

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-90560; File No. SR-NYSENAT-2020-35)

December 3, 2020

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)¹ of the Securities Exchange Act of 1934 (“Act”),² and Rule 19b-4 thereunder,³ notice is hereby given that on December 1, 2020, NYSE National, Inc. (“NYSE National” or “Exchange”) filed with the Securities and Exchange Commission (“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 modify Adding Tier 2 and Removing Tier 1. The Exchange proposes to implement the rule change on December 1, 2020. 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 15 U.S.C. 78a.

³ 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 modify Adding Tier 2 and Removing Tier 1.

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 displayed and non-displayed liquidity to the Exchange. The proposed changes also respond to the current volatile market environment that has resulted in unprecedented average daily volumes, which is related to the ongoing spread of the novel coronavirus (“COVID-19”).

The Exchange proposes to implement the rule change on December 1, 2020.

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.”⁴

⁴ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (S7-10-04) (Final Rule) (“Regulation NMS”).

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.”⁵ Indeed, equity trading is currently dispersed across 16 exchanges,⁶ 31 alternative trading systems,⁷ and numerous broker-dealer internalizers and wholesalers. Based on publicly-available information, no single exchange has more than 16% of the market share of executed volume of equity trades (whether excluding or including auction volume).⁸ 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%.⁹

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

⁵ 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).

⁶ 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>.

⁷ 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>.

⁸ See Cboe Global Markets U.S. Equities Market Volume Summary, available at http://markets.cboe.com/us/equities/market_share/.

⁹ See *id.*

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 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 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 incentives to route liquidity-providing order flow to the Exchange. As described above, ETP Holders with liquidity-providing order flow have a choice of where to send that order flow.

Proposed Change to Adding Tier 2

Under current Adding Tier 2, ETP Holders that add liquidity to the Exchange in securities with a per share price of \$1.00 or more and that have at least 0.15% or more of ADV

of adding liquidity as a percentage of US CADV are charged a fee of \$0.0022 per share for adding displayed orders in Tape A, B, and C securities. The Exchange proposes to revise Adding Tier 2 by modifying the requirements to qualify for the tier, as follows (proposed additions underlined, deletions bracketed):

Tier Requirement	Adding Rate
<p>Adding Tier 2</p> <p>At least [0.15%] <u>0.13%</u> or more Adding ADV as a % of US CADV</p>	<p>Displayed liquidity: Tapes A, B and C: \$0.0022</p>

The Exchange does not propose any changes to the Adding Rate for Adding Tier 2, and the rate for Orders that add liquidity under the Adding Tier 2 would remain unchanged.

The Exchange believes that lowering the ADV requirement for Adding Tier 2 from 0.15% to 0.13% or more Adding ADV as a percentage of US CADV will allow greater numbers of ETP Holders to potentially qualify for the tier, and will incentivize more ETP Holders to route their liquidity-providing order flow to the Exchange in order to qualify for the tier. This in turn would support the quality of price discovery on the Exchange and provide additional price improvement opportunities for incoming orders. The Exchange believes that by correlating the amount of the fee to the level of orders sent by an ETP Holder that add liquidity, the Exchange’s fee structure would incentivize ETP Holders to submit more orders that add liquidity to the Exchange, thereby increasing the potential for price improvement to incoming marketable orders submitted to the Exchange.

As noted above, the Exchange operates in a competitive environment, particularly as relates to attracting non-marketable orders, which add liquidity to the Exchange. Currently, only

a few ETP Holders have qualified for Adding Tier 2. The Exchange does not know how much order flow ETP Holders choose to route to other exchanges or to off-exchange venues. 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 in order to qualify for the revised Adding Tier 2 rate. However, the Exchange believes there are multiple additional ETP Holders that could qualify for the revised Adding Tier 2, if they so choose, based on their current trading profiles.

Proposed Changes to Removing Tier 1

Under current Removing Tier 1, the Exchange provides a rebate of \$0.0030 per share to ETP Holders that remove liquidity from the Exchange in securities with a per share price of \$1.00 or more and that have (i) a combined Adding ADV and Removing ADV of at least 0.20% as a % of US CADV, and (ii) 250,000 of Adding ADV.

The Exchange proposes to revise Removing Tier 1 by modifying the requirements to qualify for the tier, as follows (proposed additions underlined, deletions bracketed):

Tier Requirement	Removing Rate
<p>Removing Tier 1</p> <p>At least [0.20%] <u>0.18%</u> Adding ADV and Removing ADV combined as a % of US CADV and 250,000 Adding ADV</p>	<p>(\$0.0030)</p>

The Exchange does not propose any changes to the Removing Rate for Orders that removed liquidity that qualify for Removing Tier 1, and the rate for such orders under Removing Tier 1 would remain unchanged.

The Exchange believes that lowering the combined Adding ADV and Removing ADV requirement for Removing Tier 1 from 0.20% to 0.18% as a percentage of US CADV for ETP Holders that also have 250,000 Adding ADV will allow greater numbers of ETP Holders to qualify for the tier, and will incentivize more ETP Holders to route liquidity-removing order flow to the Exchange in order to qualify for the tier. This in turn would support the quality of price discovery on the Exchange and provide additional price improvement opportunities for incoming orders.

As described above, ETP Holders with liquidity-removing order flow have a choice of where to send that order flow. The Exchange believes that as a result of the proposed change to Removing Tier 1, more ETP Holders will choose to route their liquidity-removing order flow to the Exchange in order to qualify for the credits for removing liquidity associated with Removing Tier 1 given that the requirements to qualify have been reduced.

As noted, the Exchange operates in a competitive environment. Currently, only a few ETP Holders qualify for Removing Tier 1. The Exchange does not know how much order flow ETP Holders choose to route to other exchanges or to off-exchange venues. 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 in order to qualify for the revised Removing Tier 1 rate. However, the Exchange believes there are multiple ETP Holders that could qualify for the revised Removing Tier 1, if they so choose, based on their current trading profiles.

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 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 16 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 the proposal represents a reasonable attempt to attract additional order flow to the Exchange. Specifically, the Exchange believes that the proposed revisions to Adding Tier 2 and Removing Tier 1 are

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4) & (5).

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 the proposed rule 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 modifying Adding Tier 2 and Removing Tier 1 would encourage the submission and removal of additional liquidity from the Exchange, thus enhancing order execution opportunities for ETP Holders from the substantial amounts of liquidity present on the Exchange. All ETP Holders would benefit from the greater amounts of liquidity that would 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 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 modified Adding Tier 2 and Removing Tier 1. 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 changes would not permit unfair discrimination among ETP Holders because the 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,¹² 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."¹³

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-providing and liquidity-removing 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 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 in Tapes A, B and C securities is less

¹² 15 U.S.C. 78f(b)(8).

¹³ Regulation NMS, 70 FR at 37498-99.

than 2%. 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)¹⁴ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁵ 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

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f)(2).

Commission shall institute proceedings under Section 19(b)(2)(B)¹⁶ 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-2020-35 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-2020-35. 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 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

¹⁶ 15 U.S.C. 78s(b)(2)(B).

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-NYSENAT-2020-35, 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.¹⁷

J. Matthew DeLesDernier
Assistant Secretary

¹⁷ 17 CFR 200.30-3(a)(12).