

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-86618; File No. SR-NYSENAT-2019-18)

August 9, 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)¹ of the Securities Exchange Act of 1934 (“Act”),² and Rule 19b-4 thereunder,³ notice is hereby given that on August 1, 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 (“Fee Schedule”) to (1) offer one general rate for adding displayed and non-displayed liquidity; (2) revise the requirements to qualify for Adding Tier 1, Adding Tier 2 and Adding Tier 3 and the rates available under those tiers; (3) offer a new Non-Displayed Adding Tier 1 rate; (4) delete current Adding Tier 4, Step Up Adding Tier 1 and Step Up Adding Tier 2; (5) revise the requirements to qualify for Taking Tier 1 and Taking Tier 2 and increase the credits available under those tiers and Taking Tier 3; and (6) make certain non-substantive changes to the presentation of the Fee Schedule. The Exchange proposes to implement the rule change on August 1, 2019. The

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

- (1) Offer one general rate for adding displayed and non-displayed liquidity.

Specifically, the Exchange proposes to offer a single general fee of \$0.0028 per share for orders executed on the Exchange that provide liquidity in securities priced at or above \$1.00, which would be applicable regardless of whether an execution results from a displayed or non-displayed order that provided liquidity.

This general rate would apply unless an ETP Holder qualifies for one of the tiered rates;

- (2) Revise the requirements to qualify for Adding Tier 1, Adding Tier 2 and Adding Tier 3 and the rates available under those tiers. Specifically, an ETP Holder would qualify for Adding Tier 1, Adding Tier 2, and Adding Tier 3 if its average daily volume ("ADV") of shares executed on the Exchange that provide liquidity

meet specified percentage thresholds. An ETP Holder that meets these thresholds would be charged a revised per share single rate of \$0.0020, \$0.0024, \$0.0026 under Adding Tier 1, Adding Tier 2, and Adding Tier 3, respectively, for orders that provide displayed liquidity on Tapes A, B and C. The current separate Adding Tier 1, Adding Tier 2, and Adding Tier 3 fees for Non-displayed liquidity and BBO setting interest would be eliminated. The current rate for MPL Orders would remain unchanged;

- (3) Offer a new Non-Displayed Adding Tier 1 rate of \$0.0026 for Tapes A, B and C if an ETP Holder's ADV of shares executed on the Exchange that provide liquidity meet specified percentage thresholds;
- (4) Delete current Adding Tier 4, Step Up Adding Tier 1 and Step Up Adding Tier 2 and associated footnotes * and **;
- (5) Revise the requirements to qualify for Taking Tier 1 and Taking Tier 2, and increase the credits available under those Tiers and Taking Tier 3. Specifically, an ETP Holder would qualify for Taking Tier 1 and Taking Tier 2 (which will be renamed as Removing Tiers) based on whether its ADV of shares executed on the Exchange that remove liquidity meet specified percentage thresholds. The Exchange proposes to increase the per share credits that would be available to an ETP Holder that qualifies under Removing Tier 1, Removing Tier 2, and Removing Tier 3 to a single rate of \$0.0030, \$0.00275, and \$0.0025 respectively, for orders that remove liquidity from the Exchange. The credit for MPL Orders that remove liquidity from the Exchange would remain unchanged; and
- (6) Make certain non-substantive changes to the presentation of the Fee Schedule by

consolidating current text relating to Transaction Fees under Section I of the Fee Schedule, adding defined terms to provide for consistent use of terminology, and adding new headings under that Section of the Fee Schedule.

The Exchange proposes to implement the rule change on August 1, 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.”⁴

As the Commission itself recognized, the market for trading services in NMS stocks has become “more fragmented and competitive.”⁵ Indeed, equity trading is currently dispersed across 13 exchanges,⁶ 31 alternative trading systems,⁷ and numerous broker-dealer internalizers

⁴ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (S7-10-04) (Final Rule) (“Regulation NMS”).

⁵ 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”).

⁶ See Cboe Global Markets, U.S. Equities Market Volume Summary, available at http://markets.cboe.com/us/equities/market_share/. See generally <https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html>.

⁷ See FINRA ATS Transparency Data, available at <https://otctransparency.finra.org/otctransparency/AtsIssueData>. Although 54 alternative trading systems were registered with the Commission as of July 29, 2019, only 31 are currently trading. A list of alternative trading systems registered with the Commission is available at <https://www.sec.gov/foia/docs/atlist.htm>.

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).⁸ Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, in June 2019, the Exchange had 1.2% market share of executed volume of equity trades (excluding auction volume), which was down from 1.5% in March 2019.⁹

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 products. While it is not possible to know a firm's reason for shifting order flow, the Exchange believes that one such reason is because of fee changes at any of the registered exchanges or non-exchange trading venues to which a firm routes order flow. These fees vary month to month, and not all are publicly available. With respect to non-marketable order flow that would provide liquidity on an Exchange, ETP Holders can choose from any one of the 13 currently operating registered exchanges to route such order flow. Accordingly, competitive forces constrain 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 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

⁸ See Cboe Global Markets U.S. Equities Market Volume Summary, available at http://markets.cboe.com/us/equities/market_share/.

⁹ See *id.*

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.

Proposed Rule Change

To respond to this competitive environment, the Exchange proposes to streamline its transaction fees and credits by providing a single general rate that would be applicable to all adding liquidity that does not otherwise qualify for a tiered rate and by revising and simplifying the adding and removing liquidity tiers.

The Exchange believes that by increasing the credits available for removing liquidity on the Exchange, more ETP Holders will choose to route liquidity-removing order flow to the Exchange. The Exchange further believes ETP Holders that route orders that provide liquidity will respond to this increased order flow by routing more liquidity-providing order flow to the Exchange. The Exchange further believes that offering a single, slightly higher fee for orders that add liquidity to the Exchange, more ETP Holders will choose to route their liquidity-providing order flow to the Exchange to qualify for one of the adding tiers that, as described below, would have lower fees as compared to the General Rate as the ETP Holder adds more liquidity to the Exchange.

Without having a view of ETP Holder's activity on other markets and off-exchange venues, the Exchange believes that this combination of revising the quoting and volume requirements and rates available for each of the adding tiers, offering a separate adding tier for non-displayed orders, eliminating current Adding Tier 4 and Step Up Adding Tiers 1 and 2, and revising the requirements and credits available for the removing tiers would be significant

enough to incentivize market participants to direct their order flow to the Exchange.

Non-Substantive Changes

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. Specifically, the Exchange proposes to consolidate all information applicable only to Transaction Fees under Section I of the Fee Schedule.

First, the Exchange would add a new subsection A under Section I titled “Transaction Fees” that would set forth the following seven definitions applicable to Transaction Fees:

- “ADV” would mean average daily volume;
- “Adding ADV” would mean an ETP Holder’s average daily volume of shares executed on the Exchange that provided liquidity;
- “Adding Liquidity” would mean execution of an ETP Holder’s order on the Exchange that provided liquidity;
- “CADV” would mean consolidated average daily volume;
- “Removing Liquidity” would mean execution of an ETP Holder’s Aggressing Order, as defined under Rule 7.36(a)(5), or other orders that removed liquidity;
- “Removing ADV” would mean an ETP Holder’s average daily volume of shares executed on the Exchange that removed liquidity; and
- “US CADV” would mean the United States consolidated average daily volume of transactions reported to a securities information processor (“SIP”).¹⁰ Transactions that are not reported to a SIP are not included in the US CADV.

¹⁰ The Exchange proposes to refer to the SIP rather than Consolidated Tape because the latter term does not encompass Tape C securities.

The Exchange proposes these definitions to use consistent terms throughout Section I of the Fee Schedule relating to Transaction Fees. Specifically, the Exchange proposes to use the term “Adding” when referring to an order that when executed, provides liquidity, and to use the term “Removing” when referring to an order that when executed, takes liquidity. By consolidating definitions used in Section I of the Fee Schedule, the Exchange would eliminate the need to separately define these terms within the tables of the Fee Schedule or in end notes.

Second, the Exchange proposes to relocate the text in the first four of the five bullets under the heading “Fees and Credits Applicable to Market Participants,” which set forth general information applicable to Transaction Fees, to a new subsection B under Section I titled “General.”¹¹ In moving this text, the Exchange proposes to add “of Section I” before “of this Schedule of Fees and Rebates” in the beginning of subsection (c) of the third bullet.¹²

Third, because the Exchange has added two new subsections, the Exchange proposes that current subsection A (“General Rates”) would become new subsection C and current subsection B (“Tiered Rates”) would become new subsection D.

Fourth, the Exchange proposes to add new subsections D.1 titled “Rates for Adding Liquidity (Per Share)” and D.2 titled “Rates for Removing Liquidity (Per Share)” before the Adding Tiers and Removing Tiers, respectively. The Exchange believes these new subsections will make the Fee Schedule easier to navigate by separating the tiers for adding liquidity from the tiers for removing liquidity.

Fifth, the Exchange proposes to use the term “rate” throughout Section I of the Fee

¹¹ The final bullet would remain under the heading “Fees and Credits Applicable to Market Participants.”

¹² The Exchange also proposes non-substantive grammatical changes to subsections (a) and (c) of the third bullet to use “must” or “will” rather than “shall.”

Schedule rather than the term “Fee” and therefore proposes to replace reference to the term “fees” in the D.1 heading with the term “rates” so that the second column would become “Adding Rate”. The Exchange proposes to use the more general term “Rate” as it would be applicable both to fees charged and credits provided under the Fee Schedule.

Sixth, the Exchange proposes that in both the Adding Tiers and Removing Tiers, the rates for MPL Orders would be separated into their own columns. The Exchange does not propose any substantive changes to the rates applicable to MPL Orders.

Finally, consistent with the proposal to use consistent terminology described above, under new subsection D.2 (Rates for Removing Liquidity (Per Share)): (1) references to “taking” would be replaced with “removing” in four places, including the heading of the third column; (2) “Removing” would be added before “Rate” in the second column; and (3) “Per share” would be deleted in six places in the second and third column since the phrase would appear in the heading.¹³ The Exchange would also correct a typographical error to add a zero to the left of the decimal for the Removing MPL rates.

General Rates

Under the current General Rates, for securities priced at or above \$1.00, ETP Holders are charged the following rates for executions that add liquidity to the Exchange, unless a better tiered credit or fee set forth in Fee Schedule applies:

- \$0.0023 per share for executions on the Exchange of displayed orders that add liquidity to the Exchange;
- \$0.0021 per share for executions on the Exchange of orders that set a new BBO

¹³ “Per share” would also be deleted in the heading below new subsection D.1 following “Adding Rate.”

and that add liquidity to the Exchange;

- \$0.0025 per share for executions on the Exchange of non-displayed orders that add liquidity to the Exchange; and
- \$0.0010 per share for executions on the Exchange of MPL Orders that add liquidity to the Exchange.

For securities priced at or above \$1.00, ETP Holders are charged \$0.0005 per share for executions that remove liquidity from the Exchange, unless a better tiered credit or fee set forth in Fee Schedule applies.

For securities priced below \$1.00, the Exchange does not charge a fee for executions that add or remove liquidity from the Exchange.

The Exchange proposes to streamline and simplify the general rates for adding liquidity in securities priced at or above \$1.00. The new general rate for orders that add liquidity would be a single rate of \$0.0028 per share, regardless of whether the order was displayed or non-displayed, excluding MPL Orders that add liquidity, which have their own rate. This new general rate would apply unless the ETP Holder is eligible for one of the tiered rates, described below. The separate charges described above for executions on the Exchange of orders that add liquidity and set a new BBO and for executions of non-displayed orders that add liquidity to the Exchange would be eliminated. The current charge for MPL Orders that add liquidity to the Exchange would remain unchanged. Similarly, the current per share charge for executions that remove liquidity to the Exchange would remain unchanged. The Exchange would also continue not to charge a fee for executions that add or remove liquidity from the Exchange for securities priced below \$1.00.

With this change, the General Rate available for orders that add liquidity would be a flat

\$0.0028, rather than the current variable rates of \$0.0023, \$0.0021 or \$0.0025 that change depending on whether the order was displayed or non-displayed or set a new BBO.

The Exchange believes that by offering a single, slightly higher fee for orders that add liquidity to the Exchange, more ETP Holders will choose to route their liquidity-providing order flow to the Exchange to qualify for one of the adding tiers, described below, which would have lower fees as compared to the General Rate as the ETP Holder adds more liquidity to the Exchange.

Adding Tiers

The Exchange currently has six tiers of differentiated pricing for orders that add liquidity on the Exchange. In addition to six different qualifications, within each tier, the rates vary depending on whether the order adds displayed or non-displayed liquidity, sets the BBO, or whether the order is in a Tape A, B, or C Security. These tiers include 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.

As described below, the Exchange proposes to reduce the number of adding tiers from six to four and revise and simplify both the qualifications and rates. Adding Tiers 1-3 would be streamlined by (1) simplifying the qualification for each tier to be a percentage of Adding ADV as a percentage of the US CADV, and (2) if the ETP Holder qualifies for the applicable tier, applying a single new rate for displayed liquidity that adds liquidity, regardless of the Tape. The Exchange further proposes to add a separate Adding Tier that would be applicable to orders that provide non-displayed liquidity. Finally, Adding Tier 4, Step Up Tier 1, and Step Up Tier 2

would be eliminated.

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 NBBO¹⁴ at least 5% of the time in 950 or more securities on an average daily basis, calculated monthly, and have an ADV of adding liquidity as a percentage of US consolidated ADV (“CADV”) of 0.20% or more, or
- (ii) quote at the NBBO at least 5% of the time in 2,450 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:

- \$0.0008 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 replace the current requirements to qualify for Adding Tier 1

¹⁴ See footnote ** in the current Fee Schedule, which notes that “NBBO” (among other terms) is defined in in NYSE National Rule 1.1. As discussed below, the Exchange propose to delete footnote ** in connection with the elimination of qualifications based on the NBBO.

with the single requirement that an ETP Holder execute at least 0.15% or more Adding ADV as a percentage of US CADV.

The Exchange also proposes to streamline the Adding Tier 1 fees. A uniform fee of \$0.0020 per share for adding displayed orders in Tapes A, B and C securities would replace the current distinct fees of \$0.0008 per share for adding displayed orders in Tape B and C securities and \$0.0011 per share for adding displayed orders in Tape A securities. The fees for Non-displayed liquidity and BBO setting would be eliminated. The current rate for MPL Orders that add liquidity 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 NBBO in 1,950 or more symbols on an average daily basis, calculated monthly, and with 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.

The Exchange proposes to replace the current requirement to qualify for Adding Tier 2 with the single requirement that an ETP Holder execute at least 0.10% or more Adding ADV as a percentage of US CADV.

The Exchange also proposes to streamline the Adding Tier 2 fees. A uniform fee of \$0.0024 per share for adding displayed orders in Tapes A, B and C securities would replace the current distinct fees of \$0.0012 per share for adding displayed orders in Tape B and C securities and \$0.0015 per share in Tape A securities. The fees for Non-displayed liquidity and BBO setting would be eliminated. The current rate for MPL Orders that add liquidity would not change.

Adding Tier 3

Under current Adding Tier 3, 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 NBBO in 550 or more symbols 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.

The Exchange proposes to replace the current requirement to qualify for Adding Tier 3 with the single requirement that an ETP Holder execute at least 0.05% or more Adding ADV as a percentage of US CADV.

The Exchange also proposes to streamline the Adding Tier 3 fees. A uniform fee of \$0.0026 per share for adding displayed orders in Tapes A, B and C securities would replace the current distinct fees of \$0.0015 per share for adding displayed orders in Tape B and C securities

and \$0.0017 per share in Tape A securities. The fees for Non-displayed liquidity and BBO setting would be eliminated. The current rate for MPL Orders that add liquidity would remain unchanged.

Deletion of Adding Tier 4 and Step Up Adding Tiers 1 and 2

As noted above, as part of the streamlining of the Exchange's tiered rates, current Adding Tier 4¹⁵ and Step Up Adding Tiers 1 and 2 would be deleted in their entirety.

Non-Displayed Adding Tier 1

The separate fees for non-displayed liquidity for ETP Holders meeting the requirements of Adding Tiers 1-3 would be deleted and replaced with a new, uniform Non-Displayed Adding Tier 1. To qualify for this tier, the Exchange proposes that an ETP Holder would need at least 0.08% or more of Adding ADV as a percentage of US CADV. If an ETP Holder qualifies for this tier, it would be eligible for a \$0.0026 fee for non-displayed orders in all Tapes, excluding MPL Orders that add liquidity. Because, as described above, the rates for MPL Orders would be addressed in Adding Tiers 1 - 3, the Exchange proposes that the Non-Displayed Adding Tier rate would not be applicable to MPL Orders that add liquidity.

Application of the Proposed Changes to the Adding Tiers

The proposed changes to the Adding Tiers is designed to provide order flow providers with incentives to route liquidity-providing order flow to the Exchange. The proposed rates for these Adding Tiers correlate to the proposed rates for the Removing Tiers, described below. As described above, ETP Holders with liquidity-providing order flow have a choice of where to send that order flow.

¹⁵ Footnote * in the current Fee Schedule provides that the Adding Tier 4 volume requirements are waived. Since the Exchange proposes to delete Adding Tier 4, the Exchange would delete footnote * as well.

For example, if US CADV is 7 billion shares, an ETP Holder would be eligible for the following fees based on their Adding ADV:

- An adding ADV of 5.25 million shares in the billing month would be 0.075% of US CADV. That ETP Holder would qualify for Adding Tier 3 fee of \$0.0026 per share for its displayed orders that provide liquidity and the General Rate of \$0.0028 for its non-displayed orders that provide liquidity.
- An adding ADV of 8.75 million shares in the billing month would be 0.125% of US CADV. That ETP Holder would qualify for Adding Tier 2 fee of \$0.0024 per share for displayed orders that provide liquidity and the Non-Displayed Adding tier fee of \$0.0026 per share for non-displayed orders that provide liquidity.
- An adding ADV of 12.25 million shares in the billing month would be 0.175% of US CADV. That ETP Holder would qualify for Adding Tier 1 fee of \$0.0020 per share for displayed orders that provide liquidity and the Non-Displayed Adding Tier fee of \$0.0026 per share for non-displayed orders that provide liquidity.
- An adding ADV of less than 3.5 million shares in the billing month would be less than 0.05% of US CADV. That ETP Holder would be eligible for the General Rate fee of \$0.0028 per share for both displayed and non-displayed orders that provide liquidity.

The Exchange believes that simplifying the requirements to qualify for Adding Tiers 1-3, eliminating three tiers, and establishing a single, higher rate for displayed orders across all three tapes, coupled with a single tier for non-displayed orders with simplified qualification requirements and a higher rate, would make it easier for ETP Holders to qualify for the tiers and would incent ETP Holders to route their liquidity-providing order flow to the Exchange. The

Exchange cannot predict with certainty how many ETP Holders would avail themselves of the opportunities presented by the new Adding Tiers. However, based on levels of order flow historically routed to the Exchange, the Exchange believes that as many as four ETP Holders out of 49 ETP Holders on the Exchange could qualify for new Adding Tier 1 if they so choose; two more ETP Holders could qualify for new Adding Tier 2; six more ETP Holders could qualify for new Adding Tier 3; and four ETP Holders could qualify for the new Non-Displayed Adding Tier 1. Additional liquidity-providing order flow benefits all market participants because it provides greater execution opportunities on the Exchange.

Removing Tiers¹⁶

The Exchange currently sets forth the rebates it provides in three Taking Tiers that establish minimum quoting and volume requirements that an ETP Holder must satisfy in order to be eligible for corresponding rebate, including a separate “Taking MPL Rate” setting forth the rebate for ETP Holders using MPL Orders to remove liquidity receive if the quoting and volume requirements are met. As described above, the Exchange proposes to rename the Taking Tiers as “Removing Tiers.”

The Exchange proposes to revise both the Removing Tier 1 and Removing Tier 2 qualification requirements and the credits available under those Tiers, and increase the credit for Removing Tier 3. As noted above, the Exchange believes that simplifying the qualification requirements and increasing the credits for removing liquidity will incent more ETP Holders will choose to route liquidity-removing order flow to the Exchange.

¹⁶ As noted, the Exchange proposes to replace “taking” with “removing” in the Fee Schedule. Current Taking Tiers 1-3 would accordingly become Removing Tiers 1-3.

Removing Tier 1

Under current Taking Tier 1, ETP Holders that remove liquidity from the Exchange in securities with a per share price of \$1.00 or more and that have at least (1) 0.0025% Adding ADV as a percentage of US CADV, or (2) 0.0125% Adding ADV as a percentage of US CADV and 0.032% Removing ADV as percentage of US CADV, or (3) 0.00125% Adding ADV as a percentage of US CADV and 0.25% Removing ADV as percentage of US CADV, would be eligible for the following credits:

- \$0.0020 per share for orders; and
- \$0.0002 per share for MPL Orders.

The Exchange proposes to replace the current alternative requirements to qualify for Removing Tier 1 with the requirement that ETP Holders have at least 0.10% Removing ADV as a percentage of US CADV and 250,000 Adding ADV.

The Exchange also proposes to increase the rebate for qualifying for Removing Tier 1 from \$0.0020 per share to \$0.0030 per share. The current rate for MPL Orders would not change.

Removing Tier 2

Under current Taking Tier 2, ETP Holders that remove liquidity from the Exchange in securities with a per share price of \$1.00 or more and that have at least 0.0125% Adding ADV as a percentage of US CADV, would be eligible for the following credits:

- \$0.0018 per share for orders; and
- \$0.0002 per share for MPL Orders.

The Exchange proposes to replace the current requirement to qualify for Removing Tier 2 with the requirement that ETP Holders have at least 0.04% Removing ADV as a percentage of

US CADV and 100,000 Adding ADV.

The Exchange also proposes to increase the rebate for qualifying for Removing Tier 1 from \$0.0018 per share to \$0.00275 per share. The current rate for MPL Orders would not change.

Removing Tier 3

Under current Taking Tier 3, ETP Holders that remove liquidity from the Exchange in securities with a per share price of \$1.00 or more and that have at least 50,000 Adding ADV, would be eligible for the following credits:

- \$0.0010 per share for orders; and
- \$0.0002 per share for MPL Orders.

The Exchange proposes to increase the rebate for qualifying for Removing Tier 3 from \$0.0010 per share to \$0.0025 per share. The current rate for MPL Orders would not change.

Application and Impact of the Proposed Changes to the Removing Tiers

The proposed change to the Removing Tiers is designed to provide order flow providers with incentives to route liquidity-removing order flow to a public exchange, thereby promoting price discovery and transparency and enhancing order execution opportunities for ETP Holders.

For example, an ETP Holder has an Adding ADV of 75,000 shares. That ETP Holder would qualify for Removing Tier 3 credit of \$0.0025 per share.

In a month when US CADV was 7 billion shares, an ETP Holder would be eligible for the following credits:

- A Removing ADV of 3.5 million shares in a billing month would be 0.05% of US CADV. If that ETP Holder also has an Adding ADV of 125,000 shares, the ETP Holder would qualify for Removing Tier 2 credit of \$0.00275 per share for orders

that remove liquidity by exceeding the requirements.

- A Removing ADV of 8.75 million shares in a billing month would be 0.125% of US CADV. If the ETP Holder also has an Adding ADV of 300,000 shares, that ETP Holder would qualify for Removing Tier 1 credit of \$0.0030 per share for orders that remove liquidity by exceeding the requirements.
- An ETP Holder with an Adding ADV of less than 50,000 shares would then be eligible for the base fee of \$0.0005 per share for orders that remove liquidity.

As described above, ETP Holders with liquidity-removing order flow have a choice of where to send that order flow. The Exchange believes that by simplifying the requirements to qualify for the two removing tiers with the highest rebate and increasing the rebate for all three removing tiers, more ETP Holders will choose to route their liquidity-removing order flow to the Exchange in order to interact with the increased liquidity-providing order flow the Exchange anticipates from its proposed changes to the Adding Tiers.

The Exchange cannot predict with certainty how many ETP Holders would avail themselves of the opportunities presented by the revised removing tiers. Based on prior order flow routed to the Exchange, the Exchange believes that as many as five ETP Holders of the 49 current Exchange ETP Holders could qualify for the revised Removing Tier 1 if they so choose; six more ETP Holders could qualify for the revised Removing Tier 2; and six more ETP Holders could qualify for the revised Removing Tier 3. Additional liquidity-providing order flow benefits all market participants because it provides greater execution opportunities on the Exchange.

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,¹⁷ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁸ 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 fragmented and competitive market. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. While it is not possible to know a firm's reason for shifting order flow, the Exchange believes that one such reason is because of fee changes at any one of the registered exchanges or non-exchange trading venues that a firm routes order flow to, which vary month to month, and not all of which are publicly known about. With respect to non-marketable order flow that would provide displayed liquidity on an Exchange, ETP Holders can choose from any one of the 13 currently operating registered exchanges to route such order flow. Accordingly, competitive forces constrain exchange transaction fees that relate to orders that would provide displayed liquidity on an exchange.

Given the current competitive environment, the proposal represents a reasonable attempt to attract additional order flow to the Exchange. Specifically, the Exchange believes that

¹⁷ 15 U.S.C. 78f(b).

¹⁸ 15 U.S.C. 78f(b)(4) & (5).

offering a single, higher General Rate that would be applicable to all adding liquidity that does not otherwise qualify for a tiered rate is reasonable because a higher rate would provide an incentive for ETP Holders to route additional liquidity-providing orders to the Exchange to qualify for one of the Adding Tier rates, thereby promoting price discovery and providing meaningful added levels of liquidity and contributing to the depth and market quality on the Exchange. Similarly, the Exchange believes that revising and simplifying the adding liquidity tier rates and which rates would be available for displayed and non-displayed orders is also reasonable because the Exchange believes that lower tiered rates, coupled with simplified qualification requirements that would make it easier for ETP Holders to qualify for the respective tiers, would incent more ETP Holders to route their liquidity-providing order flow to the Exchange, thereby attracting liquidity-providing order flow to the Exchange.

In addition, the Exchange believes that the proposed changes to the removing tiers are reasonable because the proposed changes would incentivize submission of additional liquidity to a public exchange, thereby enhancing order execution opportunities for ETP Holders.

Specifically, simplifying the requirements to qualify for the two removing tiers with the highest rebate and increasing the rebate for all three removing tiers would incentivize ETP Holders to send additional liquidity to the Exchange in order to receive a higher credits and avoid the General Rate fees by meeting the higher liquidity requirements for a Removing Tier credit.

As noted, the Exchange's market share of intraday trading has declined from March 2019 to June 2019. The Exchange believes that the proposal represents a reasonable attempt to 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.

Finally, the Exchange also believes the proposed non-substantive changes to consolidate text relating to transaction fees under Section I of the Fee Schedule and to add a definitions section are reasonable and 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 on the Fee Schedule, thereby reducing potential confusion.

The Proposal is an Equitable Allocation of Fees

The Exchange believes its proposal equitably allocates its fees among its market participants. The proposal would continue to encourage ETP Holders to send orders to the Exchange, thereby contributing to robust levels of liquidity, which benefits all market participants. The Exchange believes that, for the reasons discussed above, revising and simplifying the qualification requirements for adding and removing tier rates would make it easier for current and new liquidity providers to qualify for the respective tier fees and credits, 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 further believes that the proposed uniform higher general fee of \$0.0028 for adding displayed and non-displayed liquidity is equitable because the magnitude of the uniform rate is not unreasonably higher than the current separate fees for displayed (\$0.0023)

and non-displayed (\$0.0025) adding liquidity that it would replace, and in comparison to the general rates charged by other exchanges with taker-maker fee models for adding liquidity. For example, Cboe EDGA charges a non-tier fee of \$0.0030 per share for adding liquidity.¹⁹

The proposed higher fees for adding displayed liquidity in Tape A, Tape B and Tape C securities in Adding Tier 1 (\$0.0020), Adding Tier 2 (\$0.0024) and Adding Tier 3 (\$0.0026) and the single, higher Non-Displayed Adding Tier 1 charge are equitable because the magnitude of the uniform rates is not unreasonably higher than the current separate rates each replaces, and in comparison to the fees charged by other exchanges for orders that add displayed and non-displayed liquidity. For example, Cboe EDGA charges a tiered fees of \$0.0022 and \$0.0026 for adding liquidity.²⁰

Finally, the higher proposed credits for Removing Tier 1 (\$0.0030), Removing Tier 2 (\$0.00275), and Removing Tier 3 (\$0.0025) are similarly equitable because the magnitude of the uniform rates is not unreasonably higher than the current separate rates each replaces, and in comparison to the fees charged by other exchanges for orders that add displayed and non-displayed liquidity. For example, Cboe EDGA offers a tiered credit of (\$0.0026) per share for removing liquidity.²¹

The number of ETP Holders that could qualify for the General Rate, each of the Adding Tiers, and the Removing Tiers are noted above. Without having a view of an ETP Holder's activity on other markets and off-exchange venues, the Exchange believes the proposed revised requirements and corresponding higher rates would provide an incentive for market participants

¹⁹ See Cboe EDGA U.S. Equities Exchange Fee Schedule, available at https://markets.cboe.com/us/equities/membership/fee_schedule/edga/.

²⁰ See id.

²¹ See id.

to increase the orders they send to the Exchange in order 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 numerous firms could qualify for the Adding Tiers Removing Tiers if they choose to direct order flow to, as noted earlier, and increase trading on, the Exchange.

The Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more liquidity to the Exchange thereby improving market-wide quality and price discovery. The proposal neither targets nor will it have a disparate impact on any particular category of market participant.

Specifically, the Exchange believes that the proposal constitutes an equitable allocation of fees because all similarly situated ETP Holders and other market participants would be eligible for the same general and tiered rates and would be eligible for the same fees and credits. Moreover, the proposed change is equitable because all qualifying ETP Holders that meet the new requirements for Adding Tiers 1-3 would be eligible for the fee by satisfying the revised requirements, and because the revised requirements would apply equally to all similarly situated ETP Holders. Similarly, the proposed change is equitable because all qualifying ETP Holders that meet the new requirements for Removing Tiers 1-3 would be eligible for the credits by satisfying the revised requirements, and because the revised requirements would apply equally to all similarly situated ETP Holders.

The Proposal is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. In the prevailing competitive environment, ETP Holders are free to disfavor the Exchange's pricing if they believe that alternatives offer them better value.

The proposal neither targets nor will it have a disparate impact on any particular category of market participant. The Exchange also believes that the proposed change is not unfairly discriminatory because it is reasonably related to the value to the Exchange's market quality associated with higher volume. The Exchange believes that the proposal does not permit unfair discrimination because the proposal would be applied to all similarly situated ETP Holders and other market participants would be charged the same rates or receive the same credits.

The Exchange further believes that the proposal does not permit unfair discrimination because the Exchange will be making the Adding Tier and Removing Tier rates available to all ETP Holders on an equal basis. Accordingly, no ETP Holder already operating on the Exchange would be disadvantaged by the proposed allocation of fees. For the same reasons, the Exchange believes that the proposal would not permit unfair discrimination among ETP Holders. The Exchange believes that the proposed change is not unfairly discriminatory because all qualifying ETP Holders that meet the revised requirements would be eligible for the Adding Tiers 1-3 fees by satisfying the revised thresholds, and because the revised thresholds would apply equally to all similarly situated ETP Holders. Similarly, the proposed change is equitable because all qualifying ETP Holders that meet the new requirements for Removing Tiers 1-3 would be eligible for the credits by satisfying the revised requirements, and because the revised requirements 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 general and tiered rates are available equally to all ETP Holders. As described above, in today's competitive marketplace, order flow providers have a choice of where to direct liquidity-providing order flow, and the Exchange believes there

are additional ETP Holders that could qualify if they chose to direct their order flow to the Exchange.

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

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

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

In accordance with Section 6(b)(8) of the Act,²² the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing 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."²³

Intramarket Competition. The proposed change is designed to attract additional order flow to the Exchange. The Exchange believes that the proposed increased fees and credits would continue to incentivize market participants to direct liquidity providing and removing orders to the Exchange. Greater liquidity benefits all market participants on the Exchange by providing more trading opportunities and encourages ETP Holders to send orders, thereby contributing to

²² 15 U.S.C. 78f(b)(8).

²³ Regulation NMS, 70 FR at 37498-99.

robust levels of liquidity, which benefits all market participants. The proposed reduced requirements for the tiers 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. As noted, the Exchange's market share of intraday trading (*i.e.*, excluding auctions) declined from March to June 2019. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with off-exchange venues. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition.

The Exchange believes that the proposed 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)²⁴ of

²⁴ 15 U.S.C. 78s(b)(3)(A).

the Act and subparagraph (f)(2) of Rule 19b-4²⁵ 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)²⁶ 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-NYSENAT-2019-18 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-2019-18. This file number should be included on the subject line if e-mail is used. To help the Commission process and review

²⁵ 17 CFR 240.19b-4(f)(2).

²⁶ 15 U.S.C. 78s(b)(2)(B).

your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSENAT-2019-18, 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.²⁷

Jill M. Peterson
Assistant Secretary

²⁷ 17 CFR 200.30-3(a)(12).