

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-87695; File No. SR-NYSENAT-2019-30)

December 9, 2019

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule 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 November 27, 2019, 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 eliminate the fees currently charged for MPL orders that add liquidity on the Exchange and provide that liquidity-removing orders that execute at prices better than the contra-side NBBO will not be subject to any fee. 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 it received on the proposed rule change. The text of those statements may be examined at the places

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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) eliminate the fee currently charged for non-tiered MPL orders adding liquidity in securities priced at or above \$1.00, (2) eliminate the fee currently charged for liquidity-adding MPL orders in Adding Tiers 1, 2, and 3, and (3) revise its rates for removing liquidity to provide that liquidity-removing orders that execute at prices better than the contra-side NBBO will not be subject to any fee.

The Exchange proposes to implement the rule change on December 2, 2019.

Background

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

As the Commission itself recognized, the market for trading services in NMS stocks has

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

become “more fragmented and competitive.”⁴ Indeed, equity trading is currently dispersed across 13 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 17% of the market share of executed volume of equity trades (whether excluding or including auction volume).⁷ Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, in each of the last three months, the Exchange had approximately 2% market share of executed volume of equity trades (whether excluding or including auction volume).⁸

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain products. While it is not possible to know a firm’s reason for shifting 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 vary 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

⁴ See Securities Exchange Act Release No. 51808, 84 FR 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/divisionsmarketregmrexchangeshtml.html>.

⁶ See FINRA ATS Transparency Data, available at <https://otctransparency.finra.org/otctransparency/AtsIssueData>. Although 54 alternative trading systems were registered with the Commission as of July 29, 2019, only 31 are currently trading. A list of alternative trading systems registered with the Commission is available at <https://www.sec.gov/foia/docs/atlist.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.*

of the 13 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 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 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 to amend its transaction fees as follows.

First, by eliminating the \$0.0010 fee currently applied to non-tiered MPL orders adding liquidity in securities priced at or above \$1.00. To effect this change, the Exchange proposes to revise the table in Section C of the Fee Schedule to replace the "\$0.0010 per share" text with "No charge" in the first row under the "Adding Liquidity" header. The Exchange's General Rates would otherwise remain the same.

The Exchange believes that eliminating the per share charge for MPL orders that add liquidity to the Exchange will incentivize ETP Holders to route liquidity-providing MPL orders to the Exchange, thereby attracting liquidity-providing and price improving order flow to the

Exchange and enhancing order execution opportunities, to the benefit of all ETP Holders seeking to remove liquidity. In addition, by eliminating this charge in its General Rates, the Exchange believes that ETP Holders may be more likely to contribute liquidity-adding MPL order flow even if they do not qualify for an Adding Tier.

Second, by eliminating the \$0.0005 fee currently applied to MPL orders adding liquidity in Adding Tiers 1, 2, and 3 (as set forth in Section D.1. of the Fee Schedule). Currently, MPL orders adding liquidity, on all Tapes, are subject to a \$0.0005 fee in Adding Tiers 1, 2, and 3. To effect the proposed change, the Exchange proposes to revise the table in Section D.1. to replace the current fee of \$0.0005 with “No charge” in the “Adding MPL Rate” column for Adding Tiers 1, 2, and 3. The Exchange’s Tiered Rates for Adding Liquidity would otherwise remain the same.

The Exchange believes that the elimination of the fee currently charged for MPL orders adding liquidity at these tiers will encourage ETP Holders to send additional mid-point liquidity to the Exchange, thereby enhancing order execution and price improvement opportunities for ETP Holders seeking to remove liquidity.

Finally, by amending its rates for removing liquidity to provide that liquidity-removing orders that execute at prices better than the contra-side NBBO will not be subject to any fee, across all Removing Tiers set forth in Section D.2. of the Fee Schedule. Under the Exchange’s current Tiered Rates for Removing Liquidity, as reflected in Section D.2. of the Fee Schedule, MPL orders removing liquidity receive a rebate of \$0.0002 at Removing Tiers 1, 2, and 3.

To effect this proposed change, the Exchange proposes to revise the table in Section D.2. to reflect that all orders removing liquidity (not just MPL orders) that execute at a price better than the contra-side NBBO will carry no charge and will not be eligible for a rebate. The

Exchange proposes to revise the header of the third column in the table in Section D.2. to “Removing Rate for Orders that Execute at a Price Better than Contra-Side NBBO” and replace “(\$0.0002)” with “No Charge” as the rate applicable to each Removing Tier in this column. The remainder of the Removing Rates in this section would remain unchanged.

The Exchange believes that the proposed change reflects a reasonable effort to both encourage ETP Holders to route liquidity-removing order flow to the Exchange and remain consistent with the Exchange’s taker-maker fee model. The Exchange proposes to eliminate credits available to removing orders that execute at a price better than the contra-side NBBO 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). As proposed, the tiered rates for such orders would be at no charge, which remains better than the current General Rate to remove liquidity, which is \$0.0005 per share. The Exchange believes that the proposed change would continue to promote market quality and execution opportunities for ETP Holders. Accordingly, the Exchange proposes that while such orders will not receive a rebate, they also will not be subject to a fee at any of the Removing Tiers.

Although the Exchange does not have a full view of ETP Holders’ activity on other markets and off-exchange venues, the Exchange believes that these changes would be significant enough to incentivize market participants to direct increased order flow to the Exchange. The Exchange believes that the changes will encourage ETP Holders to route additional liquidity to the Exchange and further believes that ETP Holders are likely to respond by in turn routing more liquidity-providing order flow to the Exchange

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of

the Act,⁹ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁰ 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 fragmented and competitive market. 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 categories of products, in response to fee changes. While it is not possible to know a firm's reason for shifting order flow, the Exchange believes that one such reason is because of fee changes at any one of the registered exchanges or non-exchange trading venues that a firm routes order flow to, which vary month to month, and not all of which are publicly known. With respect to non-marketable order flow that would provide liquidity on an Exchange, ETP Holders can choose from any one of the 13 currently operating registered exchanges to route such order flow. Accordingly, competitive forces constrain exchange transaction fees that relate to orders that would provide liquidity on an exchange.

Given the current competitive environment, the Exchange believes that this proposal represents a reasonable attempt to attract additional order flow to the Exchange. Specifically, the Exchange believes that eliminating the fees currently charged for both tiered and non-tiered MPL orders adding liquidity, as described above, is reasonable because ETP Holders will have an incentive to route additional liquidity-providing orders to the Exchange without incurring any transaction fees, thereby providing meaningful liquidity and increasing the opportunity for

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4) & (5).

contra-side order flow to receive price improvement. In addition, the Exchange believes that the proposed changes to the Removing Tiers are reasonable because they would promote execution opportunities for ETP Holders routing order flow to the Exchange.

The Exchange believes that the proposal as a whole represents a reasonable effort to promote price improvement 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

The Exchange believes its proposed change equitably allocates its fees among its market participants. The proposed change would continue to encourage ETP Holders to both submit additional 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 eliminating fees in connection with MPL orders adding liquidity would encourage the submission of additional liquidity to a national securities exchange, thus enhancing order execution opportunities for ETP Holders from the substantial amounts of liquidity present on the Exchange. All ETP Holders seeking to remove liquidity would benefit from the greater amounts of liquidity that will be present on the Exchange, which would provide greater execution opportunities.

The Exchange believes the proposed rule change would also improve market quality for all market participants seeking to remove liquidity on the Exchange and, as a consequence, attract more liquidity to the Exchange, thereby improving market-wide quality. The proposal neither targets nor will it have a disparate impact on any particular category of market participant.

Specifically, the Exchange believes that the proposal constitutes an equitable allocation of fees because all similarly situated ETP Holders and other market participants would be eligible for the same general and tiered rates and would be eligible for the same fees and credits. Moreover, the proposed change is equitable because the revised fees would apply equally to all similarly situated ETP Holders.

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 also believes that the proposed change is not unfairly discriminatory because it is reasonably related to the value to the Exchange's market quality associated with higher volume at prices more favorable than the NBBO. 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 rates, and, in this case, benefit from the elimination of fees previously charged to ETP Holders. Accordingly, no ETP Holder already operating on the Exchange would be disadvantaged by the proposed allocation of fees.

The Exchange further believes that the proposed changes would not permit unfair discrimination among ETP Holders because the general 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 liquidity-providing 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,¹¹ 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."¹²

Intramarket Competition. The proposed change is designed to attract additional order flow to the Exchange. The Exchange believes that its proposal to eliminate certain fees applying to MPL orders adding liquidity and apply no charge to liquidity-removing orders that execute at a price better than the contra-side NBBO would provide additional incentives for market participants to route orders to 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 revised fees would be available to all similarly-situated market participants, and thus, the proposed change would not

¹¹ 15 U.S.C. 78f(b)(8).

¹² Regulation NMS, 70 FR at 37498-99.

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. As noted above, the Exchange's market share of intraday trading was less than 2% in each of the last three months. 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 credits 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. 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)¹³ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁴ thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(2).

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)¹⁵ 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 e-mail to rule-comments@sec.gov. Please include File Number SR-NYSENAT-2019-30 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-2019-30. This file number should be included on the subject line if e-mail 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

¹⁵ 15 U.S.C. 78s(b)(2)(B).

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 offices 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-NYSENAT-2019-30, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

J. Matthew DeLesDernier
Assistant Secretary

¹⁶ 17 CFR 200.30-3(a)(12).