



8011-01p

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90953; File No. SR-NYSEArca-2021-05]

This document is scheduled to be published in the Federal Register on 01/26/2021 and available online at [federalregister.gov/d/2021-01591](https://www.federalregister.gov/d/2021-01591), and on [govinfo.gov](https://www.govinfo.gov)

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
January 19, 2021.

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 January 13, 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 (1) eliminate credits and fees associated with Self Trade Prevention Modifiers, and (2) eliminate the Market Data Revenue Sharing Credits. 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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 (1) eliminate credits and fees associated with Self Trade Prevention (“STP”) Modifiers, and (2) eliminate the Market Data Revenue Sharing Credits. The Exchange proposes to implement the fee changes effective January 13, 2021.⁴

The Exchange currently provides STP Modifiers that allow ETP Holders entering orders to elect to prevent those orders from executing against other orders entered on the Exchange by the same ETP Holder.⁵ In connection with the STP functionality, in 2009, the Exchange adopted the following credits and fees for orders returned to an ETP Holder using the STP Modifiers: ETP Holders entering an incoming order with either the STP Cancel Both (“STPC”) or the STP Decrement and Cancel (“STPD”) Modifier were charged \$0.0030 per share for orders returned to the ETP Holder. The ETP Holder's corresponding resting order marked with any of the STP Modifiers that interacts with an incoming STPC or STPD Modifier were credited \$0.0029 per share for orders returned to the ETP Holder. ETP Holders entering an incoming order with either the STP Cancel Newest (“STPN”) or the STP Cancel Oldest (“STPO”) Modifier were not credited or charged any fees.⁶

In 2018, the Exchange modified the credit from \$0.0029 per share to \$0.0030 per share for an ETP Holder's resting order that is returned to the ETP Holder.⁷ With that change, both the

⁴ The Exchange originally filed to amend the Fee Schedule on January 4, 2021 (SR-NYSEArca-2021-01). SR-NYSEArca-2021-01 was subsequently withdrawn and replaced by this filing.

⁵ See Securities Exchange Act Release No. 60191 (June 30, 2009), 74 FR 32660 (July 8, 2009) (SR-NYSEArca-2009-58).

⁶ See Securities Exchange Act Release No. 60322 (July 16, 2009), 74 FR 36794 (July 24, 2009) (SR-NYSEArca-2009-68).

⁷ See Securities Exchange Act Release No. 83032 (April 11, 2018), 83 FR 16909 (April

fee and the credit associated with the STPC and STPD Modifiers is currently the same, \$0.0030 per share. Additionally, the Exchange continues to not charge a fee or provide a credit to ETP Holders that enter an order with the STPN Modifier or with the STPO Modifier.

As a result of the standardization of the credits and fees associated with the STPC and STPD Modifiers, ETP Holders no longer pay a fee or receive a credit for this activity. Coupled with the zero credits and fees associated with the STPN and STPO Modifiers, there is currently no revenue generated by the Exchange when ETP Holders utilize the STP Modifiers when entering their orders on the Exchange. As a result, the Exchange proposes to eliminate the credits and fees associated with STP Modifiers and remove them from the Fee Schedule. The Exchange also proposes to renumber footnotes through the Fee Schedule in conjunction to the changes discussed herein.

Additionally, the Fee Schedule currently provides for Market Data Revenue Sharing Credits for Cross Orders in Tape A, Tape B and Tape C Securities. Due to a lack of demand, the Exchange eliminated Cross Orders in 2019.⁸ As a result, the Market Data Revenue Sharing Credits program has become obsolete and the Exchange no longer collects revenue pursuant to the program. Therefore, the Exchange proposes to eliminate the Market Data Revenue Sharing Credits program and remove it, along with footnote 11,⁹ 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

17, 2018) (SR-NYSEArca-2018-20).

⁸ See Securities Exchange Act Release No. 87519 (November 13, 2019), 84 FR 63917 (November 19, 2019) (SR-NYSEArca-2019-80).

⁹ The Exchange notes that footnote 11 contains rule text that is outdated, left over from the time when the Exchange employed a Directed Order Process, which it no longer does, and which limited the participation of LMMs in the program. The same applies to GTC orders, which are also no longer available on the Exchange. The Exchange, therefore, proposes to delete the rule text in footnote 11 in its entirety.

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,¹⁰ in general, and furthers the objectives of Sections 6(b)(4) and(5) of the Act,¹¹ 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 STP Modifiers and Market Data Revenue Sharing Credits when such fees and credits become obsolete. In particular, the Exchange believes that the proposed rule change to eliminate the credits and fees associated with STP Modifiers is reasonable because this activity has become revenue neutral since the Exchange standardized the credits and fees associated with the STPC and STPD Modifiers in 2018. While ETP Holders may continue to utilize this functionality, they are no longer subject to any fees or credits for doing so. The Exchange notes that no other market provides for fees and credits associated with the use of STP Modifiers and this proposed rule change would align the Exchange's billing practice with those of its competitors.

Additionally, the Exchange believes that the proposed rule change to eliminate the Market Data Revenue Sharing Credits program applicable to Cross Orders is reasonable because, with the elimination of Cross Orders, the Exchange no longer generates revenue to share with ETP Holders under the program.

The Exchange believes that amending the Fee Schedule to remove credits and fees associated with STP Modifiers and to remove the Market Data Revenue Sharing Credits for

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4) and (5).

Cross Orders that are no longer functional 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 changes are reasonable because they 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 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,¹² 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

¹² 15 U.S.C. 78f(b)(8).

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.

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)¹³ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁴ 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

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(2).

Commission shall institute proceedings under Section 19(b)(2)(B)¹⁵ 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-2021-05 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-2021-05. 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

¹⁵ 15 U.S.C. 78s(b)(2)(B).

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-2021-05 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.¹⁶

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2021-01591 Filed: 1/25/2021 8:45 am; Publication Date: 1/26/2021]

¹⁶ 17 CFR 200.30-3(a)(12).