

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-99405; File No. SR-NYSEARCA-2024-04)

January 22, 2024

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, also NYSE Arca Rules 7.31-E, 7.34-E, 7.36-E, 7.37-E and 7.38-E

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 January 10, 2024, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II 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 amend a rule reference related to the definition of Retail Orders. The Exchange is not proposing any change to fees and credits. The Exchange also proposes to amend NYSE Arca Rules 7.31-E, 7.34-E, 7.36-E, 7.37-E and 7.38-E. 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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.

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 amend a rule reference related to the definition of Retail Orders. The Exchange is not proposing any change to fees and credits. The Exchange also proposes to amend NYSE Arca Rules 7.31-E, 7.34-E, 7.36-E, 7.37-E and 7.38-E to delete references to an obsolete rule.

Currently, the Exchange’s Fee Schedule provides specified fees and credits for agency orders that originate from a natural person and are submitted to the Exchange by an ETP Holder,³ provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology.⁴ The Exchange’s rules concerning such “retail orders” are set out in Rule 7.31-E(i)(4).⁵ On the Fee Schedule, these orders are identified as Retail Orders. Specifically, under

³ See Rule 1.1 (definitions of ETP & ETP Holder).

⁴ See Securities Exchange Act Release No. 67540 (July 30, 2012), 77 FR 46539 (August 3, 2012) (SR-NYSEArca-2012-77).

⁵ See Securities Exchange Act Release No. 94121 (February 1, 2022), 87 FR 6900 (February 7, 2022) (SR-NYSEARCA-2022-07). Rule 7.31-E(i)(4)(A) provides that an “order designated with a “retail” modifier is an agency order or a riskless principal order

Section III. titled Standard Rates - Transactions, footnote (c) currently states that “Retail Order means an order as defined in Rule 7.44-E(a)(3).”

In a recent rule filing that discontinued the Exchange’s Retail Liquidity Program, the Exchange deleted Rule 7.44-E in its entirety, including Rule 7.44-E(A)(3), which defined the term Retail Order.⁶ Given the discontinuance of the Retail Liquidity Program on the Exchange, and the subsequent deletion of Rule 7.44-E(a)(3), the Exchange proposes to amend footnote (c) under Section III. of the Fee Schedule to replace the cross-reference in the footnote from now deleted Rule 7.44-E(A)(3) to Rule 7.31-E(i)(4). As proposed, footnote (c) would state that “Retail Order means an order designated with a “retail” modifier as provided in Rule 7.31-E(i)(4).” Additionally, Rules 7.31-E, 7.34-E, 7.36-E, 7.37-E and 7.38-E each currently contain a reference to Rule 7.44-E, which, as noted above, was deleted when the Exchange discontinued its Retail Liquidity Program. The Exchange thus proposes to also delete reference to Rule 7.44-E from Rule 7.31-E, 7.34-E, 7.36-E, 7.37-E and 7.38-E.

The Exchange believes the proposed change would delete reference to an obsolete rule from the Exchange’s rules and correct a rule reference in the Fee Schedule by replacing a cross-reference in the Fee Schedule from a rule that was recently deleted and is now obsolete to Rule 7.31-E(i)(4) which is currently in effect and which defines “retail orders.”

that meets the criteria of FINRA Rule 5320.03 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 with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology.”

⁶ See Securities Exchange Act Release No. 98168 (August 18, 2023), 88 FR 57980 (August 24, 2023) (SR-NYSEARCA-2023-55). There is no substantive difference between the definition of Retail Order under current Rule 7.31-E and how a Retail Order was defined under the now deleted Rule 7.44-E.

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,⁷ in general, and furthers the objectives of Sections 6(b)(4) and(5) of the Act,⁸ 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.

In particular, the Exchange believes its proposal to replace Rule 7.44-E(a)(3) from footnote (c) under Section III. of the Fee Schedule with Rule 7.31-E(i)(4) to correct the cross-reference are consistent with the Act because the proposed change would update the Exchange's rules to delete an obsolete rule and update the Fee Schedule to correct a cross-reference from a recently deleted rule to a current rule. The proposal otherwise involves no substantive change. Additionally, the proposed change would promote just and equitable principles of trade and is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system as it would update the Exchange's rules to delete reference to an obsolete rule and update the Fee Schedule by replacing a cross-reference from a rule that is now obsolete to a rule currently in effect.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4) and (5).

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,⁹ 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 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. Specifically, the Exchange does not believe that its proposal to amend the Fee Schedule to correct a cross-reference from a rule that was recently deleted to a current rule will have any impact on competition as the change is intended to update obsolete rule references and involves no substantive change.

Intermarket Competition. The Exchange believes the proposed rule changes 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. ETP Holders have numerous alternative venues that they may participate on and direct their order flow, including other equities exchanges, off-exchange venues, and alternative trading systems. By amending the cross-reference, as proposed herein, the Exchange is updating obsolete rule references to its rules and to the Fee Schedule. Accordingly, the Exchange does not believe its proposed change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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.

⁹ 15 U.S.C. 78f(b)(8).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹ Because the proposed rule change does not:

(i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and Rule 19b-4(f)(6) thereunder.¹³

A proposed rule change filed under Rule 19b-4(f)(6)¹⁴ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁵ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately. The Exchange states that the proposed change will not adversely impact investors and will permit the Exchange to amend the cross reference from an obsolete rule to a current rule in order to alleviate potential investor or public confusion. Based on the foregoing, the Commission believes that waiving the 30-day operative delay is consistent with the protection of

¹⁰ 15 U.S.C. 78s(b)(3)(A)(iii).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ 17 CFR 240.19b-4(f)(6)(iii).

investors and the public interest. For this reason, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.¹⁶

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 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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSEARCA-2024-04 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-2024-04. This file number should be included on the subject line if email is used. To help the Commission process and

¹⁶ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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 10:00 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. 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-2024-04, and should be submitted on or before [INSERT 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Sherry R. Haywood,

Assistant Secretary.

¹⁷ 17 CFR 200.30-3(a)(12).