SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-101432; File No. SR-NYSEARCA-2024-86)

October 25, 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 Regarding the Gross FOCUS Fee Charged to ETP Holders

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 October 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, II, and III 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") regarding the gross FOCUS fee charged to ETP Holders ("Gross FOCUS Fee"), effective October 10, 2024.[3] 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

1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 The Exchange previously filed to amend the Fee Schedule on October 1, 2024 (SR-NYSEARCA-2024-83) and withdrew such filing on October 10, 2024.

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 its Fee Schedule to (1) provide for a temporary waiver of the Gross FOCUS fee from October 1, 2024 through February 28, 2025 (the "Waiver Period"), and (2) delete a reference to a superseded fee.

The Exchange proposes to implement the fee changes effective October 10, 2024.

Background

Generally, the Exchange may only use regulatory fees "to fund the legal, regulatory and surveillance operations" of the Exchange.[4] Consistent with the foregoing, the Exchange currently charges each ETP Holder a monthly regulatory fee of \$0.069 per \$1,000 of gross revenue reported on its FOCUS Report ("Gross FOCUS Fee").[5]

The revenue collected pursuant to the Gross FOCUS Fee funds the performance of the Exchange's regulatory activities with respect to ETP Holders, including surveillance operations expenses. More specifically, the revenue generated by the Gross FOCUS Fee funds a material portion, but not all, of the Exchange's expenses related to its regulatory program, including legal expenses associated with regulation, the costs related to in-house staff, third-party service providers, and technology that facilitates regulatory functions such as surveillance, investigation,

4 See NYSE Arca, Inc. Bylaws, Art. II, Sec. 2.03 (Dividends; Regulatory Fees and Penalties).

5 FOCUS is an acronym for Financial and Operational Combined Uniform Single Report. FOCUS Reports are filed periodically with the Securities and Exchange Commission (the "Commission" or "SEC") as SEC Form X-17A-5 pursuant to Rule 17a-5 under the Act.

examinations, and enforcement. Gross FOCUS Fee funds may also be used for indirect expenses such as human resources and other administrative costs (collectively, "Regulatory Costs").

The Exchange monitors the amount of revenue collected from the Gross FOCUS Fee to ensure that these funds, in combination with its other regulatory fees and fines, do not exceed Regulatory Costs. The Exchange monitors Regulatory Costs and revenues on an annual basis, at a minimum. If the Exchange determines that regulatory revenues exceed or are projected to exceed Regulatory Costs, the Exchange will adjust the Gross FOCUS Fee downward or seek a partial waiver of the fee by submitting a filing to the Commission. As described below, the Exchange has determined that continued collection of Gross FOCUS Fees at the current rate for the proposed Waiver Period would exceed a material portion of the Exchange's anticipated Regulatory Costs (as noted above), justifying the proposed waiver of the Gross FOCUS Fee for ETP Holders through the end of February 2025.

Proposed Rule Change

Based on the Exchange's recent review of current and anticipated Regulatory Costs and Gross FOCUS Fee revenue, the Exchange proposes to waive the Gross FOCUS Fee from October 1, 2024 through February 28, 2025 in order to help ensure that the amounts collected from the Gross FOCUS Fee, in combination with other regulatory fees and fines, do not exceed the Exchange's total projected Regulatory Costs. The Exchange proposes to reduce the Gross FOCUS Fee because it believes that if the fee is not adjusted, Gross FOCUS Fee revenue to the Exchange year-over-year could exceed a material portion of the Exchange's Regulatory Costs. The Exchange's position is based on its periodic analysis of actual and anticipated costs to fund its regulatory program and revenue to offset those costs, including the Gross FOCUS Fee, and takes into consideration both that the last Gross FOCUS Fee adjustment was more than three years ago, and the projected regulatory spending landscape going forward. Moreover, the Exchange believes that a five-month waiver rather than adjusting the fee would most efficiently accomplish the goal of reasonably ensuring that Gross FOCUS Fee collection does not exceed anticipated Regulatory Costs, and allow for further consideration of the appropriate Gross FOCUS Fee rate going forward.

The Exchange would announce the proposed waiver of the Gross FOCUS Fee by Trader Update.

Finally, as noted above, the Exchange adopted the current Gross FOCUS Fee of $0.069 per $1,000 Gross FOCUS Revenue in October 2020, effective January 1, 2021. Given that the new rate was not proposed to be implemented until January 1, 2021, both rates were reflected in the Fee Schedule. The Exchange proposes to delete as obsolete the old rate, replace it with the current rate, and delete the language that reads "$0.069 as of as of January 1, 2021."

The proposed change is not otherwise intended to address 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 the provisions of Section 6(b)[6] of the Act, in general, and Section 6(b)(4) and (5)[7] of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

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6 15 U.S.C. 78f(b).

7 15 U.S.C. 78f(b)(4) and (5).

The Proposal is Reasonable

The Exchange believes the proposed fee change is reasonable because it would help ensure that revenue collected from the Gross FOCUS Fee does not exceed a material portion of the Exchange's projected Regulatory Costs. The Exchange has targeted the Gross FOCUS Fee to generate revenues that would be less than or equal to the Exchange's regulatory costs, which is consistent with both Rule 129 and the Commission's view that regulatory fees be used for regulatory purposes. As noted above, the principle that the Exchange may only use regulatory fees "to fund the legal, regulatory, and surveillance operations" of the Exchange is reflected in the Exchange's operating agreement.[8] In this regard, the Gross FOCUS Fee has been calculated to recover a material portion, but not all, of the Exchange's Regulatory Costs. As also noted above, based on the Exchange's recent review of current and projected regulatory costs and Gross FOCUS Fee collections, a five-month waiver of the Gross FOCUS Fee, which was last adjusted more than three years ago, would be the most efficient way to lessen the potential for generating excess funds that may otherwise occur using the current rate and allow for further consideration of the appropriate Gross FOCUS Fee rate going forward. The Exchange thus believes that the proposed waiver would be a fair and reasonable method for ensuring that the amounts collected from the Gross FOCUS Fee, in combination with other regulatory fees and fines, do not potentially exceed Regulatory Costs. The Exchange further believes that resuming the current rate as of March 1, 2025 would be reasonable because it would permit the Exchange to resume assessing the Gross FOCUS Fee in a way that is designed to recover a material portion, but not all, of the Exchange's projected Regulatory Costs. The Exchange would continue monitoring Regulatory Costs in advance of the fee resumption next year and, if the Exchange

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[8] See note 4, supra.

determines that the rate should be further modified to help ensure that Gross FOCUS Fee collections would not exceed a material portion of Regulatory Costs, would make an appropriate rule filing with the Commission.

The Exchange further believes that the proposed deletion of references to a superseded Gross FOCUS Fee would increase the clarity and transparency of the Exchange's rules and remove impediments to and perfect the mechanism of a free and open market by ensuring that persons subject to the Exchange's jurisdiction, regulators, and the investing public could more easily navigate and understand the Exchange rules. The Exchange further believes that the proposed change would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased clarity, thereby reducing potential confusion.

The Proposal is an Equitable Allocation of Fees

The Exchange believes its proposal is an equitable allocation of fees among its market participants. The Exchange further believes that the proposed Gross FOCUS Fee waiver would benefit all ETP Holders because all ETP Holders would be eligible for the waiver, and would benefit from the waiver, on full and equal terms. For the same reasons, the proposed waiver neither targets nor will it have a disparate impact on any particular category of market participant. All ETP Holders would qualify for the waiver of the Gross FOCUS Fee on an equal and non-discriminatory basis. The Exchange also believes that recommencing the Gross FOCUS Fee effective March 1, 2025, at the current rate, unless the Exchange determines it would be necessary to further adjust the fee, is equitable because the Gross FOCUS Fee would resume applying to all ETP Holders on an equal basis.

The Exchange further believes the proposed change supports an equitable allocation of fees and credits among its market participants because it would eliminate obsolete text from the Fee Schedule describing pricing that is no longer applicable to any market participants. Accordingly, the Exchange believes the proposal would impact all similarly situated ETP Holders on an equal basis. The Exchange also believes that the proposed change would promote investor protection and the public interest because the deletion of superseded fees from the Fee Schedule would enhance the clarity of the Fee Schedule and reduce confusion regarding fees and credits currently applicable to market participants who transact on the Exchange.

The Proposed Fee is not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. The proposed waiver of the Gross FOCUS Fee would benefit all similarly-situated market participants on an equal and non-discriminatory basis. Moreover, the proposal neither targets nor will it have a disparate impact on any particular category of market participant. The proposed fee change is designed to pause collection of a fee that applies to ETP Holders on an equal and non-discriminatory basis, waiver of which would apply to and benefit all ETP Holders equally. The Exchange also believes that recommencing the Gross FOCUS Fee on March 1, 2025 at the current rate, unless the Exchange determines it would be necessary to further adjust the rate to ensure that collections do not exceed a material portion of its Regulatory Costs, is not unfairly discriminatory because the resumed fee would apply equally to all ETP Holders.

In addition, the proposed elimination of obsolete pricing would affect all market participants on an equal and non-discriminatory basis, as the fee with which such pricing is associated is no longer available to any market participants. The Exchange also believes that the proposed change would protect investors and the public interest because the deletion of superseded pricing programs would facilitate market participants' understanding of the pricing currently applicable on the Exchange.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will 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 fee change would not impose an undue burden on competition as the fee waiver would apply to all ETP Holders on an equal and non-discriminatory basis. The Exchange believes that the proposed waiver would also not place certain market participants at an unfair disadvantage because all ETP Holders would be eligible for the same waiver. For the same reasons, the proposed fee waiver neither targets nor will it have a disparate impact on any particular category of market participant. All similarly-situated ETP Holders would be eligible for the proposed waiver. The Exchange also believes recommencing the Gross FOCUS Fee on March 1, 2025 at the same current rate (unless the Exchange determines it necessary at that time to adjust the fee to ensure that collections do not exceed a material portion of its Regulatory Costs) would not impose an undue burden on competition because the proposed rate would apply equally to all ETP Holders subject to the Gross FOCUS Fee and would permit the Exchange to resume assessing a fee that is designed to recover a material portion, but not all, of the Exchange's projected Regulatory Costs.

Intermarket Competition. The proposed fee change is not designed to address any competitive issues. Rather, the proposed change is designed to help the Exchange adequately fund its regulatory activities while seeking to ensure that total collections from regulatory fees do not exceed total Regulatory Costs.

Finally, that portion of the proposal that relates to elimination of a reference to a superseded fee would not have any impact on intra- or inter-market competition because the proposed change is solely designed to enhance the clarity and transparency of the Fee Schedule and alleviate possible customer confusion that may arise from inclusion of a reference to a superseded fee.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,[9] and Rule 19b-4(f)(2) thereunder[10] the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing. 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.

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9 15 U.S.C. 78s(b)(3)(A)(ii).

10 17 CFR 240.19b-4.

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-2024-86 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-2024-86. 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-2024-86, 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.[11]

J. Matthew DeLesDernier,

Deputy Secretary.

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[11] 17 CFR 200.30-3(a)(12).