

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-92536; File No. SR-NYSEARCA-2021-66)

July 30, 2021

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Reformat the Basic Rates Section of 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 20, 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 reformat the Basic rates section of the NYSE Arca Equities Fees and Charges (“Fee Schedule”) applicable to securities priced at or above \$1.00 and the rates applicable to securities priced below \$1.00 without making any substantive changes to the current fees and credits for each group of securities. The Exchange proposes to implement the fee changes effective July 20, 2021.<sup>4</sup> The proposed

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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.

<sup>4</sup> The Exchange originally filed to amend the Fee Schedule on July 1, 2021 (SR-NYSEArca-2021-59). SR-NYSEArca-2021-59 was subsequently withdrawn and replaced by SR-NYSEArca-2021-62. SR-NYSEArca-2021-62 was subsequently withdrawn and replaced by this filing.

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 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 reformat the Basic rates section of the Fee Schedule applicable to securities priced at or above \$1.00 and the rates applicable to securities priced below \$1.00 without making any substantive changes to the current fees and credits for each group of securities. The Exchange proposes to implement the fee changes effective July 20, 2021.

The Exchange proposes the following non-substantive changes to reorganize the presentation of the Fee Schedule in order to enhance its clarity and transparency, thereby making the Fee Schedule easier to navigate.

In connection with the proposed rule change, the Exchange would add new section I titled “Definitions” that would adopt several definitions that would apply only for purposes of the fees and credits on the Fee Schedule. As proposed, section I would set forth the following twelve definitions applicable to Exchange Transactions:

- “**ADV**” would mean average daily volume.
- “**Adding Liquidity**” would mean the execution of an order on the Exchange that provided liquidity.
- “**Auction**” would mean Early Open Auction, Core Open Auction, Trading Halt Auction and Closing Auction on NYSE Arca.
- “**Auction Orders**” would mean Market Orders, Market-On-Close Orders, Limit-On-Close Orders and Auction-Only Orders executed in a NYSE Arca auction.
- “**Cboe BZX Auction**” would mean orders routed for execution in the open or closing auction on Cboe BZX.
- “**Closing Orders**” would mean Market, Market-On-Close, Limit-On-Close, and Auction-Only Orders executed in a Closing Auction.
- “**Nasdaq Auction**” would mean orders routed for execution in the open or closing auction on Nasdaq.
- “**NYSE American Auction**” would mean orders routed for execution in the open or closing auction on NYSE American.
- “**NYSE Auction**” would mean orders routed for execution in the open or closing auction on NYSE.
- “**Opening Orders**” would mean Market and Auction-Only Orders executed in an Early Open Auction, Core Open Auction or Trading Halt Auction.
- “**Removing Liquidity**” would mean the execution of an order that removed liquidity.

- “US CADV” would mean the United States consolidated average daily volume of transactions reported to a securities information processor (“SIP”). Transactions that are not reported to a SIP are not included in the US CADV.<sup>5</sup>

The Exchange proposes these definitions to use consistent terms throughout the Fee Schedule relating to Exchange Transactions. Specifically, the Exchange proposes to use the term “Adding Liquidity” when referring to an order that when executed, provides liquidity, and to use the term “Removing Liquidity” when referring to an order that when executed, takes liquidity. By consolidating definitions used in this part of the Fee Schedule, the Exchange would eliminate the need to separately define these terms within the tables of the Fee Schedule or in footnotes. Additionally, with the proposed adoption of the terms ADV and US CADV in proposed Section I of the Fee Schedule, the Exchange proposes to delete references to current footnotes 3 and 4 throughout the Fee Schedule, where footnote 3 of the Fee Schedule currently defines the term US CADV and footnote 4 of the Fee Schedule currently defines the term ADV. The Exchange further proposes to amend current footnote 1 to delete an internal reference to footnote 3 and delete the words “average daily volume” as the definition for ADV now appears in proposed Section I titled Definitions. The Exchange also proposes to renumber footnotes

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<sup>5</sup> The proposed definition differs from the definition in current footnote 3, which is marked for deletion under this proposed rule change. The current definition includes a reference to odd lots that is no longer applicable. The current definition also includes references to exclusion of volume on days when the market closes early and the date of the annual reconstitution of the Russell Investments Indexes. The references to exclusion of volume appear in current footnote 1 and would therefore continue to apply to Exchange Transactions.

through the Fee Schedule in conjunction to the changes discussed herein.<sup>6</sup>

Next, the Exchange proposes to add new section II titled “General” that would set forth general information regarding the way the Exchange has always interpreted and applied fees and credits to Exchange Transactions. As proposed, this section would contain the following general information applicable to Exchange Transactions:

- Rebates indicated by parentheses ( ).
- All fees and credits and tier requirements apply to ETP Holders and Market Makers.
- All fees and credits are per share unless noted otherwise.

Next, the Exchange proposes a non-substantive change to the presentation of the Basic rates applicable to securities priced at or above \$1.00 and the rates applicable to securities priced below \$1.00.<sup>7</sup> The Exchange proposes a table presentation. The proposed changes would appear in the Fee Schedule in two tables, one that would appear under proposed new section III titled “Standard Rates - Transactions” and a second table that would appear under proposed new section V titled “Standard Rates - Routing.”<sup>8</sup> The

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<sup>6</sup> In connection with the proposed renumbering of footnotes, the Exchange also proposes to delete current footnote 6 in its entirety because the Exchange previously removed the term “Allied Person” from its rules. See Securities Exchange Act Release No. 84857 (December 19, 2018), 83 FR 66824 (December 27, 2018) (SR-NYSEArca-2018-97).

<sup>7</sup> In connection with this change, the Exchange proposes to amend the description of Rounds Lots and Odd Lots under Exchange Transactions to include both securities with a Per Share Price \$1.00 or Above and securities with a Per Share Price Below \$1.00. This proposed change would provide consistency between the description and the table presentation which includes rates for both groups of securities.

<sup>8</sup> With this proposed rule change, the Exchange also proposes to use the term “Standard” rates rather than “Basic” rates.

Exchange also proposes to simplify the presentation in each table by using sub-titles to identify the type of activity (i.e., Adding Liquidity, Adding Liquidity - Retail Orders, Adding Liquidity - MPL Orders, Removing Liquidity, Opening Orders and Closing Orders in the table titled “Standard Rates - Transactions”) and then listing the corresponding rates under each category. The proposed changes would appear as follows in the Fee Schedule:

**Standard Rates - Transactions (applicable when Tier Rates do not apply):**

Category	Adding Liquidity <sup>(a)(b)</sup>	Adding Liquidity - Retail Orders <sup>(c)</sup>	Adding Liquidity - MPL Orders	Removing Liquidity <sup>(d)</sup>	Opening Orders <sup>(e)(g)</sup>	Closing Orders <sup>(f)(g)</sup>
Securities priced at or above \$1.00	(\$0.0020)	(\$0.0032)	(\$0.0010)	\$0.0030	\$0.0015; \$0.0005 for Retail Orders	\$0.0012; \$0.0008 for Retail Orders
Securities priced below \$1.00	(\$0.00004)	(\$0.00004)	(\$0.00004)	0.295% of Dollar Value	0.1% of Dollar Value	0.1% of Dollar Value

**Standard Rates - Routing:**

Category	Orders routed that remove liquidity	Primary Until 9:45 Orders and Primary After 3:55 Orders designated as Retail Orders and routed to the primary market	Primary Only (“PO”) Orders in Tape A Securities routed to NYSE that add liquidity	PO Orders in Tape B Securities routed to NYSE American that add liquidity	PO Orders in Tape A Securities routed to NYSE Auction	PO Orders in Tape B Securities routed to NYSE American Auction	PO Orders in Tape B Securities routed to Cboe BZX Auction	PO Orders in Tape C Securities routed to NASDAQ Auction
Securities priced at or above \$1.00	\$0.0035	\$0.0010	(\$0.0012)	No Credit	\$0.0010	\$0.0005	\$0.0030	\$0.0030

Securities priced below \$1.00	0.3% of Dollar Value <sup>(a)</sup>	n/a	n/a	n/a	n/a	n/a	n/a	n/a
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The Exchange notes that each of the rates that currently appear in the Basic rates section of the Fee Schedule, with one exception discussed below, and in the section of the Fee Schedule applicable to securities priced below \$1.00 have been relocated in the tables proposed above and in proposed footnotes (a) through (g) for the table under proposed section III titled “Standard Rates - Transactions” and in proposed footnote (a) for the table under proposed section V titled “Standard Rates - Routing.” The Exchange proposes to relocate certain of these rates in footnotes because these rates do not have a logical place in the proposed tables. The proposed footnotes under proposed section III titled “Standard Rates - Transactions” would be as follows:

- (a) For securities priced at or above \$1.00, an additional credit in Tape B Securities shall apply to LMMs and to Market Makers affiliated with LMMs that provide displayed liquidity based on the number of Less Active ETP Securities in which the LMM is registered as the LMM. The applicable tiered-credits are noted below (See LMM Transaction Fees and Credits).
- (b) In securities priced below \$1.00, this credit applies to all orders that provide liquidity.
- (c) Retail Order means an order as defined in Rule 7.44-E(a)(3).
- (d) In securities priced at or above \$1.00, this fee also applies to Non-Displayed Limit Orders that remove liquidity.
- (e) In securities priced at or above \$1.00, this fee is capped at \$20,000 per

month per Equity Trading Permit ID.

- (f) Fee applies to orders in Tape A Securities, Tape C Securities, and NYSE Arca primary listed securities (includes all ETFs/ETNs).
- (g) In securities priced at or above \$1.00, this fee applies to executions resulting from Auction Orders. In securities priced below \$1.00, this fee applies to all orders executed in the Early Open Auction, Core Open Auction, Trading Halt Auction or Closing Auction.

Additionally, the proposed footnote under proposed section V titled “Standard Rates - Routing” would be as follows:

- (a) Applicable to orders of listed and Nasdaq securities routed away and executed by another market center or participant.

As noted above, each of the rates that currently appear in the Basic rates section of the Fee Schedule have been relocated in the proposed new table format. With respect to MPL orders, the Exchange proposes to relocate the base credit of \$0.0010 per share for MPL orders that provide liquidity<sup>9</sup> to the table titled “Standard Rates - Transactions” and relocate the remaining two tiers of MPL order credits to the Tier Rates section of the Fee Schedule. The Exchange believes the proposed new location for these credits is a logical place as they would appear along with tiered pricing related to MPL Orders, i.e., MPL Orders Step Up Tier 1 and MPL Orders Step Up Tier 2.

Further, the Exchange proposes to relocate and display certain rates in bullet form because these rates do not have a logical place in the proposed tables. Accordingly, the

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<sup>9</sup> The base credit of \$0.0010 per share applies for MPL orders providing liquidity when MPL Adding ADV during the billing month is less than 1.5 million shares.



Exchange proposes new section IV titled “Other Standard Rates for Securities with a Per Share Price \$1.00 or Above” that would provide these additional rates, as follows:

- No fee or credit for Non-Displayed Limit Orders that add liquidity.
- \$0.0030 fee for MPL Orders removing liquidity; \$0.0010 if such orders are designated as Retail Orders.
- \$0.0006 fee for executions in an Auction other than for executions from Auction Orders.

Next, the Exchange proposes to adopt the heading “Tier Rates - Round Lots and Odd Lots (Per Share Price \$1.00 or Above)” under proposed new section VI that would appear at the end of the proposed new section V titled “Standard Rates - Routing” to distinguish Standard Rates from Tier Rates, which begin on the Fee Schedule with Tier 1.

Finally, with the proposed relocation of the rates applicable to securities priced below \$1.00 from their current location on the Fee Schedule to the proposed table presentation, the Exchange proposes to adopt the heading “Tier Rates - Round Lots and Odd Lots (Per Share Price below \$1.00)” under proposed new section VII and keep the Sub-Dollar Adding Step Up Tier where it currently appears and that pricing tier would be the only pricing tier under this section.

As noted above, the Exchange is not proposing any substantive change to any current fee or credit. The purpose of the proposed rule change is to make a non-substantive change to reorganize the presentation of the Fee Schedule in order to enhance its clarity and transparency, thereby making the Fee Schedule easier to navigate.

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 the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>10</sup>

Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>11</sup> which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>12</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed changes are reasonable and equitable because they are clarifying, and non-substantive and the Exchange is not changing any current fees or credits that apply to trading activity on the Exchange or to routed executions. Further, the changes are designed to make the Fee Schedule easier to read and make it more user-friendly to better display the allocation of fees and credits among Exchange members. The Exchange believes that this proposed format will provide additional transparency of Exchange fees and credits. The Exchange also believes that the proposal is non-discriminatory because it applies uniformly to all ETP Holders, and again, the Exchange is not making any changes to existing fees and credits. Finally, the

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<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(4).

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

Exchange believes that the reformatted Fee Schedule, as proposed herein, will be clearer and less confusing for investors and will eliminate potential investor confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

The Exchange believes that the proposed reformatted the Fee Schedule is equitable and not unfairly discriminatory because the resulting streamlined Fee Schedule would continue to apply to ETP Holders as it does currently because the Exchange is not adopting any new fees or credits or removing any current fees or credits from the Fee Schedule that impact ETP Holders. All ETP Holders would continue to be subject to the same fees and credits that currently apply to them.

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 reformat its Fee Schedule will not place any undue burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because all ETP Holders would continue to be subject to the same fees and credits that currently apply to them. The Exchange notes that the proposal does not change the amount of any current fees or rebates, but rather makes clarifying and formatting changes, and therefore does not raise

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

any competitive issues. To the extent the proposed rule change places a burden on competition, any such burden would be outweighed by the fact that a streamlined Fee Schedule would promote clarity and reduce confusion with respect to the fees and credits that ETP Holders would be subject to.

*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.

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

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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).

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- 66 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-2021-66. 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

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

<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-2021-66 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).