SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-99773; File No. SR-NYSENAT-2024-10)

March 19, 2024

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing of Proposed Change to Amend Its Schedule of Fees and Rebates

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 March 14, 2024, NYSE National, Inc. ("NYSE National" 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 its Schedule of Fees and Rebates ("Fee Schedule") to (1) include a rebate for non-tiered orders removing liquidity in securities priced at or above $1.00 that do not execute at a price better than the contra-side NBBO; and (2) delete Removing Tiers 4 and 5 as obsolete. The Exchange proposes to implement the rule change on March 1, 2024. The proposed 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 it received on the proposed rule change. The text of those statements may be examined at the

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

2 17 CFR 240.19b-4.

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 Schedule of Fees and Rebates ("Fee Schedule") to (1) include a rebate for non-tiered orders removing liquidity in securities priced at or above $1.00 that do not execute at a price better than the contra-side NBBO; and (2) delete Removing Tiers 4 and 5 as obsolete.

The proposed changes respond to the current competitive environment where order flow providers have a choice of where to direct liquidity-providing and liquidity-removing orders by offering further incentives for ETP Holders to send additional removing liquidity to the Exchange.

The Exchange proposes to implement the rule change on March 1, 2024.

Current Market and Competitive Environment

The Exchange operates in a highly competitive market. 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."[3]

3 See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7-10-04) (Final Rule) ("Regulation NMS").

As the Commission itself has recognized, the market for trading services in NMS stocks has become "more fragmented and competitive."[4] Indeed, equity trading is currently dispersed across 16 exchanges,[5] 31 alternative trading systems,[6] and numerous broker-dealer internalizers and wholesalers. Based on publicly-available information, no single exchange has more than 18% of the market.[7] Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, the Exchange's share of executed volume of equity trades in Tapes A, B and C securities is less than 2%.[8]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain products, in response to fee changes. While it is not possible to know a firm's reason for moving order flow, the Exchange believes that one such reason is because of fee changes at any of the registered exchanges or non-exchange trading venues to which a firm routes order flow. These fees can vary from month to month, and not all are publicly available. With respect to non-marketable order flow that would provide liquidity on an exchange, ETP Holders can choose from any one of the 16 currently operating registered exchanges to route such order flow. Accordingly, competitive forces constrain the Exchange's transaction fees, and market participants can readily trade on competing venues if they deem

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4 See Securities Exchange Act Release No. 51808, 84FR 5202, 5253 (February 20, 2019) (File No. S7-05-18) (Transaction Fee Pilot for NMS Stocks Final Rule) ("Transaction Fee Pilot").

5 See Cboe Global Markets, U.S. Equities Market Volume Summary, available at http://markets.cboe.com/us/equities/market_share/. See generally https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html.

6 *See* FINRA ATS Transparency Data, *available at* https://otctransparency.finra.org/otctransparency/AtsIssueData. A list of alternative trading systems registered with the Commission is *available at* https://www.sec.gov/foia/docs/atslist.htm.

7 See Cboe Global Markets U.S. Equities Market Volume Summary, available at http://markets.cboe.com/us/equities/market_share/.

8 See id.

pricing levels at those other venues to be more favorable.

The Exchange utilizes a "taker-maker" or inverted fee model to attract orders that provide liquidity at the most competitive prices. Under the taker-maker model, offering rebates for taking (or removing) liquidity increases the likelihood that market participants will send orders to the Exchange to trade with liquidity providers' orders. This increased taker order flow provides an incentive for market participants to send orders that provide liquidity. The Exchange generally charges fees for order flow that provides liquidity. These fees are reasonable due to the additional marketable interest (in part attracted by the Exchange's rebate to remove liquidity) with which those order flow providers can trade.

Proposed Rule Change

To respond to this competitive environment, the Exchange proposes the following changes to its Fee Schedule designed to provide order flow providers with additional incentives to route order flow to the Exchange. As described above, ETP Holders have a choice of where to send their order flow.

The Exchange proposes to add a rebate of $0.0016 per share for non-tiered orders removing liquidity in securities priced at or above $1.00 that do not execute at a price better than the contra-side NBBO, which currently receive no rebate. The current rate of "no charge" for removing liquidity that executes at a price better than the contra-side NBBO would remain unchanged. The proposed rebate is competitive and would be similar to the rebates provided by other markets for non-tiered orders removing liquidity.[9] Because this rebate for non-tiered orders removing liquidity would be greater than the $0.0007 rebate per share currently available under Removing Tier 5 and the $0.0015 rebate per share currently available under Removing

9 See, e.g., Cboe EDGA Exchange Fee Schedule, available at https://www.cboe.com/us/equities/membership/fee_schedule/edga/ (providing $0.0016 standard rebate for removing displayed liquidity).

Tier 4, the Exchange proposes to delete Removing Tiers 4 and 5 as obsolete.

The Exchange believes that the proposed rebate of $0.0016 per share for non-tiered orders removing liquidity that do not execute at a price better than the contra-side NBBO will incentivize more ETP Holders to route liquidity-removing order flow to the Exchange. The Exchange believes that the increased order flow that may result from these proposed changes would in turn support the quality of price discovery on the Exchange and provide additional price improvement opportunities for incoming orders.

As noted, the Exchange operates in a competitive environment. The Exchange does not know how much order flow ETP Holders choose to route to other exchanges or to off-exchange venues. Based on the profile of firms generally, the Exchange believes that with the proposed change, additional ETP Holders could choose to direct order flow to the Exchange. Without having a view of ETP Holders' activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any additional ETP Holders directing orders to the Exchange.

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any problems that ETP Holders 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,[10] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[11] 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

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10 15 U.S.C. 78f(b).

11 15 U.S.C. 78f(b)(4) & (5).

discriminate between customers, issuers, brokers or dealers.

The Proposed Change Is Reasonable

As discussed above, the Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. 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."[12] While Regulation NMS has enhanced competition, it has also fostered a "fragmented" market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that "such competition can lead to the fragmentation of order flow in that stock."[13]

Given the current competitive environment, the Exchange believes that the proposal represents a reasonable attempt to attract additional order flow to the Exchange while aligning the Exchange's fees with those charged by other markets. Specifically, the proposed rebate of $0.0016 for non-tiered orders removing liquidity in securities priced at or above $1.00 that do not execute at a price better than the contra-side NBBO is reasonable because it is competitive when compared to the rebates offered by other markets for non-tiered orders removing liquidity.[14] Additionally, because this rebate for non-tiered orders removing liquidity would be greater than the $0.0007 rebate per share currently available under Removing Tier 5 and the

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12 See Regulation NMS, supra note 4, at 37499.

13 See Securities Exchange Act Release No. 61358, 75 FR 3594, 3597 (January 21, 2010) (File No. S7-02-10) (Concept Release on Equity Market Structure).

14 See supra note 10.

$0.0015 rebate per share currently available under Removing Tier 4, the Exchange believes it is reasonable to delete Removing Tiers 4 and 5 as obsolete. The Exchange further believes that not offering a non-tiered rebate for removing orders that execute at a price better than the contra-side NBBO is reasonable because such orders receive the benefit of an execution at a price superior to the best protected quote in the national market system (including the Exchange's best protected bid or offer). The Exchange notes that this is in line with current Exchange Removing Tiers 1-5.

The Exchange believes that the proposal represents a reasonable effort to promote price discovery and enhanced order execution opportunities for ETP Holders. All ETP Holders would benefit from the greater amounts of liquidity on the Exchange, which would represent a wider range of execution opportunities.

The Proposal Is an Equitable Allocation of Fees and Rebates

The Exchange believes the proposed rule change equitably allocates its fees among its market participants. The proposed change would continue to encourage ETP Holders to both submit removing liquidity to the Exchange and execute orders on the Exchange, thereby contributing to robust levels of liquidity, to the benefit of all market participants.

The Exchange believes that providing a rebate of $0.0016 for non-tiered orders removing liquidity in securities priced at or above $1.00 that do not execute at a price better than the contra-side NBBO and deleting the obsolete Removing Tiers 4 and 5 is an equitable allocation of fees and credits. The Exchange believes that providing such a rebate for non-tiered orders removing liquidity will encourage executions on the Exchange because it is competitive and would be similar to the rebates provided by other markets for non-tiered orders removing liquidity.[15] To the extent that the proposed change attracts order flow to the Exchange, this order

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15 See id.

flow would make the Exchange a more competitive venue for, among other things, order execution. Thus, the Exchange believes the proposed rule change would continue to improve market quality for all market participants on the Exchange and, as a consequence, continue to attract more order flow to the Exchange, thereby improving market-wide quality and price discovery.

The Exchange further believes that the proposal constitutes an equitable allocation of fees and credits because all similarly situated ETP Holders and other market participants would be eligible for the same general and tiered rebates for removing liquidity. Moreover, the proposed change is equitable because the proposed rebates would apply equally to all similarly situated ETP Holders. 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, ETP Holders are free to disfavor the Exchange's pricing if they believe that alternatives offer them better value.

Moreover, the proposal neither targets nor will it have a disparate impact on any particular category of market participant. The Exchange believes that the proposal does not permit unfair discrimination because the proposal would be applied to all similarly situated ETP Holders and all ETP Holders would be subject to the same $0.0016 rebate per share for non-tiered orders removing liquidity in securities priced at or above $1.00 that do not execute at a price better than the contra-side NBBO, and the same deletion of obsolete Removing Tiers 4 and 5. Accordingly, no ETP Holder already operating on the Exchange would be disadvantaged by the proposed allocation of fees and credits.

The Exchange further believes that the proposed change would not permit unfair discrimination among ETP Holders because the non-tiered and tiered rates are available equally to all ETP Holders. As described above, in today's competitive marketplace, order flow providers have a choice of where to direct order flow, and the Exchange believes there are additional ETP Holders that could qualify if they chose to direct their order flow to the Exchange.

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,[16] 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 the submission of additional liquidity and order flow to a public exchange, thereby enhancing order execution opportunities for ETP Holders. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."[17]

Intramarket Competition. The proposed change is designed to attract additional order flow to the Exchange. As described above, the Exchange believes that the proposed change would provide additional incentives for market participants to route liquidity-removing orders to

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[16] 15 U.S.C. 78f(b)(8).

[17] Regulation NMS, 70 FR at 37498-99.

the Exchange. Greater liquidity benefits all market participants on the Exchange by providing more trading opportunities and encourages ETP Holders to send orders, thereby contributing to robust levels of liquidity. The proposed rebate for non-tiered orders removing liquidity in securities priced at or above $1.00 that do not execute at a price better than the contra-side NBBO would be available to all similarly-situated market participants, and thus, 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 market in which market participants can readily choose to send their orders to other exchanges and off-exchange venues if they deem fee levels at those other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and off-exchange venues. Because competitors are free to modify their own fees and rebates in response, and because market participants may readily adjust their order routing practices, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition.

The Exchange believes that the proposed change could promote competition between the Exchange and other execution venues, including those that currently offer similar order types and comparable transaction pricing, by encouraging additional orders to be sent to the Exchange for execution.

C. <u>Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others</u>

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 has become effective upon filing pursuant to Section 19(b)(3)(A)[18] of the Act and paragraph (f) thereunder. 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.

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-NYSENAT-2024-10 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-NYSENAT-2024-10. 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

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[18] 15 U.S.C. 78s(b)(3)(A).

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-NYSENAT-2024-10, 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.[19]

Sherry R. Haywood,

Assistant Secretary.

[19] 17 CFR 200.30-3(a)(12).