

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Eduardo A. Aleman,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85887; File No. SR-NYSENAT-2019-12]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Schedule of Fees and Rebates

May 17, 2019.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on May 8, 2019, NYSE National, Inc. (“NYSE National” 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 its Schedule of Fees and Rebates to (1) increase the current adding tier fees (Adding Tier 1, Adding Tier 2, Adding Tier 3, and Adding Tier 4) for adding displayed liquidity in Tape A, Tape B and Tape C securities and renumber the tiers in order of favorability; and (2) adopt a new Step Up Adding Tier 1 that would set forth fees for displayed and non-displayed orders that add liquidity to the Exchange and renumber the current Step Up Adding Tier. The Exchange proposes to implement the rule change on May 8, 2019. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

The Exchange proposes to amend its Schedule of Fees and Rebates to (1) increase the current adding tier fees (Adding Tier 1, Adding Tier 2, Adding Tier 3, and Adding Tier 4) for adding displayed liquidity in Tape A, Tape B and Tape C securities and renumber the tiers in order of favorability; and (2) adopt a new Step Up Adding Tier 1 that would set forth fees for displayed and non-displayed orders that add liquidity to the Exchange and renumber the current Step Up Adding Tier.

The Exchange proposes to implement the rule change on May 8, 2019.⁴

Proposed Changes To Adding Tiers

Current Adding Tier 1 (Proposed Adding Tier 4)

Under current Adding Tier 1, the Exchange offers the following fees for transactions in stocks with a per share price of \$1.00 or more when adding liquidity to the Exchange if the ETP Holder has at least 0.015% of Adding average daily volume (“ADV”) as a percent of US consolidated ADV (“CADV”)⁵:

- \$0.0020 per share for displayed orders in Tapes B and C securities and \$0.0022 per share for displayed orders in Tape A securities;
- \$0.0018 per share for orders that set a new Exchange BBO in Tapes B and C securities and \$0.0020 per share in Tape A securities;
- \$0.0022 per share for non-displayed orders in Tapes B and C securities and

⁴ The Exchange originally filed to amend the Schedule of Fees and Rebates on April 30, 2019 (SR-NYSENAT-2019-11). SR-NYSENAT-2019-11 was subsequently withdrawn and replaced by this filing.

⁵ The Adding Tier 1 volumes are currently waived. See footnote * in the current Schedule of Fees and Rebates.

\$0.0024 per share for non-displayed orders in Tape A securities; and

- \$0.0005 per share for MPL orders, which would remain unchanged.

The Exchange proposes to amend the Adding Tier 1 fees as follows:

- \$0.0023 per share for displayed orders in Tapes B and C securities and \$0.0025 per share for displayed orders in Tape A securities;
- \$0.0021 per share for orders that set a new Exchange BBO in Tapes B and C securities and \$0.0023 per share in Tape A securities;
- \$0.0025 per share for non-displayed orders in Tapes B and C securities and \$0.0027 per share for non-displayed orders in Tape A securities; and
- \$0.0005 per share for MPL orders, which would remain unchanged.

Current Adding Tier 1 would be renumbered and become Adding Tier 4. As noted, the current Adding Tier 1 volumes are waived. Footnote * of the Schedule of Fees and Rebates would be amended to reflect the renumbering of current Adding Tier 1.⁶

Adding Tier 2 (Proposed Adding Tier 1)

Under current Adding Tier 2, the Exchange offers the following fees for transactions in stocks with a per share price of \$1.00 or more when adding liquidity to the Exchange if the ETP Holder quotes: (i) At least 5% of the NBBO⁷ in 1,000 or more symbols on an average daily basis, calculated monthly, and 0.20% or more Adding ADV as a percentage of US CADV, or (ii) at least 5% of the NBBO in 2,500 or more symbols on an average daily basis, calculated monthly, and 0.10% or more Adding ADV as a % of US CADV:

- \$0.0005 per share for adding displayed orders in Tape B and C securities and \$0.0008 per share in Tape A securities;
- \$0.0005 per share for orders that set a new Exchange BBO in Tape B and C securities and \$0.0008 per share in Tape A securities;
- \$0.0007 per share for adding non-displayed orders in Tape B and C securities and \$0.0010 per share in Tape A securities; and
- \$0.0005 per share for MPL orders, which would remain unchanged.

The Exchange proposes to amend the Adding Tier 2 fees as follows:

- \$0.0008 per share for adding displayed orders in Tape B and C securities and \$0.0011 per share in Tape A securities;
- \$0.0008 per share for orders that set a new Exchange BBO in Tape B and C

⁶ See note 4, *supra*.

⁷ See footnote ** in the current Schedule of Fees and Rebates.

¹⁰ 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.

securities and \$0.0011 per share in Tape A securities;

- \$0.0010 per share for adding non-displayed orders in Tape B and C securities and \$0.0013 per share in Tape A securities; and

- \$0.0005 per share for MPL orders, which would remain unchanged.

Current Adding Tier 2 would also be renumbered and become Adding Tier 1.

Adding Tier 3 (Proposed Adding Tier 2)

Under current Adding Tier 3, the Exchange offers the following fees for transactions in stocks with a per share price of \$1.00 or more when adding liquidity to the Exchange if the ETP Holder quotes at least 5% of the NBBO in 2000 or more symbols on an average daily basis, calculated monthly, and executes 0.10% or more Adding ADV as a percentage of US CADV:

- \$0.0009 per share for adding displayed orders in Tape B and C securities and \$0.0012 per share in Tape A securities;

- \$0.0009 per share for orders that set a new Exchange BBO in Tape B and C securities and \$0.0012 per share in Tape A securities;

- \$0.0011 per share for adding non-displayed orders in Tape B and C securities and \$0.0014 per share in Tape A securities; and

- \$0.0005 per share for MPL orders, which would remain unchanged.

The Exchange proposes to amend the Adding Tier 3 fees as follows:

- \$0.0012 per share for adding displayed orders in Tape B and C securities and \$0.0015 per share in Tape A securities;

- \$0.0012 per share for orders that set a new Exchange BBO in Tape B and C securities and \$0.0015 per share in Tape A securities;

- \$0.0014 per share for adding non-displayed orders in Tape B and C securities and \$0.0017 per share in Tape A securities; and

- \$0.0005 per share for MPL orders, which would remain unchanged.

Current Adding Tier 3 would be renumbered and become Adding Tier 2.

Adding Tier 4 (Proposed Adding Tier 3)

Under current Adding Tier 4, the Exchange offers the following fees for transactions in stocks with a per share price of \$1.00 or more when adding liquidity to the Exchange if the ETP Holder quotes at least 5% of the NBBO in 600 or more symbols on an average daily basis, calculated monthly:

- \$0.0012 per share for adding displayed orders in Tape B and C securities and \$0.0014 per share in Tape A securities;

- \$0.0012 per share for orders that set a new Exchange BBO in Tape B and C

securities and \$0.0014 per share in Tape A securities;

- \$0.0014 per share for adding non-displayed orders in Tape B and C securities and \$0.0016 per share in Tape A securities; and

- \$0.0005 per share for MPL orders, which would remain unchanged.

The Exchange proposes to amend the Adding Tier 4 fees as follows:

- \$0.0015 per share for adding displayed orders in Tape B and C securities and \$0.0017 per share in Tape A securities;

- \$0.0015 per share for orders that set a new Exchange BBO in Tape B and C securities and \$0.0017 per share in Tape A securities;

- \$0.0017 per share for adding non-displayed orders in Tape B and C securities and \$0.0019 per share in Tape A securities; and

- \$0.0005 per share for MPL orders, which would remain unchanged.

Current Adding Tier 4 would be renumbered and become Adding Tier 3.

Proposed Step Up Adding Tier 1

The Exchange proposes a new Step Up Adding Tier 1 for displayed and non-displayed orders in securities priced at or above \$1.00.

Under the proposed Step Up Adding Tier 1, the Exchange would offer the following fees for transactions in stocks with a per share price of \$1.00 or more when adding liquidity to the Exchange if the ETP Holder has 0.07% or more of Adding ADV as a percentage of US CADV over the ETP Holder's Adding ADV as a % of US CADV in November 2018:

- \$0.0012 per share for adding displayed orders in Tapes B and C securities and \$0.0015 per share in Tape A securities;

- \$0.0012 per share for orders that set a new Exchange BBO⁸ in Tapes B and C securities and \$0.0015 per share in Tape A securities;

- \$0.0014 per share for adding non-displayed orders in Tapes B and C securities and \$0.0017 per share in Tape A securities; and

- \$0.0005 per share for MPL orders.

For example, in a given month of 20 trading days, assume that an ETP Holder adds liquidity of an ADV of 3.8 million shares in a month where CADV is 7.6 billion shares, or 0.05% of US CADV in November 2018 (the "Baseline"). Further assume that the ETP Holder adds liquidity of an ADV of 9.5 million

⁸ The term "BBO" is defined in Rule 1.1 to mean the best bid or offer that is a Protected Quotation on the Exchange. The term "BB" means the best bid that is a Protected Quotation on the Exchange and the term "BO" means the best offer that is a Protected Quotation on the Exchange.

shares in the relevant billing month with the same US CADV of 7.6 billion shares, or 0.125% of US CADV. That ETP Holder would qualify for the proposed Step Up Adding Tier 1 based on their 0.075% step up as a percent of US CADV over the ETP Holder's Baseline.

Finally, the existing Step Up Adding Tier would be renumbered Step Up Adding Tier 2.

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any problems that ETP Holders would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁰ 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.

Proposed Changes To Adding Tiers

The Exchange believes that the proposed changes to the tiered adding requirements for displayed and non-displayed orders in Tape A, Tape B and Tape C securities priced at or above \$1.00 are reasonable, equitable and not unfairly discriminatory, as follows.

The proposed changes to the Adding Tier 1, Adding Tier 2, Adding Tier 3, and Adding Tier 4 fees for adding liquidity in Tapes A, B and C securities for ETP Holders meeting the current requirements for each tier, which the Exchange does not propose to change, are reasonable because the proposed fee will incentivize submission of additional liquidity to a public exchange, thereby benefiting all ETP Holders by achieving higher tiers. Specifically, the Exchange believes that higher charges would incentivize ETP Holders to send additional liquidity to the Exchange in order to avoid the proposed fee by meeting the Adding Tier liquidity requirements.

The proposed fees are also equitable and not unfairly discriminatory because those fees would be consistent with or lower than the applicable rate on other marketplaces that charge for adding liquidity. For example, Cboe BYX charges a standard fee of \$0.0019 per share, and their lowest fee for adding is

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4) & (5).

\$0.0012, while Cboe EDGA charges a standard fee of \$0.0030 per share, and their lowest fee for adding is \$0.0022. In addition, the Exchange believes that the proposed Adding Tier fees are equitable and not unfairly discriminatory as all similarly situated market participants will be subject to the same fees on an equal and non-discriminatory basis.

Proposed Step Up Adding Tier 1

The Exchange believes that the proposed Step Up Adding Tier 1 fees for ETP Holders with 0.07% or more Adding average daily volume as a percentage of US CADV in addition to the ETP Holder's Adding ADV as a percentage of US CADV in November 2018 is reasonable because the proposed tier would further contribute to incentivizing ETP Holders to bring additional order flow to a public market. In particular, the Exchange believes that the proposed new tiered rates will provide an incentive for more active ETP Holders, including those that meet the current Step Up Adding Tier 2 as well as those that do not, to add displayed liquidity to the Exchange in excess of the current Step Up Adding Tier 2 level, to the benefit of the investing public and all market participants. In addition, the Exchange believes that the proposed Step Up Adding Tier 1 fees are equitable and not unfairly discriminatory because all similarly situated market participants who would submit additional liquidity to the Exchange in order to qualify for the fees would be subject to the same fees on an equal and non-discriminatory basis.

The Exchange also believes that the proposed non-substantive renumbering changes would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased clarity and transparency, thereby reducing potential confusion.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,¹¹ 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, the

Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange, thereby promoting price discovery and transparency and enhancing order execution opportunities for ETP Holders. The Exchange believes that this 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.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. 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 believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. As a result of all of these considerations, the Exchange does not believe that the proposed changes will impair the ability of ETP Holders or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)¹² of the Act and subparagraph (f)(2) of Rule 19b-4¹³ thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may

temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)¹⁴ 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-NYSENAT-2019-12 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-NYSENAT-2019-12. 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

¹¹ 15 U.S.C. 78f(b)(8).

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(2).

¹⁴ 15 U.S.C. 78s(b)(2)(B).

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-NYSENAT-2019-12 and should be submitted on or before June 13, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Eduardo A. Aleman,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85888; File No. SR-NYSEARCA-2019-37]

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 To Adopt a Higher Credit for the Tier 2 Pricing Tier

May 17, 2019.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on May 10, 2019, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Equities Fees and Charges (“Fee Schedule”) to adopt a higher credit for the Tier 2 pricing tier. The Exchange proposes to implement the fee changes effective May 10, 2019.⁴ The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and

at the Commission’s Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

The Exchange proposes to amend the Fee Schedule to adopt a higher credit for Tier 2. The Exchange proposes to implement the fee changes effective May 10, 2019.

The Exchange proposes to adopt a higher credit for a current pricing tier—Tier 2—for securities with a per share price \$1.00 or above.

Currently, a Tier 2 credit of \$0.0029 per share for orders in Tape A and Tape C Securities that provide liquidity to the Book, and a credit of \$0.0022 per share for orders in Tape B Securities⁵ that provide liquidity to the Book, applies to ETP Holders and Market Makers that either (1) provide liquidity an average daily share volume per month of 0.30% or more, but less than 0.70% of the US CADV or (2) provide liquidity of 0.10% of more of the US CADV per month, and are affiliated with an OTP Holder or OTP Firm that provides an ADV of electronic posted Customer and Professional Customer executions in all issues on NYSE Arca Options (excluding mini options) of at least 1.50% of total Customer equity and ETF option ADV as reported by The Options Clearing Corporation (“OCC”).

The Exchange proposes to adopt a higher credit of \$0.0031 per share for orders that provide liquidity in Tape A and Tape C Securities, and \$0.0024 per share for orders that provide liquidity in Tape B Securities. The proposed higher credit would be applicable for orders

that provide displayed liquidity to the Book for ETP Holders and Market Makers that meet the requirements of Tier 2 described above and, for the billing month, (1) execute providing volume equal to at least 0.30% of US CADV, (2) execute removing volume equal to at least 0.285% of US CADV, and (3) execute Market-On-Close and Limit-On-Close Orders executed in a Closing Auction of at least 0.075% of US CADV.

For example, assume an ETP Holder posts an order for 1,000 shares that provides liquidity to the Book. Assume further that 600 shares, from the 1,000 shares that are posted and therefore are adding liquidity, trade against an incoming order which would be removing liquidity. The 600 share execution would be a product of two orders interacting, one that provided liquidity and the contra order that removed liquidity. The remaining 400 shares of that ETP Holder’s adding order would remain posted on the Book. The 600 shares of the adding order that executed and added liquidity would count towards the executed adding volume requirement of 0.30% of US CADV, the first prong of the requirement. The 400 shares of that adding order that remain unexecuted would not count towards the requirement.

Further, assume the same ETP Holder sends an Immediate or Cancel (“IOC”) order of 1,000 shares to the Exchange, of which 600 shares execute against an order that was already resting on the Book. The 600 share execution would be a product of two orders interacting, one that provided liquidity and the contra order that took liquidity. The 400 shares remaining of that IOC order that did not immediately execute would cancel back to the ETP Holder that submitted the 1,000 share order. The 600 shares of the IOC order that executed and removed liquidity would count towards the executed removing volume requirement of 0.285% of US CADV, the second prong of the requirement. The 400 shares of that IOC order that did not execute and was canceled would not count towards the requirement.

Additionally, assume an ETP Holder sends a Market-On-Close (“MOC”) order of 2,000 shares to the Exchange for execution in the Closing Auction. Further assume that 1,200 shares of that MOC order executed in the Closing Auction, and the remaining 800 shares did not execute and were canceled after the Closing Auction. The 1,200 shares of that MOC order that executed and traded in the Closing Auction would count towards the Market-On-Close and Limit-On-Close Orders executed in a

¹⁵ 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.

⁴ The Exchange originally filed to amend the Fee Schedule on April 30, 2019 (SR-NYSEArca-2019-31) and withdrew such filing on May 10, 2019.

⁵ An additional credit applies to ETP Holders and Market Makers affiliated with LMMs that provide displayed liquidity to the Book based on the number of Less Active ETP Securities in which the LMM is registered as the LMM. See LMM Transaction Fees and Credits on the Fee Schedule for the applicable tiered credits.