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–MEMX–2021–09 and should be submitted on or before September 1, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[37]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2021–17085 Filed 8–10–21; 8:45 am]

BILLING CODE 8011–01–P

[37] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92583; File No. SR–NYSEArca–2021–52]

Self-Regulatory Organizations; NYSE Arca, Inc.; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend the NYSE Arca Equities Fees and Charges

August 5, 2021.

I. Introduction

On June 14, 2021, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change (File No. SR–NYSEArca–2021–52) to amend the NYSE Arca Equities Fees and Charges (''Fee Schedule'').[3] The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[4] The proposed rule change was published for comment in the **Federal Register** on July 6, 2021.[5] The Commission received no comment letters regarding the proposed rule change. Pursuant to Section 19(b)(3)(C) of the Act,[6] the Commission is hereby: (1) Temporarily suspending File No. SR–NYSEArca–2021–52; and (2) instituting proceedings to determine whether to approve or disapprove File No. SR–NYSEArca–2021–52.

II. Description of the Proposed Rule Change

The Exchange proposes to establish a new category of Retail Order executions for purposes of the Fee Schedule. Specifically, the Exchange proposes that no fees or credits would apply for Retail Order executions that are denoted ''internalized'' executions under certain circumstances.[7] The Exchange proposes that no fees will be charged nor credits paid for Retail Orders where (i) each side of the executed order shares the same MPID, (ii) each side of the executed order is a Retail Order with a time-in-force of Day, and (iii) the above executed orders have an Average Daily Volume (''ADV'') of at least 150,000 shares.

Prior to the proposed rule change, Retail Orders that were internalized [8] on the Exchange were not identified in the Fee Schedule and were treated the like other Retail Orders, regardless of whether they were internalized executions, and regardless of ADV. Specifically, the Exchange provides a credit ranging from $0.0035 to $0.0038, depending on the step-up tier, to Retail Orders that provide liquidity, and charges no fee for Retail Orders that remove liquidity. Therefore, the proposal carves out a particular group of Retail Orders—internalized orders when such orders have an ADV of at least 150,000 shares—and eliminates the credits for those Retail Orders that provide liquidity. ETP Holders with an ADV under 150,000 of internalized Retail Orders would continue to receive the relevant credit for Retail Orders that provide liquidity.

III. Suspension of the Proposed Rule Change

Pursuant to Section 19(b)(3)(C) of the Act,[9] at any time within 60 days of the date of filing of an immediately effective proposed rule change pursuant to Section 19(b)(1) of the Act,[10] the Commission summarily may temporarily suspend the change in the rules of a self-regulatory organization (''SRO'') 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. As discussed below, the Commission believes a temporary suspension of the proposed rule change is necessary and appropriate to allow for additional analysis of the proposed rule change's consistency with the Act and the rules thereunder.

When exchanges file their proposed rule changes with the Commission, including fee filings like the Exchange's present proposal, they are required to provide a statement supporting the proposal's basis under the Act and the rules and regulations thereunder applicable to the exchange.[11] The instructions to Form 19b–4, on which exchanges file their proposed rule changes, specify that such statement ''should be sufficiently detailed and specific to support a finding that the proposed rule change is consistent with [those] requirements.'' [12]

Section 6 of the Act, including Sections 6(b)(4), (5), and (8), require the rules of an exchange to: (1) Provide for the equitable allocation of reasonable fees among members, issuers, and other persons using the exchange's facilities; [13] (2) perfect the mechanism of a free and open market and a national market system, protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers; [14] and (3) not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[15]

In justifying its proposal, the Exchange stated in its filing that its proposal is reasonable because it ''is a reasonable attempt to increase liquidity on the Exchange and improve the Exchange's market share relative to its competitors.'' [16] The Exchange also states that the proposal is an equitable allocation of fees and credits because ''all ETP Holder that participate on the

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 92291 (June 29, 2021), 86 FR 35551 (July 6, 2021) (''Notice'').

[4] 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as ''establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization.'' 15 U.S.C. 78s(b)(3)(A)(ii).

[5] *See* Notice, *supra* note 3.

[6] 15 U.S.C. 78s(b)(3)(C).

[7] The Exchange defines internalized executions as an execution where two orders presented to the Exchange from the same ETP Holder (*i.e.,* MPID) are presented separately and not in a paired manner, but nonetheless inadvertently match with one another. *See* Notice, *supra* note 3, at 35552 note 13.

[8] *See id.*

[9] 15 U.S.C. 78s(b)(3)(C).

[10] 15 U.S.C. 78s(b)(1).

[11] *See* 17 CFR 240.19b–4 (Item 3 entitled ''Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change'').

[12] *See id.*

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

[14] 15 U.S.C. 78f(b)(5).

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

[16] *See* Notice, *supra* note 3, at 35552.

Exchange will be able to internalize their Retail Orders on the Exchange at no cost, *i.e.,* they would not receive a credit or pay any fee for the execution of Retail Orders that are internalized.'' [17] Further, the Exchange states that the proposal is an equitable allocation of fees and credits because it would benefit all investors by deepening the Exchange's liquidity pool, supporting the quality of price discovery, promoting market transparency, and improving investor protection.[18] The Exchange states that the proposal is not unfairly discriminatory because ETP Holders are free to transact on other exchanges if they believe those exchanges offer better value.[19] Finally, the Exchange states that the proposal is not unfairly discriminatory because it is available to all ETP holders on an equal and non-discriminatory basis and that ''all similarly situated ETP Holders would be charged the same fee for executing Retail Orders that are internalized.'' [20]

In temporarily suspending the Exchange's proposed rule change, the Commission intends to further consider whether the proposal to amend the NYSE Arca Fee Schedule is consistent with the statutory requirements applicable to a national securities exchange under the Act. In particular, the Commission will consider whether the proposed rule change satisfies the standards under the Act and the rules thereunder requiring, among other things, that an exchange's rules provide for the equitable allocation of reasonable fees among members, issuers, and other persons using its facilities; not permit unfair discrimination between customers, issuers, brokers or dealers; and do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[21]

Therefore, the Commission finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act, to temporarily suspend the proposed rule change.[22]

[17] *See id.* at 35553.

[18] *See id.*

[19] *See id.*

[20] *See id.*

[21] *See* 15 U.S.C. 78f(b)(4), (5), and (8), respectively.

[22] For purposes of temporarily suspending the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

IV. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change

In addition to temporarily suspending the proposal, the Commission also hereby institutes proceedings pursuant to Sections 19(b)(3)(C) [23] and 19(b)(2)(B) of the Act [24] to determine whether the Exchange's proposed rule change should be approved or disapproved. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[25] the Commission is providing notice of the grounds for possible disapproval under consideration:

- Whether the Exchange has demonstrated how its proposed fee is consistent with Section 6(b)(4) of the Act, which requires that the rules of a national securities exchange ''provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities;'' [26];
- Whether the Exchange has demonstrated how its proposed fee is consistent with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange not be ''designed to permit unfair discrimination between customers, issuers, brokers, or dealers'' [27]; and
- Whether the Exchange has demonstrated how its proposed fee is consistent with Section 6(b)(8) of the Act, which requires that the rules of a national securities exchange ''not impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act].'' [28]

[23] 15 U.S.C. 78s(b)(3)(C). Once the Commission temporarily suspends a proposed rule change, Section 19(b)(3)(C) of the Act requires that the Commission institute proceedings under Section 19(b)(2)(B) to determine whether a proposed rule change should be approved or disapproved.

[24] 15 U.S.C. 78s(b)(2)(B).

[25] 15 U.S.C. 78s(b)(2)(B). Section 19(b)(2)(B) of the Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. *See id.* The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding, or if the exchange consents to the longer period. *See id.*

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

[27] 15 U.S.C. 78f(b)(5).

[28] 15 U.S.C. 78f(b)(8).

As noted above, the proposal purports to amend the NYSE Arca Fee Schedule to eliminate the credits for providing liquidity for certain internalized Retail Orders when such orders have an ADV of at least 150,000 shares. However, the Exchange's statements in support of the proposed rule change lack specificity and are at times contradictory. For example, the Exchange provides only broad general statements that the proposal is not unfairly discriminatory because all ETP Holders will be treated the same. However, this explanation fails to address why it is not unfairly discriminatory for ETP Holders with under 150,000 ADV of internalized Retail Orders to continue to receive a credit for providing liquidity while those with over 150,000 ADV of internalized Retail Orders no longer receive the same credit. Furthermore, the Exchange contends that the proposal is consistent with the Act because it will incentivize more Retail Order flow to the Exchange, thereby benefitting all investors. However, the Exchange does not explain how a proposal to eliminate an existing credit would achieve these goals.

Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the [Act] and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change.'' [29] The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,[30] and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.[31]

The Commission is instituting proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposed fees are consistent with the Act, and specifically, with its requirements that exchange fees be reasonable and equitably allocated, not be unfairly discriminatory, and not impose a burden on competition.[32]

[29] 17 CFR 201.700(b)(3).

[30] *See id.*

[31] *See id.*

[32] *See* 15 U.S.C. 78f(b)(4), (5), and (8).

V. Commission's Solicitation of Comments

The Commission requests written views, data, and arguments with respect to the concerns identified above as well as any other relevant concerns. Such comments should be submitted by September 1, 2021. Rebuttal comments should be submitted by September 15, 2021. Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[33]

The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change.

Interested persons are invited to submit written data, views, and arguments concerning the proposed rule changes, 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 No. SR–NYSEArca–2021–52 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 No. SR–NYSEArca–2021–52. The 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 such 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 publicly available. All submissions should refer to File No. SR–NYSEArca–2021–52 and should be submitted on or before September 1, 2021. Rebuttal comments should be submitted by September 15, 2021.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(3)(C) of the Act,[34] that File No. SR–NYSEArca–2021–52, be and hereby is, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule change should be approved or disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

Jill M. Peterson,

Assistant Secretary.

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[33] 15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Act grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by an SRO. *See* Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[34] 15 U.S.C. 78s(b)(3)(C).

[35] 17 CFR 200.30–3(a)(57) and (58).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92581; File No. SR–CBOE–2021–029]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of Amendment No. 1 and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To Increase Position Limits for Options on Certain Exchange-Traded Funds and an Exchange-Traded Note

August 5, 2021.

I. Introduction

On April 21, 2021, Cboe Exchange, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Interpretation and Policy .07 of Exchange Rule 8.30, Position Limits, to increase the position limits for options on the following exchange traded funds (''ETFs'') and exchange traded note (''ETN'') (collectively, ''Exchange Traded Products'' or ''ETP(s)''): SPDR Gold Shares (''GLD''), iShares iBoxx $ Investment Grade Corporate Bond ETF (''LQD''), iShares Silver Trust (''SLV''), iPath S&P 500 VIX Short-Term Futures ETN (''VXX''), ProShares Ultra VIX Short-Term Futures ETF (''UVXY''), and VanEck Vectors Gold Miners ETF (''GDX''). The proposed rule change was published for comment in the **Federal Register** on May 10, 2021.[3] On June 17, 2021, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.[5] On July 27, 2021, the Exchange submitted Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed.[6] The Commission is publishing this notice and order to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons and to institute proceedings pursuant to Section 19(b)(2)(B) of the Act[7] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposal, as Modified by Amendment No. 1

Currently, position limits for options on ETFs and ETNs traded on the Exchange, such as those subject to this

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 91767 (May 4, 2021), 86 FR 25026.

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 92204, 86 FR 33395 (June 24, 2021). The Commission designated August 8, 2021, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

[6] In Amendment No. 1, the Exchange: (1) Reduced the proposed position limit for GLD options from 1,000,000 contracts to 500,000 contracts; and (2) provided additional justification and analysis in support of the proposal. The additional justification and analysis provided by Amendment No. 1 is included in the description below of the proposal as amended. The full text of Amendment No. 1 is available on the Commission's website at: *https://www.sec.gov/comments/sr-cboe-2021-029/srcboe2021029-9094584-246812.pdf.*

[7] 15 U.S.C. 78s(b)(2)(B).