

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- 98347; File No. SR-NYSEARCA-2023-59)

September 11, 2023

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) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that, on August 28, 2023, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (“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 fees and credits applicable to the Retail Liquidity Program. The Exchange proposes to implement the fee change effective August 28, 2023. 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 eliminate the fees and credits applicable to the Retail Liquidity Program. The Exchange proposes to implement the fee change effective August 28, 2023.

The Retail Liquidity Program (“Program”) is designed to attract retail order flow in NYSE Arca-listed securities and securities traded pursuant to unlisted trading privileges while also providing the potential for price improvement to this order flow.³ Under the Program, a class of market participant called Retail Liquidity Providers (“RLPs”) are able to provide potential price improvement to retail investor orders in the form of a non-displayed order that is priced better than the best protected bid or offer, called a Retail Price Improvement Order (“RPI Order”).⁴ When there is an RPI Order in a particular security, the Exchange disseminates an indicator, known as the Retail Liquidity Identifier, that such interest exists.⁵ Retail Member Organizations (“RMOs”) can submit a Retail Order to the Exchange, which interacts, to the extent possible, with available contra-side RPI Orders and then may interact with other liquidity on the Exchange or elsewhere, depending on the Retail Order’s instructions.⁶ The segmentation in the Program is intended to allow retail order flow to receive potential price improvement as a

³ The Retail Liquidity Program was established on a pilot basis in 2013 and was approved by the Commission to operate on a permanent basis in 2019. See Securities Exchange Act Release No. 87350 (October 18, 2019), 84 FR 57106 (October 24, 2019) (SR-NYSEArca-2019-63).

⁴ See Rules 7.44-E(a)(1) (defining an RLP) and 7.44-E(a)(4) (defining RPI Order).

⁵ See Rule 7.44-E(j).

⁶ See Rule 7.44-E(a)(2) (defining RMO); Rules 7.44-E(a)(3) and 7.44-E(k) (describing Retail Orders).

result of their order flow being deemed more desirable by liquidity providers. ETP Holders other than RLPs are also permitted, but not required, to submit RPIs.

The Exchange currently provides RLP executions of RPIs against Retail Orders with a credit of \$0.0003 per share.⁷ An RMO Retail Order that executes outside of the Retail Liquidity Program is considered just a Retail Order (not an “RMO” Retail Order) and receives pricing applicable to Tiered or Standard Rates in the Fee Schedule.⁸ In addition, RMOs are not currently charged a fee or provided with a credit for executions of Retail Orders if executed against RPIs and other price-improving interest.

The Exchange recently filed a proposed rule change to discontinue the Retail Liquidity Program on the Exchange,⁹ effective August 28, 2023.¹⁰ As a result, the Retail Liquidity Program has become obsolete. Therefore, the Exchange proposes to eliminate the Retail Liquidity Program and remove it, along with references to RPI and RMO in footnote 2, from the Fee Schedule.

The proposed rule changes are intended to streamline the Fee Schedule by eliminating credits and fees that have become obsolete.

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.

⁷ See Securities Exchange Act Release No. 71722 (March 13, 2014), 79 FR 15376 (March 19, 2014) (NYSEARCA–2014–22); See also Securities Exchange Act Release No. 73013 (September 5, 2014), 79 FR 54322 (September 11, 2014) (NYSEARCA–2014–95).

⁸ As is currently the case, applicable charges are based on an ETP Holder’s qualifying levels, and if an ETP Holder qualifies for more than one tier in the Fee Schedule, the Exchange applies the most favorable rate available under such tiers.

⁹ See Securities Exchange Act Release No. 98168 (August 18, 2023) (SR-NYSEARCA-2023-55).

¹⁰ See https://www.nyse.com/publicdocs/nyse/notifications/trader-update/110000633192/NYSE_National_Retail_Liquidity_Program_August_2023.pdf.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Sections 6(b)(4) and(5) of the Act,¹² 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 it is reasonable to eliminate credits and fees associated with the Retail Liquidity Program when such fees and credits become obsolete. In particular, the Exchange believes that the proposed rule change to eliminate the fees and credits associated with the Retail Liquidity Program is reasonable because the Exchange intends to no longer operate this activity thus rendering the financial incentives associated with the Retail Liquidity Program as unnecessary. The Exchange believes that amending the Fee Schedule to remove fees and credits associated with the Retail Liquidity Program would promote the protection of investors and the public interest because it would promote clarity and transparency in the Fee Schedule.

The Exchange believes that the proposed rule change is reasonable because it would also streamline the Fee Schedule by deleting obsolete rule text. The Exchange believes deleting obsolete rule text would promote clarity to the Fee Schedule and reduce confusion to ETP Holders as to which fees and credits are applicable to their trading activity on the Exchange. The Exchange believes it is reasonable to delete the obsolete fees and credits from the Fee Schedule and thereby, streamline the Fee Schedule, to promote clarity and reduce confusion as to the

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(4) and (5).

applicability of fees and credits that ETP Holders would be subject to. The Exchange believes deleting obsolete fees and credits would also simplify the Fee Schedule.

The Exchange believes that deleting obsolete fees and credits from 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,¹³ 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 delete obsolete fees and credits from the 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. 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.

¹³ 15 U.S.C. 78f(b)(8).

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 has become effective upon filing pursuant to Section 19(b)(3)(A)¹⁴ of the Act and paragraph (f) thereunder. 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.

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:

¹⁴ 15 U.S.C. 78s(b)(3)(A).

Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSEARCA-2023-59 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-2023-59. This file number should be included on the subject line if email 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 (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright

protection. All submissions should refer to file number SR-NYSEARCA-2023-59 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Sherry R. Haywood,

Assistant Secretary.

¹⁵ 17 CFR 200.30-3(a)(12).