



SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-99327; File No. SR-NYSEARCA-2024-03]

**Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend its Schedule of Fees and Charges**

January 11, 2024

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on January 10, 2024, 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 and II 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 its Schedule of Fees and Charges (the “Fee Schedule”) regarding annual fees applicable to Exchange Traded Products. The Exchange proposes to implement the fee changes effective January 10, 2024.<sup>4</sup> The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> The Exchange previously filed to amend the Fee Schedule on December 27, 2023, for January 2, 2024 effectiveness (SR-NYSEARCA-2023-86), and withdrew such filing on January 10, 2024.

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 regarding annual fees for Exchange Traded Products (“ETPs”).<sup>5</sup>

The proposed change responds to the current extremely competitive environment for ETP listings, in which issuers can readily favor competing venues or transfer their listings if they deem fee levels at a particular venue to be excessive or discount opportunities available at other venues to be more favorable. In response to the competitive environment for listings, the Exchange proposes to amend the Fee Schedule to (1) modify the annual fees for ETPs set forth in the tables in Sections 6.a. and 6.b. of the Annual Fee section of the Fee Schedule; (2) provide for reduced annual fees for qualifying ETPs; and (3) provide for discounted annual fees for fund families with ETPs exclusively listed on the Exchange.

The Exchange proposes to implement the fee changes effective January 2, 2024.

*Proposed Rule Change*

Annual fees are assessed each January in the first full calendar year following the year of listing. Currently, the Exchange’s annual fees for ETPs are based on the number of shares outstanding per issue and then are further differentiated based on whether or not the ETP tracks an index, has a maturity date, or provides an expected return over a specific outcome period.<sup>6</sup> The aggregate total shares outstanding is calculated based on the total shares outstanding as reported by the fund issuer or fund “family” in its most recent periodic filing with the

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<sup>5</sup> “Exchange Traded Products” is defined in footnote 3 of the current Schedule of Fees and Charges.

<sup>6</sup> See Fee Schedule, ANNUAL FEE (PAYABLE JANUARY IN EACH CALENDAR YEAR), Section 6.a. & Section 6.b.

Commission or other publicly available information. Annual fees apply regardless of whether any of these funds are listed elsewhere.

Currently, Section 6.a. provides for annual fees as follows for ETPs (excluding Managed Fund Shares, Active Proxy Portfolio Shares, Managed Trust Securities, and Managed Portfolio Shares) and Exchange-Traded Fund Shares listed under Rule 5.2-E(j)(8) that track an index, have a maturity date, or provide an expected return over a specific outcome period:

Number of Shares Outstanding (each issue)	Annual Fee
Less than 25 million	\$7,500
25 million up to 49,999,999	\$10,000
50 million up to 99,999,999	\$15,000
100 million up to 249,999,999	\$20,000
250 million up to 499,999,999	\$25,000
500 million and over	\$30,000

Section 6.b. sets forth the following annual fees for Managed Fund Shares, Managed Trust Securities, Active Proxy Portfolio Shares, Managed Portfolio Shares, and Exchange-Traded Fund Shares listed under Rule 5.2-E(j)(8) that do not track an index:

Number of Shares Outstanding (each issue)	Annual Fee
Less than 25 million	\$10,000
25 million up to 49,999,999	\$12,500
50 million up to 99,999,999	\$20,000
100 million up to 249,999,999	\$25,000
250 million and over	\$30,000

As noted above, the Exchange proposes to amend the annual fees reflected in Sections 6.a. and 6.b. As proposed, annual fees would continue to be based on the number of shares outstanding, but the Exchange proposes certain changes to both the number of shares outstanding corresponding to each level of annual fee and the annual fee amounts. The proposed change is intended to simplify the Fee Schedule by largely harmonizing the annual fees set forth in Sections 6.a. and 6.b. Except for ETPs with fewer than 25 million shares outstanding, the Exchange proposes that the annual fees for ETPs listed on the Exchange would be the same for ETPs that fall under either Section 6.a. or 6.b.

The Exchange proposes to amend the fees set forth in Section 6.a. as follows:

Number of Shares Outstanding (each issue)	Annual Fee
Less than 25 million	\$8,500
25 million up to 99,999,999	\$15,000
100 million up to 199,999,999	\$25,000
200 million up to 599,999,999	\$35,000
600 million and over	\$30,000

The Exchange similarly proposes to amend the fees set forth in Section 6.b. as below:

Number of Shares Outstanding (each issue)	Annual Fee
Less than 25 million	\$10,000
25 million up to 99,999,999	\$15,000
100 million up to 199,999,999	\$25,000
200 million up to 599,999,999	\$35,000
600 million and over	\$30,000

The Exchange believes it is reasonable to continue to differentiate between ETPs in Sections 6.a. and 6.b. when an ETP has fewer than 25 million shares outstanding. The Exchange currently provides for lower fees for ETPs under Section 6.a., which are those that track an index, have a maturity date, or provide an expected return over a specific outcome period, given that such products generally require less Exchange resources associated with listing and trading such products (e.g., costs related to issuer services, listing administration, product development, and regulatory oversight). The Exchange believes it is reasonable to retain a comparatively lower listing fee for ETPs that track an index, have a maturity date, or provide an expected return over a specific outcome period when such products have fewer than 25 million shares outstanding, but to otherwise conform annual fees in Sections 6.a. and 6.b. to streamline the Fee Schedule.

The Exchange believes the proposed change would simplify and improve the clarity of the Fee Schedule by aligning the annual fees applicable to all ETPs, based on the number of outstanding shares. As currently, the Exchange proposes that annual fees would generally increase as the number of shares outstanding increases. However, the Exchange proposes that the annual fee for ETPs with 600 million or more shares outstanding would be \$30,000 (lower

than the annual fee for ETPs with 200 million to 599,999,999 shares outstanding), which the Exchange believes could further incentivize issuers to list multiple series of certain securities on the Exchange. Although the proposed change would, in some cases, increase the annual fee for certain ETPs based on the number of shares outstanding, the Exchange believes that the proposed fees would continue to encourage issuers to list ETPs on the Exchange and represents a reasonable effort by the Exchange to respond to the competitive environment for ETP listings, particularly in conjunction with the incentives proposed below that would offer issuers additional opportunities to qualify for lower annual fees.

The Exchange proposes to offer two new alternative methods through which ETPs could qualify for reduced annual fees in new Section 6.c.

First, proposed Section 6.c.i. would provide that ETPs with at least \$50 billion in assets under management, at the time the annual fee is billed, would be subject to an annual fee of \$5,000 (regardless of number of shares outstanding).

Proposed Section 6.c.ii. would provide that ETPs could instead qualify for reduced annual fees (as set forth in the table below) by achieving certain primary listing market auction volume, measured by ADV. For purposes of qualifying for this incentive, ADV would be calculated based on combined volume executed in the Exchange's opening and closing auctions in the preceding calendar year.

Primary Listing Market ETF Auction Volume (ADV)	Annual Fee
50,000 shares	\$10,000
75,000 shares	\$7,500
100,000 shares	\$6,500
150,000 shares	\$6,000
200,000 shares	\$5,000

The Exchange also proposes to add an Exclusive Listing Discount to Section 9 (Additional Annual Fee Discounts for Exchange Traded Products and Structured Products) of the

Fee Schedule.<sup>7</sup> The Exclusive Listing Discount would, as proposed, provide fund families with 50 or more ETPs exclusively listed on NYSE Arca with a 12.5% discount off the annual fee applicable to each fund. The Exchange further proposes that the Exclusive Listing Discount could be combined with the Product Family and High Volume Products<sup>8</sup> discounts already offered in the Fee Schedule, but that the discounts together may not exceed a 35% discount on annual fees.<sup>9</sup>

The Exchange believes these proposed discounts on annual fees could incentivize issuers to list or transfer to list ETPs on the Exchange, thereby promoting competition among exchanges that list ETPs, to the benefit of market participants, and, together with the proposed changes to annual fees described above, represent an effort by the Exchange to compete with other venues that list ETPs.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>10</sup> in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,<sup>11</sup> 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 Change is Reasonable

As discussed above, the Exchange operates in a highly competitive market for the listing

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<sup>7</sup> See Fee Schedule, ANNUAL FEE (PAYABLE JANUARY IN EACH CALENDAR YEAR), Section 9.

<sup>8</sup> The Product Family and High Volume Products discounts are described in Section 9, subparagraphs (ii) and (iii), respectively.

<sup>9</sup> Currently, subparagraph (iv) of Section 9 sets forth various limitations on annual fee discounts. Item 1. under subparagraph (iv) currently provides that the Product Family and High Volume Products discounts may be combined. The Exchange proposes to describe the Exclusive Listing Discount in subparagraph (iv) of Section 9 and to renumber current subparagraph (iv) to be subparagraph (v). Item 1. under new subparagraph (v) of Section 9 would provide for the combination of the Exclusive Listing Discount with the Product Family and High Volume Products discounts and specify that the discounts could not combine to provide more than a 35% discount on annual fees.

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(4) & (5).

of ETPs. Specifically, ETP issuers can readily favor competing venues or transfer listings if they deem fee levels at a particular venue to be excessive, or discount opportunities available at other venues to be more favorable. 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.”<sup>12</sup>

The Exchange believes that the ongoing competition among the exchanges with respect to new listings and the transfer of existing listings among competitor exchanges demonstrates that issuers can choose different listing markets in response to fee changes. Accordingly, competitive forces constrain exchange listing fees. Stated otherwise, changes to exchange listing fees can have a direct effect on the ability of an exchange to compete for new listings and retain existing listings.

The Exchange’s current annual fees for ETPs are based on the number of shares outstanding per issuer and provide incentives for issuers to list multiple series of certain securities on the Exchange. The Exchange believes the proposed changes to the annual fees set forth in Sections 6.a. and 6.b. are reasonable because they are intended to simplify the Fee Schedule by promoting consistency in the annual fees that would apply to all ETPs. The Exchange proposes that, as currently, annual fees would generally increase as the number of shares outstanding increases (which would continue to reduce the barriers to entry and incentivize enhanced competition among issuers of ETPs), but proposes to eliminate differences in annual fees based on whether or not the ETP tracks an index, has a maturity date, or provides an expected return over a specific outcome period, except in the case of issues with 25 million

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<sup>12</sup> See Regulation NMS, 70 FR at 37499.

shares or fewer outstanding. The Exchange believes that retaining this differentiation is reasonable because it would continue to reflect that fewer Exchange resources may be needed to support the listing and administration of ETPs that track an index, have a maturity date, or provide an expected return over a specific outcome period as an initial matter, but that such difference is generally more significant when there are fewer shares outstanding. The Exchange further believes that the proposed changes to annual fees are reasonable taken together with the proposed incentives that would offer various methods for ETPs to qualify for lower annual fees by achieving qualifying levels of assets under management, achieving primary listing market auction volume, or exclusively listing on the Exchange.

The Exchange believes that the proposal would continue to encourage issuers to list ETPs on the Exchange, even though it would, in some cases, increase the annual fee for certain ETPs and reflects a competitive pricing structure designed to incentivize issuers to list new products and transfer existing products to the Exchange, which the Exchange believes will enhance competition both among ETP issuers and listing venues, to the benefit of investors. The Exchange also believes the proposed changes are a reasonable effort by the Exchange to respond to the current competitive environment in which it operates.

#### The Proposal is an Equitable Allocation of Fees

The Exchange believes the proposal equitably allocates its fees among its market participants. In the prevailing competitive environment, issuers can readily favor competing venues or transfer listings if they deem fee levels at a particular venue to be excessive, or discount opportunities available at other venues to be more favorable. The Exchange believes that the proposed change is equitable because the proposed annual fees would apply uniformly to all similarly situated issuers. The Exchange also believes that it is equitable to continue to provide for a slightly lower annual fee for ETPs that track an index, have a maturity date, or provide an expected return over a specific outcome period when such ETPs have a smaller number of shares outstanding, to reasonably reflect the difference in Exchange resources

required to support the listing and administration of such ETPs in those circumstances. The proposal is also an equitable allocation of fees because all issuers would be eligible to qualify for reduced annual fees by meeting the same qualifying criteria. Moreover, the proposed fees would be equitably allocated among issuers because issuers would continue to qualify for an annual fee under criteria applied uniformly to all such issuers. For the same reasons, the proposal neither targets nor will it have a disparate impact on any particular category of market participant.

#### The Proposal is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. In the prevailing competitive environment, issuers are free to list elsewhere if they believe that alternative venues offer them better value. The Exchange believes the proposed change is not unfairly discriminatory because it is intended to provide for simplified annual fees that would generally apply equally to all ETPs listed on the Exchange, based on the number of shares outstanding. The Exchange believes that it is not unfairly discriminatory to maintain certain differentiation in annual fees for ETPs that track an index, have a maturity date, or provide an expected return over a specific outcome period as an initial matter and those that do not, to reflect the difference in Exchange resources required to support the listing and administration of such ETPs. The proposed methods through which issuer could qualify for reduced annual fees are also not unfairly discriminatory, as all issuers would be eligible to qualify for reduced annual fees based on the same criteria.

Finally, 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,<sup>13</sup> the Exchange believes that the proposed

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<sup>13</sup> 15 U.S.C. 78f(b)(8).

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 change would encourage competition by generally harmonizing the annual fees for all ETPs listed on the Exchange, thereby incentivizing issuers to list such products on the Exchange and enhancing competition among issuers and listing venues, to the benefit of investors. The Exchange believes that the proposed opportunities to qualify for lower annual fees could incentivize enhanced competition among issuers of ETPs and could encourage issuers to list additional products on the Exchange. The proposed rule changes reflect a competitive pricing structure designed to incentivize issuers to list and transfer new products on the Exchange, which the Exchange believes will enhance competition both among ETP issuers and listing venues, to the benefit of investors. As noted, the market for listing services is extremely competitive. Issuers have the option to list their securities on these alternative venues based on the fees charged and the value provided by each listing exchange. Because issuers have a choice to list their securities on a different national securities exchange, the Exchange does not believe that the proposed change imposes a burden on competition.

*Intramarket Competition.* The proposed change is a competitive pricing structure designed to encourage issuers to list and transfer ETPs to list on the Exchange. The Exchange believes the proposal would enhance competition among ETP issuers, to the benefit of investors. The Exchange does not believe the proposed change would burden intramarket competition, as it seeks to harmonize the fees for all ETPs listed on the Exchange and offer the same opportunities to qualify for reduced annual fees to all issuers. Accordingly, the Exchange believes that the proposed change would apply to and potentially benefit all issuers equally and thus would not impose a disparate burden on competition among market participants on the Exchange.

*Intermarket Competition.* The Exchange operates in a highly competitive listings market in which issuers can readily choose alternative listing venues. In such an environment, the Exchange must adjust its fees and discounts to remain competitive with other exchanges

competing for the same listings. The Exchange believes that the proposed rule change could enhance competition among ETP listing venues by simplifying the annual fees for listing ETPs on the Exchange and offering issuers new opportunities to qualify for reduced annual fees. The Exchange believes that the proposal is a competitive proposal designed to enhance pricing competition among listing venues. Because competitors are free to modify their own fees and discounts in response, and because issuers may readily adjust their listing decisions and practices, the Exchange does not believe its proposed 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)<sup>14</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>15</sup> thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

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. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>16</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

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<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(2).

<sup>16</sup> 15 U.S.C. 78s(b)(2)(B).

#### 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 (<https://www.sec.gov/rules/sro.shtml>);  
or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-NYSEARCA-2024-03 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-2024-03. 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-2024-03 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.<sup>17</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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