

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-93450; File No. SR-NYSEArca-2021-92)

October 28, 2021

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

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on October 25, 2021, 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 reformat the Tier rates section of the NYSE Arca Equities Fees and Charges (“Fee Schedule”) applicable to securities priced at or above \$1.00 and the rates applicable to securities priced below \$1.00 without making any substantive changes to the current fees and credits for each group of securities. The Exchange proposes to implement the proposed rule change effective immediately. The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to reformat the Tier rates section of the Fee Schedule applicable to securities priced at or above \$1.00 and the rates applicable to securities priced below \$1.00 without making any substantive changes to the current fees and credits for each group of securities. The Exchange proposes to implement the proposed rule change effective immediately.<sup>4</sup>

The Exchange proposes the following non-substantive changes to reorganize the presentation of the Fee Schedule in order to enhance its clarity and transparency, thereby making the Fee Schedule easier to navigate.

In connection with the proposed rule change, the Exchange would add adopt two new definitions that would apply only for purposes of the fees and credits on the Fee Schedule. The new definitions would be added to current section I titled “Definitions”. As proposed, section I would contain the following two new definitions applicable to Exchange Transactions:

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<sup>4</sup> The Exchange filed to amend the Fee Schedule on September 30, 2021 (SR-NYSEArca-2021-83). SR-NYSEArca-2021-83 was subsequently withdrawn and replaced by SR-NYSEArca-2021-88. SR-NYSEArca-2021-88 was subsequently withdrawn and replaced by this filing.

- “**ETP Holders**” would mean ETP Holders and Market Makers.
- “**TCADV**” would mean total Customer equity and ETF option ADV as reported by The Options Clearing Corporation (OCC).

The Exchange proposes these additional definitions to use consistent terms throughout the Fee Schedule relating to Exchange Transactions. By consolidating definitions used in this part of the Fee Schedule, the Exchange would eliminate the need to separately define these terms within the tables of the Fee Schedule or in footnotes.

Additionally, the Exchange proposes to streamline 3 definitions in current Section I. Specifically, the Exchange proposes to streamline the current defined term “**US CADV**” by removing reference to “**US**”<sup>5</sup> and adding an additional sentence to the current definition to reflect that when CADV is preceded by reference to a specific consolidated tape, i.e., Tape A, B or C, or by reference to Sub-Dollar, then CADV would refer to consolidated average daily volume of transactions reported to a SIP for all securities in that Tape or to all Sub-Dollar securities. As proposed, the revised definition of “**CADV**” would be as follows:

- “**CADV**” would mean “unless otherwise stated, the United States consolidated average daily volume of transactions reported to a securities information processor (“SIP”). Transactions that are not reported to a SIP are not included in the CADV. If CADV is preceded by a reference to a Tape or to Sub-Dollar, then CADV would refer to all consolidated average daily volume of transactions reported to a SIP for all securities in that Tape or to all Sub-Dollar securities.”

Additionally, the Exchange proposes to streamline the current defined terms “Adding

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<sup>5</sup> With the proposal to rename “US CADV” to “CADV”, in order to maintain consistency within the Fee Schedule, the Exchange proposes to remove reference to “US” from the second sentence of the current definition and from the current table titled Tape C Tiers for Adding Liquidity in Section VI on the Fee Schedule.

Liquidity” and “Removing Liquidity” by deleting the word “Liquidity” from both defined terms. The Exchange believes reference to liquidity is superfluous and market participants understand that “Adding” and “Removing” refers to adding liquidity and removing liquidity.<sup>6</sup>

Next, the Exchange proposes to add one additional bullet in current section II titled “General” that would set forth general information regarding the way the Exchange has always interpreted and applied fees and credits to Exchange Transactions. As proposed, section II would contain the following new general information applicable to Exchange Transactions:

- Tape A, Tape B and Tape C refers to securities executions reported to the Consolidated Tape A, Consolidated Tape B, and Consolidated Tape C, respectively.

Additionally, under section II, an existing bullet states that “All fees and credits and tier requirements apply to ETP Holders and Market Makers.” With the proposed adoption of “ETP Holders” as a new definition that includes Market Makers, the Exchange proposes to delete the words “and Market Makers” from the existing bullet under current section II.

Next, the Exchange proposes a non-substantive change to the presentation of the Tier rates applicable to securities priced at or above \$1.00. The Exchange proposes a table presentation under current section VI titled Tier Rates - Round Lots and Odd Lots (Per Share Price \$1.00 or Above). The proposed changes to section VI would appear in the Fee Schedule in a number of tables. First, the Exchange proposes to reformat the current Tier 1, Tier 2<sup>7</sup> and Tier

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<sup>6</sup> In connection with this change, the Exchange also proposes to delete the word “Liquidity” in the current table titled Tape C Tiers for Adding Liquidity in Section VI on the Fee Schedule. As proposed, the revised title would say Tape C Tiers for Adding. The Exchange similarly proposes to delete the word “Liquidity” from the column in this table titled Minimum Criteria for Tape C Adding Liquidity. As proposed, the revised column would say Minimum Criteria for Tape C Adding.

<sup>7</sup> In connection with this change, the Exchange propose to no longer reference the

3 requirements and rates in a table titled “Adding Tiers” which would appear on the Fee

Schedule as follows:

<b>Adding Tiers</b>					
<b>Tier</b>	<b>Minimum Requirement</b>		<b>Credit for Adding</b>		
			<b>Tape A</b>	<b>Tape B<sup>(a)</sup></b>	<b>Tape C</b>
Tier 1	0.70% Adding of CADV, or	84 million shares Adding ADV	(\$0.0031)	(\$0.0023)	(\$0.0032)
Tier 2	0.30% Adding of CADV, or	0.25% Adding CADV, 0.40% Tape B Remove of Tape B CADV, and 0.25% Customer and Professional Customer Electronic Posting Volume of TCADV on NYSE Arca Options by OTP Holder or OTP Firm affiliated with the ETP Holder	(\$0.0029)	(\$0.0022)	(\$0.0029)
Tier 3	0.20% Adding of CADV		(\$0.0025)*	(\$0.0022)	(\$0.0025)*
ETP Holders that qualify for Tier 1, Tier 2 or Tier 3 are subject to the following fees:					
Routing	\$0.0030				

exclusion of mini options in the calculation of the minimum requirement to qualify for Tier 2 because mini options no longer trade on NYSE Arca Options.

Removing in Tape B	\$0.0029
Closing Orders	\$0.0010
*ETP Holders that qualify for Tier 3 and add 0.05% of CADV above May 2019 receive an incremental credit of (\$0.0002) for Tape A and C Adding	

The Exchange notes that each of the requirements and rates that currently appear on the Fee Schedule under Tier 1, Tier 2 and Tier 3 have been relocated in the table proposed above and in proposed footnote (a). The Exchange proposes to relocate certain rates in footnotes because these rates do not have a logical place in the proposed table. The proposed footnote under the proposed new “Adding Tiers” table would be as follows:

- (a) An additional credit in Tape B shall apply to ETP Holders affiliated with LMMs that add<sup>8</sup> displayed liquidity based on the number of Less Active ETP Securities in which the LMM is registered as the LMM. The applicable tiered-credits are noted below (See LMM Transaction Fees and Credits).

Next, the Exchange proposes to reformat the current Step Up Tier,<sup>9</sup> Step Up Tier 2 and Step Up Tier 3<sup>10</sup> requirements and rates in a table titled “Step Up Tiers” which would appear on

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<sup>8</sup> The Exchange proposes to use the terms “add”, “added” or “adding” instead of “provide”, “provided” or “providing” to maintain consistency throughout the Fee Schedule.

<sup>9</sup> With this proposed rule change, the Exchange proposes to rename current Step Up Tier as Step Up Tier 1.

<sup>10</sup> Under current Step Up Tier, to qualify for the tier, ETP Holders are required to provide Adding ADV of 0.45% or more of CADV but less than 0.70% of CADV. For Step Up Tier 2, ETP Holders are required to provide Adding ADV of 0.22% or more but less than 0.30% of CADV. In the proposed Step Up Tiers table, for each of these tiers, the Exchange proposes to only adopt the minimum requirement of 0.45% and 0.22% for Step Up Tier 1 and Step Up Tier 2, respectively, because, as a practical matter, once an ETP

the Fee Schedule as follows:

<b>Step Up Tiers</b>						
	<b>Minimum Requirement</b>			<b>Credit for Adding Displayed Liquidity</b>		
<b>Tier</b>	<b>Adding ADV of CADV</b>	<b>Adding Increase of CADV</b>	<b>Adding Increase Baseline</b>	<b>Tape A</b>	<b>Tape B</b>	<b>Tape C</b>
Step Up Tier 1	0.45%	0.10%	Q1 2018	(\$0.0030)	(\$0.0023)	(\$0.0031)
Step Up Tier 2	0.22%	0.06%	May 2018	(\$0.0028)	(\$0.0022)	(\$0.0028)
Step Up Tier 3 <sup>(b)</sup>		0.40%	September 2019	(\$0.0033)	(\$0.0034)	(\$0.0033)

The Exchange notes that each of the requirements and rates that currently appear on the Fee Schedule under Step Up Tier, Step Up Tier 2 and Step Up Tier 3 have been relocated in the table proposed above and in proposed footnote (b). The Exchange proposes to relocate certain rates in footnotes because these rates do not have a logical place in the proposed table. The proposed footnote under the proposed new “Step Up Tiers” table would be as follows:

- (b) ETP Holders that qualify for Step Up Tier 3 shall not receive additional Tape B Tier credits for adding displayed liquidity, including any additional credits associated with Less Active ETP Securities, however, ETP Holders that are registered as a LMM may receive up to a combined credit of \$0.0036 per share on all its adding volume if that ETP Holder, together with its affiliates, executes Tape B adding ADV that is at least 40% over the ETP Holder’s adding ADV in Q3 2019, as a percentage of Tape B CADV.

Next, the Exchange proposes to reformat the current Cross-Asset Tier requirements and

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Holder reaches the minimum requirement, the ETP Holder would qualify for the tier regardless of the amount of additional Adding ADV volume.

credits in a table titled “Cross-Asset Tier” which would appear on the Fee Schedule as follows:

<b>Cross-Asset Tier</b>					
<b>Minimum Requirement</b>			<b>Credit for Adding</b>		
<b>Equity Volume</b>	<b>Option Customer and Professional Customer Electronic Posting Volume of TCADV by OTP Holder or OTP Firm affiliated with the ETP Holder</b>				
	<b>All Issues</b>	<b>Non-Penny Issues</b>	<b>Tape A</b>	<b>Tape B</b>	<b>Tape C</b>
0.30% Adding of CADV	0.80% of TCADV	0.20% of TCADV	(\$0.0030)	(\$0.0030)	(\$0.0030)
0.30% Adding of CADV and 0.35% Adding of Tape C CADV	0.80% of TCADV	0.20% of TCADV	n/a	n/a	Additional (\$0.0004)
0.65% Adding of CADV	0.80% of TCADV	0.20% of TCADV	Additional (\$0.0002)	Additional (\$0.0002)	n/a
0.30% Adding of CADV and 0.40% Adding and Removing of CADV above Q1 2020 Add and Remove	0.80% of TCADV	0.20% of TCADV	Additional (\$0.0001) for Adding, All Tapes		

The Exchange notes that each of the requirements and credits that currently appear on the Fee Schedule under Cross-Asset Tier have been relocated in the table proposed above.

Next, the Exchange proposes to reformat the current MPID Adding Tier requirements and credits in a table titled “MPID Adding Tier” which would appear on the Fee Schedule as follows:

<b>MPID Adding Tier</b>		
	<b>Minimum Requirement by MPID</b>	<b>Credit for MPIDs Adding</b>

<b>Tier</b>	<b>Adding Increase of CADV over Q2 2021, as a percentage of CADV</b>	<b>Adding ADV</b>	<b>Tape A</b>	<b>Tape B</b>	<b>Tape C</b>
MPID Adding Tier	2 Times	4 Million	(\$0.0028)	n/a	(\$0.0028)
	2 Times	9 Million	(\$0.0029)	n/a	(\$0.0029)

The Exchange notes that each of the requirements and rates that currently appear on the Fee Schedule under MPID Adding Tier have been relocated in the table proposed above.

Next, the Exchange proposes to reformat the current BBO Setter Tier requirements and credits in a table titled “BBO Setter Tier” which would appear on the Fee Schedule as follows:

<b>BBO Setter Tier</b>							
	<b>Minimum Requirement</b>				<b>Credit for Orders that set a new BBO<sup>(c)</sup></b>		
<b>Tier</b>	<b>Adding ADV of CADV</b>	<b>ETP ID Adding ADV of CADV</b>	<b>ETP ID Setting the Arca Best Bid or Offer of CADV</b>	<b>ETP ID Setting the Arca Best Bid or Offer as percent of ETP ID Adding ADV</b>	<b>Tape A</b>	<b>Tape B</b>	<b>Tape C</b>
BBO Setter Tier	0.70%	0.20%	0.10%	40%	(\$0.0004)	(\$0.0002)	(\$0.0004)

The Exchange notes that each of the requirements and rates that currently appear on the Fee Schedule under the BBO Setter Tier have been relocated in the table proposed above and in proposed footnote (c). The Exchange proposes to relocate certain rates in footnotes because these rates do not have a logical place in the proposed table. The proposed footnote under the proposed new “BBO Setter Tier” table would be as follows:

- (c) This credit shall be in addition to the ETP Holder’s Tiered or Standard Rate credit(s), and for Tape B and Tape C, the credit shall be in addition to any capped credit.

Next, the Exchange proposes to reformat the current Retail Order Tier, Retail Order Step-Up Tier 1, Retail Order Step-Up Tier 2 and Retail Order Step-Up Tier 3 requirements and rates in a table titled “Retail Tiers” which would appear on the Fee Schedule as follows:

<b>Retail Tiers</b>					
<b>Tier</b>	<b>Minimum Requirement of CADV</b>			<b>Rates for Retail Orders</b>	
	<b>Retail Adding ADV</b>	<b>Retail Orders with a time-in-force of Day that add and remove that is an increase over April 2018</b>	<b>Adding ADV</b>	<b>Credit for Retail Adding</b>	<b>Fee for Retail Removing with a Time-in-force of Day</b>
Retail Order Tier	0.15%			(\$0.0033)	
Retail Order Step-Up Tier 1 <sup>(d)(e)</sup>		0.40%	1.00%	(\$0.0038) <sup>(f)</sup>	No Fee
Retail Order Step-Up Tier 2 <sup>(e)</sup>		0.10%		(\$0.0035) <sup>(f)</sup>	No Fee
Retail Order Step-Up Tier 3 <sup>(e)</sup>		0.20%		(\$0.0036) <sup>(f)</sup>	No Fee

The Exchange notes that each of the requirements and rates that currently appear on the Fee Schedule under the Retail Order Tier, Retail Order Step-Up Tier 1, Retail Order Step-Up Tier 2 and Retail Order Step-Up Tier 3 have been relocated in the table proposed above and in proposed footnotes (d) through (f). The Exchange proposes to relocate certain rates in footnotes because these rates do not have a logical place in the proposed table. The proposed footnotes under the proposed new “Retail Tiers” table would be as follows:

- (d) ETP Holders that qualify for Retail Order Step-Up Tier 1 are subject to the following rates in Tape C:

- (\$0.0035) for Adding displayed liquidity.
  - \$0.0027 for Removing.
  - Additional (\$0.0002) for Adding non-displayed liquidity.
- (e) ETP Holders that qualify for Retail Order Step-Up Tier 1, Retail Order Step-Up Tier 2 and Retail Order Step-Up Tier 3 are subject to the following rates:
- No fee charged or credit paid for Retail Orders where each side of the executed order (1) shares the same MPID and (2) is a Retail Order with a time-in-force of Day.
- (f) This credit applies for Adding displayed liquidity.

Next, the Exchange proposes to reformat the current MPL Orders Tier, MPL Orders Step Up Tier 1 and MPL Orders Step Up Tier 2 requirements and credits in a table titled “MPL Orders Tiers” which would appear on the Fee Schedule as follows:

<b>MPL Order Tiers</b>				
<b>Tier</b>	<b>Minimum Requirement</b>		<b>Credit for MPL Adding</b>	
	<b>MPL Adding ADV</b>	<b>MPL Adding ADV Increase over May 2019</b>	<b>Tape A</b>	<b>Tape B and Tape C</b>
MPL Orders	3.0 Million		(\$0.0015)	(\$0.0020)
	1.5 Million		(\$0.0015)	(\$0.0015)
MPL Orders Step Up Tier 1		2 Million	(\$0.0026)	(\$0.0026)
MPL Orders Step Up Tier 2		1 Million	(\$0.0025)	(\$0.0025)

The Exchange notes that each of the requirements and credits that currently appear on the Fee Schedule under MPL Orders Tier, MPL Orders Step Up Tier 1 and MPL Orders Step Up Tier 2 have been relocated in the table proposed above.

Next, the Exchange proposes to reformat the current Limit Non-Displayed Step Up Tier

requirements and credits in a table titled “Limit Non-Displayed Step Up Tier” which would appear on the Fee Schedule as follows:

<b>Limit Non-Display Step Up Tier</b>		
	<b>Minimum CADV Requirement</b>	<b>Credit for Limit Non-Displayed Orders Adding</b>
<b>Tier</b>	<b>Limit-Non-Display and MPL Order Combined ADV Increase over July 2020</b>	<b>All Tapes</b>
Limit Non-Display Order Step Up Tier	0.02%	(\$0.0004)
	0.05%	(\$0.0010)
	0.10%	(\$0.0015)
	0.15%	(\$0.0020)

The Exchange notes that each of the requirements and credits that currently appear on the Fee Schedule under Limit Non-Displayed Step Up Tier have been relocated in the table proposed above.

Next, the Exchange proposes to reformat the current Tracking Order Tier 1 requirement and credit in a table titled “Tracking Order Tier” which would appear on the Fee Schedule as follows:

<b>Tracking Order Tier</b>		
<b>Tier</b>	<b>Minimum ADV Requirement</b>	<b>Credit for Tracking Orders that result in executions</b>
Tracking Order Tier 1	1 Million	(\$0.0010)

The Exchange notes that the requirement and credit that currently appears on the Fee Schedule under Tracking Order Tier 1 have been relocated in the table proposed above.

Next, the Exchange proposes to reformat the current Tape B Tier 1, Tape B Tier 2, Tape B Tier 3 and Tape B Step Up Tier requirements and credits in a table titled “Tape B Tiers” which would appear on the Fee Schedule as follows:

<b>Tape B Tiers</b>						
	<b>Minimum Requirement for Tape B</b>			<b>Minimum Requirement for NYSE Arca Options</b>	<b>Credit for Tape B Adding</b>	
<b>Tier</b>	<b>Adding ADV of Tape B CADV</b>	<b>Adding Increase in Tape B of Tape B CADV</b>	<b>Adding Increase Baseline</b>	<b>Market Maker Electronic Posting Volume of TCADV by OTP Holder or OTP Firm affiliated with the ETP Holder</b>	<b>Tape B Credit</b>	<b>Tape B Additional Credit<sup>(g)</sup></b>
Tier 1 <sup>(h)</sup>	1.50%				(\$0.0030)	
Tier 2 <sup>(h)</sup>	1.00% or				(\$0.0028)	
	0.25% above April 2020					
Tier 3 <sup>(h)</sup>	0.20%			0.50%	(\$0.0025)	
Step Up	0.50%	20%	Q3 2019			(\$0.0002)
	0.50%	30%	Q3 2019			(\$0.0003)
	0.50%	40%	Q3 2019			(\$0.0004)

The Exchange notes that each of the requirements and credits that currently appear on the Fee Schedule under the Tape B Tier 1, Tape B Tier 2, Tape B Tier 3 and Tape B Step Up Tier have been relocated in the table proposed above and in proposed footnotes (g) and (h). The Exchange proposes to relocate certain rates in footnotes because these rates do not have a logical place in the proposed table. The proposed footnotes under the proposed new “Tape B Tiers” table would be as follows:

- <sup>(g)</sup> This credit shall be in addition to the ETP Holder’s Tiered or Standard credit(s); provided, however, that such combined credit(s) in Tape B shall not exceed

\$0.0032, unless the ETP Holder's Adding Tape B ADV increases at least 150% over the ETP Holder's Adding ADV in Q3 2019, as a percentage of Tape B CADV, in which case 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 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.

<sup>(h)</sup> LMMs cannot qualify for this Tier.

Next, the Exchange proposes a non-substantive change to the presentation of the Tier rates applicable to securities with a per share price below \$1.00. The Exchange proposes a table presentation under current section VII titled Tier Rates - Round Lots and Odd Lots (Per Share Price below \$1.00). The proposed change to section VII would appear in the Fee Schedule in one table. More specifically, the Exchange proposes to reformat the current Sub-Dollar Adding Step Up Tier requirements and credits in a proposed new table titled "Sub-Dollar Adding Step Up Tier" which would appear on the Fee Schedule as follows:

<b>Sub-Dollar Adding Step Up Tier</b>		
	<b>Minimum Requirement</b>	<b>Credit for Sub-Dollar Adding Orders of total dollar value</b>
<b>Tier</b>	<b>1 Million Adding ADV 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</b>	<b>All Tapes</b>
Sub-Dollar Adding Step Up Tier	0.20%	0.050%
	0.50%	0.100%
	0.75%	0.125%
	1.00%	0.150%

The Exchange notes that the requirements and credits that currently appear on the Fee Schedule under Sub-Dollar Adding Step Up Tier have been relocated in the table proposed above.

Finally, Section VI of the Fee Schedule currently states that the Exchange does not provide any credit for Indications of Interest (“IOI”). The Exchange proposes to relocate the reference to no credit for IOIs to Section IV of the Fee Schedule titled “Other Standard Rates for Securities with a Per Share Price \$1.00 or Above”. Specifically, the Exchange proposes to revise the first bullet under Section IV. As proposed, the revised bullet would be as follows:

- No fee or credit for Non-Displayed Limit Orders that add liquidity or for executions resulting from IOIs.

The Exchange believes relocating the pricing related to executions from IOIs to Section IV is appropriate because the pricing for IOI is not tiered. Additionally, since the Exchange does not charge a fee or provide a credit, the Exchange believes adding reference to IOIs to the existing bullet would add clarity to the Fee Schedule and facilitate market participants’ understanding of the fees charged for services currently offered by the Exchange.

As noted above, the Exchange is not proposing any substantive change to any current fee or credit. The purpose of the proposed rule change is to make a non-substantive change to reorganize the presentation of the Fee Schedule in order to enhance its clarity and transparency, thereby making the Fee Schedule easier to navigate.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>11</sup> Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>12</sup> which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>13</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed changes are reasonable and equitable because they are clarifying, and non-substantive and the Exchange is not changing any current fees or credits that apply to trading activity on the Exchange. Further, the changes are designed to make the Fee Schedule easier to read and make it more user-friendly to better display the allocation of fees and credits among Exchange members. The Exchange believes that this proposed format will provide additional transparency of Exchange fees and credits. The Exchange also believes that the proposal is non-discriminatory because it applies uniformly to all ETP Holders, and

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<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(4).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

again, the Exchange is not making any changes to existing fees and credits. The Exchange also believes that the proposed change would protect investors and the public interest because the reformatted Fee Schedule would make the Fee Schedule more accessible and transparent and facilitate market participants' understanding of the rates applicable for services currently offered by the Exchange. Finally, the Exchange believes that the reformatted Fee Schedule, as proposed herein, will be clearer and less confusing for investors and will eliminate potential investor confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

The Exchange believes that the proposed reformatted the Fee Schedule is equitable and not unfairly discriminatory because the resulting streamlined Fee Schedule would continue to apply to ETP Holders as it does currently because the Exchange is not adopting any new fees or credits or removing any current fees or credits from the Fee Schedule that impact ETP Holders. All ETP Holders would continue to be subject to the same fees and credits that currently apply to them.

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,<sup>14</sup> 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.

*Intramarket Competition.* The Exchange's proposal to reformat its Fee Schedule will not place any undue burden on intramarket competition that is not necessary or appropriate in

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<sup>14</sup> 15 U.S.C. 78f(b)(8).

furtherance of the purposes of the Act because all ETP Holders would continue to be subject to the same fees and credits that currently apply to them. The Exchange notes that the proposal does not change the amount of any current fees or rebates, but rather makes clarifying and formatting changes, and therefore does not raise any competitive issues. To the extent the proposed rule change places a burden on competition, any such burden would be outweighed by the fact that a streamlined Fee Schedule would promote clarity and reduce confusion with respect to the fees and credits that ETP Holders would be subject to.

*Intermarket Competition.* The Exchange believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchanges and off-exchange venues if they deem fee levels at those other venues to be more favorable. Market share statistics provide ample evidence that price competition between exchanges is fierce, with liquidity and market share moving freely from one execution venue to another in reaction to pricing changes.

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)<sup>15</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>16</sup> 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

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<sup>15</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>16</sup> 17 CFR 240.19b-4(f)(2).

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)<sup>17</sup> 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2021-92 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-2021-92. 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

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<sup>17</sup> 15 U.S.C. 78s(b)(2)(B).

proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, D.C. 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-2021-92 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.<sup>18</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>18</sup> 17 CFR 200.30-3(a)(12).