Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission Investor Advisory Committee will hold a public meeting on Thursday, June 22, 2023. The meeting will begin at 10:00 a.m. (ET) and will be open to the public.

PLACE: The meeting will be conducted by remote means. Members of the public may watch the webcast of the meeting on the Commission's website at *www.sec.gov.*

STATUS: This Sunshine Act notice is being issued because a majority of the Commission may attend the meeting.

MATTERS TO BE CONSIDERED: The agenda for the meeting includes: welcome and introductory remarks; opening remarks; approval of previous meeting minutes; a panel discussion regarding private funds/markets and outbound investments in countries of concern; a panel discussion regarding ensuring digital engagement practices responsibly expand investment opportunities; a panel discussion regarding audit committee workload and transparency; a discussion of a recommendation regarding single-stock exchange traded funds; a discussion of a recommendation regarding proposed amendments to regulation 13D–G and proposed rule 10B–1 under the Securities Exchange Act of 1934; a discussion of a recommendation regarding registered investment adviser oversight; subcommittee and working group reports; and a non-public administrative session.

Public Comment: The public is invited to submit written statements to the Committee. Written statements should be received on or before June 21, 2023.

Written statements may be submitted by any of the following methods:

Electronic Statements

- Use the Commission's internet submission form (*http://www.sec.gov/rules/other.shtml*); or
- Send an email message to *rules-comments@sec.gov.* Please include File No. 265–28 on the subject line; or

Paper Electronic Statements

- Send paper statements to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File No. 265–28. This file number should be included on the subject line if email is used. To help us process and review your statement more efficiently, please use only one method.

Statements also will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Room 1503, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All statements 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.

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

(Authority: 5 U.S.C. 552b.)

Dated: June 12, 2023.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2023–12890 Filed 6–13–23; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97681; File No. SR–NYSEARCA–2023–39]

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

June 9, 2023.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 31, 2023, 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'') to (i) modify Ratio Threshold Fees and (ii) eliminate the Step Up Tier 1 pricing tier under Step Up Tiers. The Exchange proposes to implement the fee changes effective June 1, 2023. 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 (i) modify Ratio Threshold Fees, which apply to orders ranked Priority 2—Display Orders and to shares of Auction-Only Orders that have a disproportionate ratio of orders that are not executed,[3] and (ii) eliminate the Step Up Tier 1 pricing tier under Step Up Tiers. The Exchange proposes to implement the fee changes effective June 1, 2023.

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.''[4]

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

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 88930 (May 21, 2020), 85 FR 32068 (May 28, 2020) (SR–NYSEArca–2020–45) (''Ratio Threshold Fee Filing'').

[4] *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'').

Commission has recognized that ''such competition can lead to the fragmentation of order flow in that stock.'' [5] Indeed, equity trading is currently dispersed across 16 exchanges,[6] numerous alternative trading systems,[7] 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.[8] 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.[9]

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, based on transaction fees and credits. Accordingly, the Exchange's fees, including the proposed modification to the Ratio Threshold Fee, are reasonably constrained by competitive alternatives and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

Proposed Rule Change

Ratio Threshold Fee

The Ratio Threshold Fee applies to orders ranked Priority 2—Display Orders (''RT-Display Fee'') and to shares of Auction-Only Orders during the period when Auction Imbalance information is being disseminated for a Core Open Auction or Closing Auction (''RT-Auction Fee''). The purpose of this proposed rule change is to modify the RT-Auction Fee. The Exchange is not proposing any change to the RT-Display Fee.

Currently, for Auction-Only Orders,[10] ETP Holders with an average daily number of orders of 10,000 or more are charged an RT–Auction Fee on a monthly basis.[11] For purposes of determining the RT–Auction Fee:

- The number of ''Ratio Shares'' is the average daily number of shares of Auction-Only Orders that are cancelled by an ETP Holder at a disproportionate ratio to the average daily number of shares executed by that ETP Holder. Orders ranked Priority 2—Display Orders designated for the Core Trading Session only that are entered during the period when Auction Imbalance Information for the Core Open Auction is being disseminated are included in the Ratio Shares calculation.[12] All orders entered by an ETP Holder for securities in which it is registered as a Lead Market Maker are not included the calculation of Ratio Shares.
- The ''Ratio Shares Threshold'' is an ETP Holder's Ratio Shares divided by the average daily executed shares by the ETP Holder.

As noted above, the Exchange charges the RT–Auction Fee for Auction-Only Orders during the period when Auction Imbalance Information is being disseminated.[13]

The Exchange currently does not charge the RT–Auction Fee if Auction-Only Orders have a Ratio Shares Threshold of less than 50. The Exchange proposes that it would not charge the RT–Auction Fee if Auction-Only Orders have a Ratio Shares Threshold of less than 25.

Currently, if the Ratio Shares Threshold is greater than or equal to 50, the fee is as follows:

- No Charge for ETP Holders with an average of fewer than 20 million Ratio Shares per day.
- $1.00 per million Ratio Shares for ETP Holders with an average of 20 million to 200 million Ratio Shares per day.
- $10.00 per million Ratio Shares for ETP Holders with an average of more than 200 million Ratio Shares per day.

The Exchange proposes that if the Ratio Shares Threshold is greater than or equal to 25, the fee would be as follows:

- No Charge for ETP Holders with an average of fewer than 10 million Ratio Shares per day.
- $5.00 per million Ratio Shares for ETP Holders with an average of 10 million to 100 million Ratio Shares per day.
- $15.00 per million Ratio Shares for ETP Holders with an average of more than 100 million Ratio Shares per day.

ETP Holders are currently charged for the entirety of their Ratio Shares at a rate of $1.00 per million Ratio Shares if the ETP Holder has an average of 20 million to 200 million Ratio Shares; and $10.00 per million Ratio Shares if the ETP Holder has an average of more than 200 million Ratio Shares. The Exchange proposes that ETP Holders would be charged for the entirety of their Ratio Shares at a rate of $5.00 per million Ratio Shares if the ETP Holder has an average of 10 million to 100 million Ratio Shares; and $15.00 per million Ratio Shares if the ETP Holder has an average of more than 100 million Ratio Shares.

The following example illustrates the calculation of the RT–Auction Fee for Auction-Only Orders, as modified by this proposed rule change.

- In a month, ETP Holder B enters a daily average of 50,000 Auction-Only Orders for the Closing Auction, with an average size of 600 shares.
- Thus, ETP Holder B's daily average number of shares submitted in Auction-Only Orders for the Closing Auction is 30,000,000 shares (50,000 orders × 600 shares).
- During the period when Closing Auction Imbalance Information is being disseminated, ETP Holder B cancels a daily average of 29,000,000 shares and executes a daily average of 1,000,000 shares in the Closing Auction.
- ETP Holder B has an average daily Ratio Shares quantity of 28,000,000 (29,000,000 − 1,000,000), and a Ratio Shares Threshold of 28 (28,000,000/1,000,000).

[5] *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).

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

[7] *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.*

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

[9] *See id.*

[10] An Auction-Only Order is a Limit or Market Order that is to be traded only within an auction pursuant to Rule 7.35–E or routed pursuant to Rule 7.34–E. *See* Rule 7.31–E(c). Auction-Only Orders are orders submitted by an ETP Holder during the Early Open Auction, Core Open Auction, Closing Auction and Trading Halt Auction. *See* Rule 7.35–E.

[11] Similar to orders ranked Priority 2—Display Orders, the current fee focuses on Auction-Only Orders because a disproportionate ratio of such orders that are not executed uses more system resources, including updates to the Auction Imbalance Information as such orders are entered and cancelled, than other order entry and cancellation practices of ETP Holders. Accordingly, for Auction-Only Orders, Ratio Shares include shares of Auction-Only Orders executed in a disproportionate ratio to the quantity of shares entered during the period when Auction Imbalance Information is being disseminated for the Core Open Auction and Closing Auction.

[12] For purposes of the Ratio Threshold Fees, orders ranked Priority 2—Display Orders designated for the Core Trading Session only that are cancelled during the period when Auction Imbalance Information for the Core Open Auction is being disseminated are included in the calculation of the RT–Auction Fee. The Exchange includes such orders as Auction-Only Orders for purposes of such fee because prior to the Core Open Auction, such orders would not be eligible to trade and therefore would not be included in the RT-Display Fee calculation, yet such orders would be included in the imbalance calculation for the Core Open Auction.

[13] *See* Rules 7.35–E(c)(1) (Core Open Auction Imbalance Information begins at 8:00 a.m. ET) and 7.35–E(d)(1) (Closing Auction Imbalance Information begins at 3:00 p.m. ET).

• Since the Ratio Shares Threshold is greater than 25 and the average daily Ratio Shares quantity is between 10 million and 100 million, ETP Holder B would be subject to the proposed fee of $5.00 per million Ratio Share, resulting in a fee of $2,940 assuming a 21-day month (28,000,000/1,000,000 × $5.00 × 21).

Finally, the combined RT–Display Fee and RT–Auction Fee for an ETP Holder is currently capped at $2,000,000 per month. The Exchange proposes to lower the cap to $1,000,000 per month.

The purpose of the proposed rule change is to recalibrate the application of the RT–Auction Fee. The Exchange believes the proposed modification to the calculation of the RT–Auction Fee will continue to strengthen the Exchange's goal of providing a more efficient marketplace and enhance the trading experience of all ETP Holders by encouraging them to more efficiently participate on the Exchange.

As noted in the Ratio Threshold Fee Filing, the purpose of the Ratio Threshold Fee is not to create revenue, but rather to provide an incentive for a small number of ETP Holders to change their order entry practices. Based on an analysis of order entry practices by ETP Holders between December 2022 and May 2023, only 2 ETP Holders incurred the RT–Auction Fee during that time period. Additionally, between December 2022 and May 2023, the median Order Entry Ratio across all ETP Holders for Auction-Only Orders ranged from −0.87 to −.09, which indicates that the median ETP Holder had more executed shares than Ratio Shares. The Exchange does not anticipate the proposed recalibration would subject any additional ETP Holders to the RT–Auction Fee.

The Ratio Threshold Fee is intended to encourage efficient usage of Exchange systems by ETP Holders. The Exchange believes that it is in the best interests of all ETP Holders and investors who access the Exchange to encourage efficient systems usage. Unproductive share entry and cancellation practices, such as when ETP Holders flood the market with orders that are frequently and/or rapidly cancelled, do little to support meaningful price discovery, may create investor confusion about the extent of trading interest in a security. The Exchange further believes that inefficient order entry practices of a small number of ETP Holders may place excessive burdens on Exchange systems and to the systems of other ETP Holders that are ingesting market data, while also negatively impacting the usefulness of market data feeds that transmit each order and subsequent cancellation.[14] ETP Holders with an excessive ratio of cancelled to executed orders do little to support meaningful price discovery.

As noted above, only a small number of ETP Holders are executing orders at a disproportionately low ratio to the number of orders that have been entered and, thus, the impact of the current fee has been narrow and limited to those ETP Holders. These ETP Holders could avoid the fee by changing their behavior.

Eliminate Underutilized Credit

In this competitive environment, the Exchange has already established Step Up Tiers 1–3, 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 adding displayed liquidity
Step Up Tier 1	$0.0028 (Tape A and C). $0.0022 (Tape B).
Step Up Tier 2	$0.0033 (Tape A and C). $0.0034 (Tape B).
Step Up Tier 3	$0.0031 (Tape A, B and C).

The Exchange proposes to eliminate current Step Up Tier 1 and remove the pricing tier from the Fee Schedule. The current Step Up Tier 1 pricing tier has been underutilized by ETP Holders. The Exchange has observed that only once has an ETP Holder qualified for the tiered credit in the last 6 months. Since the current Step Up Tier 1 pricing tier has not been effective in accomplishing its intended purpose, which is to incent ETP Holders to increase their liquidity adding activity on the Exchange, the Exchange has determined to eliminate the pricing tier and remove it from the Fee Schedule.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[15] in general, and furthers the objectives of sections 6(b)(4) and (5) of the Act,[16] 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 Exchange believes that the proposed fee change would help to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, because it is designed to reduce the numbers of orders and shares being entered and then cancelled prior to an execution.

The Proposed Changes Are 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.'' [17]

As the Commission itself recognized, the market for trading services in NMS stocks has become ''more fragmented and competitive.'' [18] Indeed, equity trading is currently dispersed across 13 exchanges,[19] numerous alternative

[14] *See generally* Recommendations Regarding Regulatory Reponses to the Market Events of May 6, 2010, Joint CFTC–SEC Advisory Committee on Emerging Regulatory Issues, at 11 (February 18, 2011) (''The SEC and CFTC should also consider addressing the disproportionate impact that [high frequency trading] has on Exchange message traffic and market surveillance costs. . . . The Committee recognizes that there are valid reasons for algorithmic strategies to drive high cancellation rates, but we believe that this is an area that deserves further study. At a minimum, we believe that the participants of those strategies should properly absorb the externalized costs of their activity.'').

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

[16] 15 U.S.C. 78f(b)(4) and (5).

[17] *See* Regulation NMS, *supra* note 5, 70 FR at 37499.

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

[19] *See* Cboe U.S Equities Market Volume Summary, available at *https://markets.cboe.com/us/*

Continued

trading systems,[20] 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 (whether including or excluding auction volume).[21] 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. Accordingly, the Exchange's fees, including the proposed modification to the Ratio Threshold Fee, are reasonably constrained by competitive alternatives and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

Ratio Threshold Fee

The Exchange believes that the proposed change to the Ratio Threshold Fee is reasonable because it is designed to achieve improvements in the quality of displayed liquidity, particularly in advance of auctions, on the Exchange for the benefit of all market participants. In addition, the proposed change is reasonable because market participants may readily avoid the fee by adjusting their order entry and/or cancellation practices, which would result in more orders or shares being cancelled before execution.

Although only a small number of ETP Holders have been impacted since the Ratio Threshold Fee was implemented, the Exchange believes the proposed change to the manner in which the RT—Auction Fee is calculated is necessary to incent the small number of ETP Holders whose trading behavior imposes on others through order entry practices resulting in a disproportionate ratio of executed orders or shares to those that are not executed. Accordingly, the Exchange believes that it is fair to modify the manner in which the RT—Auction Fee is calculated and impose the fee on these market participants in order to incentivize them to modify their practices and thereby benefit the market.

The Exchange believes that the proposed combined fee cap of $1,000,000 is reasonable as it would reduce the impact of the fee on ETP Holders. As noted above, the purpose of the proposed fee is not to generate revenue for the Exchange, but rather to provide an incentive for a small number of ETP Holders to change their order entry and/or cancellation behavior. As a general principal, the Exchange believes that greater participation on the Exchange by ETP Holders improves market quality for all market participants. Thus, in modifying the current fee, and the cap, the Exchange balanced the desire to improve market quality against the need to discourage inefficient order entry and/or cancellation practices.

The Exchange notes that the notion of a fee that incentivizes efficient order entry and/or cancellation practices is not novel. The Exchange's current fee is comparable to a fee charged by the NASDAQ Stock Market LLC (''Nasdaq'') [22] and by Exchange's options market, NYSE Arca Options, to OTP Holders to disincentivize a disproportionate ratio of orders that are not executed.[23]

Eliminate Underutilized Credit

The Exchange believes that the proposed rule change to eliminate the Step Up Tier 1 pricing tier is reasonable because the pricing tier that is the subject of this proposed rule change has been underutilized and has not incentivized ETP Holders to bring liquidity and increase trading on the Exchange. Only once has an ETP Holder qualified for the *tiered* credit in the last 6 months. The Exchange also does not anticipate any ETP Holder in the near future will qualify for the pricing incentive proposed for deletion. The Exchange believes it is reasonable to eliminate requirements and credits, and even entire pricing tiers, when such incentives become underutilized. The Exchange believes eliminating underutilized incentive programs would also simplify the Fee Schedule. The Exchange further believes that removing reference to the pricing tier that the Exchange proposes to eliminate from the Fee Schedule would also add clarity to the Fee Schedule.

The Proposal Is an Equitable Allocation of Fees

Ratio Threshold Fee

The Exchange believes that the proposed change to the Ratio Threshold Fee is equitably allocated among its market participants. Although only a small number of ETP Holders may be subject to the RT—Auction Fee based on their current trading practices, any ETP Holder could determine to change its order entry practices at any time, and thus avoid the fee. The fee is therefore designed to encourage better order entry practices by all ETP Holders for the benefit of all market participants. Moreover, as noted above, the purpose of the Ratio Threshold Fee is not to generate revenue for the Exchange, but rather to provide an incentive for a small number of ETP Holders to change their order entry and/or cancellation behavior.

The Exchange believes that the proposal constitutes an equitable allocation of fees because all similarly situated ETP Holders would be subject to the fees. As noted above, the Exchange believes that because having a disproportionate ratio of unexecuted orders is a problem associated with a relatively small number of ETP Holders, the impact of the proposal would be limited to those ETP Holders, and only if they do not alter their trading practices. The Exchange believes the proposal would encourage ETP Holders that could be impacted to modify their practices in order to avoid the fee, thereby improving the market for all participants.

Eliminate Underutilized Credit

The Exchange believes that eliminating requirements and credits, and even entire pricing tiers, from the Fee Schedule when such incentives become ineffective is equitable because the requirements, and credits, and even entire pricing tiers, would be eliminated in their entirety and would no longer be available to any ETP Holder. The Exchange also believes that the proposed change would protect investors and the public interest because the deletion of the underutilized pricing tier would make the Fee Schedule more accessible and transparent and facilitate market participants' understanding of the fees charged for services currently offered by the Exchange.

equities/market_share. See generally *https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html.*

[20] *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.*

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

[22] *See* Securities Exchange Act Release No. 66951 (May 9, 2012), 77 FR 28647 (May 15, 2012) (SR–NASDAQ–2012–055) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Institute an Excess Order Fee).

[23] *See* Ratio Threshold Fee, at *https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf.* The Ratio Threshold Fee is charged to OTP Holders based on the number of orders entered compared to the number of executions received in a calendar month.

The Proposal Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory.

Ratio Threshold Fee

The Exchange believes that the proposed change to the Ratio Threshold Fee 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, and are free to transact on competitor markets to avoid being subject to the Exchange's fees that are the subject of this proposed rule change. The Exchange believes that the proposed fee change 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 it would be applied to all similarly situated ETP Holders, who would all be subject to the fee on an equal basis.

Eliminate Underutilized Credit

The Exchange believes that eliminating requirements and credits associated with Step Up Tier 1 from the Fee Schedule when such incentives become ineffective is not unfairly discriminatory because the requirements and credits associated with the pricing tier would be eliminated in its entirety and would no longer be available to any ETP Holder. All ETP Holders would continue to be subject to the same fee structure, and access to the Exchange's market would continue to be offered on fair and non-discriminatory terms. The Exchange also believes that the proposed change would protect investors and the public interest because the deletion of the underutilized pricing tier would make the Fee Schedule more accessible and transparent and facilitate market participants' understanding of the fees charged for services currently offered by 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. 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,[24] 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 fee change would encourage ETP Holders to modify their order entry and/or cancellation practices so that fewer orders or shares are cancelled without resulting in an execution, thereby promoting price discovery and transparency and enhancing order execution opportunities on the Exchange.

Intramarket Competition. The Exchange believes the proposed change to the Ratio Threshold Fee would not place any undue burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed fee change is designed to encourage ETP Holders to submit orders or shares into the market that are actionable. Further, the proposal would apply to all ETP Holders on an equal basis, and, as such, the proposed change would not impose a disparate burden on competition among market participants on the Exchange. To the extent that these purposes are achieved, the Exchange believes that the proposal would serve as an incentive for ETP Holders to modify their order entry practices, thus enhancing the quality of the market and increase the volume of orders or shares directed to, and executed on, the Exchange. In turn, all the Exchange's market participants would benefit from the improved market liquidity. The Exchange also does not believe the proposed rule change to eliminate underutilized pricing tiers will impose any burden on intramarket competition because the proposed change would impact all ETP Holders uniformly. To the extent the proposed rule change places a burden on competition, any such burden would be outweighed by the fact that the pricing incentive proposed for deletion has not served its intended purpose of incentivizing ETP Holders to more broadly participate on the Exchange.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. As noted 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 review, and consider adjusting 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, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition.

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 has become effective upon filing pursuant to section 19(b)(3)(A) [25] of the Act and paragraph (f) thereunder. At any time within 60 days of the filing of the 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.

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 (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSEARCA–2023–39 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–2023–39. 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 (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule

[24] 15 U.S.C. 78f(b)(8).

[25] 15 U.S.C. 78s(b)(3)(A).

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–2023–39, and should be submitted on or before July 6, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Sherry R. Haywood,

Assistant Secretary.

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[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97686; File No. SR–CBOE–2023–031]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Enhance Its Drill-Through Protection Processes for Simple Orders and Make Other Clarifying Changes

June 9, 2023.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 2, 2023, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II 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

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to enhance its drill-through protection processes for simple orders and make other clarifying changes. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, 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 Exchange 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 these 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 aspects of such statements.

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

1. Purpose

The purpose of this rule filing is to amend Rule 5.34(a), Order and Quote Price Protection Mechanisms and Risk Controls (Simple Orders), to enhance the drill-through protection process for simple orders and make other clarifying changes.

Drill-through price protection is currently described in Exchange Rule 5.34(a)(4)(A). Under Rule 5.34(a)(4)(A), if a buy (sell) order enters the Book[3] at the conclusion of the opening auction process or would execute or post to the Book at the time of order entry, the System[4] executes the order up to a buffer amount (the Exchange determines the buffer amount on a class and premium basis) above (below) the offer (bid) limit of the Opening Collar[5] or the National Best Offer (''NBO'') (National Best Bid (''NBB'')) that existed at the time of order entry, respectively (the ''drill-through price'').[6]

Rule 5.34(a)(4)(C) establishes an iterative drill-through process, whereby the Exchange permits orders to rest in the Book for multiple time periods and at more aggressive displayed prices during each time period.[7] Specifically, for a limit order (or unexecuted portion) with a Time-in-Force of Day, Good-til-Cancelled (''GTC''), or Good-til-Date (''GTD''), the System enters the order in the Book with a displayed price equal to the drill-through price. The order (or unexecuted portion) will rest in the Book at the drill-through price for the duration of consecutive time periods (the Exchange determines on a class-by-class basis the length of the time period in milliseconds, which may not exceed three seconds).[8] Following the end of each period, the System adds (if a buy order) or subtracts (if a sell order) one buffer amount (the Exchange determines the buffer amount on a class-by-class basis) to the drill-through price displayed during the immediately preceding period (each new price becomes the ''drill-through price'').[9] The order (or unexecuted portion) rests in the Book at that new drill-through price for the duration of the subsequent period. The System applies a timestamp to the order (or unexecuted portion) based on the time it enters or is re-priced in the Book for priority reasons. The order continues through this iterative process until the earliest of the following to occur: (a) the order fully executes; (b) the User[10] cancels the order; and (c) the buy (sell) order's limit price equals or is less (greater) than the drill-through price at any time during application of the drill-through mechanism, in which case the order rests in the Book at its limit price, subject to a User's instructions.

Currently, the above-described iterative drill-through process does not

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

[2] 17 CFR 240.19b–4.

[3] ''Book'' means the electronic book of simple orders and quotes maintained by the System, which single book is used during both the regular trading hours and global trading hours trading sessions. *See* Rule 1.1 (definition of, ''Book'').

[4] ''System'' means the Exchange's hybrid trading platform that integrates electronic and open outcry trading of option contracts on the Exchange and includes any connectivity to the foregoing trading platform that is administered by or on behalf of the Exchange, such as a communications hub. *See* Rule 1.1 (definition of, ''System'').

[5] *See* Rule 5.31(a) for the definition of Opening Collars.

[6] *See* Rule 5.34(a)(4)(A).

[7] The Exchange will announce to Trading Permit Holders the buffer amount and the length of the time periods in accordance with Rule 1.5. The Exchange notes that each time period will be the same length (as designated by the Exchange), and the buffer amount applied for each time period will be the same.

[8] *See* Rule 5.34(a)(4)(C). The proposed rule change defines this time period as an ''iteration.''

[9] *See* Rule 5.34(a)(4)(C).

[10] The term ''User'' shall mean any Trading Privilege Holder (TPH) or Sponsored User who is authorized to obtain access to the System pursuant to Rule 5.5.