SECURITIES AND EXCHANGE COMMISSION


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 (the “Act”),2 and Rule 19b–4 thereunder,3 notice is hereby given that on May 11, 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 ispublishing 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 adopt reduced fees for Retail Orders that are executed in the Exchange’s opening and closing auctions. The Exchange proposes to implement the fee changes effective May 11, 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 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.

1. Purpose

The Exchange proposes to amend the Fee Schedule to adopt reduced fees for Retail Orders that are executed in the Exchange’s opening and closing auctions.

The proposed changes respond to the current competitive environment where order flow providers have a choice of where to direct Retail Orders by offering further incentives for ETP Holders to send such orders to the Exchange.

The Exchange proposes to implement the fee changes effective May 11, 2021.

2. Background

As noted above, the Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”

While Regulation NMS has enhanced competition, it has also fostered a “fragmented” market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that “such competition can lead to the fragmentation of order flow in that stock.” Indeed, equity trading is

**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).

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

**The Exchange originally filed to amend the Fee Schedule on May 3, 2021 (SR–NYSEArca–2021–36). SR–NYSEArca–2021–36 was subsequently withdrawn and replaced by this filing.


Currently dispersed across 16 exchanges, numerous alternative trading systems, and broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange currently has more than 17% market share. Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, the Exchange currently has less than 10% market share of executed volume of equities trading.

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products. While it is not possible to know a firm’s reason for shifting order flow, the Exchange believes that one such reason is because of fee changes at any of the registered exchanges or non-exchange venues to which a firm routes order flow. The competition for Retail Orders is even more stark, particularly as it relates to exchange versus off-exchange venues.

The Exchange thus needs to compete in the first instance with non-exchange venues for Retail Order flow, and with the 16 other exchange venues for that Retail Order flow that is not directed off-exchange. Accordingly, competitive forces compel the Exchange to use exchange transaction fees and credits, particularly as they relate to competing for Retail Order flow, because market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

Proposed Rule Change

In response to this competitive environment, the Exchange proposes to adopt reduced fees for Retail Orders that are executed in the Exchange’s opening and closing auctions. Specifically, under the Basic rates section of the Fee Schedule, the Exchange currently charges a fee of $0.0015 per share for Market and Auction-Only Orders in Tape A, Tape B and Tape C securities executed in an Early Opening Auction, Core Open Auction or Trading Halt Auction with a cap of $20,000 per Equity Trading Permit ID. This fee also applies to Retail Orders that are executed in such auctions. To attract additional Retail Orders for execution in the Exchange’s opening auctions, the Exchange proposes to adopt a lower fee of $0.0005 per share for Market and Auction-Only Orders in Tape A, Tape B and Tape C securities that are designated as Retail Orders and executed in the Early Open Auction, Core Open Auction or Trading Halt Auction.

Further, under the Basic rates section of the Fee Schedule, the Exchange currently charges a fee of $0.0012 per share for Market, Market-On-Close, Limit-On-Close, and Auction-Only Orders in Tape A, Tape B and Tape C securities executed in the Closing Auction. This fee also applies to Retail Orders executed in the Closing Auction. To attract additional Retail Orders for execution on the Exchange, the Exchange proposes to adopt a lower fee of $0.0008 per share for Market, Market-On-Close, Limit-On-Close, and Auction-Only Orders in Tape A, Tape B and Tape C securities that are designated as Retail Orders and executed in the Closing Auction.

The Exchange is not proposing any change to the cap for Market and Auction-Only Orders executed in an Early Opening Auction, Core Open Auction or Trading Halt Auction, which would remain at $20,000 per Equity Trading Permit ID.

The purpose of the proposed rule change is to encourage even greater participation from ETP Holders and promote additional liquidity in Retail Orders. As described above, ETP Holders have a choice of where to send such orders. The Exchange believes that the proposed lower fees could lead to more ETP Holders choosing to route their Retail Orders to the Exchange for execution in the opening and closing auctions rather than to a competing exchange.

The Exchange does not know how much Retail Order flow ETP Holders choose to route to other exchanges or to off-exchange venues. Without having a view of ETP Holders’ activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any ETP Holders sending more of their Retail Orders to the Exchange. The Exchange cannot predict with certainty how many ETP Holders would avail themselves of this opportunity but additional Retail Orders would benefit all market participants because it would provide greater execution opportunities in the Exchange’s opening and closing auctions.

The proposed rule change is designed to be available to all ETP Holders on the Exchange and is intended to provide ETP Holders a greater incentive to direct more of their Retail Orders for execution in the Exchange’s opening and closing auctions.

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, in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act, 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 Proposed Fee Change Is Reasonable

As discussed above, the Exchange operates in a highly fragmented and competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue to [sic] reduce use of certain categories of products, in response to fee changes. With respect to Retail Orders, ETP Holders can choose from any one of the 16 currently operating registered exchanges, and numerous off-exchange venues, to route such order flow. Accordingly, competitive forces

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12 See id.
13 See id.
14 15 U.S.C. 78f(b)(4) and (5).
reasonably constrain exchange transaction fees that relate to Retail Orders on an exchange. Stated otherwise, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

Given this competitive environment, the proposal represents a reasonable attempt to attract additional Retail Orders to the Exchange.

The Exchange believes that the proposed change to adopt lower fees for Retail Orders executed in the Exchange’s opening and closing auctions is reasonable because the lower fees would encourage ETP Holders to send a greater number of their Retail Orders for execution on the Exchange. As noted above, the Exchange operates in a highly competitive environment, particularly for attracting Retail Order flow. The Exchange believes it is reasonable to offer reduced fees for Retail Orders in the opening and closing auctions. The Exchange believes the proposed change is also reasonable because it is designed to attract higher volumes of Retail Orders transacted on the Exchange by ETP Holders which would benefit all market participants by offering greater price discovery and an increased opportunity to trade on the Exchange.

On the backdrop of the competitive environment in which the Exchange currently operates, the proposed rule change is a reasonable attempt to increase liquidity on the Exchange and improve the Exchange’s market share relative to its competitors.

The Proposed Fee Change Is an Equitable Allocation of Fees and Credits

The Exchange believes its proposal is an equitable allocation of its fees among its market participants because all ETP Holders that participate on the Exchange may qualify for the proposed reduced fee if they elect to send their Retail Orders for execution in the Exchange’s opening and closing auctions. Without having a view of ETP Holders’ activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any ETP Holder sending more of their Retail Orders to the Exchange. The Exchange cannot predict with certainty how many ETP Holders would avail themselves of this opportunity but additional Retail Orders would benefit all market participants because it would provide greater execution opportunities in the Exchange’s opening and closing auctions. The Exchange anticipates that multiple ETP Holders that engage in retail trading activity would endeavor to send more of their Retail Orders for execution in the Exchange’s opening and closing auctions and pay the proposed lower fee.

Further, given the competitive market for attracting Retail Order flow, the Exchange notes that with this proposed rule change, the Exchange’s pricing for Retail Orders that are executed in the opening and closing auctions would be lower that fees charged by other exchanges that the Exchange competes with for order flow. For example, the Nasdaq Stock Market LLC (“Nasdaq”) charges its members a fee of $0.0015 per share per share for orders, including Retail Orders, that are executed in the Nasdaq Opening Cross, and a fee that ranges between $0.0008 per share and $0.0016 per share for orders, including Retail Orders, that are executed in the Nasdaq Closing Cross.

The Exchange further believes that the proposed change is equitable because it is reasonably related to the value to the Exchange’s market quality associated with higher volume in Retail Orders. The Exchange believes that recalibrating the fees charged for execution of Retail Orders will continue to attract order flow and liquidity to the Exchange, thereby contributing to price discovery on the Exchange and benefiting investors generally.

The Exchange believes that the proposed rule change is equitable because maintaining or increasing the proportion of Retail Orders in exchange-listed securities that are executed on a registered national securities exchange (rather than relying on certain available off-exchange execution methods) would contribute to investors’ confidence in the fairness of their transactions and would benefit investors by deepening the Exchange’s liquidity pool, supporting the quality of price discovery, promoting market transparency and improving investor protection.

The Proposed Fee Change Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. In the prevailing competitive environment, ETP Holders are free to disfavor the Exchange’s pricing if they believe that alternatives offer them better value.

The Exchange believes that the proposed change is not unfairly discriminatory because it would apply to all ETP Holders on an equal and non-discriminatory basis. The Exchange believes that the proposed rule change is not unfairly discriminatory because maintaining or increasing the proportion of Retail Orders in exchange-listed securities that are executed on a registered national securities exchange (rather than relying on certain available off-exchange execution methods) would contribute to investors’ confidence in the fairness of their transactions and would benefit all investors by deepening the Exchange’s liquidity pool, supporting the quality of price discovery, promoting market transparency and improving investor protection. This aspect of the proposed rule change also is consistent with the Act because all similarly situated ETP Holders would pay the same fee for Retail Orders executed in the Exchange’s opening and closing auctions.

Lastly, the submission of Retail Orders is optional for ETP Holders in that they could choose whether to submit Retail Orders and, if they do, the extent of its activity in this regard. The Exchange believes that it is subject to significant competitive forces, as described below in the Exchange’s statement regarding the burden on competition.

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, 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. Instead, as discussed above, the Exchange believes that the proposed fee change would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for ETP Holders. As a result, the Exchange believes that the proposed change furthers the Commission’s goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes “more efficient pricing of individual stocks for all types of orders, large and small.”

Intramarket Competition. The Exchange believes the proposed amendments to its Fee Schedule would not impose any burden on competition that is not necessary or appropriate in

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furtherance of the purposes of the Act. The proposed changes are designed to
attract additional Retail Orders to the Exchange, in particular for execution in
the Exchange’s opening and closing auctions. The Exchange believes that the
proposed lower fee would incentivize market participants to direct their Retail
Orders to the Exchange. Greater overall order flow, trading opportunities, and
pricing transparency benefits all market participants on the Exchange by
enhancing market quality and continuing to encourage ETP Holders to
send orders, thereby contributing towards a robust and well-balanced
market ecosystem.

Intermarket Competition. The
Exchange operates in a highly
competitive market in which market
participants can readily choose to send
their orders to other exchange and off-
exchange venues if they deem fee levels
at those other venues to be more
favorable. As noted above, the
Exchange’s market share of intraday trading (i.e., excluding auctions) is
currently less than 10%. 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 its proposed fee change can impose any burden on intermarket
competition.

The Exchange believes that the
proposed change could promote
competition between the Exchange and
other execution venues, including those
that currently offer similar order types
and comparable transaction pricing, by
encouraging additional orders to be sent
to the Exchange for execution.

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)19 of the Act and
subparagraph (f)(2) of Rule 19b-420
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)21 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 email to rule-comments@
  sec.gov. Please include File Number SR-
  NYSEARCA–2021–40 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–2021–40. 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 (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
cautions 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–2021–40, and
should be submitted on or before June
22, 2021.

For the Commission, by the Division of
Trading and Markets, pursuant to delegated
authority.22

J. Matthew DeLosDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE
COMMISSION

Sunshine Act Meetings

TIME AND DATE: 3:15 p.m. on Thursday,
June 3, 2021.
PLACE: The meeting will be held via
remote means and/or at the
Commission’s headquarters, 100 F
Street NE, Washington, DC 20549.
STATUS: This meeting will be closed to
the public.

MATTERS TO BE CONSIDERED:
Commissioners, Counsel to the
Commissioners, the Secretary to the
Commission, and recording secretaries
will attend the closed meeting. Certain
staff members who have an interest in
the matters also may be present.

In the event that the time, date, or
location of this meeting changes, an
announcement of the change, along with
the new time, date, and/or place of the
meeting will be posted on the
Commission’s website at https://
www.sec.gov.

The General Counsel of the
Commission, or his designee, has
certified that, in his opinion, one or
more of the exemptions set forth in 5
U.S.C. 552(b)(3), (5), (6), (7), (8), (9)(B)
and (10) and 17 CFR 200.402(a)(3),
(a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and
(a)(10), permit consideration of the
scheduled matters at the closed meeting.

The subject matter of the closed
meeting will consist of the following
topics:

- Institution and settlement of
  injunctive actions;