

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-92936; File No. SR-NYSEArca-2021-78)

September 10, 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)¹ of the Securities Exchange Act of 1934 (the “Act”),² and Rule 19b-4 thereunder,³ notice is hereby given that on September 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 eliminate the Step Up Tier 3 and Step Up Tier 5 pricing tiers. The Exchange proposes to implement the fee changes effective September 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 the Fee Schedule to eliminate the Step Up Tier 3 and Step Up Tier 5 pricing tiers. The Exchange proposes to implement the fee changes effective September 1, 2021.

Currently, to qualify for the Step Up Tier 3 credit, an ETP Holder⁴ must execute providing ADV⁵ per month of 0.15% or more, but less than 0.20% of the US CADV⁶ and directly execute providing ADV that is an increase of no less than 0.075% of US CADV for that month over the ETP Holder’s providing ADV in May 2018.⁷ If an ETP Holder meets the Step Up Tier 3 requirement, such ETP Holder is eligible to earn a credit of \$0.0025 per share for orders that provide displayed liquidity in Tape A and Tape C securities, and a credit of \$0.0022 per share for orders that provide displayed liquidity in Tape B securities.

Additionally, to qualify for the Step Up Tier 5 credits, an ETP Holder must execute providing ADV per month that is at least 0.20% of US CADV and execute providing ADV per month as a percentage of US CADV that is at least two times more than that ETP Holder’s

⁴ All references to ETP Holders in connection with this proposed fee change include Market Makers.

⁵ ADV means average daily volume. See Fee Schedule, Section I. Definitions.

⁶ US CADV means 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. See Fee Schedule, Section I. Definitions.

⁷ See Securities Exchange Act Release No. 84103 (September 12, 2018), 83 FR 47216 (September 8, 2018) (SR-NYSEArca-2018-66).

providing ADV in April 2020 as a percentage of US CADV.⁸ If an ETP Holder meets the Step Up Tier 5 requirement, such ETP Holder is eligible to earn a credit of \$0.0032 per share for orders that provide liquidity in Tape A, Tape B and Tape C securities.

The Exchange proposes to eliminate both the Step Up Tier 3 and Step Up Tier 5 pricing tiers and remove each pricing tier from the Fee Schedule because the pricing tiers have been underutilized by ETP Holders. The Exchange has observed that not a single ETP Holder has qualified for either of the pricing tiers proposed for elimination in the last six months. Since both the Step Up Tier 3 and Step Up Tier 5 pricing tiers have not been effective in accomplishing their intended purpose, which is to incent ETP Holders to increase their liquidity adding activity on the Exchange, the Exchange has determined to eliminate each of these pricing tiers from the Fee Schedule.

With the proposed elimination of Step Up Tier 3 and Step Up Tier 5, the Exchange proposes to rename current Step Up Tier 4 as Step Up Tier 3.

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,⁹ in general, and furthers the objectives of Sections 6(b)(4) and(5) of the Act,¹⁰ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other

⁸ See Securities Exchange Act Release No. 88833 (May 7, 2020), 85 FR 28676 (May 13, 2020) (SR-NYSEArca-2020-39).

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4) and (5).

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 Step Up Tier 3 and Step Up Tier 5 pricing tiers is reasonable because each of the pricing tiers that are the subject of this proposed rule change have been underutilized and have not incentivized ETP Holders to bring liquidity and increase trading on the Exchange. No ETP Holder has availed itself of either of the pricing tiers in the last six months. The Exchange does not anticipate any ETP Holder in the near future to qualify for either 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. All ETP Holders would continue to be subject to the same fee structure, and access to the Exchange's market would continue to be offered on fair and nondiscriminatory terms. The Exchange also believes that the proposed change would protect investors and the public interest because the deletion of underutilized pricing tiers would make the Fee Schedule more accessible and transparent and facilitate market participants' understanding of the fees charged for services currently offered by the Exchange.

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,¹¹ 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 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 that not a single ETP Holder has qualified for the credits under either of the pricing tiers that are the subject of this proposed rule change for the last 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

¹¹ 15 U.S.C. 78f(b)(8).

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)¹² of the Act and subparagraph (f)(2) of Rule 19b-4¹³ 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)¹⁴ of the Act to determine whether the proposed rule change should be approved or disapproved.

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(2).

¹⁴ 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-2021-78 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-2021-78. 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-2021-78, 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.¹⁵

J. Matthew DeLesDernier
Assistant Secretary

¹⁵ 17 CFR 200.30-3(a)(12).