SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-92648; File No. SR-NYSEArca-2021-70)

August 12, 2021

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

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act"),[2] and Rule 19b-4 thereunder,[3] notice is hereby given that August 2, 2021, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend the NYSE Arca Equities Fees and Charges ("Fee Schedule") to (1) modify the application of the per share fee for Tape B securities; (2) adopt increased credits and a cap applicable to the Step Up Tier 4 credit in Tape B securities; (3) eliminate a requirement to qualify for the Tape B Tier 2 credit; (4) adopt increased credits and a cap applicable to the Tape B Step Up Tier; and (5) adopt a new pricing tier, MPID Adding Tier, applicable to Tape A and Tape C securities. The Exchange proposes to implement the fee changes effective August 2, 2021. 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.

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to (1) modify the application of the per share fee for Tape B securities; (2) adopt increased credits and a cap applicable to the Step Up Tier 4 credit in Tape B securities; (3) eliminate a requirement to qualify for the Tape B Tier 2 credit; (4) adopt increased credits and a cap applicable to the Tape B Step Up Tier; and (5) adopt a new pricing tier, MPID Adding Tier, applicable to Tape A and Tape C securities.

The proposed changes respond to the current competitive environment where order flow providers have a choice of where to direct liquidity-providing orders by offering further incentives for ETP Holders[4] to send additional liquidity to the Exchange.

The Exchange proposes to implement the fee changes effective August 2, 2021.

Background

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices,

4 All references to ETP Holders in connection with this proposed fee change include Market Makers.

products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."[5]

While Regulation NMS has enhanced competition, it has also fostered a "fragmented" market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that "such competition can lead to the fragmentation of order flow in that stock."[6] Indeed, equity trading is currently dispersed across 16 exchanges,[7] numerous alternative trading systems,[8] and broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly available information, no single exchange currently has more than 17% market share.[9] Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, the Exchange currently has less than 10% market share of

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5 See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (File No. S7-10-04) (Final Rule) ("Regulation NMS").

6 See Securities Exchange Act Release No. 61358, 75 FR 3594, 3597 (January 21, 2010) (File No. S7-02-10) (Concept Release on Equity Market Structure).

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

8 See FINRA ATS Transparency Data, available at https://otctransparency.finra.org/otctransparency/AtsIssueData. A list of alternative trading systems registered with the Commission is available at https://www.sec.gov/foia/docs/atslist.htm.

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

executed volume of equities trading.[10]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products. 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 venues to which a firm routes order flow. With respect to non-marketable order flow that would provide liquidity on an Exchange against which market makers can quote, ETP Holders can choose from any one of the 16 currently operating registered exchanges to route such order flow. Accordingly, competitive forces constrain exchange transaction fees that relate to orders that would provide liquidity on an exchange.

Proposed Rule Change

Tape B

Currently, for Exchange Transactions, under Section III (Standard Rates - Transactions), the Exchange charges a fee of $0.0012 per share for Closing Orders[11] in securities priced at or above $1.00.[12] Pursuant to footnote (f), this fee currently applies to orders in Tape A Securities, Tape C Securities and NYSE Arca primary listed securities (includes all ETFs/ETNs). The Exchange currently does not charge this fee for orders in securities whose primary market is NYSE American LLC ("NYSE American") or Cboe BZX Exchange, Inc. ("Cboe BZX"). The Exchange proposes to modify the application of this fee by amending the text of footnote (f) so

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10 See id.

11 Under Section I (Definitions) of the Fee Schedule, the term Closing Orders means Market, Market-On-Close, Limit-On-Close, and Auction-Only Orders executed in a Closing Auction.

12 For Retail Orders in securities priced at or above $1.00, this fee is $0.0008 per share, and for securities priced below $1.00, this fee is 0.1% of Dollar Value.

that the fee would apply to all securities, i.e., Tape A, Tape B and Tape C securities. The purpose of the proposed fee change is to simplify the Fee Schedule and maintain consistency with respect to the fee charged by the Exchange when it executes Closing Orders in all securities.

Similarly, for Exchange Transaction[sic], under Section VI (Tier Rates - Round Lots and Odd Lots (Per Share Price $1.00 or Above)), the Exchange currently charges a fee of $0.0010 per share for Market, Market-On-Close, Limit-On-Close, and Auction-Only Orders executed in a Closing Auction in NYSE Arca Primary listed securities (includes all ETFs/ETNs). This fee is applicable under Tier 1 and Tier 2 pricing tiers.

The Exchange currently does not charge this fee for orders in securities whose primary market is NYSE American or Cboe BZX. The Exchange proposes to modify the application of this fee by deleting the words "in NYSE Arca primary listed securities (includes all ETFs/ETNs)" in Tier 1 and Tier 2 so that the fee would apply to all Tape B securities. The purpose of the proposed fee change is to simplify the Fee Schedule and maintain consistency with respect to the fee charged by the Exchange when it executes Closing Orders in all Tape B securities.

Step Up Tier 4

The proposed rule change is designed to be available to all ETP Holders on the Exchange and is intended to provide ETP Holders an opportunity to receive enhanced rebates by executing more of their orders in Tape B securities on the Exchange.

The Exchange currently has multiple levels of step-up pricing tiers, Step Up Tiers 1 - 5, which are designed to encourage ETP Holders that provide displayed liquidity on the Exchange to increase that order flow, which would benefit all ETP Holders by providing greater execution opportunities on the Exchange. In order to provide an incentive for ETP Holders to direct providing displayed order flow to the Exchange, the credits increase in the various tiers based on increased levels of volume directed to the Exchange.

Currently, the following credits are available to ETP Holders that provide increased levels of displayed liquidity on the Exchange:

Tier	***Credit for Providing Displayed Liquidity***
Step Up Tier	\$0.0030 (Tape A) \$0.0023 (Tape B) \$0.0031 (Tape C)
Step Up Tier 2	\$0.0028 (Tape A and C) \$0.0022 (Tape B)
Step Up Tier 3	\$0.0025 (Tape A and C) \$0.0022 (Tape B)
Step Up Tier 4	\$0.0033 (Tape A and C) \$0.0034 (Tape B)
Step Up Tier 5	\$0.0032 (Tape A, B and C)

Under the Step Up Tier 4, if an ETP Holder increases its providing liquidity on the Exchange by a specified percentage over the level that such ETP Holder provided liquidity in September 2019, it is eligible to earn higher credits. Specifically, to qualify for the credits under Step Up Tier 4, an ETP Holder must directly execute providing average daily volume (ADV) per month that is an increase of no less than 0.40% of US CADV for that month over the ETP Holder’s providing ADV in September 2019, taken as a percentage of US CADV.

If an ETP Holder meets the Step Up Tier 4 requirement, such ETP Holder is currently eligible to earn a credit of:

- \$0.0033 per share for orders that provide displayed liquidity in Tape A and Tape C Securities, and
- \$0.0034 per share for orders that provide displayed liquidity in Tape B

Securities.[13]

ETP Holders that qualify for Step Up Tier 4 do not receive any additional incremental Tape B Tier credits for providing displayed liquidity, including any incremental credits associated with Less Active ETP Securities and are currently capped at $0.0034 per share.[14] With this proposed rule change, the Exchange proposes to modify the cap applicable to the Step Up Tier 4 credit in Tape B securities. As proposed, an ETP Holder that is registered as a Lead Market Maker can receive up to a combined credit of $0.0036 per share on all its adding volume in Tape B Securities if that ETP Holder, together with its affiliates,[15] executes providing ADV in Tape B Securities that is at least 40% over the ETP Holder's providing ADV in Q3 2019, as a percentage of US Tape B CADV.

The purpose of the proposed rule change is to incentivize ETP Holders to register as Lead Market Makers and generally to incentivize order flow providers to send liquidity-providing orders to the Exchange while capping the level of credit that such participants would receive. The Exchange believes that, although it is proposing to continue to limit the financial incentive for orders that provide displayed liquidity in Tape B securities, the current rebate, i.e., $0.0034 per share, is among one of the highest credits paid by the Exchange and should continue to serve as an incentive for ETP Holders to direct displayed liquidity providing orders to the Exchange.

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13 See Securities Exchange Act Release Nos. 86122 (June 17, 2019), 84 FR 29258 (June 21, 2019) (SR-NYSEArca-2019-43); 87292 (October 11, 2019), 84 FR 55603 (October 17, 2019) (SR-NYSEArca-2019-70); and 88833 (May 7, 2020), 85 FR 28676 (May 13, 2020) (SR-NYSEArca-2020-39).

14 See Securities Exchange Act Release Nos. 88436 (March 20, 2020), 85 FR 17112 (March 26, 2020) (SR-NYSEArca-2020-21); and 88833 (May 7, 2020), 85 FR 28676 (May 13, 2020) (SR-NYSEArca-2020-39).

15 The term "affiliate" means any ETP Holder under 75% common ownership or control of that ETP Holder. See Fee Schedule, NYSE Arca Marketplace: General, Section II. Aggregate Billing of Affiliated ETP Holders.

Tape B Tier 2

Currently, under the Tape B Tier 2 pricing tier, an ETP Holder could qualify for a credit of $0.0028 per share[16] if such ETP Holder, on a daily basis, measured monthly, directly executes providing volume in Tape B Securities during the billing month ("Tape B Adding ADV") that is either (1) equal to at least 1.0% of the US Tape B CADV or (2) equal to at least 0.20% of the US Tape B CADV for the billing month over the ETP Holder's or Market Maker's Q2 2015 Tape B Adding ADV taken as a percentage of Tape B CADV or (3) equal to at least 0.25% of the US Tape B CADV for the billing month over the ETP Holder's or Market Maker's April 2020 Tape B Adding ADV taken as a percentage of Tape B CADV.

The Exchange proposes to eliminate the second requirement above which requires an ETP Holder to execute providing volume in Tape B Securities equal to at least 0.20% of the US Tape B CADV for the billing month over the ETP Holder's or Market Maker's Q2 2015 Tape B Adding ADV taken as a percentage of Tape B CADV. The Exchange has observed that, over the last 6 months, not a single ETP Holder has qualified for the Tape B Tier 2 credit by utilizing the requirement that the Exchange is proposing to eliminate. Given that this requirement has not served to meaningfully increase activity on the Exchange, the Exchange has determined to eliminate it from the Fee Schedule. The Exchange is not proposing any other change to the Tape B Tier 2 pricing tier.

With this proposed rule change, ETP Holders would continue to be able to qualify for the Tape B Tier 2 credit of $0.0028 per share for providing liquidity in Tape B Securities if such ETP Holder, on a daily basis, measured monthly, directly executes Tape B Adding ADV that is

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16 Under the Standard Rates, ETP Holders receive a credit of $0.0020 per share for Tape B orders that provide liquidity.

either (1) equal to at least 1.0% of the US Tape B CADV or (2) equal to at least 0.25% of the US Tape B CADV for the billing month over the ETP Holder's or Market Maker's April 2020 Tape B Adding ADV taken as a percentage of Tape B CADV.

The Exchange believes that eliminating a requirement that has become underutilized will also streamline the Fee Schedule. The Exchange further believes that the remaining requirements will continue to incentivize ETP Holders to submit liquidity providing orders in Tape B Securities to qualify for the Tape B Tier 2 credit. The Exchange is not proposing any change to the level of Tape B Tier 2 credit.

Tape B Step Up Tier

Currently, ETP Holders that meet the requirement under Tape B Step Up Tier can earn the following incremental credits:

- An incremental credit of $0.0002 per share when an ETP Holder's providing ADV in Tape B Securities during the billing month is at least 0.50% of the US Tape B CADV and the ETP Holder's providing ADV in Tape B Securities during the billing month as a percentage of US Tape B CADV is at least 20% more but less than 30% of the ETP Holder's providing ADV as a percentage of US Tape B CADV in 3Q 2019;
- An incremental credit of $0.0003 per share when an ETP Holder's providing ADV in Tape B Securities during the billing month is at least 0.50% of the US Tape B CADV and the ETP Holder's providing ADV in Tape B Securities during the billing month as a percentage of US Tape B CADV is at least 30% more but less than 40% of the ETP Holder's providing ADV as a percentage of US Tape B CADV in 3Q 2019; and

- An incremental credit of $0.0004 per share when an ETP Holder's providing ADV in Tape B Securities during the billing month is at least 0.50% of the US Tape B CADV and the ETP Holder's providing ADV in Tape B Securities during the billing month as a percentage of US Tape B CADV is at least 40% more than the ETP Holder's providing ADV as a percentage of US Tape B CADV in 3Q 2019.[17]

The incremental credits are payable in addition to the ETP Holder's Tiered or Standard credit(s); provided, however, that such combined credit(s) in Tape B Securities currently cannot exceed $0.0032 per share.

The Exchange proposes to adopt an increased cap applicable under the Tape B Step Up Tier pricing tier. As proposed, if an ETP Holder's providing ADV increases at least 150% over the ETP Holder's providing ADV in Q3 2019, then the ETP Holder can receive a combined credit of up to:

- $0.0033 per share if the ETP Holder is registered as a Lead Market Maker or Market Maker in at least 150 Less Active ETPs in which it meets at least two Performance Metrics, and has Tape B Adding ADV equal to at least 0.65% of US Tape B CADV, or
- $0.0034 per share if the ETP Holder or Market Maker is registered as a Lead Market Maker or Market Maker in at least 200 Less Active ETPs in which it meets at least two Performance Metrics, and has Tape B Adding ADV equal to at least 0.70% of US Tape B CADV.

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17 See Securities Exchange Act Release No. 87292 (October 11, 2019), 84 FR 55603 (October 17, 2019) (SR-NYSEArca-2019-70).

For example, assume an ETP Holder has providing ADV of 1.20% of Tape B CADV in Tape B securities in the baseline period of third quarter of 2019. Further assume that the same ETP Holder has providing ADV of Tape B CADV of 1.80% in Tape B securities in the billing month. The ETP Holder in this example would qualify for an incremental credit of $0.0004 per share because the ETP Holder has providing ADV in Tape B Securities during the billing month of 1.80%, which is at least 0.50% of the US Tape B CADV, and because the ETP Holder has providing ADV of Tape B CADV of 1.80%, which is at least 40% more than the ETP Holder's baseline ADV of 1.20% of Tape B CADV. Also assume further that the ETP Holder is registered as a Lead Market Maker or Market Maker in 150 Less Active ETPs in which it meets at least two Performance Metrics.

In the above example, the ETP Holder would also qualify for the existing Tape B Tier 1 credit of $0.0030 per share by meeting the 1.5% of the US Tape B CADV requirement, for a total credit of $0.0034 per share ($0.0030 per share plus $0.0004 per share). Given the cap currently in place, the ETP Holder's combined credit would be reduced to $0.0032 per share. However, since the ETP Holder is registered as a Lead Market Maker or Market Maker in at least 150 Less Active ETPs in which it meets at least two Performance Metrics, under the proposed rule change, the ETP Holder would receive a combined credit of $0.0033 per share. If the ETP Holder was registered as a Lead Market Maker or Market Maker in 200 Less Active ETPs in which it met at least two Performance Metrics, under the proposed rule change, ETP Holder would receive a combined credit of $0.0034 per share. Under both scenarios, the ETP Holder meets the Tape B Adding ADV requirement of 0.70% of US Tape B CADV for the $0.0034 per share cap.

As noted above, the Exchange operates in a competitive environment, particularly as it relates to attracting non-marketable, providing liquidity that would be displayed on the Exchange. The purpose of this proposed rule change is to provide an incentive to ETP Holders to register as Lead Market Makers or Market Makers in Less Active ETPs and to incentivize such liquidity providers to increase the orders sent to the Exchange.

MPID Adding Tier

The Exchange proposes to adopt a new pricing tier, MPID Adding Tier, that would offer a per share credit for orders that provide liquidity in Tape A and Tape C securities. As proposed, to qualify for the proposed pricing tier, an MPID would be required to execute providing ADV in all securities that is at least 2 times more than its providing ADV in 2Q 2021, as a percentage of US CADV. A qualifying MPID would receive a credit for providing liquidity in Tape A and Tape C securities of $0.0028 per share if the MPID has least 4 million shares of providing ADV during the billing month, or $0.0029 per share if the MPID has at least 9 million shares of providing ADV during the billing month.

For example, assume an MPID has providing ADV of 2 million shares of Tape A, Tape B and Tape C securities in the baseline period of 2Q 2021. Further assume that the same MPID has providing ADV of 4 million shares in the billing month, which is 2 times more than the baseline ADV of 2 million shares. Under the proposed rule change, the MPID would receive a credit of $0.0028 per share for adding liquidity in Tape A and Tape C securities. If instead the MPID has providing ADV of 9 million shares in the billing month, which is 4.5 times more than the baseline period, then the MPID would receive a credit of $0.0029 per share for adding liquidity in Tape A and Tape C securities.

The proposed rule change is designed to incentivize ETP Holders to increase liquidity-providing orders in Tape A and Tape C securities they send to the Exchange, which would support the quality of price discovery on the Exchange and provide additional liquidity for incoming orders. As noted above, the Exchange operates in a competitive environment, particularly as it relates to attracting non-marketable, which add liquidity to the Exchange. Because the proposed tier requires an ETP Holder's MPID to increase the volume of its trades in orders that add liquidity over the MPID's 2Q 2021 baseline, the Exchange believes that the proposed credits would provide an incentive for all ETP Holders to send additional liquidity to the Exchange in order to qualify for them.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[18] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[19] 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 Fee Change is Reasonable

As discussed above, the Exchange operates in a highly fragmented and 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

18 15 U.S.C. 78f(b).

19 15 U.S.C. 78f(b)(4) and (5).

that are most important to investors and listed companies."[20]

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. With respect to non-marketable order which provide liquidity on an Exchange, ETP Holders can choose from any one of the 16 currently operating registered exchanges to route such order flow. Accordingly, competitive forces reasonably constrain exchange transaction fees that relate to orders that would provide displayed liquidity on an exchange. Stated otherwise, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

Tape B

The Exchange believes the proposed amendment to the Tape B fees is reasonable because it seeks to standardize the fee for Tape B securities. The Exchange periodically reviews its fees and rebates and determined that it does not currently charge a fee for Closing Orders in Tape B securities whose primary market is NYSE American or Cboe BZX, nor does the Exchange currently charge for Market, Market-On-Close, Limit-On-Close, and Auction-Only Orders executed in a Closing Auction for securities whose primary market is NYSE American or Cboe BZX. The Exchange believes it is reasonable to charge the same fee for all Tape B securities.

Step Up Tier 4

The Exchange believes the proposed rule change to adopt an increased cap on the credit applicable to the Step Up Tier 4 credit in Tape B securities is reasonable because the increased credit, which would be among the highest paid by the Exchange, outside of Lead Market Maker

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

credits for adding liquidity, would serve to incentivize ETP Holders to increase their participation on the Exchange as Lead Market Makers and execute a greater number of orders in Tape B securities on the Exchange. The Exchange believes the increased credits would continue to encourage ETP Holders to submit additional liquidity to a national securities exchange and to participate as a Lead Market Maker or Market Maker. The Exchange believes it is reasonable to require ETP Holders to meet the applicable volume threshold to qualify for the increased credits. Submission of additional liquidity to the Exchange would promote price discovery and transparency and enhance order execution opportunities for ETP Holders from the substantial amounts of liquidity present on the Exchange. The Exchange notes that the requirement to execute providing ADV that is at least 40% over the ETP Holder's or Market Maker's providing ADV in Q3 2019 is the same as the requirement to achieve the top incremental credit for Tape B Step Up Tier. The Exchange believes that adopting an identical requirement would provide ETP Holders a further incentive to provide additional liquidity in Tape B Securities. Additionally, the Exchange believes that utilizing the same baseline as Tape B Step Up Tier would make it easier for firms to monitor their providing ADV for both tiers, as opposed introducing a new baseline. All ETP Holders would benefit from the greater amounts of liquidity that will be present on the Exchange, which would provide greater execution opportunities.

Tape B Tier 2

The Exchange believes that the proposed rule change to eliminate one of the requirements to qualify for the Tape B Tier 2 credit is reasonable because the requirement proposed for deletion has been underutilized and has generally not incentivized ETP Holders to bring liquidity and increase trading on the Exchange.

In the last 6 months, no ETP Holder has availed itself of the Tape B Tier 2 by meeting the requirement proposed for deletion. The Exchange does not anticipate any ETP Holder in the near future to qualify for the Tape B Tier 2 credit by meeting the requirement proposed for deletion. The Exchange believes it is reasonable to eliminate requirements within pricing tiers when they become underutilized. The Exchange believes eliminating underutilized tier requirements would also simplify the Fee Schedule. The Exchange further believes that removing reference to underutilized tier requirements that the Exchange proposes to eliminate from the Fee Schedule would also add clarity to the Fee Schedule.

Tape B Step Up Tier

The Exchange believes the proposed rule change to modify the credit and the cap applicable under the Tape B Step Up Tier for Tape B securities is a reasonable means of attracting additional liquidity to the Exchange. The Exchange believes the modified credits, which are among the highest paid by the Exchange, would continue to encourage ETP Holders to submit additional liquidity to a national securities exchange. The Exchange believes it is reasonable to require ETP Holders to meet the applicable volume threshold to qualify for the increased credits, given the higher combined credit of $0.0033 per share and $0.0034 per share the Exchange would pay if the tier criteria is met. Submission of additional liquidity to the Exchange would promote price discovery and transparency and enhance order execution opportunities for ETP Holders from the substantial amounts of liquidity present on the Exchange. The Exchange also believes it is reasonable to require ETP Holders be registered as a Lead Market Maker or Market Maker in a minimum number [sic] Less Active ETPs and to meet at least two Performance Metrics in such securities as the Exchange believes this requirement would enhance market quality in Less Active ETPs and support the quality of price discovery in such securities. All ETP Holders would benefit from the greater amounts of liquidity that will be present on the Exchange, which would provide greater execution opportunities.

MPID Adding Tier

The Exchange believes the proposed MPID Adding Tier is a reasonable means to encourage ETP Holders to increase their liquidity providing orders in Tape A and Tape C securities each month over a predetermined baseline by offering liquidity providers an opportunity to receive an enhanced rebate. Further, the Exchange believes it's reasonable to provide the proposed credit to the qualifying MPID if it meets the tier's criteria because this would encourage individual MPIDs to send orders that provide liquidity to the Exchange, thereby contributing to robust levels of liquidity, which benefits all market participants, and promoting price discovery and transparency. Since the proposed tier would be new, no ETP Holder's MPID currently qualifies for the proposed pricing tier. As previously noted, without a view of ETP Holder activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether the proposed rule change would result in any ETP Holder's MPID qualifying for the tier. The Exchange believes the proposed credit is reasonable as it would provide an additional incentive for an ETP Holder's MPID to direct its order flow to the Exchange and provide meaningful added levels of liquidity in order to qualify for the proposed credit, thereby contributing to depth and market quality on the Exchange.

As noted above, the Exchange operates in a highly competitive environment, particularly for attracting order flow that provides displayed liquidity on an exchange. More specifically, the Exchange notes that greater add volume order flow may provide for deeper, more liquid markets and execution opportunities at improved prices, which the Exchange believes incentivizes liquidity providers to submit additional liquidity and enhance execution opportunities. This overall increase in activity would deepen the Exchange's liquidity pool, offer additional cost savings, support the quality of price discovery, promote market transparency and improve market quality, for all investors. The Exchange believes it is reasonable to provide higher credits in Tape A and Tape C securities to incentivize liquidity adding orders in those securities, and not in Tape B securities, because Tape A and Tape C securities are non-NYSE Arca-listed securities and do not have Lead Market Makers or Market Makers to provide additional liquidity. The Exchange notes that other markets with which the Exchange competes currently offer its members an opportunity to earn rebates based on the activity of the member's MPID.[21] The Exchange believes the proposed new pricing tier continues to be a reasonable means to encourage ETP Holders to increase their liquidity on the Exchange.

The Proposed Fee Change is an Equitable Allocation of Fees and Credits

The Exchange believes its proposal equitably allocates its fees among its market participants.

Tape B

The Exchange believes that the proposed rule change constitutes an equitable allocation of reasonable fees because the proposed fee is comparable to the fee charged by the Exchange for the same activity in NYSE Arca-listed securities and would apply equally to all ETP Holders that choose to execute their orders in Tape B securities on the Exchange. The proposed change may impact the submission of orders to a national securities exchange, and to the extent that ETP Holders continue to submit such orders to the Exchange, the proposed rule change would not have a negative impact to ETP Holders trading on the Exchange because the proposed fee would

21 See BZX Fee Schedule, Footnote 2, Step Up Tiers, and Footnote 4, Single Investor MPID Tiers, at https://www.cboe.com/us/equities/membership/fee_schedule/bzx/.

be in line with the fee currently charged by the Exchange for trading in NYSE Arca-listed securities. However, without having a view of ETP Holder's activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in a change in trading behavior by ETP Holders.

Step Up Tier 4

The Exchange believes the proposed amendment to the credit and the cap under Step Up Tier 4 equitably allocates its fees and credits among market participants because it is reasonably related to the value of the Exchange's market quality associated with higher equities volume. The Exchange believes the proposed increased credits, which would be among the highest paid by the Exchange, would provide an incentive for ETP Holders to increase their participation as Lead Market Makers on the Exchange and execute a greater amount of their orders in Tape B securities on the Exchange. The Exchange believes the proposed increased credits would continue to encourage ETP Holders to send orders that add liquidity to the Exchange, thereby contributing to robust levels of liquidity for the benefit all market participants. The Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and attract more liquidity to the Exchange. ETP Holders that currently qualify for credits associated with Step Up pricing tiers on the Exchange will continue to receive credits when they provide liquidity to the Exchange. The Exchange believes that recalibrating the requirements for providing liquidity will continue to attract order flow and liquidity to the Exchange for the benefit of investors generally.

Tape B Tier 2

The Exchange believes that the proposed rule change to eliminate one of the requirements to qualify for the Tape B Tier 2 credit is an equitable allocation of its fees and credits. The Exchange believes that eliminating a tier requirement from the Fee Schedule when such requirement becomes underutilized is equitable because the requirement would be eliminated in its entirety and would no longer be available to any ETP Holder.

Tape B Step Up Tier

The Exchange believes the proposed amendment to the credit and the cap under the Tape B Step Up Tier equitably allocates its fees and credits among market participants because it is reasonably related to the value of the Exchange's market quality associated with higher equities volume. As proposed, the Exchange would provide qualifying ETP Holders with some of the highest credits payable by the Exchange provided they participate as Lead Market Makers and provide increased Tape B adding ADV. The more an ETP Holder participates, the greater the credit they would receive. The Exchange believes the proposed credits would encourage ETP Holders to send orders that add liquidity to the Exchange, thereby contributing to robust levels of liquidity, which would benefit all market participants.

MPID Adding Tier

The Exchange believes that the proposed adoption of the MPID Adding Tier represents an equitable allocation of fees because all ETP Holders will be eligible for the proposed pricing tier and have the opportunity to meet the tier's criteria and receive the applicable rebate if such criteria is met. That is, the proposed pricing tier is designed as an incentive to any and all liquidity providers interested in meeting the tier criteria to submit additional order flow to the Exchange and each will receive the proposed rebate if the tier criteria is met. While the Exchange has no way of knowing whether this proposed rule change would definitively result in any particular ETP Holder qualifying for the proposed pricing tier, the Exchange anticipates a number of ETP Holders would be able to meet, or will reasonably be able to meet, the proposed criteria. However, without having a view of activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any ETP Holder qualifying for the proposed tier. The Exchange also notes that the proposed change will not adversely impact any ETP Holder's pricing or their ability to qualify for other rebate tiers. Rather, should an ETP Holder not meet the proposed criteria, the ETP Holder will merely not receive the corresponding rebate.

The Proposed Fee Change 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.

Tape B

The proposal to amend the Tape B fees is not unfairly discriminatory because the fee would be applied on an equal basis to all ETP Holders that choose to send their orders in Tape B securities to the Exchange. Additionally, the proposed rule change neither targets nor will it have a disparate impact on any particular category of market participant. The proposal does not permit unfair discrimination because the proposed fees would be applied to all ETP Holders, who would all be charged the same fee on an equal basis. Accordingly, no ETP Holder already operating on the Exchange would be disadvantaged by this allocation of fees.

Step Up Tier 4

The Exchange believes it is not unfairly discriminatory to cap the increased credit payable under Step Up Tier 4 for providing displayed liquidity in Tape B securities because the proposed credit and cap would be applied on an equal basis to all ETP Holders, who would all be subject to the proposed change on an equal basis. Additionally, the proposal neither targets nor will it have a disparate impact on any particular category of market participant. The proposal does not permit unfair discrimination because the proposed change would be applied to all ETP Holders, who would all be subject to the proposed change on an equal basis. Accordingly, no ETP Holder already operating on the Exchange would be disadvantaged by this allocation of fees.

Tape B Tier 2

The Exchange believes that the proposed rule change to eliminate one of the requirements to qualify for the Tape B Tier 2 credit is not unfairly discriminatory. The Exchange believes that eliminating a tier requirement from the Fee Schedule when such requirement becomes underutilized is equitable and not unfairly discriminatory because the requirement would be eliminated in its entirety and would no longer be available to any ETP Holder. Additionally, the proposed rule change neither targets nor will it have a disparate impact on any particular category of market participant.

Tape B Step Up Tier

The Exchange believes it is not unfairly discriminatory to modify and cap the credit payable under Tape B Step Up Tier 4 for providing displayed liquidity in Tape B securities because the proposed increased cap would be applied on an equal basis to all ETP Holders, who would all be subject to the proposed cap on an equal basis. Additionally, the proposal neither targets nor will it have a disparate impact on any particular category of market participant. The proposal does not permit unfair discrimination because the proposed cap would be applied to all ETP Holders, who would all be subject to the cap on an equal basis.

MPID Adding Tier

The Exchange believes it is not unfairly discriminatory to provide the proposed credit as the credit would be provided on an equal basis to all ETP Holders that add liquidity by meeting the new proposed MPID Adding Tier's requirements. 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 proposed new tier is designed as an incentive to any and all ETP Holders interested in meeting the tier criteria to submit additional order flow to the Exchange and each will receive the proposed rebate if the tier criteria is met. The Exchange also notes that the proposed change will not adversely impact any ETP Holder's pricing or their ability to qualify for other tiers. Rather, should an ETP Holder not meet the criteria of the proposed new pricing tier, the ETP Holder will merely not receive the corresponding rebate.

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In the prevailing competitive environment, ETP Holders are free to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Moreover, this proposed rule change neither targets nor will it have a disparate impact on any particular category of market participant. The Exchange believes that this proposal does not permit unfair discrimination because the changes described in this proposal would be applied to all similarly situated ETP Holders and all ETP Holders would be subject to the same requirements. Accordingly, no ETP Holder already operating on the Exchange would be disadvantaged by the proposed allocation of fees. The Exchange further believes that the proposed changes would not permit unfair discrimination among ETP Holders because the standard and tiered rates are available equally to all ETP Holders.

Finally, the submission of orders to the Exchange is optional for ETP Holders in that they could choose whether to submit orders to the Exchange and, if they do, the extent of its activity in this regard. 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 integrated competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."[23]

Intramarket Competition. The Exchange believes the proposed amendments to its Fee Schedule would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed change represents a significant departure from previous pricing offered by the Exchange or its competitors. The proposed changes are designed to attract additional order flow to the

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

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

Exchange. The Exchange believes that the proposed adoption of a new pricing tier and amending credits associated with established tiers would incentivize market participants to direct liquidity adding order flow to the Exchange, bringing with it additional execution opportunities for market participants and improved price transparency. Greater overall order flow, trading opportunities, and pricing transparency benefits all market participants on the Exchange by enhancing market quality and continuing to encourage ETP Holders to send orders, thereby contributing towards a robust and well-balanced market ecosystem. The Exchange also does not believe the proposed rule change to eliminate underutilized requirements to qualify for a pricing tier will impose any burden on intramarket competition because the proposed change would impact all ETP Holders uniformly (i.e., the requirement will not be available to any ETP Holder).

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 above, the Exchange's market share of intraday trading (i.e., excluding auctions) is currently less than 10%. 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 the Act and subparagraph (f)(2) of Rule 19b-4[25] 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

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24 15 U.S.C. 78s(b)(3)(A).

25 17 CFR 240.19b-4(f)(2).

26 15 U.S.C. 78s(b)(2)(B).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEARCA-2021-70 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEARCA-2021-70. 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-2021-70, 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]

J. Matthew DeLesDernier
Assistant Secretary

27 17 CFR 200.30-3(a)(12).