SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-86122; File No. SR-NYSEArca-2019-43)

June 17, 2019

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 June 3, 2019, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission (the "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 modify the per share credits associated with the Step Up Tier 4. The Exchange proposes to implement the fee changes effective June 3, 2019. The proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places

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

2 15 U.S.C. 78a.

3 17 CFR 240.19b-4.

specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to modify the per share credits available for ETP Holders (including Market Makers) that provide displayed liquidity under the Step Up Tier 4. The Exchange currently provides credits to ETP Holders[4] 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. The purpose of this proposed rule change is to increase the credit for providing displayed liquidity that would be paid to ETP Holders that qualify for the Step Up Tier 4. The Exchange proposes to implement the fee changes effective June 3, 2019.

Background

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]

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4 All references to ETP Holders in connection with the Step Up Tier 4 include Market Makers.

5 See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005)

As the Commission itself recognized, the market for trading services in NMS stocks has become "more fragmented and competitive."[6] Indeed, equity trading is currently dispersed across 13 exchanges,[7] 32 alternative trading systems,[8] and numerous broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange has more than 18% market share (whether including or excluding auction volume).[9] Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, in the first quarter of 2019, the Exchange averaged less than 9% market share of executed volume of equity trades.[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, in response to fee changes. With respect to non-marketable order flow that would provide displayed liquidity on an Exchange, ETP Holders can choose from any one of the 13 currently operating registered exchanges to route such order flow. Accordingly, competitive forces constrain exchange transaction fees that relate to orders that would provide displayed liquidity on an exchange.

6 See Securities Exchange Act Release No. 51808, 84 FR 5202, 5253 (February 20, 2019) (File No. S7-05-18) (Final rule).

7 See Cboe U.S Equities Market Volume Summary at https://markets.cboe.com/us/equities/market_share

8 *See* FINRA ATS Transparency Data (May 6, 2019), *available at* https://otctransparency.finra.org/otctransparency/AtsIssueData. Although 54 alternative trading systems were registered with the Commission as of April 30, 2019, only 32 are currently trading. 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 (May 31, 2019), available at http://markets.cboe.com/us/equities/market_share/.

10 Based on Cboe U.S. Equities Market Volume Summary, the Exchange's market share of intraday trading (excluding auctions) for the months of January 2019, February 2019 and March 2019 was 9.01%, 8.33% and 9.02%, respectively.

In response to this competitive environment, the Exchange has already established Step Up Tiers 1 - 4, 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.

Under the Step Up Tier 4, if an ETP Holder increases its providing liquidity on the Exchange by a specified percentage over the level that such ETP Holder provided liquidity in January 2019, it is eligible to earn higher credits for providing displayed liquidity. Specifically, to qualify for the credits under the Step Up Tier 4, an ETP Holder must directly execute providing average daily volume (ADV) per month that is an increase of no less than 0.70% of US CADV for that month over the ETP Holder's providing ADV in January 2019, taken as a percentage of US CADV.

Currently, if an ETP Holder meets these Step Up Tier 4 qualifications, such ETP Holder is eligible to earn a credit of:

- $0.0031 per share for orders that provide displayed liquidity to the Book in Tape A Securities, and
- $0.0032 per share for orders that provide displayed liquidity to the Book in Tape B and Tape C Securities.[11]

Proposed Rule Change

With this proposed rule change, the Exchange proposes to increase the credits available for ETP Holders that qualify for the Step Up Tier 4 as follows:

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[11] See Securities Exchange Act Release No. 85311 (March 14, 2019), 84 FR 10348 (March 20, 2019) (SR-NYSEArca-2019-10).

- $0.0033 per share for orders that provide displayed liquidity to the Book in Tape A Securities;
- $0.0034 per share for orders that provide displayed liquidity to the Book in Tape B Securities; and
- $0.0033 per share for orders that provide displayed liquidity to the Book in Tape C Securities.

The Exchange is not proposing to change any of the requirements to qualify for the Step Up Tier 4.

With this proposed rule change, the following credits would be available to ETP Holders that provide increased levels of displayed liquidity on the Exchange:

Tier	***Credit for Providing Displayed Liquidity***
Step Up Tier	$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	$0.0025 (Tape A and C) $0.0022 (Tape B)
Step Up Tier 4	$0.0033 (Tape A and C) $0.0034 (Tape B)

The goal of the proposed change to the Step Up Tier 4 pricing tier is to incentivize ETP Holders to increase the orders sent to the Exchange that would provide displayed liquidity, which would support the quality of price discovery on the Exchange and promote market transparency. This tier is available to all ETP Holders. However, to date, not one ETP Holder has qualified for the Step Up Tier 4.

The Exchange proposes to increase the credits available under the established Step Up Tier 4 to provide an incentive for ETP Holders to send order flow to qualify for this tier. As noted above, the Exchange operates in a competitive environment, particularly as it relates to attracting displayed providing liquidity. Because the Step Up Tier 4 pricing tier has a singular requirement for ETP Holders, *i.e.*, providing an increased liquidity over that ETP Holder's baseline providing volume, the Exchange believes that the proposed increased credits would provide an incentive for ETP Holders to route additional displayed providing liquidity to the Exchange to qualify for the higher credit.

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. <u>Statutory Basis</u>

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[13] 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 Exchange believes that the proposed rule change provides for the equitable allocation of reasonable dues and fees and is not unfairly discriminatory for the following reasons.

As noted above, the Exchange operates in highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been

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[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4) and (5).

remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."[14]

As the Commission itself recognized, the market for trading services in NMS stocks has become "more fragmented and competitive."[15] Indeed, equity trading is currently dispersed across 13 exchanges,[16] 32 alternative trading systems,[17] and numerous broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange has more than 18% market share (whether including or excluding auction volume).[18] Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, in the first quarter of 2019, the Exchange averaged less than 9% market share of executed volume of equity trades (excluding auction volume).[19] 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 to reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain

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14 See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005)

15 See Securities Exchange Act Release No. 51808, 84 FR 5202, 5253 (February 20, 2019) (File No. S7-05-18) (Final rule).

16 See Cboe U.S Equities Market Volume Summary at https://markets.cboe.com/us/equities/market_share

17 *See* FINRA ATS Transparency Data (May 6, 2019), *available at* https://otctransparency.finra.org/otctransparency/AtsIssueData. Although 54 alternative trading systems were registered with the Commission as of April 30, 2019, only 32 are currently trading. A list of alternative trading systems registered with the Commission is *available at* https://www.sec.gov/foia/docs/atslist.htm.

18 See Cboe Global Markets U.S. Equities Market Volume Summary (May 31, 2019), available at http://markets.cboe.com/us/equities/market_share/.

19 Based on Cboe U.S. Equities Market Volume Summary, the Exchange's market share of intraday trading (excluding auctions) for the months of January 2019, February 2019 and March 2019 was 9.01%, 8.33% and 9.02%, respectively.

exchange transaction fees. Stated otherwise, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

The Exchange believes the proposed change is reasonable because the higher credits under the Step Up Tier 4 would continue to allow ETP Holders that meet the requirement of the pricing tier to receive increased per share credits. As noted above, the Exchange operates in a highly competitive environment, particularly for attracting order flow that provides displayed liquidity on an exchange. The Exchange believes it is reasonable to continue to provide a higher credit for orders that provide displayed liquidity if an ETP Holder meets the qualification for the Step Up Tier 4. Because no ETP Holder to date has qualified for the Step Up Tier 4, the Exchange believes the proposed increased credits are reasonable as they 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 proposed increased credits would also enable the Exchange to compete for order flow.

As noted above, no ETP Holder currently qualifies for the Step Up Tier 4 pricing tier. 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 higher credits would provide an incentive for ETP Holders to submit additional adding liquidity to qualify for the higher credits.

The Exchange believes that the proposed increased credit is equitable and not unfairly discriminatory because the magnitude of the additional credit is not unreasonably high in comparison to the credit paid with respect to other pricing tiers noted in the table above, and in comparison to the credits paid by other exchanges for orders that add liquidity. For example, ETP Holders that meet the requirement under Tier 1 currently receive credits of $0.0031 per share in Tape A securities, $0.0023 per share in Tape B securities, and $0.0032 per share in Tape C Securities. ETP Holders that do not qualify for any of the Exchange's tiers currently receive a credit of $0.0020 per share in all tapes, and would continue to receive such credit for adding liquidity.

With respect to credits paid by other exchanges, the Cboe BZX Exchange, Inc. ("BZX") provides its members that have an adding ADV of 1.25% or more of US CADV a credit of $0.0032 per share for adding liquidity.[20] Additionally, the Nasdaq Stock Market LLC ("Nasdaq") provides a credit of $0.00305 per share for orders that add liquidity on that market for members that have greater than 1.25% add of US CADV. However, Nasdaq members can receive additional credits, as follows:

- An additional credit of $0.0002 per share by meeting the requirements of Nasdaq's Qualified Market Maker Program;
- An additional credit of $0.0001 per share in Tape B securities by having greater than 0.10% added in Tape B securities of Tape B CADV; and
- An additional credit of $0.00005 per share in Tape B securities by having greater than 1.75% added of US CADV of which 0.60% or greater is in Tape B securities.

Nasdaq members meeting all of the above requirements would receive a combined credit of $0.00325 per share in Tape A and Tape C securities, and $0.0034 per share in Tape B securities.[21]

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[20] See BZX Fee Schedule, Footnote 1, Add Volume Tiers, Tier 6, at https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/.

[21] See https://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2.

The Exchange believes it is not unfairly discriminatory to provide increased per share credits as the proposed increased credits would be provided on an equal basis to all ETP Holders that add liquidity by meeting the Step Up Tier 4 requirement. Further, the Exchange believes the proposed increased per share credits would incentivize ETP Holders that meet the current Tier 1 requirement and send more of their orders to the Exchange to qualify for increased credits. The proposed increased per share credits would apply equally to all ETP Holders as each would be required to execute providing ADV per month that is an increase of no less than 0.70% of US CADV over their January baseline taken as a percentage of US CADV, regardless of whether an ETP Holder currently meets the requirement of another pricing tier.

The Exchange believes that recalibrating the credits for providing liquidity will continue to attract order flow and liquidity to the Exchange, thereby contributing to price discovery on the Exchange and benefiting investors generally.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[22] 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

[22] 15 U.S.C. 78f(b)(8).

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."[23]

Intramarket Competition. The proposed change is designed to attract additional order flow to the Exchange. The Exchange believes that the proposed increased credits would continue to incentivize market participants to direct providing displayed order flow to the Exchange. Greater liquidity benefits all market participants on the Exchange by providing more trading opportunities and encourages ETP Holders, to send orders, thereby contributing to robust levels of liquidity, which benefits all market participants. The proposed credits would be available to all similarly-situated market participants, and, as such, the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. The Exchange notes that for the months of January 2019, February 2019 and March 2019, the Exchange's market share of intraday trading (excluding auctions) was 9.01%, 8.33% and 9.02%, respectively.[24] 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

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

24 See note 10, supra.

readily adjust their order routing practices, the Exchange does not believe its proposed fee change can impose any burden on competition.

The Exchange believes that the proposed change could promote competition between the Exchange and other execution venues, including those that currently offer similar order types and comparable transaction pricing, by encouraging additional orders to be sent to the Exchange for execution. The Exchange also believes that the proposed change is designed to provide the public and investors with a Schedule of Fees and Rebates that is clear and consistent, thereby reducing burdens on the marketplace and facilitating investor protection.

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)[25] of the Act and subparagraph (f)(2) of Rule 19b-4[26] 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)[27] of the Act to determine whether the proposed rule change should be approved or disapproved.

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[25] 15 U.S.C. 78s(b)(3)(A).

[26] 17 CFR 240.19b-4(f)(2).

[27] 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-2019-43 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-2019-43. 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 office of the Exchange. All comments received will be posted without change.

Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2019-43 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.[28]

Vanessa A. Countryman
Acting Secretary

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[28] 17 CFR 200.30-3(a)(12).