

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-93899; File No. SR-NYSEARCA-2021-106]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Options Fees and Charges With Respect to a Regulatory Fee Related to the Central Registration Depository

January 5, 2022.

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 December 22, 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 Options Fees and Charges (the “Fee Schedule”) with respect to a regulatory fee related to the Central Registration Depository (“CRD system”), which is collected by the Financial Industry Regulatory Authority, Inc. (“FINRA”). The Exchange proposes to implement the fee change on January 2, 2022. 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 the Fee Schedule with respect to a regulatory fee collected by FINRA for use of the CRD system.<sup>4</sup> The Exchange proposes to implement the fee change on January 2, 2022.

FINRA collects and retains certain regulatory fees via the CRD system for the registration of associated persons of OTP Holders and OTP Firms that are not FINRA members (collectively, “Non-FINRA OTP Holders”).<sup>5</sup> The CRD system fees are user-based, and there is no distinction in the cost incurred by FINRA if the user is a FINRA member or a Non-FINRA OTP Holder.

FINRA recently amended one of the fees assessed for use of the CRD system.<sup>6</sup> Accordingly, the Exchange proposes to amend the Fee Schedule to mirror the fee assessed by FINRA, which will be implemented concurrently with the amended FINRA fee on January 2, 2022.<sup>7</sup> Specifically, the Exchange proposes to amend the Fee Schedule to modify the fee charged to Non-FINRA OTP Holders for each initial Form U4 filed for the registration of a representative or principal from \$100 to \$125.<sup>8</sup>

<sup>4</sup> The CRD system is the central licensing and registration system for the U.S. securities industry. The CRD system enables individuals and firms seeking registration with multiple states and self-regulatory organizations to do so by submitting a single form, fingerprint card, and a combined payment of fees to FINRA. Through the CRD system, FINRA maintains the qualification, employment, and disciplinary histories of registered associated persons of broker-dealers.

<sup>5</sup> The Exchange originally adopted fees for use of the CRD system in 2005 and amended those fees in 2013. See Securities Exchange Act Release Nos. 51641 (May 2, 2005), 70 FR 24155 (May 6, 2005) (SR-PCX-2005-49); 68590 (January 4, 2013), 78 FR 2470 (January 11, 2013) (SR-NYSEArca-2012-145). While the Exchange lists these fees in its Fee Schedule, it does not collect or retain these fees.

<sup>6</sup> See Securities Exchange Act Release No. 90176 (October 14, 2020), 85 FR 66592 (October 20, 2020) (SR-FINRA-2020-032).

<sup>7</sup> The Exchange notes that it has only adopted the CRD system fees charged by FINRA to Non-FINRA OTP Holders when such fees are applicable. In this regard, certain FINRA CRD system fees and requirements are specific to FINRA members, but do not apply to NYSE Arca-only OTP Holders. Non-FINRA OTP Holders have been charged CRD system fees since 2005. See note 5, *supra*. OTP Holders that are also FINRA members are charged CRD system fees according to Section 4 of Schedule A to the FINRA By-Laws.

<sup>8</sup> See Section 4(b)(1) of Schedule A to the FINRA By-Laws effective on January 2, 2022. This fee is assessed when a Non-FINRA OTP Holder submits an initial Uniform Application for Securities Industry Regulation or Transfer (known as a “Form U4”) filed by a member in the CRD system to register an individual.

The Exchange notes that the proposed change is not otherwise intended to address any other issues surrounding regulatory fees, and the Exchange is not aware of any problems that OTP Holders would have in complying with the proposed change.

##### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5),<sup>10</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 Exchange believes that the proposed fee change is reasonable because the fee will be identical to that adopted by FINRA as of January 2, 2022 for use of the CRD system to submit a Form U4. The costs of operating and improving the CRD system are similarly borne by FINRA when a Non-FINRA OTP Holder uses the CRD system; accordingly, the fees collected for such use should, as proposed by the Exchange, mirror the fees assessed to FINRA members. In addition, as FINRA noted in amending its fees, it believes that its proposed pricing structure is reasonable and correlates fees with the components that drive its regulatory costs to the extent feasible.

The Exchange also believes that the proposed fee change provides for the equitable allocation of reasonable fees and other charges, and does not unfairly discriminate between customers, issuers, brokers, and dealers. The fee applies equally to all individuals and firms required to report information to the CRD system, and the proposed change will result in the same regulatory fee being charged to all OTP Holders required to report information to the CRD system and for services performed by FINRA regardless of whether such OTP Holders are FINRA members. Accordingly, the Exchange believes that the fee collected for such use should increase in lockstep with the fee adopted by FINRA as of January 2, 2022, as is proposed by the Exchange.

#### 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

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

<sup>10</sup> 15 U.S.C. 78f(b)(4) & (5).

of the purposes of the Act. Specifically, the Exchange believes that the proposed change will reflect the fee that will be assessed by FINRA for Form U4 filings as of January 2, 2022 and will thus result in the same regulatory fees being charged to all OTP Holders required to report information to the CRD system and for services performed by FINRA, regardless of whether or not such OTP Holders are FINRA members.

*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>11</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>12</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>13</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-2021-106 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-2021-106. 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 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-2021-106 and should be submitted on or before February 1, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2022-00261 Filed 1-10-22; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

**[Investment Company Act Release No. 34463; 812-15217]**

**ETF Opportunities Trust and Applied Finance Advisors, LLC; Notice of Application**

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from section 15(a) of the Act and rule 18f-2 under the Act, as well as from certain disclosure requirements in rule 20a-1 under the Act, Item 19(a)(3) of Form N-1A, Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A under the Securities Exchange Act of 1934, and sections 6-07(2)(a), (b), and (c) of Regulation S-X ("Disclosure Requirements"). The requested exemption would permit an investment adviser to hire and replace certain sub-advisers without shareholder approval and grant relief from the Disclosure Requirements as they relate to fees paid to the sub-advisers.

**APPLICANTS:** ETF Opportunities Trust (the "Trust"), a Delaware statutory trust registered under the Act as an open-end management investment company that offers the Applied Finance Valuation Large Cap ETF (the "Existing Fund"), and Applied Finance Advisors, LLC (the "Adviser"), a Delaware limited liability company that is registered as an investment adviser under the Investment Advisers Act of 1940 (collectively with the Trust, the "Applicants").

**FILING DATES:** The application was filed on April 6, 2021, and amended on July 29, 2021 and November 10, 2021.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by emailing the Commission's Secretary at [Secretarys-Office@sec.gov](mailto:Secretarys-Office@sec.gov) and serving applicants with a copy of the request by email. Hearing requests should be received by the Commission by 5:30 p.m. on January 31, 2022, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at [Secretarys-Office@sec.gov](mailto:Secretarys-Office@sec.gov).

**ADDRESSES:** The Commission: [Secretarys-Office@sec.gov](mailto:Secretarys-Office@sec.gov). Applicants: [kshupe@ccofva.com](mailto:kshupe@ccofva.com).

**FOR FURTHER INFORMATION CONTACT:** Erin Loomis Moore, Senior Counsel, at (202) 551-6721, or Joseph Toner, Acting Branch Chief, at (202) 551-6825

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(2).

<sup>13</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>14</sup> 17 CFR 200.30-3(a)(12).