SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-87917; File No. SR-NYSEArca-2019-93)

January 9, 2020

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Its Schedule of Fees and Charges to Modify the Annual Fees Applicable to Exchange Traded Products and Managed Fund Shares and Managed Trust Securities

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 December 31, 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 its Schedule of Fees and Charges to (1) modify the annual fees applicable to Exchange Traded Products ("ETPs") and Managed Fund Shares and Managed Trust Securities, (2) introduce annual fee discounts for ETPs and Structured Products, and (3) offer an alternate way for issuers of multiple series of securities listed under Rule 5.2-E(j)(6) to qualify for the current discount. The Exchange proposes to implement the fee changes effective January 1, 2020. The proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

2 15 U.S.C. 78a.

3 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 amend its Schedule of Fees and Charges to (1) modify the annual fee applicable to ETPs and Managed Fund Shares and Managed Trust Securities, (2) introduce annual fee discounts for ETPs and Structured Products, and (3) offer an alternate way for issuers of multiple series of securities listed under Rule 5.2-E(j)(6) to qualify for the current discount.

The proposed changes respond to the current extremely competitive environment for ETP listings in which issuers can readily favor competing venues or transfer their listings if they deem fee levels at a particular venue to be excessive, or discount opportunities available at other venues to be more favorable. The Exchange's current annual fees for ETPs are based on the number of shares outstanding per issuer and provide incentives for issuers to list multiple series of certain securities on the Exchange. In response to the competitive environment for listings, the Exchange proposes a competitive pricing structure that combines higher minimum annual fees for ETPs and Managed Fund Shares and Managed Trust Securities with new discounts for issuers that list multiple ETPs and Structured Products.[4] The proposed changes are designed to incentivize issuers to list new products, transfer existing products to the Exchange, and maintain listings on the Exchange, which the Exchange believes will enhance competition both among issuers and listing venues, to the benefit of investors.

The Exchange proposes to implement the fee changes effective January 1, 2020.

Proposed Rule Change

The Exchange proposes increased annual fees for ETPs and Managed Fund Shares and Managed Trust Securities. Annual fees are assessed each January in the first full calendar year following the year of listing. The aggregate total shares outstanding is calculated based on the total shares outstanding as reported by the Fund issuer or Fund "family" in its most recent periodic filing with the Commission or other publicly available information. Annual fees apply regardless of whether any of these Funds are listed elsewhere.

Annual ETP Fees

Currently, the Exchange charges the following annual fees for listed ETPs (with the exception of Managed Fund Shares and Managed Trust Securities) based on the number of shares outstanding for each issue listed by the same issuer, as follows:

Number of Shares Outstanding (each issue)	Annual Fee
Less than 25 million	$5,000
25 million up to 49,999,999	$7,500
50 million up to 99,999,999	$10,000
100 million up to 249,999,999	$15,000

4 "Exchange Traded Products" are defined in footnote 3 of the current Schedule of Fees and Charges. "Structured Products" are defined in footnote 4 of the current Schedule of Fees and Charges.

250 million up to 499,999,999	$20,000
500 million and over	$25,000

The Exchange proposes to increase annual fees for such listed ETPs by $2,500 at the levels below 49,999,999 shares outstanding and by $5,000 for each level at 50 million shares outstanding and above. The Exchange proposes the following revised annual fees:

For issuers with less than 25 million shares outstanding for each issue, the proposed annual fee would be $7,500.

- For issuers with shares outstanding for each issue from 25 million up to 49,999,999, the proposed annual fee would be $10,000.
- For issuers with shares outstanding for each issue from 50 million up to 99,999,999, the proposed annual fee would be $15,000.
- For issuers with shares outstanding for each issue from 100 million up to 249,999,999, the proposed annual fee would be $20,000.
- For issuers with shares outstanding for each issue from 250 million up to 499,999,999, the proposed annual fee would be $25,000.
- For issuers with shares outstanding for each issue from 500 million and over, the proposed annual fee would be $30,000.

Annual Fees for Managed Fund Shares and Managed Trust Securities

Currently, the Exchange charges the following annual fees for listed Managed Fund Shares and Managed Trust Securities based on the number of shares outstanding for each issue:

Number of Shares Outstanding (each issue)	Annual Fee
Less than 25 million	$7,500
25 million up to 49,999,999	$10,000

50 million up to 99,999,999	$12,500
100 million up to 249,999,999	$20,000
250 million up to 499,999,999	$30,000
500 million and over	$40,000

The Exchange proposes to increase annual fees for listed Managed Fund Shares and Managed Trust Securities by $2,500 at the levels below 49,999,999 shares outstanding. For issuers with outstanding shares between 50 million up to 99,999,999, the proposed fee would increase by $7,500. For issuers with outstanding shares of 100 million up to 249,999,999 shares, the annual fee would increase by $5,000. Issuers with shares outstanding of 250 million shares and over would be charged $30,000, and the current rate of $40,000 for issuers with shares outstanding of 500 million and over would be eliminated. The Exchange proposes the following revised annual fees for listed Managed Fund Shares and Managed Trust Securities:

- For issuers with less than 25 million shares outstanding for each issue, the proposed fee would be $10,000.
- For issuers with shares outstanding for each issue from 25 million up to 49,999,999, the proposed fee would be $12,500.
- For issuers with shares outstanding for each issue from 50 million up to 99,999,999, the proposed fee would be $20,000.
- For issuers with shares outstanding for each issue from 100 million up to 249,999,999, the proposed fee would be $25,000.
- For issuers with shares outstanding for each issue from 250 million and over, the proposed fee would be $30,000.

The proposed annual fee increases are intended to support the ongoing costs of listing and trading ETPs and Managed Fund Shares and Managed Trust Securities on the Exchange, including costs related to issuer services, listing administration and product development. The Exchange's comprehensive listing and trading program, including utilization of Lead Market Makers ("LMM") to foster liquidity provision and stability in the marketplace, seeks to provide superior market quality for securities listed on the Exchange. The Exchange notes that annual fees for ETPs and Managed Fund Shares and Managed Trust Securities have not increased since 2009.[5] The Exchange believes that the proposed fee increases are appropriate in that the Exchange generally expends significant resources supporting the listing and administration of ETPs and Managed Fund Shares and Managed Trust Securities. The Exchange expects to increase spending to support the listing and administration of these securities going forward.

The Exchange believes that the proposed fee increase of $2,500 for ETPs with less than 50 million shares outstanding and proposed increase of $5,000 for ETPs with 50 million shares or more outstanding could be mitigated at least in part for those issuers that would qualify for the proposed additional annual fee discounts the Exchange is proposing for ETP issuers, described in more detail below. The largest proposed annual fee increase of $7,500 would be for Managed Fund Shares and Managed Trust Securities with between 50 million and 99,999,999 shares outstanding. However, the current $40,000 fee for securities with 500 million shares outstanding or more would be eliminated, effectively lowering the rate for issuers with securities in that category by $10,000. Annual fees for Managed Fund Shares and Managed Trust Securities would not exceed $30,000 for such securities at 250 million shares outstanding and above.

5 See Securities Exchange Act Release No. 61104 (December 3, 2009), 74 FR 65568 (December 10, 2009) (SR-NYSEArca-2009-106).

Finally, the proposed fees are comparable to the annual fees charged by competing exchanges on a per product basis. For example, a new ETP listed on the Exchange with 1 million shares outstanding would pay a $7,500 annual fee under the proposal. On The Nasdaq Stock Market LLC ("Nasdaq"), the issuer of a series of ETPs with up to 1 million shares outstanding currently pays an annual fee of $6,500.[6] On Cboe BZX Exchange, Inc. ("Cboe BZX"), when an ETP first lists or has been listed for fewer than three calendar months on the ETP's first trading day of the year, the ETP currently pays an annual listing fee of $4,500. Other newly listed ETPs on Cboe BZX are subject to a volume-based fee schedule, where annual fees range from $7,000 for consolidated average daily volume ("CADV") of 0-10,000 shares to $5,000 for ETPs with a CADV greater than 1,000,000 shares.[7] Moreover, unlike these competing exchanges, the Exchange does not cap or waive annual fees for ETPs and Structured Products once certain levels are achieved. Nasdaq, for instance, caps the annual fee of an issuer of a series of ETPs at $14,500 once the total shares outstanding exceed 16 million shares.[8] On Cboe BZX, where the average daily auction volume combined between the opening and closing auctions on the Exchange across all of an issuer's ETPs listed on the Exchange exceeds 500,000 shares, there is no annual listing fee for any of the issuer's ETPs listed on the Exchange.[9]

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6 See Nasdaq Rule 5940(b)(1). Nasdaq Rule 5940(b) applies to a series of Portfolio Depository Receipts, Index Fund Shares, Managed Fund Shares or other securities listed under the Nasdaq Rule 5700 Series where no other fee schedule is specifically applicable. Nasdaq's annual listing fees are also based on the total number of outstanding shares.

7 See Cboe BZX Rule 14.13(b)(2)(C)(ii) & (v). On Cboe BZX, ETPs include all securities set forth in Cboe BZX Rule 14.11. See, e.g., Cboe BZX Rule 14.13(b)(1)(C).

8 See Nasdaq Rule 5940(b)(1).

9 See Cboe BZX Rule 14.13(b)(2)(C)(iii).

Additional Annual Fee Discounts

In addition to the proposed increases to the annual fees described above, the Exchange proposes two new, non-mutually exclusive discounts for ETPs and Structured Products that would be set forth in new Section 9 of the Schedule of Fees and Charges titled "Additional Annual Fee Discounts for ETPs and Structured Products ("Products")." Eligibility for the proposed discounts would be subject to certain limitations, described more fully below.

First, the Exchange proposes to move the current discount for multiple series listed under Rule 5.2-E(j)(6) to a new romanette (i) under the proposed heading. The current text would be transposed without change except for the addition of an alternate way for issuers of multiple series of securities listed under Rule 5.2-E(j)(6) to qualify for the current discount. Specifically, the Exchange would add a clause providing that multiple series of securities listed under Rule 5.2-E(j)(6) that are issued by the same issuer that issues five or more ETNs based on an identical reference asset would also be eligible to receive the current 30% discount off the aggregate calculated annual fee for such multiple series. The Exchange believes the proposed change would facilitate the issuance of additional ETN series, which may provide enhanced competition among ETN issuers while providing a reduction in fees to certain issuers listing additional ETN series.

Second, the proposed new discounts for "families" of Products would appear under new romanette (ii) titled "Product Family Discounts."

As proposed, an issuer that lists multiple Products would be eligible for the following discounts for those Products, which would be a discount on the aggregate calculated annual fee for each Product from such issuer.

- A family consisting of between 5 and 9 listed Products would be eligible for a 5% discount for each Product.
- A family consisting of between 10 and 19 listed Products would be eligible for a 7.5% discount for each Product.
- A family consisting of between 20 and 39 listed Products would be eligible for a 10% discount for each product.
- A family consisting of between 40 and 89 listed Products would be eligible for a 12.5% discount for each product.
- A family consisting of between 90 and 249 listed Products would be eligible for a 15% discount for each product.
- A family consisting of 250 or more listed Products would be eligible for a 17.5% discount for each product.

Third, the Exchange proposes new "High Volume Products Discounts" in romanette (iii). As proposed, an eligible Product would be considered a "High Volume Product" if it has (1) 1,000,000 shares CADV averaged over 12 months or, if the Product is listed less than 12 months, 1,000,000 shares CADV averaged since the date of listing, or (2) 50,000 CADV executed in opening and closing auctions averaged over 12 months or, if the Product is listed less than 12 months, 1,000,000 shares CADV averaged since the date of listing. A Product transferred to the Exchange after January 1, 2020, would automatically be considered a High Volume Product eligible for the next highest High Volume Products discount for the calendar year in which the transfer occurred plus the following calendar year.

As proposed, an issuer that lists multiple High Volume Products as defined above would be eligible for the following discounts, which will be a discount on the aggregate calculated annual fee for each Product from such issuer:

- An issuer listing between 1 and 2 High Volume Products would be eligible for a 7.5% discount for each Product.
- An issuer listing between 3 and 9 High Volume Products would be eligible for a 10% discount for each Product.
- An issuer listing between 10 and 14 High Volume Products would be eligible for a 12.5% discount for each Product.
- An issuer listing between 15 and 34 High Volume Products would be eligible for a 15% discount for each Product.
- An issuer listing 35 or more High Volume Products would be eligible for a 17.5% discount for each Product.

Finally, romanette (iv) would set forth the following proposed limitations on discounts offered by the Exchange:

- First, the Exchange proposes that the eligible discounts for Product Family and High Volume Products can be combined. For instance, an issuer with five listed Products, three of which qualify as High Volume Products, would be eligible for a 5% Product Family discount plus a 10% High Volume Products discount for a 15% total discount for all five listed products.
- Second, the Exchange proposes that an issuer that transfers a Product off the Exchange (except for transfers to an Exchange affiliate) in a trailing 12-month period beginning January 1, 2020 would become ineligible for either or both the

Fund Family and the High Volume Products discount for the following calendar year.

- Finally, the Exchange proposes that issuers eligible for the 30% discount for issuing more than five securities based on an identical reference asset that also qualify for the Fund Family and/or the High Volume Products discounts for those products would receive either the Fund Family and/or the High Volume Products discount or the 30% discount, whichever is greater.

The purpose of the proposed changes is to provide an incentive for issuers to develop and list additional Products on the Exchange. The proposed discounts would encourage issuers to list additional Products on the Exchange and maintain their listings on the Exchange. By proposing to combine eligible discounts for Product Family and High Volume Products, the proposal is designed to provide an incentive to issuers to list additional series of securities on the Exchange. Moreover, the proposal to automatically consider a High Volume Product eligible for the next highest High Volume Products discount for the calendar year in which the transfer occurred as well as the following calendar year would provide an incentive to issuers to transfer additional Products to the Exchange. In addition, proposing that an issuer that transfers a Product off the Exchange (except for transfers to an Exchange affiliate) in a trailing 12-month period beginning January 1, 2020, would become ineligible for either or both the Fund Family and the High Volume Products discount for the following calendar year, would provide an incentive to issuers to maintain those and other listings on the Exchange. Finally, proposing that issuers eligible for the 30% discount for issuing more than five securities based on an identical reference asset that also qualify for the Fund Family and/or the High Volume Products discounts for those products would receive the greater of the Fund Family and/or the High Volume Products discount or the

30% discount would ensure that qualifying issuers receive the maximum discount for which they are eligible.

Each of the proposed changes described above are not otherwise intended to address other issues, and the Exchange is not aware of any significant problems that market participants would have in complying with the proposed changes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[11] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Change is Reasonable

As discussed above, the Exchange operates in a highly competitive market for the listing of ETPs. Specifically, ETP issuers can readily favor competing venues or transfer listings if they deem fee levels at a particular venue to be excessive, or discount opportunities available at other venues to be more favorable. The Exchange's current annual fees for ETPs are based on the number of shares outstanding per issuer and provide incentives for issuers to list multiple series of certain securities on the Exchange. 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

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10 15 U.S.C. 78f(b).

11 15 U.S.C. 78f(b)(4) & (5).

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."[12]

The Exchange believes that the ongoing competition among the exchanges with respect to new listings and the transfer of existing listings among competitor exchanges demonstrates that issuers can choose different listing markets in response to fee changes. Accordingly, competitive forces constrain exchange listing fees. Stated otherwise, changes to exchange listing fees can have a direct effect on the ability of an exchange to compete for new listings and retain existing listings.

Given this competitive environment, the proposal represents a reasonable attempt to attract new issuers and retain listings on the Exchange. Specifically, the Exchange believes that the proposed annual fee increases for ETPs and Managed Fund Shares and Managed Trust Securities -- the first proposed annual fee increase since 2009 -- are reasonable and necessary to support the ongoing Exchange costs associated with listing and trading ETPs and Managed Fund Shares and Managed Trust Securities on the Exchange, including costs related to issuer services, listing administration and product development. The Exchange's comprehensive listing and trading program, including utilization of LMMs to foster liquidity provision and stability in the marketplace, seeks to provide superior market quality for securities listed on the Exchange. Moreover, as previously noted, the Exchange believes that the proposed fee increases are reasonable because the Exchange generally expends significant resources to provide services in connection with the listing and administration of ETPs and Managed Fund Shares and Managed Trust Securities. The Exchange expects to increase spending to support the listing and administration of those securities going forward.

12 See Regulation NMS, 70 FR at 37499.

The Exchange also believes that the proposed fee increases, which range between $2,500 and $7,500, are modest and, that the proposed fee increase of $2,500 for ETPs with less than 50 million shares outstanding and proposed increase of $5,000 for ETPs with 50 million shares or more outstanding could be mitigated at least in part for those issuers that would qualify for the proposed additional annual fee discounts the Exchange is proposing for ETP issuers.

The Exchange further believes the proposed fee increases are reasonable because the current $40,000 fee for Managed Fund Shares and Managed Trust Securities with outstanding shares of 500 million or more would be eliminated, effectively lowering the rate for issuers in that group by $10,000 and fixing the annual fee for Managed Fund Shares and Managed Trust Securities with 250 million outstanding shares or above at $30,000.

The Exchange also believes that the proposed fees are reasonable because they are comparable to the annual fees charged by other competing exchanges on a per product basis. For instance, as noted above, a new ETP listed on the Exchange with 1 million shares outstanding would pay a $7,500 annual fee under the proposal. On Nasdaq, a new ETP with up to 1 million shares outstanding currently pays an annual fee of $6,500.[13] On Cboe BZX, an initially listed ETP (or one listed for fewer than three calendar months on the ETP's first trading day of the year) currently pays an annual listing fee of $4,500; other newly issued ETPs on Cboe BZX are subject to a volume-based fee schedule, where annual fees range from $7,000 to $5,000 from lowest to highest CADV range.[14] As noted above, the Exchange operates in a highly competitive listings market in which issuers can readily choose alternative listing venues. For instance, unlike competing exchanges, the Exchange does not cap or waive annual fees for ETPs and Structured

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13 See Nasdaq Rule 5940(b)(1). Nasdaq's annual listing fees are, like the Exchange's, also based on the number of outstanding shares.

14 See Cboe BZX Rule 14.13(b)(2)(C)(ii) & (v).

Products once certain levels are achieved. Nasdaq, for instance, caps the annual fee of an issuer of a series at $14,500 once the total shares outstanding exceed 16 million shares.[15] On Cboe BZX, where the average daily auction volume combined between the opening and closing auctions on the Exchange across all of an issuer's ETPs listed on the Exchange exceeds 500,000 shares, there is no annual listing fee for any of the issuer's ETPs listed on the Exchange.[16] Moreover, a competing market has the ability to defer or waive all or any part of its annual fees for listings and that the Exchange lacks similar discretionary authority.[17] Given this competitive environment, the Exchange believes that the proposal represents a reasonable attempt to attract new issuers and retain listings on the Exchange.

The proposed discounts for Products are also reasonable because they are designed to encourage issuers to add additional Products to the Exchange. The proposed automatic application of the discounts to High Volume Products transferred to the Exchange for the year in which the transfer occurred as well as the following calendar year and the penalties for transferring products off the Exchange in a trailing 12-month period after January 1, 2020, are reasonable attempts to provide incentives to issuers to transfer additional Products to, and maintain listings on, the Exchange. The proposed penalty also constitutes a reasonable attempt to discourage transfers to and from the Exchange solely for the purpose of securing one or more of the proposed discounts.

Finally, the Exchange believes that the proposal to also permit issuers that issue five or more ETNs based on an identical reference asset to qualify for the current 30% annual fee

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15 See Nasdaq Rule 5940(b)(1).

16 See Cboe BZX Rule 14.13(b)(2)(C)(iii).

17 See Cboe BZX Rule 14.13(b)(2)(D).

discount for multiple series of securities listed under Rule 5.2-E(j)(6) is reasonable because it would reduce the annual fee for related ETNs and would facilitate the issuance of additional ETNs series, which may provide enhanced competition among ETN issuers. The Exchange further believes that the proposal is reasonable because the Exchange would incur cost savings in connection with the listing and administration of such additional related ETNs that are commensurate with the reduction in annual fees.[18]

The Proposal is an Equitable Allocation of Fees

The Exchange believes its proposal equitably allocates its fees among its market participants. In the prevailing competitive environment, issuers can readily favor competing venues or transfer listings if they deem fee levels at a particular venue to be excessive, or discount opportunities available at other venues to be more favorable.

The proposed fee increases for ETPs and Managed Fund Shares and Managed Trust Securities are equitable because the proposed increased annual fees would apply uniformly to all issuers. Moreover, as proposed, the fee structure would retain the same categories of number of shares outstanding for ETPs and would retain all but the last of the current categories for Managed Fund Shares and Managed Trust Securities. The proposed fees would continue to be equitably allocated among issuers because issuers would continue to qualify for an annual fee based on the number of shares outstanding and under criteria applied uniformly to all such issuers. The proposed discounts for ETPs and Structured Products are also equitable because the propose discounts would apply uniformly to all issuers and to all ETPs and Structured Products that are listed on the Exchange either generically or pursuant to a rule filing with the Commission.

[18] For instance, the Exchange would benefit from efficiencies relating to, among other things, listing review and ongoing regulatory compliance in connection with the issuance of multiple ETNs.

The proposal neither targets nor will it have a disparate impact on any particular category of market participant. The proposed annual fee increases would be applicable to all existing and potential issuers of ETPs and Managed Fund Shares and Managed Trust Securities uniformly. Moreover, all issuers would be eligible for the proposed discounts for ETPs and Structured Products, and all issuers would be subject to the proposed benefits and penalties of the proposed discounts in equal measure.

Finally, the Exchange believes that the proposed alternate way to qualify for the current 30% annual fee discount for multiple series of securities listed under Rule 5.2-E(j)(6) is an equitable allocation of fees because the current discount would apply equally to all issuers issuing five or more ETNs based on an identical reference asset. As noted, the Exchange believes that the proposal would reduce the annual fee for related ETNs and would facilitate the issuance of additional ETNs series, which may provide enhanced competition among ETN issuers. The Exchange further believes that the proposal is reasonable because the Exchange would incur cost savings in connection with the listing and administration of such additional related ETNs that are commensurate with the reduction in annual fees.

<u>The Proposal is Not Unfairly Discriminatory</u>

The Exchange believes that the proposal is not unfairly discriminatory. In the prevailing competitive environment, issuers are free to list elsewhere if they believe that alternative venues offer them better value.

The Exchange believes it is not unfairly discriminatory to provide higher annual fees for ETPs and Managed Fund Shares and Managed Trust Securities because the proposed fees would be provided on an equal basis to all issuers listing those products on the Exchange during a calendar year. Moreover, the proposed fee structure would retain the same six categories of number of shares outstanding for ETPs and would retain all but the last of the current six categories for Managed Fund Shares and Managed Trust Securities. As a result, the proposal would apply to issuers in the same manner as the current annual fees for ETPs and Managed Fund Shares and Managed Trust Securities.

For the same reason, the Exchange believes it is not unfairly discriminatory to offer combinable discounts for ETPs and Structured Products because the discounts are available equally to all issuers listing multiple products in those categories on the Exchange during a calendar year. As noted, the Exchange believes that the proposed discounts are designed to incentivize issuers to list new Products, transfer existing Products to the Exchange, and maintain their listings on the Exchange, which the Exchange believes will enhance competition both among issuers and listing venues, to the benefit of investors.

The proposal does not unfairly discriminate between issuers by offering a discount to issuers that transfer a High Volume Product after January 1, 2020. Competing markets similarly offer incentives to issuers to either maintain a listing or transfer additional listings. For instance, Cboe BZX provides a more favorable annual fee to both legacy listings and transfers by capping the annual fee it charges ETPs listed prior to January 1, 2019 or that transferred from another national securities exchange at $4,000.[19] Moreover, the Exchange notes that a competing market has the ability to defer or waive all or any part of its annual fees for listings and that the Exchange lacks similar discretionary authority.[20]

The proposed Product Family Discounts are not unfairly discriminatory. The Exchange proposes a discount proportionate to the number of Products listed that increases by a uniform

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19 See Cboe BZX Rule 14.13(b)(2)(C)(i).

20 See Cboe BZX Rule 14.13(b)(2)(D).

2.5% in order to attract new listings of ETPs and Structured Products to the Exchange. Although the proposed Product Family Discounts would not apply to issuers with less than 5 listed Products, it would provide an equal incentive for issuers to list at least 5 Products on the Exchange in order to qualify for a proposed discount.

Similarly, the proposed High Volume Products discounts are not unfairly discriminatory. The High Volume Products discounts would offer a discount proportionate to the number of Products listed that increases by a uniform 2.5% in order to attract new listings of ETPs and Structured Products to the Exchange. The proposed discounts incentivize all issuers to list or transfer additional Products to the Exchange in order to qualify for the proposed discounts. Any issuer can qualify for the minimum 7.5% discount by listing a Product that meets the proposed definition of a High Volume Product (which would apply to all eligible Products despite length of time listed) or transferring a Product to the Exchange after January 1, 2020.

The Exchange also believes that combining discounts for Product Family Discounts and High Volume Products is not unfairly discriminatory. As noted, both proposed discounts apply to all issuers equally, and the proposal to combine them would not be unfairly discriminatory since issuers of all sizes could qualify for, and combine, discounts in both proposed categories.

The Exchange further believes that the proposed alternate way to qualify for the current 30% annual fee discount for multiple series of securities listed under Rule 5.2-E(j)(6) is not unfairly discriminatory. As noted, the current discount would apply equally to all similarly situated issuers. Any ETN issuer could qualify for the current discount by issuing 5 or more ETNs. Although the current discount would not apply to ETN issuers that issue less than 5 ETNs based on the same reference asset, the proposal would provide an equal incentive for ETN issuers to list at least 5 ETNs on the Exchange in order to qualify for the current discount.

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. <u>Self-Regulatory Organization's Statement on Burden on Competition</u>

In accordance with Section 6(b)(8) of the Act,[21] 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 competition because it will increase fees for ETPs and Managed Fund Shares and Managed Trust Securities and provide additional, cumulative discounts for ETPs and Structured Products, designed to encourage issuers to develop and list additional products on the Exchange, which the Exchange believes will enhance competition both among issuers and listing venues, to the benefit of investors. The proposal also ensures that the fees charged by the Exchange accurately reflect the services provided and benefits realized by listed issuers. The market for listing services is extremely competitive. Issuers have the option to list their securities on these alternative venues based on the fees charged and the value provided by each listing exchange. Because issuers have a choice to list their securities on a different national securities exchange, the Exchange does not believe that the proposed fee changes impose a burden on competition.

Intramarket Competition. The proposed changes are designed to attract additional listings to the Exchange. The Exchange believes that the proposed changes would continue to incentivize issuers to develop and new products, transfer existing products to the Exchange, and

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[21] 15 U.S.C. 78f(b)(8).

maintain listings on the Exchange. The proposed fees and discounts would be available to all issuers, and, as such, the proposed change would not impose a disparate burden on competition among market participants on the Exchange. Although issuers that can list more Products would qualify for relatively higher Product Family discounts, such issuers would also pay substantially higher aggregate annual fees. Moreover, the proposed discounts are relatively modest, ranging from 5% to 17.5%. The relative benefit of higher Product Family discounts potentially accruing to larger issuers are thus not sufficiently disparate as to impose a burden on competition among Exchange issuers. Similarly, the current discount for multiple series listed under Rule 5.2-E(j)(6) would apply equally to all similarly situated issuers, and, as such, the proposed change would also not impose a disparate burden on competition among market participants on the Exchange.

Intermarket Competition. The Exchange operates in a highly competitive listings market in which issuers can readily choose alternative listing venues. In such an environment, the Exchange must adjust its fees and discounts to remain competitive with other exchanges competing for the same listings. Because competitors are free to modify their own fees and discounts in response, and because issuers may readily adjust their listing decisions and practices, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition. Moreover, the Exchange notes that a competing market has the ability to defer or waive all or any part of its annual fees for listings and that the Exchange lacks similar discretionary authority.[22] As such, the proposal is a competitive proposal designed to enhance pricing competition among listing venues and implement pricing for listings that better reflects the revenue and expenses associated with listing on the Exchange.

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[22] See Cboe BZX Rule 14.13(b)(2)(D).

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)[23] of the Act and subparagraph (f)(2) of Rule 19b-4[24] 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)[25] 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-2019-93 on the subject line.

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23 15 U.S.C. 78s(b)(3)(A).

24 17 CFR 240.19b-4(f)(2).

25 15 U.S.C. 78s(b)(2)(B).

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-2019-93. 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-2019-93 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.[26]

J. Matthew DeLesDernier
Assistant Secretary

[26] 17 CFR 200.30-3(a)(12).