

2021 is 180 days from that date, and April 1, 2021 is 240 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Exchange Act,<sup>11</sup> designates April 1, 2021 as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR-CboeBYX-2020-021).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021-02006 Filed 1-29-21; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90988; File No. SR-NYSEArca-2021-04]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Schedule of Fees and Charges To Establish Annual Fees for Exchange Traded Products

January 26, 2021.

Pursuant to Section 19(b)(1) <sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”) <sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on January 12, 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 its Schedule of Fees and Charges to establish annual fees for Exchange Traded Products that have a maturity date and for products that are based on an expected return over a specific outcome period. The Exchange proposes

to implement the fee changes effective January 12, 2021.<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 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 the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to amend its Schedule of Fees and Charges to establish annual fees for Exchange Traded Products (“ETPs”) <sup>5</sup> that have a maturity date and ETPs that are based on an expected return over a specific outcome period. As proposed, these types of ETPs would be eligible for the current annual fees for products that track an index.

The proposed change responds to the current extremely competitive environment for ETPs 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. The Exchange’s current annual fees for ETPs is based on the number of shares outstanding per issuer and provide incentives for issuers to list multiple series of certain securities on the Exchange. In response to the competitive environment for listings, the Exchange adopted a competitive pricing structure that combines higher minimum annual fees for certain securities with discounts for issuers that

list multiple ETPs. The proposed change is designed to offer annual listing fees for ETPs that have a maturity date and ETPs that provide an expected return over a specific outcome period based on the annual fees for ETPs that track an index.

The Exchange proposes to implement the fee changes effective January 12, 2021.

##### Proposed Rule Change

Annual fees are assessed each January in the first full calendar year following the year of listing. 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 Commission or other publicly available information. Annual fees apply regardless of whether any of these Funds are listed elsewhere.

The Exchange proposes to offer annual listing fees for two types of ETPs: (1) ETPs that have a specific maturity date, such as a fixed income ETP that primarily holds a diversified portfolio of fixed income bonds that provides regular interest payments and distributes a final payout in its stated maturity year; and (2) ETPs that provide an expected return over a specific outcome period, which are designed to provide a particular set of returns over a specific period based on the performance of an underlying instrument during the ETP’s outcome period. Such ETPs include a buffer strategy that seeks to provide investment returns that match the gains of a particular index(s) up to a maximum annual return, or cap level, while guarding against declines in the same underlying index(s), a buffer level, over a particular time period. Currently, both types of ETPs are eligible for the annual fees set forth in section 6.b. of the Schedule of Fees and Charges, which are applicable to 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. Generally, the products eligible for fees under section 6.b. of the Schedule of Fees and Charges entail more active issuer management and therefore incur higher Exchange costs, including costs related to issuer services, listing administration, product development and regulatory oversight.

The Exchange proposes that ETPs that have a maturity date and ETPs that provide an expected return over a specific outcome period would be eligible for the lower fees set forth in section 6.a. of the Schedule of Fees and

<sup>11</sup> *Id.*

<sup>12</sup> 17 CFR 200.30-3(a)(31).

<sup>13</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 originally filed to amend the Schedule of Fees and Charges on December 23, 2020 (SR-NYSEArca-2020-117). SR-NYSEArca-2020-117 was withdrawn and replaced by SR-NYSEArca-2020-118. SR-NYSEArca-2020-117 was subsequently withdrawn and replaced by this filing.

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

Charges for products that track an index, as follows:

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

An ETP designed to provide a particular set of returns over a specific outcome period utilizing a buffer strategy as described above is designed to provide investment returns that match the gains of a particular index(s) up to a maximum cap level while guarding against declines in the same underlying index(s) below a certain buffer level over a specified time period, which is very similar to how a fund based on an index operates. Moreover, an ETP with a maturity date designed to end on a specific date would not require the same open-ended commitment of Exchange resources as the more traditional types of actively managed products eligible for fees under section 6.b. of the Schedule of Fees and Charges that do not have a specified end date. Accordingly, the Exchange believes that the proposed lower fees are appropriate because ETPs that have a maturity date and that provide an expected return over a specific outcome period, like products that track an index, generally require the expenditure of less Exchange resources to support listing and administration. Charging lower fees for such products would thus more closely correlate the listing fee applicable to the issuer of ETPs to the costs associated with listing and trading such products, including costs related to issuer services, listing administration, product development and regulatory oversight. Structured products would continue to be charged annual fees under section 7 of the Schedule of Fees and Charges.

The proposed change described above 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 Section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of Sections

6(b)(4) and (5) of the Act,<sup>7</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 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 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 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>8</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.

Annual fees for ETPs are based on the number of shares outstanding per issuer, and then are further differentiated based on whether the ETP is index based or not, with lower annual fees for ETPs that are based on an index. As discussed above, the Exchange believes that it is reasonable to charge annual fees for ETPs that have a maturity date and ETPs that provide an expected return over a specific outcome period based on that same differentiation. The Exchange believes that, given the characteristics of such ETPs, charging the same, lower fees as the Exchange currently charges

ETPs that track an index would be reasonable because those relatively lower annual fees better correlate with the generally lesser Exchange costs associated with listing and trading ETPs that track an index, including costs related to issuer services, listing administration and product development. Given the current competitive environment, the Exchange believes that the proposed change is a reasonable attempt to establish listing fees for products that, like products that track an index, require a decreased expenditure of Exchange resources to support listing and administration, thereby enhancing competition among issuers and listing venues. The Exchange also believes that lower annual fees may reduce the barriers to entry and incentivize enhanced competition among issuers of ETPs that have a maturity date and ETPs that provide an expected return over a specific outcome period. The proposed rule change 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 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 proposed fees for ETPs that have a maturity date and ETPs that provide an expected return over a specific outcome period are equitable because the proposed annual fees would apply uniformly to all issuers. Moreover, the proposed fees would be equitably allocated among issuers because issuers would continue to qualify for the annual listing fee based on issuing ETPs that have a maturity date and that provide an expected return over a specific outcome period and for the annual fee based on the number of shares outstanding and 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.

<sup>7</sup> 15 U.S.C. 78f(b)(4) & (5).

<sup>8</sup> See Regulation NMS, 70 FR at 37499.

<sup>6</sup> 15 U.S.C. 78f(b).

In the prevailing competitive environment, issuers are free to list elsewhere if they believe that alternative venues offer them better value. The Exchange believes it is not unfairly discriminatory to offer the lower annual fees for products tracking an index to ETPs that have a maturity date and that provide an expected return over a specific outcome period because the proposed fees would apply to and potentially benefit all issuers equally. Further, the Exchange believes it is not unfairly discriminatory to apply the same fees applicable to ETPs that track an index to ETPs that have a maturity date and that provide an expected return over a specific outcome period because the proposed fees would be offered on an equal basis to all issuers listing such products on the Exchange. Moreover, the proposed annual fees would apply to issuers in the same manner as the current annual fees for ETPs that track an index.

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>9</sup> 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 the proposed change would encourage competition by offering lower annual fees for ETPs that have a maturity date and that provide an expected return over a specific outcome period, thereby incentivizing issuers to list such products on the Exchange, thereby enhancing competition among issuers and listing venues, to the benefit of investors. The Exchange believes that lower annual fees may reduce the barriers to entry and incentivize enhanced competition among issuers of ETPs that have a maturity date and that provide an expected return over a specific outcome period. 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 that have a maturity date and ETPs that provide an expected return over a specific outcome period on the Exchange. The Exchange believes the proposal will enhance competition among ETP issuers, to the benefit of investors. The Exchange does not believe the proposed change would burden intramarket competition as it would apply to and potentially benefit all issuers equally and uniformly and, as such, the proposed change 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 such proposal will directly enhance competition among ETP listing venues by reducing the costs associated with listing on the Exchange for ETPs that have a maturity date and that provide an expected return over a specific outcome period, to the benefit of investors. As such, the proposal is a competitive proposal designed to enhance pricing competition among listing venues and implement pricing for listings that better reflects the revenue and expenses associated with listing these types of ETPs on the Exchange. 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 can 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>10</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>11</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 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 Commission shall institute proceedings under Section 19(b)(2)(B)<sup>12</sup> 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2021-04 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-2021-04. 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 (<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

<sup>9</sup> 15 U.S.C. 78f(b)(8).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(2).

<sup>12</sup> 15 U.S.C. 78s(b)(2)(B).

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. 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-2021-04 and should be submitted on or before February 22, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**J. Matthew DeLesDernier,**  
Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90995; File No. SR-NASDAQ-2020-069]

### Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, To Exclude Special Purpose Acquisition Companies From the Requirement That at Least 50% of a Company's Round Lot Holders Each Hold Unrestricted Securities With a Market Value of at Least \$2,500

January 26, 2021.

#### I. Introduction

On October 8, 2020, The Nasdaq Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to exclude special purpose acquisition companies from the requirement that at least 50% of a company's round lot holders each hold unrestricted securities with a market value of at least

\$2,500. On October 21, 2020, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposed rule change in its entirety. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on October 28, 2020.<sup>3</sup> On December 11, 2020, pursuant to Section 19(b)(2) of the Act,<sup>4</sup> the Commission designated a longer period within which to approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change, as modified by Amendment No. 1.<sup>5</sup> This order approves the proposed rule change, as modified by Amendment No. 1.

#### II. Description of the Proposed Rule Change, as Modified by Amendment No. 1

The Exchange has proposed to exclude companies listed pursuant to Nasdaq Rule IM-5101-2 whose business plan is to engage in a merger or acquisition with one or more unidentified companies within a specified period of time ("SPACs"), prior to the completion of any such merger or acquisition, from the requirement that at least 50% of the company's required minimum number of round lot holders must each hold unrestricted securities with a market value of at least \$2,500 at the time of initial listing ("Required Minimum Amount").<sup>6</sup>

<sup>3</sup> See Securities Exchange Act Release No. 90245 (October 22, 2020), 85 FR 68400 ("Notice").

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> See Securities Exchange Act Release No. 90644, 85 FR 82005 (December 17, 2020). The Commission designated January 26, 2021, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change, as modified by Amendment No. 1.

<sup>6</sup> Nasdaq defines "round lot holder" as a holder of a normal unit of trading of unrestricted securities. The number of beneficial holders will be considered in addition to holders of record. See Nasdaq Rule 5005(a)(40). Nasdaq defines "normal unit of trading" to mean 100 shares of a security unless, with respect to a particular security, Nasdaq determines that a normal unit of trading shall constitute other than 100 shares. See Nasdaq Rule 5005(a)(39). Nasdaq defines "unrestricted securities" to mean securities that are not restricted securities. See Nasdaq Rule 5005(a)(46). Nasdaq defines "restricted securities" to mean securities that are subject to resale restrictions for any reason, including, but not limited to, securities: (1) Acquired directly or indirectly from the issuer or an affiliate of the issuer in unregistered offerings such as private placements or Regulation D offerings; (2) acquired through an employee stock benefit plan or as compensation for professional services; (3) acquired in reliance on Regulation S, which cannot be resold within the United States; (4) subject to a lockup agreement or a similar contractual restriction; or (5) considered "restricted securities" under Rule 144. See Nasdaq Rule 5005(a)(37). The number of required minimum number of round lot holders is 450 holders for the

The Exchange states in its proposal that it imposed the Required Minimum Amount to help ensure that at least 50% of the required minimum number of shareholders hold a meaningful value of unrestricted securities and that a company has sufficient investor interest to support an exchange listing.<sup>7</sup> The Exchange asserts that, prior to adopting the Required Minimum Amount, it had noticed problems with companies listing where a large number of round lot holders held exactly 100 shares, which would be worth only \$400 in the case of a stock that is trading at the minimum bid price of \$4 per share, or as little as \$200 in the case of a stock listing under alternative price criteria.<sup>8</sup> The Exchange further states that such holders held shares in the company prior to its IPO and that such amount was not a representation of genuine investor interest in the company sufficient to support an exchange listing.<sup>9</sup> In proposing to adopt the standard, the Exchange stated that it believed the Required Minimum Amount was a more appropriate representation of genuine investor interest in the company and would make it more difficult to circumvent the round lot holder requirement through share transfers for no value.<sup>10</sup>

The Exchange states that it does not believe the Required Minimum Amount is as relevant to the listing of SPACs.<sup>11</sup>

Nasdaq Global Select Market; 400 holders for the Nasdaq Global Market; and 300 holders for the Nasdaq Capital Market. See Nasdaq Rules 5315(f)(1)(C), 5405(a)(3), and 5505(a)(3). Nasdaq defines "market value" as the consolidated closing bid price multiplied by the measure to be valued. See Nasdaq Rule 5005(a)(23).

<sup>7</sup> See Notice, *supra* note 3, at 68401; Securities Exchange Act Release No. 86314 (July 5, 2019), 84 FR 33102, 33107 (July 11, 2019) (order approving SR-NASDAQ-2019-009) ("Required Minimum Amount Approval Order"). In the Required Minimum Amount Approval Order, the Commission also approved Nasdaq's proposal to exclude restricted securities (*see supra* note 6) from the calculation of publicly held shares, market value of publicly held shares, and round lot holders for initial listing purposes. According to Nasdaq, these changes were designed to help ensure adequate distribution, shareholder interest, and a liquid trading market for a security. See Notice, *supra* note 3, at 68401; Required Minimum Amount Approval Order, *supra*, at 33103, 33108-09.

<sup>8</sup> See Notice, *supra* note 3, at 68401. See also Required Minimum Amount Approval Order, *supra* note 7, at 33109.

<sup>9</sup> See Notice, *supra* note 3, at 68401-02.

<sup>10</sup> See *id.* at 68401; Required Minimum Amount Approval Order, *supra* note 7, at 33109.

<sup>11</sup> See Notice, *supra* note 3, at 68401. Nasdaq Rule IM-5101-2 sets forth requirements applicable to SPACs and requires, among other things, that at least 90% of the gross proceeds raised in the IPO and any concurrent sale by the SPAC of equity securities must be deposited in a trust account. See Nasdaq Rule IM-5101-2(a). Until a SPAC has completed business combinations meeting the requirements of IM-5101-2(b), each shareholder

Continued

<sup>13</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b-4.