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 FR 19(b)(2)(B)[21] 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–NYSEAMER–2022–49 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–NYSEAMER–2022–49. 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–NYSEAMER–2022–49, and should be submitted on or before November 10, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–22734 Filed 10–19–22; 8:45 am]

BILLING CODE 8011–01–P

[21] 15 U.S.C. 78s(b)(2)(B).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96086; File No. SR–NYSEARCA–2022–68]

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

October 14, 2022.

Pursuant to FR 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 3, 2022, 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'') by introducing a minimum credit under Adding Tiers for Adding in Tape A, Tape B and Tape C securities. The Exchange also proposes to amend the equity and options volume requirement under the Cross Asset Tier. The Exchange proposes to implement the fee changes effective October 3, 2022. 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 by introducing a minimum credit under Adding Tiers for Adding in Tape A, Tape B and Tape C securities. The Exchange also proposes to amend the equity and options volume requirement under the Cross Asset Tier. The Exchange proposes to implement the fee changes effective October 3, 2022.

Background

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. 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.''[3]

While Regulation NMS has enhanced competition, it has also fostered a ''fragmented'' market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that ''such competition can lead to the fragmentation of order flow in that

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (File No. S7–10–04) (Final Rule) (''Regulation NMS'').

stock.'' [4] Indeed, equity trading is currently dispersed across 16 exchanges,[5] numerous alternative trading systems,[6] and broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly available information, no single exchange currently has more than 17% market share.[7] 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 equities trading.[8]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products. While it is not possible to know a firm's reason for shifting order flow, the Exchange believes that one such reason is because of fee changes at any of the registered exchanges or non-exchange venues to which a firm routes order flow. With respect to non-marketable order flow that would provide liquidity on an Exchange against which market makers can quote, ETP Holders can choose from any one of the 16 currently operating registered exchanges to route such order flow. Accordingly, competitive forces constrain exchange transaction fees that relate to orders that would provide liquidity on an exchange.

Proposed Rule Change

Adding Tiers

Currently, under the Adding Tiers table in FR VI. Tier Rates—Round Lots and Odd Lots (Per Share Price $1.00 or Above), the Exchange provides multiple tiers and associated credits for Adding liquidity on the Exchange. Specifically, under Tier 1, if an ETP Holder has Adding ADV that is equal to at least 0.70% of CADV, or has Adding ADV of 84 million shares then that ETP Holder could qualify for a credit of $0.0031 per share for Adding in Tape A securities, $0.0023 per share for Adding in Tape B securities and $0.0032 per share for Adding in Tape C securities.

Under Tier 2, if an ETP Holder has Adding ADV that is equal to at least 0.50% of CADV then that ETP Holder could qualify for a credit of $0.0030 per share for Adding in Tape A securities, $0.0023 per share for Adding in Tape B securities and $0.0031 per share for Adding in Tape C securities.

Under Tier 3, if an ETP Holder has Adding ADV that is equal to at least 0.30% of CADV, or has Adding ADV that is equal to at least 0.25% of CADV plus Removing ADV that is equal to at least 0.40% of Tape B CADV and at least 0.25% of Customer and Professional Customer Electronic Posting Volume of TCADV on NYSE Arca Options by OTP Holder or OTP Firm affiliated with the ETP Holder then that ETP Holder could qualify for a credit of $0.0029 per share for Adding in Tape A securities, $0.0022 per share for Adding in Tape B securities and $0.0029 per share for Adding in Tape C securities.

Finally, under Tier 4, if an ETP Holder has Adding ADV that is equal to at least 0.20% of CADV then that ETP Holder could qualify for a credit of $0.0025 per share for Adding in Tape A securities, $0.0022 per share for Adding in Tape B securities and $0.0025 per share for Adding in Tape C securities.[9]

Additionally, ETP Holders that currently qualify for Tier 1, Tier 2, Tier 3 and Tier 4 are subject to the following fees: $0.0030 per share for Routing, $0.0029 per share for Removing in Tape B securities, and $0.0010 per share for Closing Orders.[10]

The Exchange proposes that ETP Holders that qualify for Tier 1, Tier 2, Tier 3 and Tier 4 and also have combined Adding and Removing that is equal to 1.0% of CADV would receive a minimum credit of $0.0030 per share for Adding in Tape A, Tape B and Tape C securities. The Exchange proposes to reflect the proposed minimum credit by adopting footnote * to the heading titled Tier under the Adding Tiers table.

The Exchange believes that the proposed new minimum credit will incentivize ETP Holders to route their liquidity-providing order flow to the Exchange in order to qualify for the proposed credit, which would be higher than the credits currently available under current Tier 3 and current Tier 4. The proposed credit is also higher than the credit currently provided for Adding in Tape B securities under each of the current tiers. The Exchange believes that by correlating the amount of the fee to the level of orders sent by an ETP Holder that add liquidity, the Exchange's fee structure would incentivize ETP Holders to submit more orders that add liquidity to the Exchange, thereby increasing the potential for price improvement to incoming marketable orders submitted to the Exchange.

As noted above, the Exchange operates in a competitive environment, particularly as it relates to attracting non-marketable orders, which add liquidity to the Exchange. The Exchange does not know how much order flow ETP Holders choose to route to other exchanges or to off-exchange venues. Based on the profile of liquidity-adding firms generally, the Exchange believes that a number of ETP Holders could qualify for the proposed new credit if they choose to direct additional order flow to the Exchange. However, without having a view of ETP Holders' activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in ETP Holders directing more of their orders to the Exchange in order to qualify for the proposed new credit.

Cross Asset Tier

The Exchange proposes to amend the volume requirement applicable to ETP Holders to qualify for the credits payable under the Cross-Asset Tier. The proposed rule change is designed to be available to all ETP Holders on the Exchange and is intended to both streamline the Fee Schedule by reducing the number of requirements and provide ETP Holders an opportunity to receive credits by trading equities and options on the Exchange.

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

[4] *See* Securities Exchange Act Release No. 61358, 75 FR 3594, 3597 (January 21, 2010) (File No. S7–02–10) (Concept Release on Equity Market Structure).

[5] *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.*

[6] *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.*

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

[8] *See id.*

[9] ETP Holders that qualify for Tier 4 and have Adding ADV that is equal to 0.05% of CADV above May 2019 receive an incremental credit of $0.0002 per share for Tape A and Tape C Adding. *See* Fee Schedule. This incremental credit is currently denoted on the Fee Schedule under footnote * and is appended to the credits applicable under Tier 4. Footnote * currently appears under Closing Orders. With this proposed rule change, the Exchange proposes to rename the footnote as ** and relocate it from its current location so it appears under Tier 4.

[10] *See* Fee Schedule.

the Exchange's equities and options platform.

Specifically, FR VI. Tier Rates-Round Lots and Odd Lots (Per Share Price $1.00 or Above), provides a base Cross-Asset Tier credit of $0.0030 per share for Adding in Tape A, Tape B and Tape C securities if an ETP Holder has Adding ADV that is equal to at least 0.30% of CADV and has Customer and Professional Customer Electronic Posting Volume by an OTP Holder or OTP Firm affiliated with the ETP Holder that is equal to at least 0.80% of TCADV in all options classes and equal to at least 0.20% of TCADV in Non-Penny options classes.

With this proposed rule change, the Exchange proposes to eliminate the Non-Penny Issues requirement of 0.20% of TCADV. As proposed, to qualify for the base Cross-Asset Tier credit of $0.0030 per share in Tape A, Tape B and Tape C securities, an ETP Holder will be required to meet the current equity volume requirement, *i.e.,* 0.30% Adding ADV of CADV and the current options requirement, *i.e.,* 0.80% of TCADV in all options classes.[11]

Under the Cross-Asset Tier, ETP Holders are also currently eligible to receive an additional credit of $0.0004 per share in Tape C securities if the ETP Holder has Adding ADV that is equal to at least 0.30% of CADV and Adding ADV in Tape C Securities that is equal to at least 0.35% of Tape C CADV, combined with Customer and Professional Customer Electronic Posting Volume by an OTP Holder or OTP Firm affiliated with the ETP Holder that is equal to at least 0.80% of TCADV in all options classes and equal to at least 0.20% of TCADV in Non-Penny Issues. The Exchange proposes to amend the current Tape C equity volume requirement and eliminate the Non-Penny Issues requirement of 0.20% of TCADV to qualify for the additional credit. As proposed, to qualify for the current additional credit of $0.0004 per share in Tape C securities, an ETP Holder will be required to meet an equity volume requirement that is equal to at least 0.50% Adding ADV of CADV and the current options requirement that is equal to at least 0.80% of TCADV in all options classes.

Under the Cross-Asset Tier, ETP Holders are also currently eligible to receive an additional credit of $0.0002 per share in Tape A and Tape B securities if the ETP Holder has Adding ADV that is equal to at least 0.65% of CADV, combined with Customer and Professional Customer Electronic Posting Volume by an OTP Holder or OTP Firm affiliated with the ETP Holder that is equal to at least 0.80% of TCADV in all options classes and equal to at least 0.20% of TCADV in Non-Penny Issues. The Exchange proposes to eliminate the Non-Penny Issues requirement of 0.20% of TCADV to qualify for the additional credit. As proposed, to qualify for the current additional credit of $0.0002 per share in Tape A and Tape B securities, an ETP Holder will be required to meet the current equity volume requirement that is equal to at least 0.65% of Adding ADV of CADV and the current options requirement that is equal to at least 0.80% of TCADV in all options classes.

Finally, under the Cross-Asset Tier, ETP Holders are also currently eligible to receive an additional credit of $0.0001 per share in Tape A, Tape B and Tape C securities if the ETP Holder has Adding ADV that is equal to at least 0.30% of CADV and has Adding and Removing ADV of CADV that is equal to at least 0.40% above the ETP Holder's Q1 2020 Adding and Removing ADV of CADV, combined with Customer and Professional Customer Electronic Posting Volume by an OTP Holder or OTP Firm affiliated with the ETP Holder that is equal to at least 0.80% of TCADV in all options classes and equal to at least 0.20% of TCADV in Non-Penny Issues. The Exchange proposes to amend the current equity volume requirement and eliminate the Non-Penny Issues requirement of 0.20% of TCADV to qualify for the additional credit. As proposed, to qualify for the current additional credit of $0.0001 per share in Tape A, Tape B and Tape C securities, an ETP Holder will be required to meet an equity volume requirement that is equal to at least 0.75% Adding ADV of CADV and the current options requirement that is equal to at least 0.80% of TCADV in all options classes.

The purpose of the proposed rule change is to encourage greater participation by ETP Holders on the Exchange's equities and options platforms. The Exchange believes the current requirements, some of which require ETP Holders to trade specific Tapes, increase adding and removing above a specific baseline and in both Penny and Non-Penny options classes, may have resulted in ETP Holders not aiming to achieve the pricing levels. The Exchange believes modifying and streamlining the requirements of the existing tiers should incentivize ETP Holders to direct more of their trading activity to the Exchange and thus qualify for the credits payable under the Cross-Asset Tier. 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 could lead to more ETP Holders choosing to route their liquidity-providing equites and options orders to the Exchange rather than to a competing exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with FR 6(b) of the Act,[12] in general, and furthers the objectives of FRs 6(b)(4) and (5) of the Act,[13] 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.'' [14]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. With respect to non-marketable orders that provide liquidity on an Exchange, ETP Holders can choose from any one of the 16 currently operating registered exchanges to route such order flow. Accordingly, competitive forces reasonably constrain exchange transaction fees that relate to orders that would provide displayed liquidity on an exchange. Stated otherwise, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

[11] To streamline the Fee Schedule, the Exchange proposes a non-substantive change to add the words ''Adding ADV of CADV'' to the heading titled ''Equity Volume'' under Minimum Requirement and delete the words ''Adding of CADV'' from the text of the various tiers.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4) and (5).

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

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

Adding Tiers

The Exchange believes that the proposed new minimum credit is reasonable because it is designed to encourage increased trading activity on the Exchange. The Exchange believes it is reasonable to require ETP Holders to meet the applicable volume threshold as it offers liquidity providers an opportunity to receive an enhanced rebate. Further, the proposed new minimum credit is reasonable as it would provide ETP Holders an opportunity to qualify for an enhanced rebate, which in some cases is significantly higher than what the Exchange currently provides, by meeting a higher volume threshold than that required under the current pricing tiers. The Exchange believes that the proposal represents a reasonable effort to promote price improvement and enhanced order execution opportunities for ETP Holders. All ETP Holders would benefit from the greater amounts of liquidity on the Exchange, which would represent a wider range of execution opportunities. The Exchange believes the proposed new minimum credit is a reasonable means to encourage ETP Holders to increase their liquidity providing orders in Tape A, Tape B and Tape C securities.

As noted above, the Exchange operates in a highly competitive environment, particularly for attracting order flow that provides liquidity on an exchange. More specifically, the Exchange notes that greater add volume order flow may provide for deeper, more liquid markets and execution opportunities at improved prices, which the Exchange believes would incentivize liquidity providers to submit additional liquidity and enhance execution opportunities.

Cross-Asset Tier

The Exchange believes that the proposed modification and streamlining of the volume requirements to qualify for the Cross-Asset Tier is reasonable because it is designed to encourage greater participation by ETP Holders on the Exchange's equities and options platforms and promote additional liquidity in equity and options securities traded on those platforms. The Exchange believes it is reasonable to require ETP Holders to meet the applicable volume threshold to qualify for the Cross-Asset Tier credits. The Exchange believes it is reasonable to modify the volume requirement as it would simplify and streamline the pricing tier and make it easier for ETP Holders to qualify for the pricing tier.

Further, the proposed change is reasonable as it would allow ETP Holders additional opportunities to qualify for the credit payable under the various tiers. The Exchange believes it is reasonable to modify two of the existing tiers to a straight volume requirement, without significantly modifying the volume requirement to qualify for those tiers. The Exchange believes replacing the 'step-up' to a 'straight' tier in one existing tier and eliminating the Tape C volume requirement in another existing tier with a higher equity volume requirement for both of those two tiers is reasonable because ETP Holders would no longer be required to trade a minimum amount in Tape C securities or 'step-up' above a baseline period. The Exchange believes the revised criteria would allow ETP Holders that may have been unable to meet the existing requirement to reach the proposed volume requirement more easily.

The Exchange believes that the proposal represents a reasonable effort to provide enhanced order execution opportunities for ETP Holders. All ETP Holders would benefit from the greater amounts of liquidity on the Exchange, which would represent a wider range of execution opportunities. The Exchange notes that market participants are free to shift their order flow to competing venues if they believe other markets offer more favorable fees and credits.

The Exchange notes that volume-based incentives and discounts have been widely adopted by exchanges,[15] including the Exchange,[16] 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 the proposed change is also reasonable because it is designed to attract higher volumes of equities and options 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 its proposal equitably allocates its fees and credits among its market participants.

Adding Tiers

The Exchange believes the proposed rule change to introduce a new minimum credit for ETP Holders equitably allocates its fees among its market participants. The Exchange believes the proposed new minimum credit is equitable because it is open to all similarly situated ETP Holders on an equal basis and provides 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 proposed new minimum credit, which, as noted above, is, in some cases, significantly higher than what the Exchange currently provides under the current pricing tiers. The Exchange believes the proposed change would continue to encourage ETP Holders to both submit additional liquidity to the Exchange and execute orders on the Exchange, thereby contributing to robust levels of liquidity, to the benefit of all market participants.

The proposed change is designed as an incentive to any and all liquidity providers interested in meeting the criteria to submit order flow to the Exchange and each will receive the associated rebate if the criteria is met. The Exchange believes that the proposed new minimum credit could encourage the submission and removal of additional liquidity from the Exchange, thus 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 would be present on the Exchange, which would provide greater execution opportunities.

The Exchange believes the proposed rule change would also improve market

[15] *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.

[16] *See e.g.,* Fee Schedule, Step Up Tier 1, Step Up Tier 2 and Step Up Tier 3, which provide enhanced rebates between $0.0028 and $0.0033 per share in Tape A Securities, between $0.0022 and $0.0034 per share in Tape B Securities, and between $0.0028 and $0.0033 per share in Tape C Securities for orders that provide displayed liquidity where ETP Holders meet certain volume thresholds.

quality for all market participants seeking to remove liquidity on the Exchange and, as a consequence, attract more liquidity to the Exchange, thereby improving market-wide quality. The Exchange believes that the proposal constitutes an equitable allocation of fees because all similarly situated ETP Holders would be eligible for the proposed new minimum credit if they meet the proposed volume threshold.

Cross-Asset Tier

The Exchange believes that the proposed rule change to modify the volume requirement to qualify for the credits payable under the Cross-Asset Tier 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. 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.

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. 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 the Cross-Asset Tier will continue to receive credits when they provide liquidity to the Exchange. The Exchange believes that recalibrating the volume requirement to qualify for the existing and established 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 the Cross-Asset Tier, 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.

Adding Tiers

The Exchange believes that the proposed rule change to introduce the new minimum credit is not unfairly discriminatory. The Exchange believes that the proposal does not permit unfair discrimination because the proposed new credit would be applied to all similarly situated ETP Holders and all ETP Holders would be subject to the same requirement to qualify for the proposed new credit. Accordingly, no ETP Holder already operating on the Exchange would be disadvantaged by the proposed allocation of fees and credits under the proposal. The Exchange further believes that the proposed fee change would not permit unfair discrimination among ETP Holders because the general and tiered rates are available equally to all ETP Holders. As described above, in today's competitive marketplace, order flow providers have a choice of where to direct liquidity-providing order flow, and the Exchange believes there are a number of ETP Holders who could qualify for proposed new minimum credit if they chose to direct more of their order flow to the Exchange.

Cross-Asset Tier

The Exchange believes that the proposed rule change to modify the requirement to qualify for the credits payable under the Cross-Asset Tier 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. Moreover, the proposal neither targets nor will it have a disparate impact on any particular category of market participant. The Exchange believes that the proposal does not permit unfair discrimination because the proposal would be applied to all similarly situated ETP Holders and all ETP Holders would be similarly subject to the proposed volume requirement to qualify for the credits payable under the Cross-Asset Tier. Accordingly, no ETP Holder already operating on the Exchange would be disadvantaged by the proposed allocation of fees. The Exchange further believes that the proposed changes would not permit unfair discrimination among ETP Holders because the general and tiered rates are available equally to all ETP Holders.

As described above, in today's competitive marketplace, order flow providers have a choice of where to direct liquidity-providing order flow, and the Exchange believes the proposed modification of the requirement to qualify for the credits payable under the Cross-Asset Tier will incentivize ETP Holders to direct more of their order flow to the Exchange. 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 FR 6(b)(8) of the Act,[17] 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."[18]

Intramarket Competition. The Exchange believes the proposed amendments to its Fee Schedule would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed change represents a significant departure from previous pricing offered by the Exchange or its competitors. The proposed changes are designed to attract additional order flow to the Exchange. The Exchange believes that the proposed adoption of a minimum credit and amending volume criteria of established tiers, *i.e.,* the Cross-Asset Tier, would incentivize market participants to direct liquidity adding order flow to the Exchange, bringing with it additional execution opportunities for market participants and improved price transparency. Greater overall order flow, trading opportunities, and pricing transparency benefits all market participants on the Exchange by enhancing market quality and continuing to encourage ETP Holders to send orders, thereby contributing towards a robust and well-balanced market ecosystem.

[17] 15 U.S.C. 78f(b)(8).

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

Additionally, the proposed changes would apply equally to all similarly situated ETP Holders equally in that they would all be eligible for the credits available under the Adding Tiers and the Cross-Asset Tier and each such ETP Holder has a reasonable opportunity to meet each tier's criteria.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. As noted above, the Exchange's market share of intraday trading (*i.e.,* excluding auctions) is currently less than 10%. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with off-exchange venues. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition.

The Exchange believes that the proposed changes 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 FR 19(b)(3)(A) [19] of the Act and subparagraph (f)(2) of Rule 19b–4 [20] 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 FR 19(b)(2)(B) [21] 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–2022–68 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–2022–68. 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 offices of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEARCA–2022–68, and should be submitted on or before November 10, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–22731 Filed 10–19–22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96084; File No. SR–NYSE–2022–46]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Price List

October 14, 2022.

Pursuant to FR 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on September 30, 2022, New York Stock Exchange LLC (''NYSE'' 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 it Price List to increase the cap for the maximum average number of shares per day for the billing month in calculating the average monthly consolidated average daily volume (''CADV'') for purposes of Step Up Adding Tier 3. The Exchange proposes to implement the fee changes effective October 3, 2022. 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.

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[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f)(2).

[21] 15 U.S.C. 78s(b)(2)(B).

[22] 17 CFR 200.30–3(a)(12).

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

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

[3] 17 CFR 240.19b–4.