Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

The title for the collection of information is ''Rule 203–2 (17 CFR 275.203–2) and Form ADV–W (17 CFR 279.2) under the Investment Advisers Act of 1940 (15 U.S.C. 80b).'' Rule 203–2 under the Investment Advisers Act of 1940 establishes procedures for an investment adviser to withdraw its registration or pending registration with the Commission. Rule 203–2 requires every person withdrawing from investment adviser registration with the Commission to file Form ADV–W electronically on the Investment Adviser Registration Depository (''IARD''). The purpose of the information collection is to notify the Commission and the public when an investment adviser withdraws its pending or approved SEC registration. Typically, an investment adviser files a Form ADV–W when it ceases doing business or when it is ineligible to remain registered with the Commission.

The respondents to the collection of information are all investment advisers that are registered with the Commission or have applications pending for registration. The Commission has estimated that compliance with the requirement to complete Form ADV–W imposes a total burden of approximately 0.75 hours (45 minutes) for an adviser filing for full withdrawal and approximately 0.25 hours (15 minutes) for an adviser filing for partial withdrawal. Based on historical filings, the Commission estimates that there are approximately 802 respondents annually filing for full withdrawal and approximately 454 respondents annually filing for partial withdrawal. Based on these estimates, the total estimated annual burden would be 715 hours ((802 respondents × .75 hours) + (454 respondents × .25 hours)).

Rule 203–2 and Form ADV–W do not require recordkeeping or records retention. The collection of information requirements under the rule and form are mandatory. The information collected pursuant to the rule and Form ADV–W are filings with the Commission. These filings are not kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) Whether the documentation of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, C/O Cynthia Roscoe, 100 F Street NE, Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov*.

Dated: May 8, 2020.

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2020–10239 Filed 5–12–20; 8:45 am]

BILLING CODE 8011–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–88833; File No. SR–NYSEARCA–2020–39]**

## 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

May 7, 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 May 1, 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 (1) adopt a new pricing tier, Step Up Tier 5; (2) modify the requirements associated with the Step Up Tier 4 pricing tier; (3) increase the per share credit applicable to Retail Orders; (4) adopt an alternative requirement to qualify for the Tape B Tier 2 pricing tier; and (5) adopt an incremental per share credit payable under the Cross-Asset Tier 2 pricing tier. The Exchange proposes to implement the fee changes effective May 1, 2020. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### 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) adopt a new pricing tier, Step Up Tier 5; (2) modify the requirements associated with the Step Up Tier 4 pricing tier; (3) increase the per share credit applicable to Retail Orders; (4) adopt an alternative requirement to qualify for the Tape B Tier 2 pricing tier; and (5) adopt an incremental per share credit payable under the Cross-Asset 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.

[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.

The Exchange proposes to implement the fee changes effective May 1, 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] 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 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 12% market share of 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 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 that relate to orders that would provide displayed liquidity on an exchange.

Proposed Rule Change

Step Up Tier 5

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 an enhanced rebate by executing more of their orders 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.

In this competitive environment, the Exchange has already established Step Up Tiers 1–4, 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).<br>0.0023 (Tape B).<br>0.0031 (Tape C). |
| Step Up Tier 2 | 0.0028 (Tape A and C).<br>0.0022 (Tape B). |
| Step Up Tier 3 | 0.0025 (Tape A and C).<br>0.0022 (Tape B). |
| Step Up Tier 4 | 0.0033 (Tape A and C).<br>0.0034 (Tape B). |

The Exchange proposes to amend the Fee Schedule to introduce a new pricing tier—Step Up Tier 5—for securities with a per share price of $1.00 or above.

As proposed, ETP Holders would qualify for the new Step Up Tier 5 if they directly execute providing ADV per month that is at least 0.20% of US CADV [11] and execute providing ADV per month as a percentage of US CADV that is at least two times more than that ETP Holder's providing ADV in April 2020 as a percentage of US CADV. ETP Holders that qualify for Step Up Tier 5 would receive a credit of $0.0032 per share for orders that provide displayed liquidity to the Book in Tape A, Tape B and Tape C securities.

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

For example, assume an ETP Holder has an adding ADV of 0.10% of US CADV in all securities in the baseline month of April 2020. Assume further that the same ETP Holder has an adding ADV of 0.20% of US CADV in all securities in the billing month. The ETP Holder in the above example would qualify for the proposed Step Up Tier 5 with an adding ADV step up of 0.10% of US CADV (*i.e.,* 0.20% US CADV) and an adding ADV that is at least two times the ETP Holder's April 2020 Baseline of 0.10%. If instead, the ETP holder had an adding ADV of 0.12% of US CADV in the baseline month of April 2020, that ETP Holder would then need an adding ADV of at least 0.24%, which is two times the 0.12% adding ADV in the baseline month. ETP Holders with less than 0.10% in the baseline month would need to add 0.20% of US CADV, as that is more than two times any adding ADV baseline under 0.10%.

The goal of the proposed Step Up Tier 5 pricing tier is to incentivize ETP Holders to increase the orders sent directly to the Exchange and therefore provide liquidity that supports the quality of price discovery and promotes market transparency.

While the proposed pricing tier would pay a credit that is lower than that available to ETP Holders under Step Up Tier 4, the proposed pricing tier also adopts lower volume thresholds than that required to qualify for Step Up Tier 4. The proposed pricing tier, however, pays a credit that is higher than the Step Up Tier, Step Up Tier 2 and Step Up Tier 3. While the Adding ADV of 0.20% requirement in proposed Step Up Tier 5 is less than the adding ADV requirement in Step Up Tier (0.50% of US CADV and an adding ADV step up of 0.10% US CADV) and Step Up Tier 2 (0.22% of US CADV and an adding ADV step up of 0.06%), proposed Step Up Tier 5 has the

[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/divisionsmarket regmrexchangesshtml.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] US CADV means the United States Consolidated Average Daily Volume for transactions reported to the Consolidated Tape, excluding odd lots through January 31, 2014 (except for purposes of Lead Market Maker pricing), and excludes volume on days when the market closes early and on the date of the annual reconstitution of the Russell Investments Indexes. Transactions that are not reported to the Consolidated Tape are not included in US CADV. *See* Fee Schedule, footnote 3.

additional higher requirement for ETP Holders to double their adding ADV as a percent of US CADV. An ETP Holder that has 0.40% US CADV can increase their adding ADV by 0.10% to reach the 0.50% CADV requirement to qualify for Step Up Tier, which is only an increase of 25% over the ETP Holder's 0.40% baseline.

Step Up Tier 4

As described in greater detail below, the Exchange proposes to modify the volume requirements applicable to ETP Holders to qualify for the Step Up Tier 4 pricing tier by lowering the percentage threshold that an ETP Holder must meet.[12]

Under 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 for providing displayed liquidity. Specifically, to qualify for the credits under the Step Up Tier 4 pricing tier, an ETP Holder must directly execute providing average daily volume (ADV) per month that is an increase of no less than 0.55% of US CADV for that month over the ETP Holder's providing ADV in September 2019, taken as a percentage of US CADV. Currently, if an ETP Holder meets these Step Up Tier 4 qualifications, such ETP Holder is eligible to earn a credit of:

- $0.0033 per share for orders that provide displayed liquidity to the Book in Tape A and Tape C Securities, and
- $0.0034 per share for orders that provide displayed liquidity to the Book in Tape B Securities.[13]

With this proposed rule change, the Exchange proposes to modify the volume requirements applicable to ETP Holders to qualify for the Step Up Tier 4 by lowering the percentage threshold that an ETP Holder must meet, from a minimum of 0.55% of US CADV for the billing month to a minimum of 0.40% of US CADV for the billing month.

The purpose of the proposed rule change is to increase the incentive for order flow providers to send liquidity-providing orders to the Exchange. As described above, ETP Holders with liquidity-providing orders have a choice of where to send those orders. The Exchange believes that, if it reduces the requirement to qualify for a tiered credit, more ETP Holders will choose to route their liquidity-providing orders to the Exchange to qualify for the credit.

The Exchange does not know how much order flow ETP Holders choose to route to other exchanges or to off-exchange venues. While the Step Up Tier 4 pricing tier is available to all ETP Holders, to date, two ETP Holder have qualified for it.[14] 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 more ETP Holders qualifying for the Step Up Tier 4 credit. The Exchange cannot predict with certainty how many ETP Holders would avail themselves of this opportunity but additional liquidity-providing orders would benefit all market participants because it would provide greater execution opportunities on the Exchange.

The Exchange is not proposing to amend any of the credits payable under the Step Up Tier 4.

Additionally, in a recent filing related to the Step Up Tier 4 pricing tier, the Exchange adopted a cap applicable to the Step Up Tier 4 credit in Tape B securities and noted in such filing that ETP Holders that qualify for Step Up Tier 4 would not receive any additional incremental Tape B Tier credits for providing displayed liquidity, including any incremental credits associated with Less Active ETP Securities.[15] The Fee Schedule currently states that ''ETP Holders and Market Makers that qualify for Step Up Tier 4 shall not receive any additional incremental Tape B Tier credits for providing displayed liquidity.'' The Exchange proposes to clarify the applicability of the cap by adding ''including any incremental credits associated with Less Active ETP Securities'' at the end of the sentence. The Exchange believes codifying the cap language into the Fee Schedule will provide clarity to the Fee Schedule and avoid investor confusion.

Retail Orders

As noted above, the market for trading services in NMS stocks has become ''more fragmented and competitive.'' [16] The competition for Retail Order flow is even more stark, particularly as it relates to exchange versus off-exchange venues. For example, the Exchange examined Rule 606 disclosures from two prominent retail brokerages: E-Trade and TD Ameritrade. For securities listed on the New York Stock Exchange LLC in the fourth quarter of 2019, TD Ameritrade routed 95% of its limit orders to off-exchange venues.[17] Similarly, E-Trade Financial routed more than 73% of its limit orders to off-exchange venues.[18]

The Exchange thus needs to compete in the first instance with non-exchange venues for Retail Order flow, and with the 13 other exchange venues for that Retail Order flow that is not directed off-exchange. This competition is particularly acute for non-marketable Retail Orders, *i.e.,* Retail Orders that provide liquidity, and even more fiercely for non-marketable Retail Orders that provide displayed liquidity on an exchange. Accordingly, competitive forces compel the Exchange to use exchange transaction fees and credits, particularly as they relate to competing for Retail Order flow, because market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

In response to this competitive environment, the Exchange currently provides credits to ETP Holders who enter Retail Orders [19] on the Exchange. The Exchange has multiple levels of such credits that are based on an ETP Holder's trading volume of Retail Orders on the Exchange.[20] ETP Holders that do not qualify for tiered pricing currently receive, under the Basic Rates section of the Fee Schedule, a credit of $0.0030 per share for Retail Orders in Tape A, Tape B and Tape C securities that provide liquidity to the Book. With this proposed rule change, the Exchange proposes to increase the base credit from $0.0030 per share to $0.0032 per share.

The proposed change would reduce the difference in credits available to Retail Orders that provide displayed

[12] *See* Securities Exchange Act Release Nos. 85311 (March 14, 2019), 84 FR 10348 (March 20, 2019) (SR–NYSEArca–2019–10); and 87292 (October 11, 2019), 84 FR 55603 (October 17, 2019) (SR–NYSEArca–2019–70).

[13] *See* Securities Exchange Act Release No. 86122 (June 17, 2019), 84 FR 29258 (June 21, 2019) (SR–NYSEArca–2019–43).

[14] As of April 27, 2020, there is one ETP Holder on the Exchange that qualifies for the Exchange's Step Up Tier 4 pricing tier.

[15] *See* Securities Exchange Act Release No. 88436 (March 20, 2020), 85 FR 17112 (March 26, 2020) (SR–NYSEArca–2020–21).

[16] *See* Securities Exchange Act Release No. 51808, 84 FR 5202, 5253 (February 20, 2019) (File No. S7–05–18) (Transaction Fee Pilot for NMS Stocks Final Rule) (''Transaction Fee Pilot'').

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

[18] *See https://content.etrade.com/etrade/powerpage/pdf/OrderRouting11AC6.pdf.*

[19] 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).

[20] *See* Retail Order Tier, Retail Order Step-Up Tier 1 and Retail Order Step-Up Tier 2 on the Fee Schedule at *https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf.*

liquidity on the Exchange from ETP Holders qualifying for the base credit versus the tiered credits available to Retail Orders that provide displayed liquidity on the Exchange. The Exchange believes that by increasing the base credit, it would be more closely align with the credits available for other Retail Orders that provide liquidity on the Exchange.

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 [21] if such ETP Holders, 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 Q2 2015 Tape B Adding ADV taken as a percentage of Tape B CADV. The Exchange proposes to introduce a third method of qualifying for Tape B Tier 2 credits.

As proposed, ETP Holders could qualify for the Tape B Tier 2 credit of $0.0028 per share for providing liquidity to the Book in Tape B Securities if such ETP Holder, on a daily basis, measured monthly, directly executes Tape B Adding ADV that is equal to at least 0.25% of the US Tape B CADV for the billing month over the ETP Holder's April 2020 Tape B Adding ADV taken as a percentage of Tape B CADV.

The Exchange believes that, by providing for an additional method of qualifying for Tape B Tier 2, this proposed change will provide a greater incentive to attract additional liquidity from additional ETP Holders in Tape B Securities so as to qualify for the Tape B Tier 2 credit.

The Exchange is not proposing any change to the level of Tape B Tier 2 credits.

Cross-Asset Tier 2

The Exchange proposes to adopt an incremental credit under a current pricing tier, Cross-Asset Tier 2, that would provide an additional incentive for all ETP Holders to provide liquidity in Tapes A, B and C Securities.

The purpose of this proposed rule change is to introduce a new incremental credit of $0.0001 per share under Cross-Asset Tier 2 if an ETP Holder meets both the existing Cross-Asset Tier 2 requirements [22] and executes a designated percentage of volume of its US CADV, as described below.

The Exchange currently offers tiered pricing that provides ETP Holders opportunities to qualify for higher rebates or reduced fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for ETP Holders to strive for higher tier levels, which provides increasingly higher discounts for satisfying more stringent criteria. More specifically, the Exchange currently has multiple levels of credits designed to incentivize ETP Holders to achieve certain levels of participation on both the Exchange's equities and options platform (''NYSE Arca Options''). Under Cross-Asset Tier 1, ETP Holders can currently receive the following credits for orders that provide liquidity, *i.e.,* resting limit orders available for execution on the Exchange, in Tapes A, B and C Securities: $0.0031 per share in Tape A Securities; $0.0030 per share in Tape B Securities; and $0.0032 per share in Tape C Securities.[23] Additionally, under Cross-Asset Tier 2, ETP Holders can currently receive a credit of $0.0030 per share for orders that provide liquidity.

The Exchange proposes to provide an increased incentive for ETP Holders that otherwise qualify for the current Cross-Asset Tier 2 to send liquidity-providing orders to the Exchange in Tapes A, B and C Securities. As proposed, if an ETP Holder meets the requirements of Cross-Asset Tier 2 and increases adding and removing liquidity in Tape A, Tape B and Tape C Securities combined during the billing month equal to at least 0.40% of US CADV above its adding and removing liquidity in Tape A, Tape B and Tape C Securities combined of US CADV in Q1 2020 would be eligible for an incremental credit of $0.0001 per share for orders that provide liquidity to the Book in Tape A, Tape B, and Tape C Securities.

For example, if an ETP Holder that qualifies for Cross-Asset Tier 2 has an adding ADV of 18 million shares and a removing ADV of 12 million shares, or 30 million shares combined ADV in Q1 2020. If US CADV for Q1 2020 was 6 billion shares, the ETP Holder would have an adding and removing ADV of 0.50% of US CADV in the baseline period. If the same ETP Holder had an adding and removing ADV of 54 million shares combined in a month where US CADV was also 6 billion shares, for an adding and removing ADV of 0.90% of US CADV, that ETP Holder would meet the additional requirement because the ETP Holder would have a step up of 0.40% of adding and removing ADV over its baseline month. The ETP Holder would then qualify for an incremental credit of $0.0001 per share for providing liquidity, for a combined credit of $0.0031 per share.

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

The Exchange proposes to increase the credits available under the Cross-Asset Tier 2 pricing tier to provide an incentive for ETP Holders to send increased order flow. If an ETP Holder qualifies for Cross-Asset Tier 2 and meets the additional proposed requirement, that ETP Holder would be eligible for an incremental credit as compared to the current credit for qualifying for Cross-Asset Tier 2, which is $0.0030 per share credit for orders that provide liquidity in Tapes A, B and C Securities.

The Exchange does not know how much order flow ETP Holders choose to route to other exchanges or to off-exchange venues. No ETP Holder currently qualifies for the credit under the current Cross-Asset Tier 1 pricing tier and one ETP Holder currently qualifies for the credits under the current Cross-Asset Tier 2 pricing tier.[24] However, 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 qualifying for the incremental credit. The Exchange believes the proposed increased credit for Cross-Asset Tier 2 would provide an incentive for ETP Holders to submit additional liquidity-providing orders to the Exchange to qualify for the incremental credit.

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of

[21] Under the Basic Rate, ETP Holders receive a credit of $0.0020 per share for Tape B orders that provide liquidity to the Book.

[22] To qualify for credits under Cross-Asset Tier 2, ETP Holders are required to (a) provide liquidity of 0.30% or more of the US CADV per month, and (b) have an affiliation with an OTP Holder or OTP Firm that provides an ADV of electronic posted Customer and Professional Customer executions in all issues on NYSE Arca Options (excluding mini options) of at least 0.80% of total Customer equity and ETF option ADV as reported by OCC, of which at least 0.20% of total Customer equity and ETF option ADV as reported by OCC is from Customer and Professional Customer executions in non-Penny Pilot issues on NYSE Arca Options. *See* Fee Schedule, Cross-Asset Tier 2.

[23] *See* Fee Schedule, Cross-Asset Tier 1.

[24] As of April 14, 2020, there are 53 firms that are both ETP Holders and OTP Holders.

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,[25] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[26] 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.'' [27]

As the Commission itself recognized, the market for trading services in NMS stocks has become ''more fragmented and competitive.'' [28] Indeed, equity trading is currently dispersed across 13 exchanges,[29] 31 alternative trading systems,[30] 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).[31] Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, as noted earlier, the Exchange currently has less than 12% market share of executed volume of equities trading.[32]

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 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.

Step Up Tier 5

The Exchange believes the proposal to adopt the Step Up Tier 5 pricing tier is reasonable as it would serve as an incentive to market participants to increase the orders sent directly to NYSE Arca and therefore provide liquidity that supports the quality of price discovery and promotes market transparency. The Exchange believes the proposed pricing tier, which adopts a lower threshold, is reasonable and equitable because it would allow ETP Holders to receive increased credits from those currently available under Step Up Tiers 1, 2 and 3. Moreover, the addition of the Step Up Tier 5 pricing tier would benefit market participants whose increased order flow provides meaningful added levels of liquidity thereby contributing to the depth and market quality on the Exchange. Further, the Exchange believes the proposed pricing tier is reasonable as it requires ETP Holders to double their adding ADV as a percent of US CADV in addition to meeting the 0.20% adding ADV requirement to qualify for the proposed credit. A firm with an adding ADV of 0.25% of US CADV would need to increase it to 0.50% to qualify.

Step Up Tier 4

The Exchange believes the proposed change to lower the volume requirements under the Step Up Tier 4 pricing tier is reasonable because it would allow ETP Holders an additional opportunity to meet the requirement of the pricing tier to receive per share credits payable under the Step Up Tier 4, thereby encouraging the submission of additional liquidity to a national securities exchange. 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. All ETP Holders would benefit from the greater amounts of liquidity that will be present on the Exchange, which would provide greater execution opportunities.

Because only two ETP Holders to date have qualified for the Step Up Tier 4, the Exchange believes the proposed lower volume requirements are reasonable as they would provide an additional incentive for more ETP Holders to qualify for this established tier and direct their order flow to the Exchange and provide meaningful added levels of displayed liquidity, thereby contributing to the depth and market quality on the Exchange.

The Exchange notes that volume-based incentives and discounts have been widely adopted by exchanges,[33] including the Exchange,[34] and are reasonable, equitable and non-discriminatory because they are open to all ETP Holders on an equal basis and provide additional credits that are reasonably related to the value to an exchange's market quality and associated higher levels of market activity.

The Exchange believes its proposal to amend the Fee Schedule to codify the fee cap applicable to the Step Up Tier 4 pricing tier is reasonable as it would add clarity and result in a more transparent Fee Schedule. The Exchange believes the proposed change would allow ETP Holders to more easily validate the bills that they receive from the Exchange, thus alleviating potential confusion.

Retail Orders

The Exchange believes that the proposed change is reasonable because the increased credit for Retail Orders would continue to encourage ETP

[25] 15 U.S.C. 78f(b).

[26] 15 U.S.C. 78f(b)(4) and (5).

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

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

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

[30] *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*.

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

[32] *See id.*

[33] *See e.g.,* Cboe BZX U.S. Equities Exchange (''BZX'') Fee Schedule, Footnote 1, Add Volume Tiers which provide enhanced rebates between $0.0025 and $0.0033 per share for displayed orders where BZX members meet certain volume thresholds.

[34] *See e.g.,* Fee Schedule, Step Up Tier, Step Up Tier 2, Step Up Tier 3 and Step Up Tier 4, which provide enhanced rebates between $0.0025 and $0.0033 per share in Tape A Securities, between $0.0022 and $0.0034 per share in Tape B Securities, and between $0.0025 and $0.0033 per share in Tape C Securities for orders that provide displayed liquidity where ETP Holders meet certain volume thresholds.

Holders to send Retail Orders to the Exchange. 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 an increased credit for Retail Orders that provide displayed liquidity. 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.

Tape B Tier 2

The Exchange believes the proposed change to the Tape B Tier 2 pricing tier is reasonable because it would apply to ETP Holders that provide liquidity to the Exchange and is designed to incentivize ETP Holders to increase the orders sent directly to the Exchange and therefore provide liquidity that supports the quality of price discovery and promotes market transparency.

The Exchange believes that the proposed new threshold for qualifying for Tape B Tier 2 is reasonable because it is designed to encourage increased trading activity on the NYSE Arca equity market. The Exchange believes it is reasonable to require ETP Holders to meet the applicable volume threshold to qualify for the Tape B Tier 2 credit. Further, the proposed change is reasonable as it would allow ETP Holders an additional method to qualify for the credit payable under the pricing tier if ETP Holders are unable to meet either of the two existing requirements. Additionally, ETP Holders that cannot meet the higher threshold for the Tape B Tier 1 credits would be able to qualify for the Tape B Tier 2 credit, which while providing for a lower credit, also has lower requirements to qualify for such credit.

Cross-Asset Tier 2

The Exchange believes the proposed increased credit is reasonable as it would provide an additional incentive for ETP Holders to qualify for the new incremental credit and direct their order flow to the Exchange and provide meaningful added levels of liquidity, thereby contributing to the 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 liquidity on an exchange. The Exchange believes it is reasonable to continue to provide a higher credit for orders that provide liquidity if an ETP Holder meets the heightened volume requirements to qualify for the new incremental credit.

Because the proposed amendment to the Cross-Asset Tier 2 pricing tier would be new with a requirement to increase liquidity providing orders, no ETP Holder currently qualifies for the proposed new incremental credit.

As noted above, volume-based incentives and discounts have been widely adopted by exchanges, and are reasonable, equitable and non-discriminatory because they are open to all ETP Holders on an equal basis and provide additional credits that are reasonably related to the value to an exchange's market quality and associated higher levels of market activity.

As noted previously, there are a small number of firms that currently qualify or could qualify for the credits under the current Cross-Asset Tier 1 and Cross-Asset Tier 2 pricing tiers and if these firms were to submit more of their liquidity-providing orders to the Exchange, each could qualify for the proposed new incremental credit. However, 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 qualifying for the new incremental credit. The Exchange believes the proposed incremental credit would provide an incentive for ETP Holders to submit additional adding and removing liquidity to qualify for the additional credit.

The Exchange believes that the proposed new credit for liquidity providing orders in Tapes A, B and C Securities under the current Cross-Asset Tier 2 pricing tier is reasonable because it provides an incentive for ETP Holders to route additional liquidity-providing and removing order flow to the Exchange, which would promote price discovery and increase execution opportunities for all ETP Holders. The proposed pricing is structured similarly to the incremental credit the Exchange currently provides under current Cross-Asset Tier 2, which likewise provides ETP Holders an incremental credit of $0.0004 per share (above the tiered rate of $0.0030 per share) if the ETP Holder meets the qualifying requirements.[35] The Exchange believes that the proposed change to the Cross-Asset Tier 2 pricing tier is reasonable because an ETP Holder that otherwise qualifies for the tier would still be eligible for the current per share credit of $0.0030 per share for orders that provide liquidity. The proposed additional credit is designed to provide an incentive for such ETP Holder to route additional providing and removing liquidity to the Exchange, which would be eligible for the higher credit.

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 its proposal equitably allocates its fees among its market participants.

Step Up Tier 5

The Exchange believes the proposed pricing tier is equitable because it would allow ETP Holders to receive increased credits from those currently available under Step Up Tiers 1, 2 and 3. Moreover, the addition of the Step Up Tier 5 pricing tier would benefit market participants whose increased order flow provides meaningful added levels of liquidity thereby contributing to the depth and market quality on the Exchange. Given that Step Up Tier 5 would be a new pricing tier, no ETP Holder currently qualifies for the proposed credit. And 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 qualifying for this tier. However, the Exchange believes the proposed lower volume requirements would provide an incentive for ETP Holders to continue to submit liquidity-providing order flow, which would promote price discovery and increase execution opportunities for all ETP Holders. The proposed change would thereby encourage the submission of additional liquidity to a national securities exchange, thus promoting price discovery and transparency and enhancing order execution opportunities for ETP Holders from the substantial amounts of liquidity present on the Exchange, which would benefit all market participants on the Exchange.

Step Up Tier 4

First, the Exchange is not proposing to adjust the amount of the Step Up Tier 4 credits, which will remain at the

[35] *See* Fee Schedule, Cross-Asset Tier 2. *See also* Securities and Exchange Act Release No. 80920 (June 14, 2017), 82 FR 28106 (June 20, 2017) (SR–NYSEArca–2017–64).

current level for all ETP Holders. Rather, the proposal would continue to encourage ETP Holders to send orders that add liquidity to the Exchange, thereby contributing to robust levels of liquidity, which benefits all market participants. The Exchange believes that, for the reasons discussed above, lowering the requirements would make it easier for liquidity providers to qualify for the Step Up Tier 4 credit, thereby encouraging submission of additional liquidity by more ETP Holders to the Exchange. The proposed change will thereby encourage the submission of additional liquidity to a national securities exchange, thus promoting price discovery and transparency and enhancing order execution opportunities for ETP Holders from the substantial amounts of liquidity present on the Exchange. All ETP Holders would benefit from the greater amounts of liquidity that will be present on the Exchange, which would provide greater execution opportunities.

As noted above, only one ETP Holder currently qualifies for the Step Up Tier 4 pricing tier. 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 additional ETP Holders qualifying for this tier. However, the Exchange believes the proposed lower volume requirements would provide an incentive for ETP Holders to continue to submit liquidity-providing order flow, which would promote price discovery and increase execution opportunities for all ETP Holders. The proposed change will thereby encourage the submission of additional liquidity to a national securities exchange, thus promoting price discovery and transparency and enhancing order execution opportunities for ETP Holders from the substantial amounts of liquidity present on the Exchange, which would benefit all market participants on the Exchange.

The Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more liquidity to the Exchange thereby improving market-wide quality. 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.

Since only one ETP Holder presently qualifies for the credits associated with Step Up Tier 4, the proposal will not adversely impact such ETP Holder's existing pricing or its ability to qualify for other credits provided by the Exchange.

Finally, the Exchange believes its proposal to amend the Fee Schedule to codify the fee cap applicable to the Step Up Tier 4 pricing tier is equitable as it would add clarity and result in a more transparent Fee Schedule. The Exchange believes the proposed change would allow ETP Holders to more easily validate the bills that they receive from the Exchange, thus alleviating potential confusion.

Retail Orders

The Exchange believes it is an equitable allocation of reasonable fees to increase the credit that would be available for Retail Orders because it would reduce the difference in credits available for Retail Orders that provide liquidity, while still providing increased credits under the Retail Order Tiers to provide an incentive for ETP Holders to route displayed liquidity to the Exchange.

Further, given the competitive market for attracting Retail Order flow, 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 non-tier credit of $0.00325 per share for Retail Orders that provide liquidity on that market,[36] while BZX provides its members with a credit of $0.0032 per share for retail orders that add liquidity to that market.[37]

The Exchange further believes that the proposed change is equitable because it is reasonably related to the value to the Exchange's market quality associated with higher volume in Retail Orders. The Exchange notes that currently only 11 firms submit Retail Orders that add liquidity on the Exchange and of those 11 firms, 9 qualify for the base Retail Order credit, while the other 2 qualify for higher tiered Retail Order credits. More firms could receive the base Retail Order credit of $0.0032 if those firms directed their Retail Orders to the Exchange.

Further, the Exchange notes that, with this proposed rule change, the difference between the highest credit provided for Retail Orders, $0.0035 per share, and the credit for Retail Orders that do not qualify for any of the Retail Order pricing tiers, $0.0032 per share, would be $0.0003, or 9%, which the Exchange believes is small given the requirements that ETP Holders are required to meet to qualify for the higher credit. Therefore, the Exchange believes the proposed change to the base credit for Retail Orders is equitable, as it would provide discounts that are reasonably related to the value to the Exchange's market quality associated with higher volumes associated with the submission of Retail Orders to the Exchange.

The Exchange believes that recalibrating the credits for providing liquidity will continue to attract order flow and liquidity to the Exchange, thereby contributing to price discovery on the Exchange and benefiting investors generally.

The Exchange believes that the proposed rule change is equitable because maintaining or increasing the proportion of Retail Orders in exchange-listed securities that are executed on a registered national securities exchange (rather than relying on certain available off-exchange execution methods) would contribute to investors' confidence in the fairness of their transactions and would benefit all investors by deepening the Exchange's liquidity pool, supporting the quality of price discovery, promoting market transparency and improving investor protection.

Tape B Tier 2

The Exchange believes the proposed change to the Tape B Tier 2 pricing tier is equitably allocated because it would apply to ETP Holders that provide liquidity to the Exchange and is designed to incentivize these market participants to increase the orders sent directly to the Exchange and therefore, provide liquidity that supports the quality of price discovery and promotes market transparency.

The Exchange believes the Tape B Tier 2 pricing tier is equitable because it is open to all similarly situated ETP Holders on an equal basis and provide a per share credit that is reasonably related to the value of an exchange's market quality associated with higher volumes. The Exchange believes it is equitable to require ETP Holders to meet the applicable volume thresholds to qualify for the Tape B Tier 2 credit. Further, the proposed change is equitable as it would allow ETP Holders an additional method to qualify for the credit payable under the pricing tier if

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

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

ETP Holders are unable to meet either of the two existing requirements.

The Exchange believes the Tape B Tier 2 pricing tier is equitable because it is open to all similarly situated ETP Holders on an equal basis and provides a credit that is reasonably related to the value of an exchange's market quality associated with higher volumes.

Cross-Asset Tier 2

The Exchange believes that the proposed increased credit under the Cross-Asset Tier 2 pricing tier is equitable because the magnitude of the additional credit is not unreasonably high in comparison to the credit paid with respect to other pricing tiers on the Exchange, and in comparison to the credits paid by other exchanges for orders that provide liquidity. For example, ETP Holders currently receive credits in Tape A, Tape B and Tape C Securities that range between $0.0022 per share and $0.0034 per share under Step Up Tier, Step Up Tier 2, Step Up Tier 3, Step Up Tier 4, and proposed Step Up Tier 5.

With respect to credits paid by the Exchange's competitors, BZX provides a credit of $0.0031 per share in Tape B Securities under that market's Cross-Asset pricing tier.[38]

The Exchange believes that the proposed new incremental credit for liquidity providing orders in Tapes A, B and C Securities under current Cross-Asset Tier 2 is also equitable because the proposal would continue to encourage ETP Holders to route liquidity-providing orders to the Exchange in Tapes A, B and C Securities, thereby contributing to robust levels of liquidity, which benefits all market participants.

As noted above, there are a small number of firms that currently qualify or could qualify for the credits under the current Cross-Asset Tier 1 and Cross-Asset Tier 2 pricing tiers and if these firms were to submit more of their liquidity-providing orders to the Exchange, each could qualify for the proposed new incremental credit. However, without having a view of an ETP Holder's activity on other markets and off-exchange venues, the Exchange believes the proposed new incremental credit would provide an incentive for market participants to increase liquidity in order to qualify for the proposed new incremental credit, thereby encouraging submission of additional liquidity to the Exchange. The proposed change will thereby encourage the submission of additional liquidity to a national securities exchange, thus promoting price discovery and transparency and enhancing order execution opportunities for ETP Holders from the substantial amounts of liquidity present on the Exchange. All ETP Holders would benefit from the greater amounts of liquidity that will be present on the Exchange, which would provide greater execution opportunities.

The Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more liquidity to the Exchange thereby improving market-wide quality. ETP Holders that currently qualify for credits associated with Cross-Asset pricing tiers on the Exchange will continue to receive credits when they provide liquidity to the Exchange. The Exchange believes that recalibrating the credits for providing liquidity will continue to attract order flow and liquidity to the Exchange for the benefit of investors generally. As to those market participants that do not presently qualify for the credits associated with Cross-Asset Tier 2, the proposal will not adversely impact their existing pricing or their ability to qualify for other credits provided by 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.

Step Up Tier 5

The Exchange believes that the proposed new Step Up Tier 5 pricing tier is not unfairly discriminatory because it is open to all ETP Holders, on an equal basis, that meet the requirements to qualify for the tier. The proposed pricing tier would also serve as an incentive to ETP Holders and Market Makers that do not currently meet the requirement of other pricing tiers on the Exchange to increase the level of orders sent directly to NYSE Arca in order to qualify for, and receive the higher credits associated with proposed Step Up Tier 5. The proposed pricing tier would apply equally to all ETP Holders as each would be required to execute providing ADV per month that is at least 0.20% of US CADV and execute providing ADV per month as a percentage of US CADV that is at least two times more than that ETP Holders and Market Makers providing ADV in April 2020 as a percentage of US CADV, regardless of whether an ETP Holder currently meets the requirement of another pricing tier.

Step Up Tier 4

The proposal to lower the volume requirement under Step Up Tier 4 neither targets or will it have a disparate impact on any particular category of market participant. The proposal does not permit unfair discrimination because the lower threshold would be applied to all similarly situated ETP Holders, who would all be eligible for the same credit on an equal basis. Accordingly, no ETP Holder already operating on the Exchange would be disadvantaged by this allocation of fees.

The Exchange believes it is not unfairly discriminatory to adopt lower volume requirements for ETP Holders to qualify for the Step Up Tier 4 pricing tier and adopt clarifying language with respect to the cap currently applicable for ETP Holders that qualify for the Step Up Tier 4 pricing tier as the proposed change would apply on an equal basis to all ETP Holders. Further, the Exchange believes the proposed lower volume requirements would incentivize ETP Holders to execute more of their liquidity-providers orders on the Exchange to qualify for the increased credits payable under Step Up Tier 4. The Exchange also believes that the proposed change is not unfairly discriminatory because it is reasonably related to the value of the Exchange's market quality associated with higher volume. The proposed lower volume requirements would apply equally to all ETP Holders as each would be required to execute providing volume in Tapes A, B and C Securities during the billing month that is at least 0.40% of US CADV over its providing ADV in September 2019, taken as a percentage of US CADV, regardless of whether an ETP Holder currently meets the requirement of another pricing tier.

Retail Orders

The Exchange believes that the proposed change is not unfairly discriminatory because it would apply to all ETP Holders on an equal and non-discriminatory basis. The Exchange further 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 in Retail Orders. Further, the Exchange notes that, with this proposed rule change, the difference between the highest credit provided for Retail Orders, $0.0035 per share, and the credit for Retail Orders that do not qualify for any of the Retail Order pricing tiers, $0.0032 per share,

[38] *See* BZX Fee Schedule, Cross-Asset Tape B Tier, at *https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/.*

would be $0.0003, or 9%, which the Exchange believes is small given the requirements that ETP Holders are required to meet to qualify for the higher credit. Therefore, the Exchange believes the proposed change to the base credit for Retail Orders is not unfairly discriminatory, as it would continue to provide discounts that are reasonably related to the value to the Exchange's market quality associated with higher volumes under the current Retail Order tiers.

The Exchange believes that recalibrating the credits for providing liquidity will continue to attract order flow and liquidity to the Exchange, thereby contributing to price discovery on the Exchange and benefiting investors generally.

The Exchange believes that the proposed rule change is not unfairly discriminatory because maintaining or increasing the proportion of Retail Orders in exchange-listed securities that are executed on a registered national securities exchange (rather than relying on certain available off-exchange execution methods) would contribute to investors' confidence in the fairness of their transactions and would benefit all investors by deepening the Exchange's liquidity pool, supporting the quality of price discovery, promoting market transparency and improving investor protection. This aspect of the proposed rule change also is consistent with the Act because all similarly situated ETP Holders would be eligible to qualify for the credit. Furthermore, the submission of Retail Orders is optional for ETP Holders in that they could choose whether to submit Retail Orders and, if they do, the extent of its activity in this regard.

Tape B Tier 2

The Exchange believes that the proposed new method of qualifying for the Tape B Tier 2 credit is not unfairly discriminatory because it would be available to all ETP Holders on an equal and non-discriminatory basis. In this regard, the Exchange notes that ETP Holders that do not meet the proposed alternative method would continue to have the opportunity to qualify for the Tape B Tier 2 credit by satisfying either of the two existing requirements, which would not change as a result of this proposal.

Further, the Exchange believes the proposed additional method to qualify for the Tape B Tier 2 credit would incentivize ETP Holders that do not meet the current requirements to execute more of their liquidity-providers orders on the Exchange to qualify under the proposed method. The Exchange also believes that the proposed change is not unfairly discriminatory because it is reasonably related to the value of the Exchange's market quality associated with higher volume. The proposed additional method to qualify for the Tape B Tier 2 credit would apply equally to all ETP Holders as each would be required to meet the new criteria regardless of whether an ETP Holder currently meets the requirement of another pricing tier.

Cross-Asset Tier 2

The Exchange believes it is not unfairly discriminatory to provide an incremental per share credit as the proposed increased credit would be provided on an equal basis to all ETP Holders that add liquidity by meeting the increased volume requirements under the Cross-Asset Tier 2 pricing tier. Further, the Exchange believes the proposed incremental per share credit would incentivize ETP Holders that meet the current Cross-Asset Tier 2 pricing tier requirements to execute more of their liquidity-providers orders on the Exchange to qualify for the proposed incremental credit. The Exchange also believes that the proposed change is not unfairly discriminatory because it is reasonably related to the value of the Exchange's market quality associated with higher volume. The proposed incremental per share credit would apply equally to all ETP Holders as each would be required to meet the additional criteria regardless of whether an ETP Holder currently meets the requirement of another pricing tier.

Similarly, the Exchange believes it is not unfairly discriminatory to provide an incremental credit for liquidity providing orders in Tapes A, B and C Securities under the current Cross-Asset Tier 2 pricing tier because the proposed credit would be provided on an equal basis to all ETP Holders that add liquidity by meeting the proposed new volume requirements.

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,[39] 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.'' [40]

Intramarket Competition. The Exchange believes its 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 Exchange. The Exchange believes that the proposed lower volume requirements and alternative criteria to qualify for existing pricing tiers would continue to incentivize market participants to direct providing displayed order flow to the Exchange. The Exchange's proposal to adopt an increased credit for Retail Orders would also continue to incentivize ETP Holders to direct more of their 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. Moreover, the proposal to modify the Fee Schedule to make clear the applicability of the cap under the Step Up Tier 4 pricing tier would not pose an undue burden on competition but would instead add clarity and transparency to the Fee Schedule regarding the amount of credit payable under the Step Up Tier 4 pricing tier.

[39] 15 U.S.C. 78f(b)(8).

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

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 12%. 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) [41] of the Act and subparagraph (f)(2) of Rule 19b–4 [42] 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) [43] 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–2020–39 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–2020–39. 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 Number SR–NYSEARCA–2020–39, and should be submitted on or before June 3, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[44]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2020–10219 Filed 5–12–20; 8:45 am]

**BILLING CODE 8011–01–P**

[41] 15 U.S.C. 78s(b)(3)(A).

[42] 17 CFR 240.19b–4(f)(2).

[43] 15 U.S.C. 78s(b)(2)(B).

[44] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[OMB Control No. 3235–0049, SEC File No. 270–39]**

## Proposed Collection; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

*Extension:*
Form ADV

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

The title for the collection of information is ''Form ADV under the Investment Advisers Act of 1940.'' Form ADV is a three-part investment adviser registration form. Part 1 of Form ADV contains information used primarily by the Securities and Exchange Commission (the ''Commission'') staff and Part 2 is the client brochure. Part 3 requires registered investment advisers that offer services to retail investors to prepare and file with the Commission, post to the adviser's website (if it has one), and deliver to retail investors a relationship summary. The Commission uses the information on Form ADV to determine eligibility for registration with us and to manage our regulatory and examination programs. Clients use the information required in Form ADV to determine whether to hire or retain an investment adviser, as well as what types of accounts and services are appropriate for their needs.

This collection of information is found at 17 CFR 279.1, 17 CFR 275.203–1, 17 CFR 275.204–1 and 17 CFR 275.204–4 and is mandatory. The Commission's examination staff use the information to determine eligibility for registration with us and to manage our