

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-86126; File No. SR-NYSENAT-2019-14)

June 17, 2019

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend its Schedule of Fees and Rebates

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 3, 2019, NYSE National, Inc. (“NYSE National” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Schedule of Fees and Rebates to revise the quoting requirements in order for ETP Holders to qualify for Adding Tier 1, Adding Tier 2 and Adding Tier 3 fees. The Exchange also proposes non-substantive changes to the presentation of the Adding Tiers. 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.

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

---

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

<sup>2</sup> 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Schedule of Fees and Rebates (“Fee Schedule”) to reduce the number of securities in which an ETP Holder must quote to qualify for Adding Tier 1, Adding Tier 2 and Adding Tier 3 fees. Specifically, the Exchange proposes to lower the number of securities in which an ETP Holder must quote to qualify for Adding Tiers 1-3 by 50 securities across the board. The Exchange also proposes non-substantive changes to the presentation of the Adding Tiers on the Fee Schedule. The Exchange proposes to implement the rule change on June 3, 2019.

Background

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>3</sup>

---

<sup>3</sup> 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.”<sup>4</sup> Indeed, equity trading is currently dispersed across 13 exchanges,<sup>5</sup> 32 alternative trading systems,<sup>6</sup> and numerous broker-dealer internalizers and wholesalers. Based on publicly-available information, no single exchange has more than 18% of the market share of executed volume of equity trades (whether excluding or including auction volume).<sup>7</sup> Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, in May 2019, the Exchange had 1.3% market share of executed volume of equity trades (excluding auction volume).<sup>8</sup> 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 the Exchange’s transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

The Exchange utilizes a “taker-maker” or inverted fee model to attract orders that provide

---

<sup>4</sup> See Securities Exchange Act Release No. 51808, 84 FR 5202, 5253 (February 20, 2019) (File No. S7-05-18) (Transaction Fee Pilot for NMS Stocks Final Rule) (“Transaction Fee Pilot”).

<sup>5</sup> See Cboe Global Markets, U.S. Equities Market Volume Summary (May 31, 2019), available at [http://markets.cboe.com/us/equities/market\\_share/](http://markets.cboe.com/us/equities/market_share/). See generally <https://www.sec.gov/fast-answers/divisionsmarketregmrexchangeshtml.html>.

<sup>6</sup> 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/files/data/alternative-trading-system-ats-list/atlist043019.pdf>.

<sup>7</sup> See Cboe Global Markets U.S. Equities Market Volume Summary (May 31, 2019), available at [http://markets.cboe.com/us/equities/market\\_share/](http://markets.cboe.com/us/equities/market_share/).

<sup>8</sup> See *id.*

liquidity at the most competitive prices. Under the taker-maker model, offering rebates for taking liquidity increases the likelihood that market participants will send orders to the Exchange to trade with liquidity providers' orders. This increased taker order flow provides an incentive for market participants to send orders that provide liquidity. The Exchange charges fees for order flow that provides liquidity. These fees are reasonable due to the additional marketable interest (in part attracted by the exchange's rebate to remove liquidity) with which those order flow providers can trade.

The Exchange sets forth the fees it charges for adding liquidity in four Adding Tiers that establish minimum quoting or volume requirements that an ETP Holder must satisfy in order to be eligible for specific corresponding fees. These quoting and volume requirements are based on the type of liquidity (i.e., displayed, non-displayed, BBO setting, or MPL) and the type of security (i.e., whether it is a Tape A, B or C security). In addition, the Exchange offers two "step up" Adding Tiers that do not have quoting or minimum volume requirements but require ETP Holders to provide additional incremental liquidity, thus "stepping up" their liquidity provision, in order to qualify for better pricing based on smaller amounts of liquidity than are required to qualify for Adding Tiers 1-3. The different tiers are designed to provide an incentive for order flow providers to add liquidity on the Exchange because the fees are lower for the tiers that have higher quoting or volume requirements. ETP Holders that do not send order flow to the Exchange to qualify for the Adding Tier rates would receive the rates set forth under item A (General Rates) of the Fee Schedule.

To respond to this competitive environment, the Exchange proposes to adjust its pricing to reduce the number of securities in which an ETP Holder must quote in order to qualify for the Adding Tier 1-3 fees. The Exchange's market share of intraday trading (i.e., excluding auctions)

declined from 1.5% for the month of March 2019 to 1.3% for the month of May 2019.<sup>9</sup> The proposed fee change is designed to attract additional order flow to the Exchange by making it easier to qualify for the respective tiered rates.

### Proposed Rule Change

As described in more detail below, in order to qualify for the Adding Tiers 1-3 fees, an ETP Holder must be quoting at a price that is equal to the NBBO a specified percentage of the time, in a specific number of securities.<sup>10</sup> The Exchange proposes to lower the number of securities in which an ETP Holder must quote to qualify for Adding Tiers 1-3 by 50 securities across the board. Without having a view of ETP Holder's activity on other markets and off-exchange venues, the Exchange believes that this reduction in the number of securities would be significant enough to incentivize market participants to increase their quoting on the Exchange to meet the new lower requirement, and thus be eligible for lower fees, and submit additional adding liquidity to the Exchange.

### Adding Tier 1

Under current Adding Tier 1, ETP Holders that add liquidity to the Exchange in securities with a per share price of \$1.00 or more and that:

- (i) quote at the NBBO<sup>11</sup> at least 5% of the time in 1,000 or more securities on an average daily basis, calculated monthly, and have an average daily volume ("ADV") of adding liquidity as a percentage of US consolidated ADV ("CADV") of 0.20% or more, or

---

<sup>9</sup> See id.

<sup>10</sup> The Adding Tier 4 volume requirements are currently waived. See footnote \* in the current Fee Schedule. The Exchange proposes no changes to Adding Tier 4.

<sup>11</sup> See footnote \*\* in the current Fee Schedule.

- (ii) quote at the NBBO at least 5% of the time in 2,500 or more securities on an average daily basis, calculated monthly, and have an ADV of adding liquidity as a percentage of US CADV of 0.10% or more,

would be charged the following fees:

- \$0.0008 per share for adding displayed orders in Tape B and C securities and \$0.0011 per share in Tape A securities;
- \$0.0008 per share for orders that set a new Exchange BBO in Tape B and C securities and \$0.0011 per share in Tape A securities;
- \$0.0010 per share for adding non-displayed orders in Tape B and C securities and \$0.0013 per share in Tape A securities; and
- \$0.0005 per share for MPL orders.

The Exchange proposes to amend the quoting requirements for both alternative methods described in (i) and (ii) above to qualify for the tier by reducing the number of securities in which the ETP Holder must quote. As proposed, the first alternative would require ETP Holders to quote at least 5% of the time at the NBBO in 950 (instead of 1,000) or more securities on an average daily basis, calculated monthly, while the second would require ETP Holders to quote at least 5% of the time at the NBBO in 2,450 (instead of 2,500) or more securities on an average daily basis, calculated monthly. The fees charged under the Adding Tier 1 would not change.

#### Adding Tier 2

Under current Adding Tier 2, ETP Holders that add liquidity to the Exchange in securities with a per share price of \$1.00 or more and that quote at least 5% of the time at the NBBO in 2000 or more securities on an average daily basis, calculated monthly, and have an ADV of adding liquidity as a percentage of US CADV of

0.10% or more, are charged the following fees:

- \$0.0012 per share for adding displayed orders in Tape B and C securities and \$0.0015 per share in Tape A securities;
- \$0.0012 per share for orders that set a new Exchange BBO in Tape B and C securities and \$0.0015 per share in Tape A securities;
- \$0.0014 per share for adding non-displayed orders in Tape B and C securities and \$0.0017 per share in Tape A securities; and
- \$0.0005 per share for MPL orders, which would remain unchanged

The Exchange proposes to reduce the number of securities in which the ETP Holder must quote to qualify for the tier, and would require ETP Holders to quote at least 5% of the time at the NBBO in 1,950 (instead of 2,000) or more securities on an average daily basis, calculated monthly. The fees charged under the Adding Tier 2 would not change.

### Adding Tier 3

Under current Adding Tier 3, ETP Holders that add liquidity to the Exchange in stocks with a per share price of \$1.00 or more and that quote at least 5% of the NBBO in 600 or more securities on an average daily basis, calculated monthly, are charged the following fees:

- \$0.0015 per share for adding displayed orders in Tape B and C securities and \$0.0017 per share in Tape A securities;
- \$0.0015 per share for orders that set a new Exchange BBO in Tape B and C securities and \$0.0017 per share in Tape A securities;
- \$0.0017 per share for adding non-displayed orders in Tape B and C securities and \$0.0019 per share in Tape A securities; and
- \$0.0005 per share for MPL orders, which would remain unchanged

The Exchange proposes to reduce the number of securities in which the ETP Holder must quote to qualify for the tier by 50, and would require ETP Holders to quote at least 5% of the NBBO in 550 (instead of 600) or more securities on an average daily basis, calculated monthly. The fees charged under the Adding Tier 3 would not change.

#### Application of Proposed Fee Change

The proposed rule change is designed to provide order flow providers with an incentive to route liquidity-providing order flow to the Exchange. As described above, ETP Holders with liquidity-providing order flow have a choice of where to send that order flow. The Exchange believes that if it reduces the requirements to qualify for tiers that have lower charges, more ETP Holders will choose to route their liquidity-providing order flow to the Exchange to qualify for those tiers. The Exchange cannot predict with certainty how many ETP Holders would avail themselves of this opportunity, but believes that more than 12 ETP Holders could qualify for these tiers if they so choose.<sup>12</sup> Additional liquidity-providing order flow benefits all market participants because it provides greater execution opportunities on the Exchange.

For example, assume an ETP Holder averages an ADV of 17.5 million shares of adding liquidity in a month where a billing month of US CADV is 7 billion, or 0.25% of CADV. If that ETP Holder quotes at least 5% of the NBBO in 975 securities on an average daily basis, calculated monthly, that ETP Holder would meet the proposed requirement of at least 950 securities to qualify for Adding Tier 1. Prior to the proposed change, that ETP Holder would fall short of the requirement for Tier 1, and would have instead qualified for Adding Tier 3. With this proposed change, this ETP Holder would now be eligible for Adding Tier 1 fees, which, except for MPL Adding fees, are lower than the Adding Tier 3 fees. The Exchange believes that

---

<sup>12</sup> In the month of May 2019, 12 ETP Holders quoted at least 5% of the time at the NBBO in at least 10 securities.



charging lower fees would create an incentive for liquidity providers to direct order flow to the Exchange, which in turn would create additional execution opportunities for all market participants.

### Proposed Non-Substantive Changes

The Exchange also proposes a non-substantive change to the presentation of the Adding Tiers under item B (Tiered Rates) of the Fee Schedule. The Exchange proposes a horizontal presentation similar to the presentation of the Taking Tiers rather than the current vertical presentation. The Exchange also proposes to simplify the presentation by using sub-titles to identify the type of liquidity (i.e., displayed, non-displayed, BBO setting, and MPL) and then listing the corresponding fees under each category. The proposed substantive changes described above would be included in the new presentation of the Tiered Rates. The proposed changes would appear as follows in the Fee Schedule:

<u>Tier Requirement</u>	<u>Adding Fees (per share)</u>
<p><b><u>Adding Tier 1</u></b></p> <p>Either:</p> <p>(i) <u>at least 5% of the NBBO** in 950 or more symbols on an average daily basis, calculated monthly and 0.20% or more Adding ADV as a % of US CADV, or</u></p> <p>(ii) <u>at least 5% of the NBBO** in 2,450 or more symbols on an average daily basis, calculated monthly and 0.10% or more Adding ADV as a % of US CADV</u></p>	<p><u>Displayed liquidity:</u></p> <ul style="list-style-type: none"> <li>- <u>Tapes B and C: \$0.0008</u></li> <li>- <u>Tape A: \$0.0011</u></li> </ul> <p><u>Non-displayed liquidity:</u></p> <ul style="list-style-type: none"> <li>- <u>Tapes B and C: \$0.0010</u></li> <li>- <u>Tape A: \$0.0013</u></li> </ul> <p><u>BBO setting:</u></p> <ul style="list-style-type: none"> <li>- <u>Tapes B and C: \$0.0008</u></li> <li>- <u>Tape A: \$0.0011</u></li> </ul> <p><u>MPL:</u></p> <ul style="list-style-type: none"> <li>- <u>All Tapes: \$0.0005</u></li> </ul>

<p><b><u>Adding Tier 2</u></b></p> <p><u>At least 5% of the NBBO** in 1,950 or more symbols on an average daily basis, calculated monthly and 0.10% or more Adding ADV as a % of US CADV</u></p>	<p><u>Displayed liquidity:</u></p> <ul style="list-style-type: none"> <li>- <u>Tapes B and C: \$0.0012</u></li> <li>- <u>Tape A: \$0.0015</u></li> </ul> <p><u>Non-displayed liquidity:</u></p> <ul style="list-style-type: none"> <li>- <u>Tapes B and C: \$0.0014</u></li> <li>- <u>Tape A: \$0.0017</u></li> </ul> <p><u>BBO Setting:</u></p> <ul style="list-style-type: none"> <li>- <u>Tapes B and C: \$0.0012</u></li> <li>- <u>Tape A: \$0.0015</u></li> </ul> <p><u>MPL:</u></p> <ul style="list-style-type: none"> <li>- <u>All Tapes: \$0.0005</u></li> </ul>
<p><b><u>Adding Tier 3</u></b></p> <p><u>At least 5% of the NBBO** in 550 or more symbols on an average daily basis, calculated monthly</u></p>	<p><u>Displayed liquidity:</u></p> <ul style="list-style-type: none"> <li>- <u>Tapes B and C: \$0.0015</u></li> <li>- <u>Tape A: \$0.0017</u></li> </ul> <p><u>Non-displayed liquidity:</u></p> <ul style="list-style-type: none"> <li>- <u>Tapes B and C: \$0.0017</u></li> <li>- <u>Tape A: \$0.0019</u></li> </ul> <p><u>BBO Setting:</u></p> <ul style="list-style-type: none"> <li>- <u>Tapes B and C: \$0.0015</u></li> <li>- <u>Tape A: \$0.0017</u></li> </ul> <p><u>MPL:</u></p> <ul style="list-style-type: none"> <li>- <u>All Tapes: \$0.0005</u></li> </ul>
<p><b><u>Adding Tier 4*</u></b></p> <p><u>0.015% or more Adding ADV as a % of US CADV</u></p>	<p><u>Displayed liquidity:</u></p> <ul style="list-style-type: none"> <li>- <u>Tapes B and C: \$0.0023</u></li> <li>- <u>Tape A: \$0.0025</u></li> </ul> <p><u>Non-displayed liquidity:</u></p> <ul style="list-style-type: none"> <li>- <u>Tapes B and C: \$0.0025</u></li> <li>- <u>Tape A: \$0.0027</u></li> </ul>

	<p><u>BBO Setting:</u></p> <ul style="list-style-type: none"> <li>- <u>Tapes B and C: \$0.0021</u></li> <li>- <u>Tape A: \$0.0023</u></li> </ul> <p><u>MPL:</u></p> <ul style="list-style-type: none"> <li>- <u>All Tapes: \$0.0005</u></li> </ul>
<p><b><u>Step Up Adding Tier 1</u></b></p> <p><u>0.07% or more Adding ADV as a % of US CADV over the ETP Holder's Adding ADV as a % of US CADV in November 2018</u></p>	<p><u>Displayed liquidity:</u></p> <ul style="list-style-type: none"> <li>- <u>Tapes B and C: \$0.0012</u></li> <li>- <u>Tape A: \$0.0015</u></li> </ul> <p><u>Non-displayed liquidity:</u></p> <ul style="list-style-type: none"> <li>- <u>Tapes B and C: \$0.0014</u></li> <li>- <u>Tape A: \$0.0017</u></li> </ul> <p><u>BBO Setting:</u></p> <ul style="list-style-type: none"> <li>- <u>Tape B and C: \$0.0012</u></li> <li>- <u>Tape A: \$0.0015</u></li> </ul> <p><u>MPL:</u></p> <ul style="list-style-type: none"> <li>- <u>All Tapes: \$0.0005</u></li> </ul>
<p><b><u>Step Up Adding Tier 2</u></b></p> <p><u>0.04% or more Adding ADV as a % of US CADV over the ETP Holder's Adding ADV as a % of US CADV in November 2018</u></p>	<p><u>Displayed liquidity:</u></p> <ul style="list-style-type: none"> <li>- <u>Tape B and C: \$0.0015</u></li> <li>- <u>Tape A: \$0.0018</u></li> </ul> <p><u>Non-displayed liquidity:</u></p> <ul style="list-style-type: none"> <li>- <u>Tapes B and C:\$0.0017</u></li> <li>- <u>Tape A: \$0.0020</u></li> </ul> <p><u>BBO Setting:</u></p> <ul style="list-style-type: none"> <li>- <u>Tapes B and C: \$0.0015</u></li> <li>- <u>Tape A: \$0.0018</u></li> </ul> <p><u>MPL:</u></p> <ul style="list-style-type: none"> <li>- <u>All Tapes: \$0.0005</u></li> </ul>

The Exchange believes the proposed change will add clarity to the Exchange's rules by

making the Fee Schedule easier to read. Other than the changes to the Adding Tier quoting qualifications described above, the Exchange proposes no other substantive changes to the Adding Tiers.

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any problems that ETP Holders would have in complying with the proposed change.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>13</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>14</sup> 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 lowering the number of securities in which ETP Holders are required to quote at least 5% of the time at the NBBO on an average daily basis, calculated monthly, for Adding Tiers 1-3 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 a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. 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

---

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

<sup>14</sup> 15 U.S.C. 78f(b)(4) & (5).

remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>15</sup>

As the Commission itself recognized, the market for trading services in NMS stocks has become “more fragmented and competitive.”<sup>16</sup> Indeed, equity trading is currently dispersed across 13 exchanges,<sup>17</sup> 32 alternative trading systems,<sup>18</sup> and numerous broker-dealer internalizers and wholesalers. Based on publicly-available information, no single exchange has more than 18% of the market share of executed volume of equity trades (whether including or excluding auction volume).<sup>19</sup> Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, in May 2019, the Exchange had 1.3% market share of executed volume of equity trades (excluding auction volume).<sup>20</sup> The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain exchange transaction fees.

The Exchange believes the proposed change is equitable and not unfairly discriminatory

---

<sup>15</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

<sup>16</sup> See Transaction Fee Pilot, 84 FR at 5253.

<sup>17</sup> See Cboe Global Markets, U.S. Equities Market Volume Summary (May 31, 2019), available at [http://markets.cboe.com/us/equities/market\\_share/](http://markets.cboe.com/us/equities/market_share/). See generally <https://www.sec.gov/fast-answers/divisionsmarketregmrexchangeshtml.html>.

<sup>18</sup> 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/files/data/alternative-trading-system-ats-list/atlist043019.pdf>.

<sup>19</sup> See Cboe Global Markets U.S. Equities Market Volume Summary (May 31, 2019), available at [http://markets.cboe.com/us/equities/market\\_share/](http://markets.cboe.com/us/equities/market_share/).

<sup>20</sup> See *id.*

because it would continue to encourage ETP Holders to send orders to the Exchange, thereby contributing to robust levels of liquidity, which benefits all market participants. Further, the Exchange believes that, for the reasons discussed above, lowering the quoting requirement would make it easier for liquidity providers to qualify for the fees, thereby encouraging submission of additional liquidity to the Exchange. The proposed change will thereby encourage the submission of additional liquidity to a national securities exchange, thus promoting price discovery and transparency and enhancing order execution opportunities for ETP Holders from the substantial amounts of liquidity present on the Exchange. All ETP Holders would benefit from the greater amounts of liquidity that will be present on the Exchange, which would provide greater execution opportunities.

The Exchange notes that there are currently four (4) firms qualifying for the combined Adding Tiers 1-4 and that, based on current participation on the Exchange, no additional firms would initially qualify with the lower requirements. Without having a view of an ETP Holder's activity on other markets and off-exchange venues, the Exchange believes the proposed lower quoting requirement would provide an incentive for market participants to increase their quoting to meet the new lower requirement and submit additional adding liquidity to the Exchange. In addition, based on the profile of liquidity-providing firms generally, the Exchange believes that more than twelve (12) firms could qualify for these tiers if they choose to direct order flow to, and increase quoting on, the Exchange.

Moreover, the proposed change is equitable and not unfairly discriminatory because all qualifying ETP Holders that add liquidity to the Exchange and quote at the NBBO in each tier would be eligible for the fee by satisfying the lowered quoting thresholds, and because the lower thresholds would apply equally to all similarly situated ETP Holders. The Exchange further

believes that the proposed changes would not permit unfair discrimination among ETP Holders because the different tiered rates are available equally to all ETP Holders. As described above, in today's competitive marketplace, order flow providers have a choice of where to direct liquidity-providing order flow, and while only four ETP Holders have qualified to date for these rates, the Exchange believes there are additional ETP Holders that could qualify if they chose to direct their order flow to the Exchange.

The Exchange also believes that the proposed non-substantive changes to the Adding Tier presentation would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased clarity and transparency, thereby reducing potential confusion.

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,<sup>21</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. Instead, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange by making it easier for liquidity providers to qualify for the Adding Tier 1-3 fees, thereby increasing the likelihood that market participants will send orders to the Exchange to trade with the liquidity providers' orders and thus promoting market depth, price discovery and

---

<sup>21</sup> 15 U.S.C. 78f(b)(8).

transparency and enhancing order execution opportunities for ETP Holders. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."<sup>22</sup>

*Intramarket Competition.* The proposed change is designed to attract additional order flow to the Exchange by reducing the number of securities that an ETP Permit holder is required to quote for Adding Tiers 1-3. 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 reduced quoting requirement 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 Exchange's market share of intraday trading (excluding auctions) declined from 1.5% for the month of March 2019 to 1.3% for the month of May 2019.<sup>23</sup> In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with off-exchange venues. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange does not believe its proposed fee change can impose any

---

<sup>22</sup> Securities Exchange Act Release No. 51808, 70 FR 37495, 37498-99 (June 29, 2005) (S7-10-04) (Final Rule).

<sup>23</sup> See note 9, *supra*.



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.

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>24</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>25</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 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>26</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

---

<sup>24</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>25</sup> 17 CFR 240.19b-4(f)(2).

<sup>26</sup> 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSENAT-2019-14 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-NYSENAT-2019-14. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without

change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSENAT-2019-14, 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>27</sup>

Vanessa A. Countryman  
Acting Secretary

---

<sup>27</sup> 17 CFR 200.30-3(a)(12).