

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-92405; File No. SR-NYSEArca-2021-56)

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 listing fee schedule

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 30, 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 listing fee schedule to modify the initial listing fees for equity securities and warrants and adopt fee provisions specific to groups of three or more listed REITs under common control. 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

Initial Listing Fees

NYSE Arca charges initial listing fees for the listing of common stock, preferred stock and warrants of operating companies based on the number of shares of the issuer outstanding at the time of initial listing (or, in the case of listed foreign private issuers, the number of shares outstanding in the United States), based on the following current schedule:

Up to and including 30 million shares outstanding -- \$100,000

More than 30 million shares outstanding up to and including 50 million shares outstanding -- \$125,000

More than 50 million shares outstanding -- \$150,000

The Exchange proposes to reduce the initial fee levels to the following:

Up to and including 30 million shares outstanding -- \$55,000

More than 30 million shares outstanding up to and including 50 million shares outstanding -- \$60,000

More than 50 million shares outstanding -- \$75,000

The Exchange believes that these proposed fee levels are more consistent with its actual costs in processing listing applications than those charged under the current fee schedule.

REIT Group Fee Discount

The Exchange proposes to provide group discounts for listings of common stock, preferred stock and warrants where three or more real estate investment trusts (“REITs”) are listed on the Exchange and are externally managed by the same entity or entities under common control.

Initial Listing Fee Discount: As proposed, if substantially all of the operations of three or more REITs that list in the same calendar year are externally managed by the same entity or by entities under common control, the initial listing fees payable by such REITs will be capped at an aggregate of \$165,000 (the “REIT Group Cap”), to be divided among such issuers in proportion to the shares they list at the time of initial listing. The applicability of the REIT Group Cap to REITs listed during a calendar year will be determined at the end of such calendar year. If a REIT is entitled to a reduced listing fee under the REIT Group Cap, such REIT will be entitled to receive a credit against the following calendar year’s annual fee and, where applicable, annual fees payable in subsequent calendar years.

Annual Fee Discount: As proposed, if substantially all of the operations of each of a group of three or more listed REITs are externally managed by the same entity or by entities under common control, each REIT in the group will receive a 50% discount on the applicable Annual Fees in relation to any year or portion of a year for which the common management relationship continues in existence.⁴

⁴ The following is the Annual Fee schedule for common stock and preferred stock:

Up to and including 10 million shares -- \$30,000
More than 10 million shares up to and including 100 million shares --
\$30,000 plus \$0.000375 per share above 10 million
More than 100 million shares -- \$85,0000

A limited number of publicly traded REITs have their operations externally managed by another entity pursuant to a management agreement. Typically, the REIT itself does not have any direct employees. Rather, the external manager is entirely responsible for managing and staffing the operations of the company, in return for management fees and the reimbursement of expenses as set forth in the management agreement. In a limited number of cases, a single entity or affiliated entities may externally manage more than one REIT. As an incentive for all the REITs in such a group to list on the Exchange and to reflect the efficiencies described below, the Exchange believes that it is appropriate to offer a group discount on initial listing fees and annual fees when there are at least three REITs under common management.

The Exchange believes that the proposed initial and annual fee discounts for a group of three or more REITs that are under common control is equitable and is not unfairly discriminatory, as there are meaningful efficiencies for the Exchange in dealing with the same external management team for multiple REITs. The resources the Exchange expects to expend when dealing with a single external manager in processing the new listing of multiple REITs in a single calendar year or with respect to the ongoing client service and compliance review of multiple REITs under common control are significantly less than would be the case for a REIT that is not part of such a group, so the Exchange believes the proposed discount is appropriate.

The Exchange notes that the New York Stock Exchange provides an annual fee discount for REITs that are externally managed by the same entity or by entities under common control.⁵

⁵ See Section 902.03A of the NYSE Listed Company Manual.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁶ in general, and furthers the objectives of Section 6(b)(4)⁷ 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 6(b)(5) of the Act,⁸ 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 operates in a highly competitive marketplace for the listing of equity securities. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets.

The Exchange believes that the ever shifting market share among the exchanges with respect to new listings and the transfer of existing listings between competitor exchanges demonstrates 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

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4).

⁸ 15 U.S.C. 78f(b)(5).

The Exchange believes that the proposed modification to the initial listing fee schedule is equitable and is not unfairly discriminatory as it will be applied to all listing applicants in a consistent and transparent manner and is being proposed for the purpose of aligning initial listing fees more closely with the Exchange's actual costs in processing new listings.

The Exchange believes that the proposed initial and annual fee discounts for a group of three or more REITs that are under common control is equitable and is not unfairly discriminatory, as there are meaningful efficiencies for the Exchange in dealing with the same external management team for multiple REITs. The resources the Exchange expects to expend when dealing with a single external manager in processing the new listing multiple REITs in a single calendar year or with respect to the ongoing client service and compliance review of multiple REITS under common control are significantly less than would be the case for a REIT that is not part of such a group, so the Exchange believes the proposed discount is appropriate.

The Exchange does not expect the proposed rule changes would affect the Exchange's commitment of resources to its regulatory programs.

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.

Intramarket Competition: All operating companies listing on the Exchange will be eligible to avail themselves of the proposed modified initial fee schedule. Therefore, the Exchange does not believe that the proposed changes to the initial listing fee schedule will have any meaningful effect on the competition among issuers listed on the Exchange. The purpose of the proposed group discount for REITs under common external management is recognize the significant efficiencies the Exchange experiences in dealing with a common manager for multiple issuers. As

only a small percentage of listed companies are expected to qualify for the proposed discount, the Exchange does not believe that it will have any meaningful effect on the competition among issuers listed on the Exchange.

Intermarket Competition: The Exchange operates in a highly competitive market in which issuers can readily choose to list new securities on other exchanges and transfer listings to other exchanges if they deem fee levels at those other venues to be more favorable. Because competitors are free to modify their own fees in response, and because issuers may change their listing venue, the Exchange does not believe its proposed fee changes 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

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).

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 No. SR-NYSEArca-2021-56 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, D.C. 20549-1090.

All submissions should refer to File No. NYSEArca-2021-56. 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, D.C. 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 No. NYSEArca-2021-56, 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).