 9277 (February 16, 2012) (SR-NYSEArca-2012-11).

<sup>10</sup> See Securities Exchange Act Release No. 66568 (March 9, 2012), 77 FR 15819 (March 16, 2012) (SR-NYSEArca-2012-17).

Orders on the Exchange. The Exchange also proposes to amend the volume requirement applicable to current Tracking Order Tier 3 so that the \$0.001 per share credit would be applicable for Tracking Orders that result in executions on the Exchange with an average daily volume per month of at least 1 million shares. Finally, with the proposed elimination of Tracking Order Tier 1 and Tracking Order Tier 2 pricing tiers, the Exchange proposes to rename current Tracking Order Tier 3 as Tracking Order Tier 1.

The proposed changes are not otherwise intended to address any 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,<sup>11</sup> in general, and furthers the objectives of Sections 6(b)(4) and(5) of the Act,<sup>12</sup> 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 proposed rule change to eliminate the Tier 2 credit of \$0.0031 per share for orders that provide liquidity in Tape A and Tape C Securities, and \$0.0024 per share for orders that provide liquidity in Tape B Securities, and eliminate the Tracking Order Tier 1 and Tracking Order Tier 2 pricing tiers is reasonable because each of the pricing tiers that are the subject of this proposed rule change have been underutilized and have generally not incentivized ETP Holders to bring liquidity and increase trading on the Exchange. In the last six

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<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(4) and (5).

months, no ETP Holder has availed itself of the higher Tier 2 credit. Similarly, no ETP Holder has qualified for Tracking Order Tier 1 and Tracking Order Tier 2 pricing tiers in the last six months. The Exchange does not anticipate any ETP Holder in the near future to qualify for any of the tiers that are the subject of this proposed rule change. The Exchange believes it is reasonable to eliminate requirements and credits, and even entire pricing tiers, when such incentives become underutilized. The Exchange believes eliminating underutilized incentive programs would also simplify the Fee Schedule. The Exchange further believes that removing reference to the pricing tiers that the Exchange proposes to eliminate from the Fee Schedule would also add clarity to the Fee Schedule. The Exchange believes that eliminating requirements and credits, and even entire pricing tiers, from the Fee Schedule when such incentives become ineffective is equitable and not unfairly discriminatory because the requirements, and credits, and even entire pricing tiers, would be eliminated in their entirety and would no longer be available to any ETP Holder.

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,<sup>13</sup> 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.

*Intramarket Competition.* The Exchange's proposal to eliminate certain requirements and credits, and pricing tiers in their entirety, will not place any undue burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act given

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<sup>13</sup> 15 U.S.C. 78f(b)(8).

that not a single ETP Holder has qualified for any of the credits under the pricing tiers that are the subject of this proposed rule change in the past six months. To the extent the proposed rule change places a burden on competition, any such burden would be outweighed by the fact that none of the pricing tiers proposed for deletion have served their intended purpose of incentivizing ETP Holders to more broadly participate on the Exchange. Moreover, ETP Holders can choose to trade on other venues to the extent they believe that the credits provided are too low or the qualification criteria are not attractive.

*Intermarket Competition.* The Exchange believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchanges and off-exchange venues if they deem fee levels at those other venues to be more favorable. Market share statistics provide ample evidence that price competition between exchanges is fierce, with liquidity and market share moving freely from one execution venue to another in reaction to pricing changes. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with off-exchange venues. 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 does not believe this proposed fee change would 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)<sup>14</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>15</sup> 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)<sup>16</sup> 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEARCA-2021-60 on the subject line.

#### Paper comments:

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission,

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<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(2).

<sup>16</sup> 15 U.S.C. 78s(b)(2)(B).

100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEARCA-2021-60. 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-2021-60 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.<sup>17</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>17</sup> 17 CFR 200.30-3(a)(12).