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SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-92882; File No. SR-NYSEArca-2021-74]

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
September 7, 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 August 23, 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 per share credit associated with certain Retail Orders that add and remove liquidity. The Exchange proposes to implement the fee change effective August 23, 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

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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 eliminate the per share credit associated with certain Retail Orders[4] that add and remove liquidity. The Exchange proposes to implement the fee change effective August 23, 2021.[5]

Background

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."[6]

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."[7]

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4 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).

5 The Exchange originally filed to amend the Fee Schedule on August 9, 2021 (SR-NYSEArca-2021-72). SR-NYSEArca-2021-72 was subsequently withdrawn and replaced by this filing.

6 See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (File No. S7-10-04) (Final Rule) ("Regulation NMS").

7 See Securities Exchange Act Release No. 61358, 75 FR 3594, 3597 (January 21, 2010) (File No. S7-02-10) (Concept Release on Equity Market Structure).

Indeed, equity trading is currently dispersed across 16 exchanges,[8] numerous alternative trading systems,[9] 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.[10] 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.[11]

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 15 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.

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8 See Cboe U.S Equities Market Volume Summary, available at https://markets.cboe.com/us/equities/market_share. See generally https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html.

9 *See* FINRA ATS Transparency Data, *available at* https://otctransparency.finra.org/otctransparency/AtsIssueData. A list of alternative trading systems registered with the Commission is *available at* https://www.sec.gov/foia/docs/atslist.htm.

10 See Cboe Global Markets U.S. Equities Market Volume Summary, available at http://markets.cboe.com/us/equities/market_share/.

11 See id.

To respond to this competitive environment, the Exchange has established Retail Order Step-Up tiers,[12] which are designed to provide an incentive for ETP Holders to route Retail Orders to the Exchange by providing higher credits for adding liquidity correlated to an ETP Holder's higher trading volume in Retail Orders on the Exchange. Under the Retail Order Step-Up Tiers, ETP Holders also do not pay a fee when such Retail Orders have a time-in-force of Day and remove liquidity from the Exchange.

Proposed Rule Change

The Exchange proposes to eliminate the per share credit associated with the execution of orders that are internalized.[13] An internalized retail order execution is a trade where two Retail Orders that trade against each other share the same Market Participant Identifier ("MPID"). Under the proposal, for Retail Orders that are internalized, the Exchange would not provide the current rebate and would continue to not charge a fee for orders that qualify for the Retail Order Step-Up Tier 1, Retail Order Step-Up Tier 2 and Retail Order Step-Up Tier 3 pricing tiers. More specifically, the Exchange proposes to not charge a fee or pay a credit for Retail Orders where each side of the executed order (1) shares the same MPID and (2) is a Retail Order with a time-in-force of Day. The proposed rule change would not create new means of submitting orders to the Exchange nor would it permit ETP Holders to circumvent the Exchange's order priority rules. The Exchange's priority rules would continue to apply as they currently do with respect to the execution of Retail Orders that are the subject of this proposed rule change.

Under the Retail Order Step-Up Tier 1 pricing tier, such orders currently receive a credit of $0.0038 per share for adding liquidity and do not pay a fee for removing liquidity. Under the Retail Order Step-Up Tier 2 pricing tier, such orders currently receive a credit of $0.0035 per

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12 See Retail Order Tier, Retail Order Step-Up Tier 1, Retail Order Step-Up Tier 2 and Retail Order Step-Up Tier 3 on the Fee Schedule.

13 This occurs when two orders presented to the Exchange from the same ETP Holder (i.e., MPID) are presented separately and not in a paired manner, but nonetheless inadvertently match with one another.

share for adding liquidity and do not pay a fee for removing liquidity. Lastly, under the Retail Order Step-Up Tier 3 pricing tier, such orders currently receive a credit of $0.0036 per share for adding liquidity and do not pay a fee for removing liquidity. When both sides of an execution are not Retail Orders or do not share the same MPID, the Exchange will continue to not charge a fee for removing liquidity and will continue to provide the credits noted above. The proposed rule change would not impact orders that qualify for the Retail Order pricing tier that are internalized. Such orders would continue to receive a credit of $0.0033 per share for providing liquidity and would continue to pay a fee of $0.0030 per share for removing liquidity.[14]

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,[15] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[16] 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

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14 Under Tier 1, Tier 2 and Tier 3 pricing tiers, such orders would pay a fee of $0.0029 per share in Tape B securities. See Fee Schedule.

15 15 U.S.C. 78f(b).

16 15 U.S.C. 78f(b)(4) and (5).

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."[17]

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 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 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.

In particular, the Exchange believes that the proposed elimination of credits is reasonable because the Exchange has determined to no longer provide credits for Retail Orders that are internalized. With this proposed rule change, the Exchange is eliminating credits only for a subset of Retail Orders, i.e., orders that are internalized. The Exchange currently provides credits for Retail Orders that provide liquidity that other market participants can interact with. Retail Orders that are internalized, on the other hand, do not share that characteristic and therefore, the Exchange has determined not to provide credits for such orders. The Exchange notes that market participants are free to shift their order flow to competing venues if they believe other markets offer more favorable fees and credits. Additionally, the proposed rule change would apply only to a subset of Retail Orders directed to the Exchange by ETP Holders, i.e., those that share the same MPID and that add and remove retail liquidity. All other Retail Orders would continue to be subject to current fees and credits.

The Exchange believes it is reasonable to no longer provide credits for certain types of

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17 See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

orders transacted on the Exchange because the Exchange is not required to provide such credits. As noted above, the Exchange believes that it is reasonable to eliminate credits for Retail Orders that are internalized because the pricing incentive currently in place is intended to attract liquidity that other market participants can interact with. The Exchange is not required to provide credits for activity that it believes does not accrue liquidity on the Exchange for the benefit of other market participants. The Exchange notes that other markets have utilized a similar basis for eliminating rebates. In particular, Cboe BZX Exchange, Inc. ("BZX") recently eliminated the rebate applied to orders in securities priced below $1.00 because, as BZX noted, it "no longer wishes to, nor is it required to, provide such a rebate."[18]

The Exchange believes that, despite the removal of the credits, ETP Holders may continue to direct orders to the Exchange that may otherwise be internalized off-exchange, which would contribute to a deeper, more liquid market and provide even more execution opportunities for market participants.

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

The Exchange believes the proposal is an equitable allocation of fees among its market participants because all ETP Holders that participate on the Exchange will be able to internalize their Retail Orders on the Exchange at no cost, i.e., they would not receive any credit or pay any fee for the execution of Retail Orders that are internalized. Notwithstanding the elimination of credits for Retail Orders that are internalized under Retail Order Step-Up Tiers 1-3, the Exchange believes it would continue to be an attractive venue for ETP Holders because they would still be able to execute Retail Orders that are internalized at no cost. However, without having a view of ETP Holders' activity on other markets and off-exchange venues, the Exchange has no way of knowing whether the Exchange's current fee structure would result in any ETP Holder sending their Retail Orders to the Exchange. The Exchange believes that its fee structure

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[18] See Securities Exchange Act Release No. 92013 (May 25, 2021), 86 FR 29312 (June 1, 2021) (SR-CboeBZX-2021-040).

for Retail Orders that are not internalized should incentivize ETP Holders to continue to send such 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 on the Exchange.

The Exchange further notes that the market for attracting Retail Orders remains competitive. For example, until recently, CBOE EDGX Equities, Inc. ("EDGX") charged its members an internalization fee of $0.00050 per share for orders, including Retail Orders, that add liquidity and a fee of $0.00050 per share for orders, including Retail Orders, that remove liquidity if such members did not have an adding ADV of 10,000,000 shares.[19] As a result of the recent EDGX fee change, EDGX now pays a rebate for Retail Orders that ranges between $0.0032 per share and $0.0037 per share. The Exchange believes that its fee structure for Retail Orders that are not internalized or do not qualify for Retail Order Step-Up Tiers 1-3 should continue to incentivize ETP Holders to send such orders to the Exchange. Specifically, under the Exchange's step up tiers for Retail Orders, ETP Holders can receive more favorable credits that range between $0.0035 per share and $0.0038 per share.

The Exchange believes the proposed change is equitable and not unfairly discriminatory because ETP Holders would continue to not pay any fees for Retail Orders that are internalized. Further, the Exchange believes the proposed change is equitable and not unfairly discriminatory because it would apply equally to all ETP Holders. Notwithstanding the elimination of credits for Retail Orders that are internalized under the Retail Order Step-Up Tiers 1-3, the Exchange believes that its current fee structure, which provides rebates for Retail Orders when such orders provide liquidity and interact with other participants, should provide a sufficient incentive for ETP Holders to direct their Retail Orders to the Exchange.

The Exchange believes that the proposed rule change is equitable because maintaining

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[19] See Securities Exchange Act Release No. 92445 (July 20, 2021), 86 FR 40097 (July 26, 2021) (SR-CboeEDGX-2021-033).

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.

The Proposed Fee Change is not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. The Exchange also believes that nothing about its proposed pricing model for Retail Orders that are internalized is inherently unfair; instead, it is a rational pricing model that was employed by one of the Exchange's competitors for many years.[20] Despite the elimination of the credits, the Exchange believes its fee structure incentivizes retail trading on a transparent market, thus enhances price discovery and improves the overall quality of the equity markets. 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. All ETP Holders on the Exchange that qualify for the Retail Order Step Up Tiers 1-3 whose Retail Orders are internalized would no longer receive credits and would continue to not pay a fee. The Exchange also notes that the proposed rule change will not adversely impact any ETP Holder's ability to qualify for other reduced fee or enhanced rebate tiers. 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.

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[20] See e.g., Securities Exchange Act Release No. 667662 (April 6, 2012), 77 FR 22053 (April 12, 2021) (SR-EDGX-2012-12). See also supra, note 19.

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,[21] 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, despite the elimination of credits for Retail Orders that are internalized under the Retail Order Step Up Tiers 1-3, the resulting fee structure would continue to incentivize the submission of Retail Orders to a public exchange, thereby enhancing order execution opportunities for all market participants. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."[22]

Intramarket Competition. The Exchange believes the proposed rule change does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed change applies to all ETP Holders equally in that all ETP Holders would be able to internalize Retail Orders on the Exchange at no cost, i.e., they would receive no credit or pay any fee. The Exchange believes that the resulting fee structure would continue to incentivize market participants to submit Retail Orders that are internalized for execution on a public and transparent market rather than on an off-exchange venue because ETP Holders would be able to transact such orders at no cost. Greater liquidity benefits all market participants on the Exchange by providing more trading opportunities and encourages ETP Holders to send orders, thereby contributing to robust levels of liquidity, which benefits all market participants. The elimination of credits for Retail Orders that are internalized

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21 15 U.S.C. 78f(b)(8).

22 See Securities Exchange Act Release No. 51808, 70 FR 37495, 37498-99 (June 29, 2005) (S7-10-04) (Final Rule).

under the Retail Order Step Up Tiers 1-3 would impact all similarly-situated ETP Holders on an equal basis, and, as such, the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

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. 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 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)[23] of the Act and subparagraph (f)(2) of Rule 19b-4[24] 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

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[23] 15 U.S.C. 78s(b)(3)(A).

[24] 17 CFR 240.19b-4(f)(2).

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)[25] 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 No. SR-NYSEArca-2021-74 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 No. NYSEArca-2021-74. 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.

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[25] 15 U.S.C. 78s(b)(2)(B).

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 No. NYSEArca-2021-74, 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.[26]

J. Matthew DeLesDernier,
Assistant Secretary.

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[26] 17 CFR 200.30-3(a)(12).