

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-94917; File No. SR-NYSEArca-2022-27)

May 16, 2022

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) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 2, 2022, 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 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 the NYSE Arca Equities Fees and Charges (“Fee Schedule”) by introducing two new pricing tiers, Tier 2 under Adding Tiers and Step Up Tier 3 under Step Up Tiers. The Exchange also proposes to eliminate Step Up Tier 1 under Step Up Tiers and eliminate Tier 4 under Tape C Tiers for Adding. Lastly, the Exchange proposes to amend the criteria to qualify for Tier 3 under Tape C Tiers for Adding. The Exchange proposes to implement the fee changes effective May 2, 2022. 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 by introducing two new pricing tiers, Tier 2 under Adding Tiers and Step Up Tier 3 under Step Up Tiers. The Exchange also proposes to eliminate Step Up Tier 1 under Step Up Tiers and eliminate Tier 4 under Tape C Tiers for Adding. Lastly, the Exchange proposes to amend the criteria to qualify for Tier 3 under Tape C Tiers for Adding. The Exchange proposes to implement the fee changes effective May 2, 2022.

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. 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

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.”⁴ Indeed, equity trading is currently dispersed across 16 exchanges,⁵ numerous alternative trading systems,⁶ 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.⁷ Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, the Exchange currently has less than 12% market share of executed volume of equities trading.⁸

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

³ 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”).

⁴ 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).

⁵ 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>.

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

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

Adding Tiers - Tier 2

The Exchange proposes to introduce a new pricing tier, Tier 2, in the Adding Tiers table under Section VI. Tier Rates - Round Lots and Odd Lots (Per Share Price \$1.00 or Above). As proposed, an ETP Holder could qualify for a credit of \$0.0030 per share for Adding in Tape A securities, \$0.0023 per share for Adding in Tape B securities and \$0.0031 per share for Adding in Tape C securities if the ETP Holder has Adding ADV that is equal to at least 0.50% of CADV.⁹ With the proposed addition of a new pricing tier and the renumbering of existing tiers, the Exchange proposes to amend the text regarding certain fees that are applicable to ETP Holders that qualify for each of the tiers by adding reference to the newly renumbered Tier 4.

The Exchange believes that the proposed new pricing tier will incentivize ETP Holders to route their liquidity-providing order flow to the Exchange in order to qualify for the tier, which provides higher credits than those currently available under current Tier 2 and current Tier 3.

This in turn would support the quality of price discovery on the Exchange and provide additional

⁹ With the introduction of the new Tier 2 pricing tier, the Exchange proposes to renumber current Tier 2 as Tier 3 and current Tier 3 as Tier 4 without making any changes to the requirement or credits to those tiers. Additionally, the Exchange proposes to replace reference to Tier 3 with Tier 4 in the text attached to the note denoted by * under current Tier 3.

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 it relates to attracting non-marketable orders, which add liquidity to the Exchange. The Exchange does not know how much order flow ETP Holders choose to route to other exchanges or to off-exchange venues. Based on the profile of liquidity-adding firms generally, the Exchange believes that a number of ETP Holders could qualify for the proposed new pricing tier if they choose to direct order flow to the Exchange. However, 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 new Tier 2 credits.

Step Up Tiers

The proposed rule change is designed to be available to all ETP Holders on the Exchange and is intended to provide ETP Holders an opportunity to receive an enhanced rebate by executing more of their orders on the Exchange. The Exchange currently provides credits to ETP Holders who submit orders that provide displayed liquidity on the Exchange. The Exchange currently has multiple levels of credits for orders that provide displayed liquidity that are based on the amount of volume of such orders that ETP Holders send to the Exchange.

In this competitive environment, the Exchange has already established Step Up Tiers 1 - 3, which are designed to encourage ETP Holders that provide displayed liquidity on the

Exchange to increase that order flow, which would benefit all ETP Holders by providing greater execution opportunities on the Exchange. In order to provide an incentive for ETP Holders to direct providing displayed order flow to the Exchange, the credits increase in the various tiers based on increased levels of volume directed to the Exchange.

Currently, the following credits are available to ETP Holders that provide increased levels of displayed liquidity on the Exchange:

<i>Tier</i>	<i>Credit for Adding Displayed Liquidity</i>
Step Up Tier 1	\$0.0030 (Tape A) \$0.0023 (Tape B) \$0.0031 (Tape C)
Step Up Tier 2	\$0.0028 (Tape A and C) \$0.0022 (Tape B)
Step Up Tier 3	\$0.0033 (Tape A and C) \$0.0034 (Tape B)

The Exchange proposes the following changes to the Step Up Tiers. First, the Exchange proposes to eliminate current Step Up Tier 1 and remove the pricing tier from the Fee Schedule. The current Step Up Tier 1 pricing tier has been underutilized by ETP Holders. The Exchange has observed that not a single ETP Holder has qualified for the pricing tier proposed for elimination in the last three months. Since the current Step Up Tier 1 pricing tier has not been effective in accomplishing its intended purpose, which is to incent ETP Holders to increase their liquidity adding activity on the Exchange, the Exchange has determined to eliminate the pricing tier from the Fee Schedule. With the proposed elimination of Step Up Tier 1, the Exchange proposes to rename current Step Up Tier 2 as Step Up Tier 1 and current Step Up Tier 3 as Step Up Tier 2.¹⁰

¹⁰ With the proposed addition of a new pricing tier and the renumbering of existing tiers, the Exchange proposes to amend footnote (b) under Section VI. of the Fee Schedule by replacing reference to Step Up Tier 3 with Step Up Tier 2 in the footnote. The applicability of footnote (b) would otherwise remain unchanged.

Second, the Exchange proposes to introduce a new pricing tier, Step Up Tier 3, in the Step Up Tiers table under Section VI. Tier Rates - Round Lots and Odd Lots (Per Share Price \$1.00 or Above). As proposed, an ETP Holder would qualify for the new Step Up Tier 3 if the ETP Holder has Adding ADV that is an increase of at least 0.35% as a percentage of CADV over the ETP Holder's Adding ADV in September 2019. An ETP Holder would alternatively qualify for the new Step Up Tier 3 if the ETP Holder has Removing ADV that is equal to at least 0.50% as a percentage of CADV and has Adding ADV that is an increase of at least 0.25% as a percentage of CADV over the ETP Holder's Adding ADV in September 2019. ETP Holders that meet either of the two criteria would qualify for a credit of \$0.0031 per share for orders that provide displayed liquidity in Tape A, Tape B and Tape C securities.

The Exchange believes the proposed new Step Up Tier 3 pricing tier would incentivize order flow providers to send a greater number of liquidity-providing orders to the Exchange to qualify for the pricing tier. While the proposed pricing tier would pay a credit that is lower than that available to ETP Holders under current Step Up Tier 3, the new tier also adopts lower volume thresholds than that required to qualify for current Step Up Tier 3. Additionally, proposed new Step Up Tier 3 provides ETP Holders with two ways to qualify for the credits payable under the pricing tier, and also provides for higher credits than those provided under current Step Up Tier 2 and current Step Up Tier 1, the latter of which the Exchange is proposing to eliminate entirely with this proposed rule change.

Tape C Tiers

The proposed rule change is designed to be available to all ETP Holders on the Exchange and is intended to provide ETP Holders an opportunity to receive credits by executing their orders in Tape C securities on the Exchange.

In this competitive environment, the Exchange has already established pricing for trading activity in Tape C securities where the credits increase in the various tiers based on increased levels of volume directed to the Exchange. The current Tape C Tiers are designed to encourage ETP Holders that provide liquidity in Tape C securities to increase that order flow, which would benefit all ETP Holders by providing greater execution opportunities on the Exchange.

Currently, the following credits are available to ETP Holders that add liquidity in Tape C securities on the Exchange:

- Tape C Tier 4 credit of \$0.0029 per share for ETP Holders that have at least 0.15% Adding ADV as a percentage of CADV, or 20 million shares of Adding ADV;
- Tape C Tier 3 credit of \$0.0031 per share for ETP Holders that have at least 0.25% Adding ADV as a percentage of CADV;
- Tape C Tier 2 credit of \$0.0033 per share for ETP Holders that have at least 0.35% Adding ADV as a percentage of CADV; and
- Tape C Tier 1 credit of \$0.0034 per share for ETP Holders that have at least 0.40% Adding ADV as a percentage of CADV and a fee of \$0.0029 per share for removing liquidity.

The Exchange proposes the following changes to the Tape C Tiers. First, the Exchange proposes to eliminate current Tape C Tier 4 and remove the pricing tier from the Fee Schedule. The current Tape C Tier 4 tier has been underutilized by ETP Holders. The Exchange has observed that not a single ETP Holder has qualified for the pricing tier proposed for elimination in the last three months. Since the current Tape C Tier 4 pricing tier has not been effective in accomplishing its intended purpose, which is to incent ETP Holders to direct their liquidity

adding activity in Tape C securities to the Exchange, the Exchange has determined to eliminate the pricing tier from the Fee Schedule.

Second, the Exchange proposes to modify the requirements to qualify for current Tape C Tier 3 and the credit associated with Tape C Tier 3. As proposed, an ETP Holder would qualify for Tape C Tier 3 if the ETP Holder has Adding ADV of at least 0.20% as a percentage of CADV. ETP Holders that meet the proposed lower volume requirement would qualify to receive a credit of \$0.0030 per share for orders in Tape C securities that provide liquidity on the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,¹² 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 Fee Change is Reasonable

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

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(4) and (5).

that are most important to investors and listed companies.”¹³

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 that 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.

Adding Tiers - Tier 2

The Exchange believes that the proposed new Tier 2 pricing tier is reasonable because it is designed to encourage increased trading activity on the Exchange. The Exchange believes it is reasonable to require ETP Holders to meet the applicable volume threshold as it offers liquidity providers an opportunity to receive an enhanced rebate. Further, the proposed new pricing tier is reasonable as it would provide ETP Holders an additional opportunity to qualify for a rebate by meeting lower volume threshold than that required to qualify for current Tier 1. The Exchange believes that the proposal 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 Exchange believes the proposed new Tier 2 pricing tier is a

¹³ See Securities Exchange Act Release No. 51808 (June 9, 2005), [70 FR 37496](#), 37499 (June 29, 2005).

reasonable means to encourage ETP Holders to increase their liquidity providing orders in Tape A, Tape B and Tape C securities.

As noted above, the Exchange operates in a highly competitive environment, particularly for attracting order flow that provides liquidity on an exchange. More specifically, the Exchange notes that greater add volume order flow may provide for deeper, more liquid markets and execution opportunities at improved prices, which the Exchange believes would incentivize liquidity providers to submit additional liquidity and enhance execution opportunities.

Step Up Tiers

The Exchange believes the proposal to adopt the new Step Up Tier 3 pricing tier is reasonable as it would serve as an incentive to market participants to increase the orders sent directly to NYSE Arca and therefore provide liquidity that supports the quality of price discovery and promotes market transparency. The Exchange believes the proposed pricing tier is reasonable and equitable because it would allow ETP Holders to receive increased credits from those currently available under current Step Up Tier 2 and current Step Up Tier 1, the latter of which the Exchange proposes to eliminate with this proposed rule change. Moreover, the addition of the new Step Up Tier 3 pricing tier 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. Further, the Exchange believes the proposed pricing tier is reasonable as it also provides ETP Holders two methods to qualify for the proposed credit. An ETP Holder can choose to either send only liquidity-providing orders or a combination of orders that Add liquidity and Remove liquidity and as long as the ETP Holder meets the prescribed requirement, the ETP Holder would qualify for the proposed new pricing tier and the corresponding credit.

The Exchange believes that the proposed rule change to eliminate the Step Up Tier 1 pricing tier is reasonable because the pricing tier has been underutilized and has not incentivized ETP Holders to bring liquidity and increase trading on the Exchange. No ETP Holder has availed itself of the pricing tier in the last three months. The Exchange believes it is reasonable to eliminate requirements and credits, and even entire pricing tiers, when such incentives become underutilized. The Exchange believes eliminating underutilized incentive programs would also simplify the Fee Schedule. The Exchange further believes that removing reference to the pricing tier that the Exchange proposes to eliminate from the Fee Schedule would also add clarity to the Fee Schedule.

The Exchange notes that volume-based incentives and discounts have been widely adopted by exchanges, including the Exchange, and are reasonable, equitable and not unfairly discriminatory because they are available to all ETP Holders on an equal basis. They also provide additional benefits or discounts that are reasonably related to the value of the Exchange's market quality and associated higher levels of market activity. Additionally, the Exchange is one of many venues and off-exchange venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. Competing exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based on members achieving certain volume thresholds.

Tape C Tiers

The Exchange believes the proposed change to lower the volume requirement under the Tape C Tier 3 is reasonable because it would allow ETP Holders to more easily meet the requirement of the pricing tier to receive per share credits payable under the pricing tier, thereby encouraging the submission of additional liquidity to a national securities exchange. 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 believes the proposed lower volume requirement is also reasonable as it would provide an additional incentive for ETP Holders to qualify for this established tier and direct their order flow to the Exchange and provide meaningful added levels of displayed liquidity, thereby contributing to the depth and market quality on the Exchange. The Exchange also believes it is reasonable to offer a nominally lower credit to ETP Holders when they qualify for Tape C Tier because ETP Holders would correspondingly be subject to lower volume requirement to qualify for such credit.

The Exchange believes that the proposed rule change to eliminate the Tape C Tier 4 pricing tier is reasonable because the pricing tier has been underutilized and has not incentivized ETP Holders to bring liquidity and increase trading on the Exchange. No ETP Holder has availed itself of the pricing tier in the last three months. The Exchange believes it is reasonable to eliminate requirements and credits, and even entire pricing tiers, when such incentives become underutilized. The Exchange believes eliminating underutilized incentive programs would also simplify the Fee Schedule. The Exchange further believes that removing reference to the pricing tier that the Exchange proposes to eliminate from the Fee Schedule would also add clarity to the Fee Schedule.

The Proposed Fee Change is an Equitable Allocation of Fees and Credits

The Exchange believes its proposal equitably allocates its fees and credits among its market participants.

Adding Tiers - Tier 2

The Exchange believes the proposed rule change to introduce a new pricing tier for ETP

Holder equitably allocates its fees among its market participants. The Exchange believes the proposed new Tier 2 pricing tier is equitable because it is open to all similarly situated ETP Holders on an equal basis and provides a per share credit that is reasonably related to the value of an exchange's market quality associated with higher volumes. The Exchange believes it is equitable to require ETP Holders to meet the applicable volume thresholds to qualify for the new Tier 2 credits. The Exchange believes 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 proposed change is designed as an incentive to any and all liquidity providers interested in meeting the tier criteria to submit order flow to the Exchange and each will receive the associated rebate if the tier criteria is met. The Exchange believes that the proposed new Tier 2 could 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 Exchange believes that the proposal constitutes an equitable allocation of fees because all similarly situated ETP Holders would be eligible for the fees and credits provided under the proposed new pricing tier.

Step Up Tiers

The Exchange believes the proposed new Step Up Tier 3 pricing tier is equitable because it would allow ETP Holders to receive increased credits above those currently available under current Step Up Tier 2 and current Step Up Tier 1, the latter of which the Exchange proposes to eliminate with this proposed rule change. Moreover, the addition of the new Step Up Tier 3 pricing tier 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. Given that Step Up Tier 3 would be a new pricing tier, no ETP Holder currently qualifies for the proposed credit. And 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 any ETP Holders qualifying for this tier. However, the Exchange believes the proposed volume requirements and the multiple ways by which an ETP Holder could qualify for the proposed pricing tier should provide an incentive for ETP Holders to submit orders that both provide liquidity and remove liquidity, which would promote price discovery and increase execution opportunities for all ETP Holders. The Exchange notes that the proposed new Step Up Tier 3 would use the same September 2019 baseline as the current Step Up Tier 3, renamed as Step Up Tier 2. The Exchange believes that utilizing the same baseline would make it easier for ETP Holders to monitor their providing ADV, as opposed to introducing a new baseline. The Exchange believes the proposed change would thereby encourage the submission of additional orders to a national securities exchange, thus promoting price discovery and transparency and enhancing order execution opportunities for ETP Holders from the substantial amounts of liquidity present on the Exchange, which would benefit all market participants on the Exchange.

The Exchange believes that eliminating requirements and credits, and even entire pricing tiers, from the Fee Schedule when such incentives become ineffective is equitable because the requirements, and credits, and even entire pricing tiers, would be eliminated in their entirety and would no longer be available to any ETP Holder. The Exchange also believes that the proposed change would protect investors and the public interest because the deletion of the underutilized pricing tier would make the Fee Schedule more accessible and transparent and facilitate market participants' understanding of the fees charged for services currently offered by the Exchange.

Tape C Tiers

The Exchange believes that the proposed modification of the volume threshold to qualify for Tape C Tier 3 and the corresponding credit payable under the pricing tier represents an equitable allocation of fees. The Exchange believes the proposal would continue to encourage ETP Holders 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 that lowering the requirement would make it easier for liquidity providers to qualify for the Tape C Tier 3 credit of \$0.0030 per share. While the Exchange proposes to nominally lower the credit that would be payable under the pricing tier, the Exchange believes the proposed lower volume requirement would nonetheless encourage the submission of additional liquidity to the Exchange, thus promoting price discovery and transparency and enhancing order execution opportunities for all ETP Holders.

The Exchange believes the proposed lower volume requirement should incentivize ETP Holders to submit liquidity-providing order flow, which would promote price discovery and increase execution opportunities for all ETP Holders. While the Exchange has no way of knowing whether this proposed rule change would definitively result in any particular ETP

Holder qualifying for the modified Tape C Tier 3, the Exchange anticipates a number of ETP Holders would be able to meet, or will reasonably be able to meet, the modified criteria. However, without having a view of activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any ETP Holder meeting the modified requirement and qualifying for the modified Tape C Tier 3 rebate. As stated, the proposed changes to the requirements to qualify for the Tape C Tier 3 pricing tier and the corresponding credit is designed to continue to incentivize ETP Holders to submit additional liquidity in Tape C securities. The Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more liquidity to the Exchange thereby improving market-wide quality.

The Exchange believes that the proposal represents an equitable allocation of fees and credits and is not unfairly discriminatory because it would apply uniformly to all ETP Holders, in that all ETP Holders will have the opportunity to meet the tier's criteria and receive the applicable rebate if such criteria is met. The proposed rebate would apply automatically and uniformly to all ETP Holders that achieve the corresponding criteria.

The Proposed Fee Change is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory.

Adding Tiers - Tier 2

The Exchange believes that the proposed rule change to introduce the new Tier 2 pricing tier is not unfairly discriminatory. The Exchange believes that the proposal does not permit unfair discrimination because the proposed new pricing tier would be applied to all similarly situated ETP Holders and all ETP Holders would be subject to the same requirements under the proposed new tier. Accordingly, no ETP Holder already operating on the Exchange would be

disadvantaged by the proposed allocation of fees and credits under the proposed new tier. The Exchange further believes that the proposed fee change 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 a number of ETP Holders who could qualify for proposed new tier if they chose to direct their order flow to the Exchange.

Step Up Tiers

The Exchange believes that the proposed new Step Up Tier 3 pricing tier is not unfairly discriminatory because it is open to all ETP Holders, on an equal basis, who meet the requirements to qualify for the tier. The proposal does not permit unfair discrimination because the proposed volume requirements to qualify for the new pricing tier would be applied to all similarly situated ETP Holders, who would all be eligible for the same credit on an equal basis. Accordingly, no ETP Holder already operating on the Exchange would be disadvantaged by this allocation of fees. The Exchange believes the proposed new pricing tier would also serve as an incentive to ETP Holders that do not currently meet the requirement of other pricing tiers on the Exchange to increase the level of orders sent directly to NYSE Arca in order to qualify for, and receive the credits associated with the proposed new Step Up Tier 3. The proposed new pricing tier would apply equally to all ETP Holders as each would be required to meet one of two volume requirements to qualify for the proposed credit associated with the proposed new pricing tier, regardless of whether an ETP Holder currently meets the requirement of another pricing tier.

The Exchange believes that eliminating requirements and credits associated with Step Up Tier 1 from the Fee Schedule when such incentives become ineffective is not unfairly

discriminatory because the requirements and credits associated with the pricing tier would be eliminated in its entirety and would no longer be available to any ETP Holder. 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 the deletion of the underutilized pricing tier would make the Fee Schedule more accessible and transparent and facilitate market participants' understanding of the fees charged for services currently offered by the Exchange.

Tape C Tiers

The Exchange believes it is not unfairly discriminatory to adopt lower volume requirements for ETP Holders to qualify for the Tape C Tier 3 pricing tier and a corresponding lower credit as the proposed change would apply on an equal basis to all ETP Holders. The proposal does not permit unfair discrimination because the lower threshold and the corresponding credit would be applied to all similarly situated ETP Holders, who would all be eligible for the same credit on an equal basis. The Exchange notes that the proposed change will not adversely impact any ETP Holder's pricing or their ability to qualify for other tiers. The Exchange also believes that the proposed change is not unfairly discriminatory because it is reasonably related to the value of the Exchange's market quality associated with higher volume. The proposed modified volume requirement and corresponding credit would apply equally to all ETP Holders as each would be required to meet the revised criteria in order to receive the corresponding credit.

The Exchange believes that eliminating requirements and credits associated with Tape C Tier 4 from the Fee Schedule when such incentives become ineffective is not unfairly

discriminatory because the requirements and credits associated with the pricing tier would be eliminated in its entirety and would no longer be available to any ETP Holder. 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 the deletion of the underutilized pricing tier would make the Fee Schedule more accessible and transparent and facilitate market participants' understanding of the fees charged for services currently offered by the Exchange.

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, this proposed rule change neither targets nor will it have a disparate impact on any particular category of market participant. The Exchange believes that this proposal does not permit unfair discrimination because the changes described in this proposal would be applied uniformly to all similarly situated ETP Holders and all ETP Holders would be subject to the same requirements. Accordingly, no ETP Holder already operating on the Exchange would be disadvantaged by the proposed allocation of fees.

Finally, the submission of orders to the Exchange is optional for ETP Holders in that they could choose whether to submit orders to the Exchange and, if they do, the extent of its activity in this regard. 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,¹⁴ 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."¹⁵

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 change represents 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, in particular with respect to Tape C securities. The Exchange believes that the proposed adoption of new pricing tiers and amending criteria of established tiers would incentivize market participants to direct liquidity adding order flow to the Exchange, bringing with it additional execution opportunities for market participants and improved price transparency. Greater overall order flow, trading opportunities, and pricing transparency benefits all market participants on the Exchange by enhancing market quality and continuing to

¹⁴ 15 U.S.C. 78f(b)(8).

¹⁵ See Securities Exchange Act Release No. 51808, 70 FR 37495, 37498-99 (June 29, 2005) (S7-10-04) (Final Rule).

encourage ETP Holders to send orders, thereby contributing towards a robust and well-balanced market ecosystem. The Exchange also does not believe the proposed rule change to eliminate underutilized pricing tiers will impose any burden on intramarket competition because the proposed change would impact all ETP Holders uniformly.

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 change can impose any burden on intermarket competition.

The Exchange believes that the proposed changes 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)¹⁶ of

¹⁶ 15 U.S.C. 78s(b)(3)(A).

the Act and subparagraph (f)(2) of Rule 19b-4¹⁷ 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)¹⁸ 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-NYSEArca-2022-27 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-2022-27. This file number should be included on the subject line if e-mail is used. To help the Commission process and review

¹⁷ 17 CFR 240.19b-4(f)(2).

¹⁸ 15 U.S.C. 78s(b)(2)(B).

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-2022-27, 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.¹⁹

J. Matthew DeLesDernier
Assistant Secretary

¹⁹ 17 CFR 200.30-3(a)(12).