comment in the **Federal Register** on August 20, 2019. The 180th day after publication of the Notice is February 16, 2020, and April 16, 2020 is an additional 60 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[8] designates April 16, 2020 as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR–CboeBYX–2019–012).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–03181 Filed 2–18–20; 8:45 am]

BILLING CODE 8011–01–P

[8] *Id.*

[9] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88181; File No. SR–NYSEARCA–2020–10]

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

February 12, 2020.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on February 3, 2020, 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 amend the Retail Order Step-Up Tier 2 pricing tier. 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.

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 the Fee Schedule to amend the Retail Order Step-Up Tier 2 pricing tier. 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 displayed liquidity to the Exchange.

The Exchange proposes to implement the fee changes effective February 3, 2020.

Background

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, 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]

As the Commission itself recognized, the market for trading services in NMS stocks has become ''more fragmented and competitive.''[6] Indeed, equity trading is currently dispersed across 13 exchanges,[7] 31 alternative trading systems,[8] and numerous broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange currently has more than 20% market share (whether including or excluding auction volume).[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 executed volume of equity trades (excluding auction volume).[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. The competition for Retail Orders[11] is even more stark, particularly as it relates to exchange versus off-exchange venues. For example, the Exchange examined Rule 606 disclosures from three prominent retail brokerages: E-Trade, TD Ameritrade and Charles Schwab. For securities listed on the New York Stock Exchange LLC in the third quarter of 2019, TD Ameritrade routed 92% of its limit orders to off-exchange venues.[12] Similarly, E-Trade Financial and Charles Schwab routed more than 73% and more than 97%,[13] respectively, of its limit orders to off-exchange venues. With respect to non-marketable order

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

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

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

[5] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005)

[6] *See* Securities Exchange Act Release No. 51808, 84 FR 5202, 5253 (February 20, 2019) (File No. S7–05–18) (Final Rule).

[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/.*

[10] *See id.*

[11] A Retail Order is an agency order that originates from a natural person and is submitted to the Exchange by an ETP Holder, provided that no change is made to the terms of the order to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. *See* Securities Exchange Act Release No. 67540 (July 30, 2012), 77 FR 46539 (August 3, 2012) (SR–NYSEArca–2012–77).

[12] *See https://www.tdameritrade.com/retail-en_us/resources/pdf/AMTD2054.pdf.*

[13] *See https://content.etrade.com/etrade/powerpage/pdf/OrderRouting11AC6.pdf. See also https://www.schwab.com/public/schwab/nn/legal_compliance/important_notices/order_routing.html.*

flow that would provide displayed liquidity on an Exchange against which market makers can quote, 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 and credits that relate to orders that would provide displayed liquidity on an exchange.

Proposed Rule Change

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 quoting and trading more on the Exchange.

The Exchange currently provides credits to ETP Holders who submit orders that provide displayed liquidity on the Exchange. The Exchange currently has multiple levels of credits for orders that provide displayed liquidity that are based on the amount of volume of such orders that ETP Holders send to the Exchange.

As described in greater detail below, the Exchange proposes to amend the volume requirements and the associated per share credit payable for Retail Orders that provide liquidity in Tape A, Tape B and Tape C securities.

In this competitive environment, the Exchange has already established Retail Order Step-Up Tiers 1, 2, 3 and 4, which are designed to encourage ETP Holders that provide displayed liquidity in Retail Orders 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 Retail 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 in Retail Orders on the Exchange:

Tier	Credit for providing displayed liquidity in retail orders
Retail Order Step-Up Tier 1	$0.0033 (Tape A, Tape B and Tape C).
Retail Order Step-Up Tier 2	$0.0035 (Tape A, Tape B and Tape C).
Retail Order Step-Up Tier 3	$0.0035 (Tape A, Tape B and Tape C).
Retail Order Step-Up Tier 4	$0.0036 (Tape A, Tape B and Tape C).

Generally, under the Retail Order step-up pricing tiers, if an ETP Holder increases its retail liquidity, it is eligible to earn higher credits and lower fees.

Under Retail Order Step-Up Tier 1, to qualify for the Retail Order Step-Up Tier 1 credit, an ETP Holder must execute an average daily volume (ADV) per month of Retail Orders with a time-in-force of Day that add or remove liquidity that is an increase of 0.12% or more of the US CADV above its April 2018 ADV taken as a percentage of US CADV. Currently, if an ETP Holder meets the Retail Order Step-Up Tier 1 requirement, such ETP Holder is eligible to earn a credit of $0.0033 per share for Retail Orders that provide displayed liquidity to the Book in Tape A, Tape B and Tape C securities, and is not charged a fee for Retail Orders with a time-in-force of Day that remove liquidity.[14]

Under Retail Order Step-Up Tier 2, ETP Holders that provide liquidity an ADV per month of 1.10% or more of the US CADV, and execute an ADV of Retail Orders with a time-in-force of Day that add or remove liquidity during the month that is an increase of 0.35% or more of the US CADV above their April 2018 ADV taken as a percentage of US CADV are eligible for the per share credit under the Retail Order Step-Up Tier 2 pricing tier. Currently, if an ETP Holder meets the Retail Order Step-Up Tier 2 requirement, such ETP Holder is eligible to earn a credit of $0.0035 per share for Retail Orders that provide displayed liquidity to the Book in Tape A, Tape B and Tape C securities, and is not charged a fee for Retail Orders with a time-in-force of Day that remove liquidity.[15] Additionally, under Retail Order Step-Up Tier 2, ETP Holders can earn an incremental credit of $0.0002 per share for orders in Tape C securities that provide non-displayed liquidity in addition to a credit of $0.0035 per share for orders in Tape C securities that provide displayed liquidity to the Book, and [sic] a fee of $0.0027 per share for orders in Tape C securities that take liquidity from the Book.

Under Retail Order Step-Up Tier 3,[16] ETP Holders that execute an ADV of Retail Orders with a time-in-force of Day that add or remove liquidity during the month that is an increase of 0.10% or more of the US CADV above their April 2018 ADV taken as a percentage of US CADV, are eligible to receive a credit of $0.0035 per share for Retail Orders that provide displayed liquidity in Tape A, Tape B and Tape C securities. Retail Orders with a time-in-force designation of Day that remove liquidity from the Book are not charged a fee. The Retail Order Step-Up Tier 3 provides the same level of credit for Retail Orders that provide displayed liquidity to the Book in Tapes A, B and C securities payable under the current Retail Order Step-Up Tier 2 but has a lower requirement to qualify for the credit. Retail Order Step-Up Tier 3 also does not provide the incremental $0.0002 per share credit in Tape C securities for orders that provide non-displayed liquidity to the Book, the $0.0035 per share credits for non-Retail Orders that provide displayed liquidity to the Book in Tape C Securities, or the $0.0027 per share fee applicable for orders in Tape C securities that take liquidity, all of which are currently payable under Retail Order Step-Up Tier 2.

Under Retail Order Step-Up Tier 4,[17] ETP Holders that execute an ADV of Retail Orders with a time-in-force of Day that add or remove liquidity during the month that is an increase of 0.20% or more of the US CADV above their April 2018 ADV taken as a percentage of US CADV, are eligible to receive a credit of $0.0036 per share for Retail Orders that provide displayed liquidity in Tape A, Tape B and Tape C securities. Retail Orders with a time-in-force designation of Day that remove liquidity from the Book are not charged a fee.

With this proposed rule change, the Exchange proposes to amend the volume requirements and the associated per share credit payable under Retail

[14] *See* Securities Exchange Act Release No. 83268 (May 17, 2018), 83 FR 23983 (May 23, 2018) (SR–NYSEArca–2018–34).

[15] *See* Securities Exchange Act Release No. 83828 (August 10, 2018), 83 FR 40816 (August 16, 2018) (SR–NYSEArca–2018–58). Additionally, under Retail Order Step-Up Tier 2, ETP Holders are eligible to earn a credit of $0.0035 per share for orders in Tape C securities that provide displayed liquidity, can receive an incremental credit of $0.0002 per share for orders in Tape C securities that provide non-displayed liquidity, and are charged a fee of $0.0027 per share for orders in Tape C securities that take liquidity. The Exchange is not proposing any change to this aspect of Retail Order Step-Up Tier 2 with this proposed rule change.

[16] *See* Securities Exchange Act Release No. 87994 (January 16, 2020), 85 FR 3955 (January 23, 2020) (SR–NYSEArca–2020–05).

[17] *See id.*

Order Step-Up Tier 2. More specifically, the Exchange proposes to amend the average share volume requirement that ETP Holders are required to meet, from 1.10% or more of US CADV to 1.00% or more of US CADV. Additionally, the Exchange proposes to amend the amount of Retail Orders that ETP Holders are required to execute from an increase over their April 2018 ADV of 0.35% or more to an increase over their April 2018 ADV of 0.40% or more. Finally, the Exchange proposes to increase the credit payable under Retail Order Step-Up Tier 2 from $0.0035 per share to $0.0038 per share.

With this proposed rule change, the following credits would be available to ETP Holders that provide increased levels of displayed liquidity in Retail Orders on the Exchange:

Tier	Credit for providing displayed liquidity in retail orders
Retail Order Step-Up Tier 1	$0.0033 (Tape A, Tape B and Tape C).
Retail Order Step-Up Tier 2	$0.0038 (Tape A, Tape B and Tape C).
Retail Order Step-Up Tier 3	$0.0035 (Tape A, Tape B and Tape C).
Retail Order Step-Up Tier 4	$0.0036 (Tape A, Tape B and Tape C).

For all other fees and credits, tiered or basic rates apply based on a firm's qualifying levels.

The purpose of the proposed rule change is to encourage even greater participation from ETP Holders and promote additional liquidity in Retail Orders. As described above, ETP Holders with liquidity-providing orders have a choice of where to send those orders. The Exchange believes that the proposed amendment to the volume requirement and credit payable under Retail Order Step-Up Tier 2 could lead to more ETP Holders choosing to route their liquidity-providing Retail Orders to the Exchange rather than to a competing exchange.

The Exchange does not know how much Retail Order flow ETP Holders choose to route to other exchanges or to off-exchange venues. Without having a view of ETP Holders' 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 Holders sending more of their Retail Orders to the Exchange to qualify for the proposed Retail Order Step-Up Tier 2 credit. Currently, no ETP Holders qualify for Retail Order Step-Up Tier 2.[18] The Exchange cannot predict with certainty how many ETP Holders would avail themselves of this opportunity but additional liquidity-providing Retail Orders would benefit all market participants because it would provide 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 significant problems that market participants would have in complying with the proposed changes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[19] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[20] 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 that are most important to investors and listed companies.'' [21]

As the Commission itself recognized, the market for trading services in NMS stocks has become ''more fragmented and competitive.'' [22] Indeed, equity trading is currently dispersed across 13 exchanges,[23] 31 alternative trading systems,[24] and numerous broker-dealer internalizers and wholesalers, all competing for order flow. As noted above, no exchange possesses significant pricing power in the execution of equity order flow.

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 orders which 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 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.

Given this competitive environment, the proposal represents a reasonable attempt to attract additional order flow to the Exchange.

As noted above, the competition for Retail Order flow is stark given the amount of retail limit orders that are routed to non-exchange venues. 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. This competition is particularly acute for non-marketable, or limit, retail orders, *i.e.,* retail orders that can provide liquidity on an exchange. That competition is even more fierce for retail limit orders that provide *displayed* liquidity on an exchange. Accordingly, competitive forces constrain exchange transaction fees,

[18] As of January 31, 2020, there are 13 ETP Holders on the Exchange that provide liquidity that could qualify for the Exchange's Retail Step-Up pricing tiers.

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(4) and (5).

[21] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[22] *See* Securities Exchange Act Release No. 51808, 84 FR 5202, 5253 (February 20, 2019) (File No. S7–05–18) (Final Rule).

[23] *See* Cboe Global Markets, U.S Equities Market Volume Summary, available at *https://markets.cboe.com/us/equities/market_share/*.

[24] *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.*

particularly as they relate to competing for retail orders.

The Exchange believes the proposed change to the Retail Order Step-Up Tier 2 pricing tier is reasonable because it would provide ETP Holders with additional incentives to send a greater number of Retail Orders to the Exchange. The Exchange believes that the proposed amendment to qualify for the tier utilizing a higher Retail Order requirement and a lower liquidity providing ADV is reasonable because the proposal would provide firms with greater incentive to reach retail order volume tiers, thereby creating an added incentive for ETP Holders to bring additional retail order flow to a public market. The Exchange believes the proposed change is reasonable because the increased credit proposed herein would continue to encourage ETP Holders to send Retail Orders to the Exchange to qualify for the pricing tier. As noted above, the Exchange operates in a highly competitive environment, particularly for attracting Retail Order flow that provides displayed liquidity on an exchange. The Exchange believes it is reasonable to continue to provide credits in general, and higher credits, for Retail Orders that provide displayed liquidity if an ETP Holder meets the amended qualifications for the pricing tier.

Further, given the competitive market for attracting Retail Orders, the Exchange notes that with this proposed rule change, the Exchange's pricing for Retail Orders would be comparable to credits currently in place on other exchanges that the Exchange competes with for order flow. For example, the Nasdaq Stock Market LLC (''Nasdaq'') provides its members with a credit of $0.0033 per share if such member has an 85% add to total volume (adding liquidity and removing liquidity) ratio during a billing month.[25] Cboe BZX Exchange, Inc. (''BZX'') provides its members with a credit of $0.0032 per share for retail orders that add liquidity to that market.[26] In addition, Cboe EDGX Exchange, Inc. ('EDGX'') provides its members with a credit of $0.0037 per share for retail orders that add liquidity to that market if an EDGX member adds liquidity in Retail Orders of 0.50% of CADV or more.[27]

The Exchange believes the proposed change is also reasonable because it is designed to attract higher volumes of Retail Orders transacted on the Exchange by ETP Holders which would benefit all market participants by offering greater price discovery, increased transparency, and an increased opportunity to trade on the Exchange.

On the backdrop of the competitive environment in which the Exchange currently operates, the proposed rule change is a reasonable attempt to increase liquidity on the Exchange and improve the Exchange's market share relative to its competitors.

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

The Exchange believes that the proposed rule change to amend the requirement and credit payable under Retail Order Step-Up Tier 2 equitably allocates fees and credits among its market participants because it is reasonably related to the value of the Exchange's market quality associated with higher volume in Retail Orders. The Exchange believes that pricing is just one of the factors that ETP Holders consider when determining where to direct their order flow. Among other things, factors such as execution quality, fill rates, and volatility, are important and deterministic to ETP Holders in deciding where to send their order flow.

Further, the Exchange notes that, with this proposed rule change, the difference between the highest credit provided for Retail Orders, $0.0038 per share, as proposed, and the credit for Retail Orders that do not qualify for any Retail Order pricing tiers, $0.0030 per share, is $0.0008, or 21%, which the Exchange believes is relatively small given the heightened requirements that ETP Holders must meet to qualify for the higher credit. Similarly, with this proposed rule change, the difference in the highest credit for Retail Orders, $0.0038 per share, as proposed, and the credit provided for Retail Orders to those ETP Holders qualifying for the Retail Order Tier or Retail Order Step-Up Tier 1, $0.0033 per share, would only be $0.0005 per share, or 13%. Therefore, the Exchange believes the proposed amendment to the Retail Order Step-Up Tier 2 pricing tier is equitably allocated and provides credits that are reasonably related to the value to the Exchange's market quality associated with higher volumes. In today's competitive marketplace, order flow providers have a choice of where to direct liquidity-providing order flow, and while only three ETP Holders have qualified to date for the current Retail Order pricing tiers, 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 the proposed amendment to the Retail Order Step-Up Tier 2 pricing tier is equitable because the magnitude of the proposed credit is not unreasonably high relative to credits paid by other exchanges for orders that provide additional step up liquidity in Retail Orders.[28] The Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more Retail Orders 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. ETP Holders that currently qualify for credits associated with Retail Order Step-Up pricing tiers on the Exchange will continue to receive credits when they provide liquidity to the Exchange.

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.

The Exchange believes it is not unfairly discriminatory to provide a higher per share step-up credit for Retail Orders, as the proposed credit would be provided on an equal basis to all ETP Holders that add liquidity by meeting the amended requirements of the Retail Order Step-Up Tier 2. Further, the Exchange believes the proposed increased per share credits would incentivize ETP Holders that meet the current tiered requirements to send more of their Retail Orders to the Exchange to qualify for increased credits. 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.

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

[25] *See* Nasdaq Price List, Rebate to Add Displayed Designated Retail Liquidity, at *http://nasdaqtrader.com/Trader.aspx?id=PriceListTrading2.*

[26] *See* BZX Fee Schedule, Fee Codes and Associated Fees, at *https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/.*

[27] *See* EDGX Fee Schedule, Fee Codes and Associated Fees, at *https://markets.cboe.com/us/equities/membership/fee_schedule/edgx/.*

[28] *See* notes 25–27, *supra.*

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,[29] 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.'' [30]

Intramarket Competition. The Exchange believes the proposed rule change does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed change applies to all ETP Holders equally in that all ETP Holders are eligible for the pricing tier, have a reasonable opportunity to meet the tier's criteria and will all receive the proposed rebate if such criteria is met. Additionally, the proposed change is designed to attract additional order flow to the Exchange. The Exchange believes that the proposed amendment to Retail Order Step-Up Tier 2 pricing tier would continue to incentivize market participants to submit orders that qualify as Retail 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 robust levels of liquidity, which benefits all market participants. The amended pricing tier 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 believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchanges and off-exchange venues if they deem fee levels at those other venues to be more favorable. 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 this proposed fee change would 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) [31] of the Act and subparagraph (f)(2) of Rule 19b–4 [32] 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) [33] 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 email to *rule-comments@sec.gov.* Please include File Number SR–NYSEARCA–2020–10 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–2020–10. This file number should be included on the subject line if email 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

[29] 15 U.S.C. 78f(b)(8).

[30] *See* Securities Exchange Act Release No. 51808, 70 FR 37495, 37498–99 (June 29, 2005) (S7–10–04) (Final Rule).

[31] 15 U.S.C. 78s(b)(3)(A).

[32] 17 CFR 240.19b–4(f)(2).

[33] 15 U.S.C. 78s(b)(2)(B).

[34] 17 CFR 200.30–3(a)(12).

Number SR–NYSEARCA–2020–10 and should be submitted on or before March 11, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–03183 Filed 2–18–20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88182; File No. SR–NYSEArca–2020–11]

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

February 12, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 3, 2020, NYSE Arca, Inc. (''NYSE Arca'' or the ''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 the NYSE Arca Equities Fees and Charges (''Fee Schedule''). The Exchange proposes to implement the fee changes effective February 3, 2020. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

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 regarding the Exchange's tiered-rebate structure applicable to Lead Market Makers (''LMMs''),[3] and to ETP[4] Holders affiliated with such LMM, that provide displayed liquidity in Tape B securities to the NYSE Arca Book.

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 and LMMs to send additional displayed liquidity to the Exchange.

The Exchange proposes to implement the fee changes effective February 3, 2020.

Background

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, 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]

As the Commission itself recognized, the market for trading services in NMS stocks has become ''more fragmented and competitive.''[6] Indeed, equity trading is currently dispersed across 13 exchanges,[7] 31 alternative trading systems,[8] and numerous broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange currently has more than 20% market share (whether including or excluding auction volume).[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 executed volume of equity.[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 displayed liquidity on an Exchange against which market makers can quote, ETP Holders and LMMs can choose from any one of the 13 currently operating registered exchanges to route such order flow. Accordingly, competitive forces constrain exchange transaction fees and credits that relate to orders that would provide displayed liquidity on an exchange.

Proposed Rule Change

The proposed rule change is designed to be available to all ETP Holders and LMMs on the Exchange and is intended to provide ETP Holders and LMMs an opportunity to receive enhanced rebates by quoting and trading more on the Exchange.

The Exchange currently provides tier-based incremental credits for orders that provide displayed liquidity in Tape B securities to the NYSE Arca Book.[11] Specifically, LMMs that are registered as the LMM in Tape B securities that have a consolidated average daily volume (''CADV'') in the previous month of less than 100,000 shares, or 0.010% of Consolidated Tape B ADV, whichever is greater (''Less Active ETP Securities''), and the ETP Holders affiliated with such LMMs, currently receive an incremental credit for orders that

[34] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] The term ''Lead Market Maker'' is defined in Rule 1.1(w) to mean a registered Market Maker that is the exclusive Designated Market Maker in listings for which the Exchange is the primary market.

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

[5] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[6] *See* Securities Exchange Act Release No. 51808, 84 FR 5202, 5253 (February 20, 2019) (File No. S7–05–18) (Final Rule).

[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/divisionsmarketregmr exchangesshtml.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/.*

[10] *See id.*

[11] *See* Securities Exchange Act Release Nos. 76084 (October 6, 2015), 80 FR 61529 (October 13, 2015) (SR–NYSEArca–2015–87); 79597 (December 19, 2016), 81 FR 94460 (December 23, 2016) (SR–NYSEArca–2016–165); and 85094 (February 11, 2019), 84 FR 4579 (February 15, 2019) (SR–NYSEArca–2019–05).