

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-89797; File No. SR-NYSEArca-2020- 81)

September 9, 2020

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 September 1, 2020, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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 method to qualify for the Tape B Tier 1 pricing tier, and (2) eliminate the Retail Order Step-Up Tier 1 pricing tier. The Exchange proposes to implement the fee changes effective September 1, 2020. 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 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to (1) eliminate an alternative method to qualify for the Tape B Tier 1 pricing tier, and (2) eliminate the Retail Order Step-Up Tier 1 pricing tier. The Exchange proposes to implement the fee changes effective September 1, 2020.

ETP Holders³ currently qualify for a Tape B Tier 1 credit of \$0.0030⁴ per share when, on a daily basis, measured monthly, they directly execute providing volume in Tape B securities that is equal to at least 1.50% of Tape B US consolidated average daily volume ("US CADV")⁵ for the billing month.⁶ In February 2020, the Exchange adopted an alternative method for ETP Holders to qualify for the Tape B Tier 1 credit.⁷ In March 2020, the Exchange amended the

³ All references to ETP Holders in connection with this proposed fee change include Market Makers.

⁴ Under the Basic Rate, ETP Holders receive a credit of \$0.0020 per share for Tape B orders that provide liquidity to the Book.

⁵ US CADV means United States Consolidated Average Daily Volume for transactions reported to the Consolidated Tape, excluding odd lots through January 31, 2014 (except for purposes of Lead Market Maker pricing), and excludes volume on days when the market closes early and on the date of the annual reconstitution of the Russell Investments Indexes. Transactions that are not reported to the Consolidated Tape are not included in US CADV. See Fee Schedule, footnote 3.

⁶ See Securities Exchange Act Release No. 76084 (October 6, 2015), 80 FR 61529 (October 13, 2015) (SR-NYSEArca-2015-87).

⁷ See Securities Exchange Act Release No. 88194 (February 13, 2020), 85 FR 9820 (February 20, 2020) (SR-NYSEArca-2020-12).

percentage CADV requirement applicable under the alternative method.⁸ Pursuant to the alternative method, an ETP Holder could qualify for the Tape B Tier 1 credit if the ETP Holder is affiliated with an OTP Holder or OTP Firm that provides an ADV of electronic posted executions for the account of a market maker in all issues on NYSE Arca Options (excluding mini options) of at least 0.55% of total Customer equity and ETF option ADV as reported by The Options Clearing Corporation (“OCC”) and the ETP Holder directly executes providing volume in Tape B securities during the billing month that is equal to

- at least 1.00% of US Tape B CADV for the billing month of March, April and May 2020
- at least 1.15% of US Tape B CADV for the billing month of June, July and August 2020
- at least 1.25% of US Tape B CADV for the billing month of September 2020 and each billing month thereafter.

The Exchange proposes to eliminate the alternative method for ETP Holders to qualify for the Tape B Tier 1 credit and remove it from the Fee Schedule. The Exchange has observed that just one ETP Holder has qualified under the alternative method since it was adopted. Further, since March 2020, no ETP Holder affiliated with an OTP Holder or OTP Firm has qualified for the Tape B Tier 1 credit under the alternative method.⁹ Given that the alternative method has not served to meaningfully increase activity on the Exchange or improve the quality of the market, the Exchange has determined to eliminate it from the Fee Schedule. The

⁸ See Securities Exchange Act Release No. 88436 (March 20, 2020), 85 FR 17112 (March 26, 2020) (SR-NYSEArca-2020-21).

⁹ There are currently 53 firms that are both ETP Holders and OTP Holders.

Exchange is not proposing any other change to Tape B Tier 1 pricing tier.

Additionally, the Exchange proposes to eliminate the Retail Order Step-Up Tier 1 pricing tier.

Currently, to qualify for the Retail Order Step-Up Tier 1 credit, an ETP Holder must execute an average daily volume (ADV) per month of Retail Orders¹⁰ with a time-in-force of Day that add or remove liquidity that is an increase of 0.12% or more of the US CADV above its April 2018 ADV taken as a percentage of US CADV.¹¹ If an ETP Holder meets the Retail Order Step-Up Tier 1 requirement, such ETP Holder is eligible to earn a credit of \$0.0033 per share for Retail Orders that provide displayed liquidity to the Book in Tape A, Tape B and Tape C securities, and is not charged a fee for Retail Orders with a time-in-force of Day that remove liquidity.

The Exchange proposes to eliminate the Retail Order Step-Up Tier 1 pricing tier and remove it from the Fee Schedule because the pricing tier has been underutilized by ETP Holders. The Exchange notes that another current pricing tier, Retail Order Step-Up Tier 3, has a lower requirement and provides a higher credit than Retail Order Step-Up Tier 1.¹² As a result, no ETP Holders have qualified for the credit under the Retail Order Step-Up Tier 1 pricing tier since the Exchange adopted the Retail Order Step-Up Tier 3. Therefore, the Exchange has determined to

¹⁰ A Retail Order is an agency order that originates from a natural person and is submitted to the Exchange by an ETP Holder, provided that no change is made to the terms of the order to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. See Securities Exchange Act Release No. 67540 (July 30, 2012), 77 FR 46539 (August 3, 2012) (SR-NYSEArca-2012-77).

¹¹ See Securities Exchange Act Release No. 83268 (May 17, 2018), 83 FR 23983 (May 23, 2018) (SR-NYSEArca-2018-34).

¹² See Securities Exchange Act Release No. 87994 (January 16, 2020), 85 FR 3955 (January 23, 2020) (SR-NYSEArca-2020-05).

eliminate the Retail Order Step-Up Tier 1 from the Fee Schedule.

With the proposed elimination of Retail Order Step-Up Tier 1, the Exchange proposes to rename current Retail Order Step-Up Tier 2 as Retail Order Step-Up Tier 1, rename current Retail Order Step-Up Tier 3 as Retail Order Step-Up Tier 2, and rename current Retail Order Step-Up Tier 4 as Retail Order 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,¹³ in general, and furthers the objectives of Sections 6(b)(4) and(5) of the Act,¹⁴ 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 alternative method to qualify for the Tape B Tier 1 pricing tier, and eliminate the Retail Order Step-Up Tier 1 pricing tier 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. Since March 2020, no ETP Holder has availed itself of the alternative method to qualify for the Tape B Tier 1 pricing tier. Similarly, no ETP Holder has qualified for Retail Order Step-Up Tier 1 since the Exchange adopted the Retail

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(4) and (5).

Order Step-Up Tier 3 in January 2020, which provides a higher credit and has a lesser requirement to qualify. 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,¹⁵ 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 that not a single ETP Holder has qualified for any of the fees and credits under any of the pricing

¹⁵ 15 U.S.C. 78f(b)(8).

tiers that are the subject of this proposed rule change for a number of 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)¹⁶ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁷ 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)¹⁸ 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. Please include File Number SR-NYSEArca-2020-81 on the subject line.

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f)(2).

¹⁸ 15 U.S.C. 78s(b)(2)(B).

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-2020-81. 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 offices 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-2020-81, 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.¹⁹

J. Matthew DeLesDernier
Assistant Secretary

¹⁹ 17 CFR 200.30-3(a)(12).