SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-93621; File No. SR-NYSEArca-2021-99)

November 19, 2021

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the NYSE Arca Equities Fees and Charges

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b-4 thereunder,[3] notice is hereby given that, on November 15, 2021, NYSE Arca, Inc. ("NYSE Arca" 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 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 Equities Fees and Charges ("Fee Schedule") to (1) amend the standard rates for adding and removing liquidity in Round Lots and Odd Lots in Tapes A, B and C securities with a per share price below $1.00; (2) consolidate the fee charged for PO Orders in Tape B and Tape C securities routed to auctions at away markets; (3) amend the application of the credits for Retail Orders that add liquidity; (4) amend the requirement applicable to the additional credit payable for Tape B securities; and (5) amend the requirement applicable to tiered credits payable for adding liquidity in Round Lots and Odd Lots in Tapes A, B and C securities with a per share price below $1.00. The Exchange proposes to implement the fee changes effective November 15, 2021. The proposed rule change is available

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

2 15 U.S.C. 78a.

3 17 CFR 240.19b-4.

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 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 the Fee Schedule to (1) amend the standard rates for adding and removing liquidity in Round Lots and Odd Lots in Tapes A, B and C securities with a per share price below $1.00; (2) consolidate the fee charged for PO Orders in Tape B and Tape C securities routed to auctions at away markets; (3) amend the application of the credits for Retail Orders that add liquidity; (4) amend the requirement applicable to the additional credit payable for Tape B securities; and (5) amend the requirement applicable to tiered credits payable for adding liquidity in Round Lots and Odd Lots in Tapes A, B and C securities with a per share price below $1.00.

The Exchange proposes to implement the fee changes effective November 15, 2021.[4]

Background

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[4] The Exchange originally filed to amend the Fee Schedule on November 1, 2021 (SR-NYSEArca-2021-95). SR-NYSEArca-2021-95 was subsequently withdrawn and replaced by this filing.

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."[5]

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."[6] Indeed, equity trading is currently dispersed across 16 exchanges,[7] numerous alternative trading systems,[8] and broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly available information, no single exchange currently has more than 18% market share.[9] Therefore, no exchange possesses significant pricing power in the execution of equity

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

6 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).

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

8 *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.

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

order flow. More specifically, the Exchange currently has less than 12% market share of executed volume of equities trading.[10]

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. 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 venues to which a firm routes order flow. With respect to non-marketable order flow that would provide liquidity on an Exchange against which market makers can quote, 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.

Proposed Rule Change

*Standard Rate for Adding and Removing Liquidity in Round Lots and Odd Lots in Tapes A, B and C securities with a per share price below $1.00 ("Sub-Dollar Securities")*

The Exchange currently provides a base credit of $0.00004 per share for adding liquidity in Sub-Dollar Securities. The base credit of $0.00004 per share also applies to Retail Orders and MPL Orders that add liquidity in Sub-Dollar Securities. For orders in Sub-Dollar Securities that remove liquidity, the Exchange currently charges a fee of 0.295% of dollar value.

With this proposed rule change, the Exchange proposes to eliminate the credit for Sub-Dollar Securities that add liquidity, including for MPL Orders in Sub-Dollar Securities that add liquidity. For Retail Orders in Sub-Dollar Securities, the Exchange proposes to modify the

10 See id.

credit, from $0.00004 per share to 0.05% of dollar value.[11] For orders in Sub-Dollar Securities that remove liquidity, the Exchange proposes to increase the fee, from 0.295% of dollar value to 0.30% of dollar value.

The purpose of reducing the standard rebate for orders, including MPL Orders, in Sub-Dollar Securities is for business and competitive reasons, as the Exchange believes the reduction of rebates would decrease the Exchange's expenditures with respect to transaction pricing and would also offset some of the costs associated with rebates paid to ETP Holders that qualify for the Sub-Dollar Step Up Tier and the rebates paid by the Exchange for Retail Orders in Sub-Dollar Securities, and the Exchange's operations generally, in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added liquidity. The Exchange notes that the proposed standard rebate for orders, including MPL Orders, in Sub-Dollar Securities that add liquidity, and the proposed standard fee for orders in Sub-Dollar Securities that remove liquidity is comparable to, and competitive with, the standard rebate and fee provided by at least one other exchange for executions of orders in securities priced below $1.00 per share.[12] Additionally, the proposed standard rebate for Retail Orders in Sub-Dollar Securities that add liquidity is also comparable to, and competitive with, the standard rebate provided by at least one other exchange for execution of orders in securities priced below $1.00

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11 The Exchange notes that other exchanges provide credits for liquidity-adding transactions in securities priced below $1.00 that are denominated in a percentage of the total dollar amount of the transaction. See e.g., the Members Exchange fee schedule on its public website (available at https://info.memxtrading.com/fee-schedule/), which reflects a rebate of 0.05% of total dollar value for Retail Orders that add displayed liquidity in securities priced below $1.00 per share.

12 See the Nasdaq Stock Market equities trading fee schedule on its public website (available at https://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2), which reflects a standard rebate of $0.00 per share to add liquidity in securities priced below $1.00 per share and a standard fee of 0.30% of total dollar volume in securities priced below $1.00 per share.

per share.[13]

*PO Orders*

Currently, under Section V. Standard Rates - Routing, the Exchange charges a fee of $0.0030 per share for PO Orders[14] in Tape B securities routed for execution in the open or closing auction on Cboe BZX. The Exchange also currently charges a similar fee of $0.0030 per share for PO Orders in Tape C securities routed for execution in the open or closing auction on Nasdaq.

The Exchange proposes to streamline the Fee Schedule by deleting the column for the fee for PO Orders in Tape C securities routed to Nasdaq auction and merge it with the column for the fee for PO Orders in Tape B securities routed to Cboe BZX auction. The purpose of the proposed change is to simplify the Fee Schedule. The Exchange is not making any substantive change other than to streamline the Standard Rates - Routing table under Section V. by merging the per share fees for PO Orders routed to Cboe BZX and Nasdaq into a single column.

*Retail Orders*

The Exchange currently provides tiered credits for Retail Orders that provide liquidity on the Exchange. Specifically, Section VI. Tier Rates - Round Lots and Odd Lots (Per Share Price $1.00 or Above), provides a base Retail Order Tier credit of $0.0033 per share for Adding. Additionally, the Exchange has established Retail Order Step-Up Tier 1, Retail Order Step-Up Tier 2 and Retail Order Step-Up Tier 3 that provide a credit of $0.0038 per share, $0.0035 per

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13 See note 11, supra.

14 A PO Order is a Market or Limit Order that on arrival is routed directly to the primary listing market without being assigned a working time or interacting with interest on the NYSE Arca Book. See NYSE Arca Rule 7.31-E(f)(1).

share, and $0.0036 per share, respectively, for Adding.[15]

The Exchange proposes to eliminate the distinction with respect to the type of liquidity for which the Exchange provides credits under Retail Order Step-Up Tier 1, Retail Order Step-Up Tier 2 and Retail Order Step-Up Tier 3 by removing current footnote (f) from the Retail Tiers table. With the proposed elimination of footnote (f), all Retail Orders sent to the Exchange by ETP Holders that add liquidity would receive the credits payable under the Retail Order Tier, Retail Order Step-Up Tier 1, Retail Order Step-Up Tier 2 and Retail Order Step-Up Tier 3. The Exchange is not proposing any substantive change to the requirement or the amount of the credit under each of the Retail Order tiers. The Exchange also proposes to renumber footnotes (g) and (h) as footnotes (f) and (g), respectively, in conjunction to the changes discussed herein.

The purpose of the proposed rule change is to adopt consistency within the Fee Schedule as to the type of activity for which the Exchange provides credits. The Exchange believes the proposed rule change will continue to encourage participation from ETP Holders to provide liquidity in Retail Orders on the Exchange to increase that order flow which would benefit all ETP Holders by providing greater execution opportunities on the Exchange. The Exchange also believes that the proposed change would protect investors and the public interest because maintaining such consistency within the Fee Schedule would make the Fee Schedule more transparent and facilitate market participants' understanding of the credits provided by the Exchange.

*Tape B Credits*

Currently, ETP Holders that meet the requirement under Tape B Step Up Tier can earn

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15 See Retail Tiers table under Section VI. Tier Rates - Round Lots and Odd Lots (Per Share Price $1.00 or Above). Footnote (f) provides that the credit payable under Retail Order Step-Up Tier 1, Retail Order Step-Up Tier 2 and Retail Order Step-Up Tier 3 applies for Adding displayed liquidity.

the following incremental credits:

- An incremental credit of $0.0002 per share when an ETP Holder has Adding ADV of Tape B CADV of at least 0.50% and has an Adding Increase in Tape B of Tape B CADV of at least 20% in Q3 2019;
- An incremental credit of $0.0003 per share when an ETP Holder has Adding ADV of Tape B CADV of at least 0.50% and has an Adding Increase in Tape B of Tape B CADV of at least 30% in Q3 2019; and
- An incremental credit of $0.0004 per share when an ETP Holder has Adding ADV of Tape B CADV of at least 0.50% and has an Adding Increase in Tape B of Tape B CADV of at least 40% in Q3 2019.

The incremental credits are payable in addition to the ETP Holder's Tiered or Standard credit(s); provided, however, that such combined credit(s) in Tape B securities currently cannot exceed $0.0032 per share.

The Exchange also provides an increased cap applicable under the Tape B Step Up Tier pricing tier. Specifically, if an ETP Holder's providing ADV increases at least 150% over the ETP Holder's Adding ADV in Q3 2019, then the ETP Holder can receive a combined credit of up to:

- $0.0033 per share if the ETP Holder is registered as a Lead Market Maker or Market Maker in at least 150 Less Active ETPs in which it meets at least two Performance Metrics, and has Tape B Adding ADV equal to at least 0.65% of Tape B CADV, or
- $0.0034 per share if the ETP Holder or Market Maker is registered as a Lead Market Maker or Market Maker in at least 200 Less Active ETPs in which it meets at least

two Performance Metrics, and has Tape B Adding ADV equal to at least 0.70% of Tape B CADV.

The Exchange proposes to amend the requirement to qualify for the increased cap applicable under the Tape B Step Up Tier pricing tier. The Exchange is not proposing any change to the level of the credits.

As proposed, if an ETP Holder is registered as a Lead Market Maker or Market Maker in at least 100 Less Active ETPs in which it meets at least two Performance Metrics, where the ETP Holder, together with any affiliates, has Adding Tape B ADV that is an increase of at least 60% over the ETP Holder's Adding ADV in Q3 2019, as a percentage of Tape B CADV, then such ETP Holder can receive a combined credit of up to:

- $0.0033 per share if the ETP Holder, together with any affiliates, has Tape B Adding ADV equal to at least 0.65% of Tape B CADV, or
- $0.0034 per share if the ETP Holder, together with any affiliates, has Tape B Adding ADV equal to at least 0.70% of Tape B CADV.

The Exchange believes lowering the Adding Tape B ADV requirement from 150% over the ETP Holder's Adding ADV in Q3 2019 to 60% and lowering the number of Less Active ETPs in which an ETP Holder is required to register as a Lead Market Maker or Market Maker from 150 and 200 Less Active ETPs to 100 Less Active ETPs, would allow ETP Holders to more easily qualify for the additional credits. The Exchange believes the amended requirements would continue to provide an incentive to ETP Holders to register as Lead Market Makers or Market Makers and incentivize such liquidity providers to increase the number of orders sent to the Exchange.

*Sub-Dollar Adding Step Up Tier*

The Exchange currently provides tiered credits to ETP Holders that add liquidity in Sub-Dollar Securities. Specifically, an ETP Holder that has an Adding ADV of 1 million shares with a per share price below $1.00 ("Sub-Dollar Adding Orders"), and Adding Increase of CADV in Sub-Dollar Adding Orders over July 2020, as a percentage of CADV with a per share price below $1.00, receives a credit for Sub-Dollar Adding Orders, as follows:

- A credit equal to 0.050% of the total dollar value for Adding Increase of CADV in Sub-Dollar Adding Orders of at least 0.20% over July 2020;
- A credit equal to 0.100% of the total dollar value for Adding Increase of CADV in Sub-Dollar Adding Orders of at least 0.50% over July 2020;
- A credit equal to 0.125% of the total dollar value for Adding Increase of CADV in Sub-Dollar Adding Orders of at least 0.75% over July 2020; and
- A credit equal to 0.150% of the total dollar value for Adding Increase of CADV in Sub-Dollar Adding Orders of at least 1.00% over July 2020.

The Exchange proposes to eliminate the tier in the third bullet above because no ETP Holder has reached that tier in the last 6 months. Additionally, the Exchange proposes to modify the requirement for tiers in the first and second bullets above. The Exchange is not proposing any change to the level of the credits provided for adding liquidity in Sub-Dollar Securities.

Specifically, the Exchange proposes to modify the volume threshold that ETP Holders would have to meet to qualify for the credits in the tiers in the first and second bullets above. With the proposed modifications, the tiered credits payable to ETP Holders that liquidity in Sub-Dollar Securities would be as follows:

- A credit equal to 0.050% of the total dollar value for Adding Increase of CADV in Sub-Dollar Adding Orders of at least 0.30% over July 2020;

- A credit equal to 0.100% of the total dollar value for Adding Increase of CADV in Sub-Dollar Adding Orders of at least 0.60% over July 2020; and
- A credit equal to 0.150% of the total dollar value for Adding Increase of CADV in Sub-Dollar Adding Orders of at least 1.00% over July 2020.

The purpose of this proposed change is to continue to incentivize ETP Holders to increase the liquidity-providing orders in Sub-Dollar Securities they send to the Exchange, which would support the quality of price discovery on the Exchange and provide additional liquidity for incoming orders. As noted above, the Exchange operates in a competitive environment, particularly as it relates to attracting non-marketable orders, which add liquidity to the Exchange. While the Exchange proposes to increase the volume threshold for two of the current tiers, the Exchange believes ETP Holders will continue to be able to meet the increased requirement given the increased trading in Sub-Dollar Securities in recent months. ETP Holders that trade in Sub-Dollar Securities would benefit by receiving enhanced credits if they choose to send such orders to the Exchange. The Exchange also believes that maintaining July 2020 as the baseline month would continue to allow ETP Holders to meet the increased volume requirement. Based on their current trading profile on the Exchange, a number of ETP Holders would already meet the increased volume threshold and would therefore continue to receive credits that they previously earned. However, without having a view of ETP Holders' activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in other ETP Holders directing orders to the Exchange in order to qualify for the tiers. The Exchange cannot predict with certainty how many ETP Holders would avail themselves of this opportunity, but additional liquidity-providing orders would benefit all market participants because it would provide greater execution opportunities on the Exchange.

The Exchange believes that eliminating a tier that has become underutilized will streamline the Fee Schedule. The Exchange further believes that the remaining tiers will continue to incentivize ETP Holders to submit liquidity providing orders in Sub-Dollar Securities to qualify for the credits. As noted above, the Exchange is not proposing any change to the level of credits payable under the remaining tiers for adding liquidity in Sub-Dollar Securities.

The proposed changes are not otherwise intended to address any 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,[16] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[17] 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.

As discussed above, the Exchange operates in a highly fragmented and 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."[18]

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16 15 U.S.C. 78f(b).

17 15 U.S.C. 78f(b)(4) and (5).

18 See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499

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 categories of products, in response to fee changes. With respect to non-marketable orders which 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 reasonably constrain exchange transaction fees that relate to orders that would provide displayed liquidity on an exchange. Stated otherwise, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

Given this competitive environment, the proposal represents a reasonable attempt to attract additional order flow to the Exchange. The Exchange believes that the proposal is also equitable and 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. The proposal is also not unfairly discriminatory because it neither targets nor will it have a disparate impact on any particular category of market participant.

*Standard Rate for Adding and Removing Liquidity in Sub-Dollar Securities*

The Exchange believes that the proposed changes to increase the standard fee for orders in Sub-Dollar Securities that remove liquidity and reduce the standard rebate for orders, including MPL Orders, in Sub-Dollar Securities that add liquidity are reasonable, equitable, and consistent with the Act because such changes are designed to generate additional revenue and decrease the Exchange's expenditures with respect to transaction pricing and also to offset some of the costs associated with the rebates paid to ETP Holders that qualify for the Sub-Dollar Step Up Tier and the higher rebates paid by the Exchange for Retail Orders in Sub-Dollar Securities,

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(June 29, 2005).

and the Exchange's operations generally, in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added liquidity.

The Exchange also believes the proposed increased standard fee for orders in Sub-Dollar Securities is reasonable and appropriate because it represents a modest increase from the current standard fee and, as noted above, remains comparable to the fee to remove liquidity in securities below $1.00 charged by at least one other exchange.[19] Similarly, the Exchange believes the proposed reduced standard rebate for orders, including MPL Orders, in Sub-Dollar Securities that add liquidity, and modification, from a per share basis to total dollar value, of the standard rebate for Retail Orders in Sub-Dollar Securities that add liquidity is reasonable and appropriate because the reduction represents a modest decrease from the current standard rebate and, as noted above, remains comparable to, and competitive with, the standard rebates provided by other exchanges for orders, including Retail Orders, that add liquidity in securities priced below $1.00 per share.[20] The Exchange further believes that the proposed changes to the standard fees and rebates for adding and removing liquidity in Sub-Dollar Securities are equitably allocated and not unfairly discriminatory because they would apply equally to all ETP Holders.

*PO Orders*

The Exchange believes that the proposed rule change to merge the fee columns for PO Orders routed to Cboe BZX and Nasdaq is reasonable because the resulting change will simplify the Fee Schedule. The Exchange believes the proposed change is also reasonable because the Exchange is not making any substantive change other than to streamline the Standard Rates - Routing table in Section V. by merging the per share fees for PO Orders routed to Cboe BZX and Nasdaq into a single column.

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19 See note 12, supra.

20 See notes 11 and 12, supra.

The Exchange believes that simplifying and streamlining the Fee Schedule is equitable and not unfairly discriminatory because all ETP Holders would continue to be subject to the same fee structure, and access to the Exchange's market would continue to be offered on fair and non-discriminatory terms. The Exchange also believes that the proposed change would protect investors and the public interest because a streamlined Fee Schedule would make it more accessible and transparent and facilitate market participants' understanding of the fees charged for services currently offered by the Exchange.

*Retail Orders*

The Exchange believes that the proposed rule change to eliminate the distinction between orders that provide liquidity and those that provide displayed liquidity under Retail Order Step-Up Tier 1, Retail Order Step-Up Tier 2 and Retail Order Step-Up Tier 3 is reasonable because it will result in consistency on the Exchange with respect to the credits provided for liquidity-adding Retail Orders under the Retail Order tiers. With this proposed rule change, the Exchange would provide a credit to all liquidity-adding Retail Orders that qualify under the Retail Order Step-Up Tier 1, Retail Order Step-Up Tier 2 and Retail Order Step-Up Tier 3, similar to liquidity-adding Retail Orders that qualify under the Retail Order Tier, which does not currently require that such orders provide displayed liquidity. The Exchange believes it is reasonable to provide credits for Retail Orders that provide liquidity without any distinction. At least one other exchange does not make a distinction when providing a credit for liquidity-adding Retail Orders.[21]

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[21] See Cboe BZX U.S. Equities Exchange ("BZX") Fee Schedule, Fee Code ZA, which provides a credit for Retail Orders that add liquidity, available at https://www.cboe.com/us/equities/membership/fee_schedule/bzx/.

The Exchange believes the proposed change is also reasonable because the Exchange is not making any change other than to remove footnote (f) and therefore, adopt consistency in how credits would be payable for liquidity-adding Retail Orders; the Exchange is not proposing any change to the requirements or the level of credits under the Retail Order Tier, Retail Order Step-Up Tier 1, Retail Order Step-Up Tier 2 and Retail Order Step-Up Tier 3. As noted above, the purpose of the proposed rule change is to adopt consistency within the Fee Schedule as to the type of activity for which the Exchange provides credits. The Exchange believes the proposed rule change will continue to encourage participation from ETP Holders to provide liquidity in Retail Orders on the Exchange to increase that order flow which would benefit all ETP Holders by providing greater execution opportunities on the Exchange.

The Exchange believes that adopting consistent application in how credits are paid is equitable and not unfairly discriminatory because all ETP Holders would continue to be subject to the same fee structure, and access to the Exchange's market would continue to be offered on fair and non-discriminatory terms. The Exchange also believes that the proposed change would protect investors and the public interest because a simplified Fee Schedule would make it more transparent and facilitate market participants' understanding of the credits provided by the Exchange.

*Tape B Credits*

The Exchange believes the proposed rule change to modify the requirements to qualify for the additional Tape B credits is a reasonable means of attracting additional liquidity to the Exchange. The Exchange believes the modified requirements would continue to encourage ETP Holders to submit additional liquidity to a national securities exchange and receive the current level of credits, which are among the highest paid by the Exchange. The Exchange believes it is reasonable to require ETP Holders to meet the applicable volume threshold to qualify for the increased credits, given the higher combined credit of $0.0033 per share and $0.0034 per share that the Exchange would pay if the tier criteria is met. The Exchange believes that submission of additional liquidity to the Exchange would promote price discovery and transparency and enhance order execution opportunities for ETP Holders from the substantial amounts of liquidity present on the Exchange. The Exchange also believes it is reasonable to require ETP Holders to register as a Lead Market Maker or Market Maker in a minimum number of Less Active ETPs and to meet at least two Performance Metrics in such securities as the Exchange believes this requirement would enhance market quality in Less Active ETPs and support the quality of price discovery in such securities. The Exchange also believes it is reasonable to lower the number of Less Active ETPs in which an ETP Holder is required to register as a Lead Market Maker or Market Maker because it would lead to greater participation by ETP Holders in Less Active ETPs.

The Exchange believes the proposed rule change to modify the requirements to qualify for the additional Tape B credits equitably allocates its fees and credits among market participants because it is reasonably related to the value of the Exchange's market quality associated with higher equities volume. As proposed, the Exchange would continue to provide qualifying ETP Holders with some of the highest credits payable by the Exchange provided they continue to participate as Lead Market Makers or Market Makers and continue to provide increased Tape B adding ADV. The more an ETP Holder participates, the greater the credit that ETP Holder would receive. The Exchange believes the modified requirements would encourage ETP Holders to continue to send orders that add liquidity to the Exchange, thereby contributing to robust levels of liquidity, which would benefit all market participants.

The Exchange believes it is not unfairly discriminatory to modify the requirements to qualify for the increased Tape B credits because the resulting requirements would be applied on an equal basis to all ETP Holders, who would all be subject to them on an equal basis. Additionally, the proposal neither targets nor will it have a disparate impact on any particular category of market participant. The proposal does not permit unfair discrimination because the modified requirements would be applied to all ETP Holders, who would all be subject to the requirements on an equal basis.

*Sub-Dollar Adding Step Up Tier*

The Exchange believes the proposal to modify the volume requirement for ETP Holders to qualify for the Sub-Dollar Adding Step Up Tier is reasonable because, despite the increased volume requirement, ETP Holders would continue to be incentivized to send orders in Sub-Dollar Securities to qualify for the credits provided by the Exchange, which the Exchange is not changing. Additionally, despite the increased volume requirement, the Exchange believes that ETP Holders would continue to send orders in Sub-Dollar Securities to the Exchange because no competing market currently provides tier-based credits in Sub-Dollar Securities similar to those provided by the Exchange. To the extent that ETP Holders would be required to send increased orders in Sub-Dollar Securities to the Exchange to qualify for the credits, such increased participation would result in increased liquidity which in turn would support the quality of price discovery and would promote market transparency as such orders would be sent to a national securities exchange rather than to off-exchange venues. Moreover, the addition of liquidity would benefit market participants whose increased order flow would provide meaningful added levels of liquidity thereby contributing to the depth and market quality on the Exchange.

The Exchange notes that volume-based incentives and discounts have been widely adopted by exchanges,[22] including the Exchange,[23] and are reasonable, equitable and non-discriminatory because they are open to all ETP Holders on an equal basis and provide additional credits that are reasonably related to the value to an exchange's market quality and associated higher levels of market activity.

The Exchange believes that the proposed rule change to eliminate one of the tiers is reasonable because the tier proposed for deletion has been underutilized and has not incentivized ETP Holders to bring liquidity and increase trading on the Exchange. In the last 6 months, no ETP Holder has availed itself of the tier's requirement. The Exchange believes it is reasonable to eliminate pricing tiers when they become underutilized. The Exchange believes eliminating underutilized tiers would also simplify the Fee Schedule. The Exchange further believes that removing reference to underutilized tiers that the Exchange proposes to eliminate from the Fee Schedule would also add clarity to the Fee Schedule.

The Exchange believes the proposal to modify the volume requirement for ETP Holders to qualify for the Sub-Dollar Adding Step Up Tier is equitable because, despite the increased volume requirement, ETP Holders would continue to be incentivized to send orders in Sub-Dollar Securities to qualify for the credits provided by the Exchange, which the Exchange is not changing. Moreover, any increased order flow would be to the benefit of all market participants because such increased order flow in Sub-Dollar Securities would provide meaningful added

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22 See e.g., BZX Fee Schedule, Footnote 1, Add Volume Tiers which provide enhanced rebates between $0.0025 and $0.0031 per share for displayed orders where BZX members meet certain volume thresholds.

23 See e.g., Fee Schedule, Step Up Tiers, which provide enhanced rebates between $0.0028 and $0.0033 per share in Tape A Securities, between $0.0022 and $0.0034 per share in Tape B Securities, and between $0.0028 and $0.0033 per share in Tape C Securities for orders that provide displayed liquidity where ETP Holders meet certain volume thresholds.

levels of liquidity thereby contributing to the depth and market quality on the Exchange.

As noted above, based on their current trading profile on the Exchange, a number of ETP Holders would already meet the increased volume threshold and would therefore continue to receive credits that they previously earned. However, without having a view of ETP Holders' activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in other ETP Holders directing orders to the Exchange in order to qualify for the tiers. The Exchange cannot predict with certainty how many ETP Holders would avail themselves of this opportunity, but additional liquidity-providing orders would benefit all market participants because it would provide greater execution opportunities on the Exchange.

The Exchange believes that offering credits for providing liquidity in Sub-Dollar Securities, which are some of the highest among the Exchange's competitors, if the step-up requirements are met, will continue to attract increased order flow and liquidity to the Exchange, thereby providing additional price improvement opportunities on the Exchange and benefiting investors generally. As to those market participants that do not qualify for the adding liquidity credits by increasing order flow and liquidity, the proposal will not adversely impact their existing pricing or their ability to qualify for other credits provided by the Exchange.

The Exchange believes that the proposed rule change to eliminate one of the tiers is an equitable allocation of its fees and credits. The Exchange believes that eliminating a tier from the Fee Schedule when such tier becomes underutilized is equitable because the tier would be eliminated in its entirety and would no longer be available to any ETP Holder.

The Exchange believes it is not unfairly discriminatory to modify the volume requirement for ETP Holders to qualify for the Sub-Dollar Adding Step Up Tier, as the modified requirement would be applicable on an equal basis to all ETP Holders that add liquidity under the pricing tier. The Exchange believes that, despite the increased volume requirement, the credits payable under the pricing tier, which the Exchange is not proposing to change, would continue to serve as an incentive to ETP Holders to increase the level of orders sent to the Exchange in order to qualify for such credits.

The Exchange believes that the proposed rule change is not unfairly discriminatory because maintaining or increasing the proportion of Sub-Dollar Securities that are executed on a registered national securities exchange (rather than relying on certain available off-exchange execution methods) would contribute to investors' confidence in the fairness of their transactions and would benefit all investors by deepening the Exchange's liquidity pool, supporting the quality of price discovery, promoting market transparency and improving investor protection. Finally, the submission of orders in Sub-Dollar Securities to the Exchange is optional for ETP Holders in that they could choose whether to submit such orders to the Exchange and, if they do, the extent of its activity in this regard.

The Exchange believes that the proposed rule change to eliminate one of the tiers is not unfairly discriminatory. The Exchange believes that eliminating a tier from the Fee Schedule when such tier becomes underutilized is not unfairly discriminatory because the tier would be eliminated in its entirety and would no longer be available to any ETP Holder.

On the backdrop of the competitive environment in which the Exchange currently operates, the proposed rule change is a reasonable attempt to increase liquidity on the Exchange and improve the Exchange’s market share relative to its competitors.

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,[24] 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 changes would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and 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 integrated competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."[25]

*Intramarket Competition*. The Exchange believes the proposed amendments to its Fee Schedule would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed changes represent a significant departure from previous pricing offered by the Exchange or its competitors. The proposed changes are designed to attract additional order flow to the Exchange, and would continue to incentivize market participants to direct order flow to the Exchange, bringing with it additional execution opportunities for market participants. In particular, the proposed changes to the standard fees and rebates for Sub-Dollar Securities would be available to all similarly situated market participants, and as such, would not impose a disparate burden on competition among market participants on the Exchange. The Exchange's proposal to remove the distinction between Retail Orders that provide liquidity from those that provide displayed liquidity would also continue to incentivize ETP Holders to direct more of

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[24] 15 U.S.C. 78f(b)(8).

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

their Retail Orders to the Exchange as each Retail Order would be treated in a similar fashion for purposes of the credits offered by the Exchange. Additionally, the proposed volume requirement to qualify for the Tape B credits and to qualify for the Sub-Dollar Adding Step Up tier would continue to incentivize ETP Holders to direct order flow to the Exchange, and would apply to all ETP Holders equally in that all ETP Holders are eligible for these tiers, have a reasonable opportunity to meet the tiers' criteria and will receive credits on their qualifying orders if such criteria are met. Greater overall order flow, trading opportunities, and pricing transparency benefits all market participants on the Exchange by enhancing market quality and continuing to encourage ETP Holders to send orders, thereby contributing towards a robust and well-balanced market ecosystem. Moreover, the proposal to modify the Fee Schedule to consolidate the pricing applicable to PO Orders routed to away markets would add clarity and transparency to the Fee Schedule. The Exchange also does not believe the proposed rule change to eliminate underutilized tiers will impose any burden on intramarket competition because the proposed change would impact all ETP Holders uniformly (i.e., the tier will not be available to any ETP Holder). The proposed changes would equally impact all similarly-situated market participants, and, as such, 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 exchange 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 (i.e., excluding auctions) is currently less than 12%. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with 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 changes imposes any burden on intermarket competition.

The Exchange believes that the proposed fee changes may 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)[26] of the Act and subparagraph (f)(2) of Rule 19b-4[27] 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)[28] of the Act to determine whether the proposed rule change should be approved or disapproved.

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[26] 15 U.S.C. 78s(b)(3)(A).

[27] 17 CFR 240.19b-4(f)(2).

[28] 15 U.S.C. 78s(b)(2)(B).

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-NYSEArca-2021-99 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-2021-99. 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 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-NYSEArca-2021-99, 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.[29]

J. Matthew DeLesDernier
Assistant Secretary

[29] 17 CFR 200.30-3(a)(12).