with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange notes that waiver of the operative delay would allow it to implement the proposal immediately and would allow investors and the public to immediately benefit from the Exchange's revised opening process. Further, the Exchange states that the proposed rule amendments are substantially similar to those currently in place on other options exchanges.[62] The Commission believes the proposal raises no novel or unique regulatory issues. The Commission finds that it is consistent with the protection of investors and the public interest to waive the 30-day operative delay. Accordingly, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[63]

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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule 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–MIAX–2020–04 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–MIAX–2020–04. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2020–04 and should be submitted on or before April 16, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[64]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–06386 Filed 3–25–20; 8:45 am]

BILLING CODE 8011–01–P

[62] *See, e.g., supra* notes 6,7, 9, 32–34, 40–41.

[63] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[64] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88436; File No. SR–NYSEArca–2020–21]

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

March 20, 2020.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on March 11, 2020, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''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.

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

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

[3] 17 CFR 240.19b–4.

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

The Exchange proposes to amend the NYSE Arca Equities Fees and Charges (''Fee Schedule'') to (1) amend the requirement to qualify for the Tape B Tier 1 pricing tier; (2) amend the per share fee for PO Orders routed to the Nasdaq Stock Market LLC; (3) adopt a per share fee for PO Orders routed to Cboe BZX Exchange, Inc.; (4) adopt a cap applicable to the Step Up Tier 4 credit in Tape B securities; and (5) amend the requirement to qualify for the tiered-rebate structure applicable to Lead Market Makers and to ETP Holders affiliated with such Lead Market Makers. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

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

1. Purpose

The Exchange proposes to amend the Fee Schedule to (1) amend the requirement to qualify for the Tape B Tier 1 pricing tier; (2) amend the per share fee for Primary Only (''PO'') Orders [4] routed to the Nasdaq Stock

[4] A PO Order is a Market or Limit Order that on arrival is routed directly to the primary listing market without being assigned a working time or interacting with interest on the NYSE Arca Book. *See* NYSE Arca Rule 7.31–E(f)(1).

Market LLC (''Nasdaq''); (3) adopt a per share fee for PO Orders routed to Cboe BZX Exchange, Inc. (''Cboe BZX''); (4) adopt a cap applicable to the Step Up Tier 4 credit in Tape B securities; and (5) amend the requirement to qualify for the tiered-rebate structure applicable to Lead Market Makers (''LMMs''),[5] and to ETP Holders [6] affiliated with such LMMs, that provide displayed liquidity in Tape B securities to the NYSE Arca Book.

The proposed changes respond to the current competitive environment where order flow providers have a choice of where to direct liquidity-providing orders by offering further incentives for ETP Holders and LMMs to send additional displayed liquidity to the Exchange.

The Exchange proposes to implement the fee changes effective March 11, 2020.[7]

Background

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [8]

As the Commission itself recognized, the market for trading services in NMS stocks has become ''more fragmented and competitive.'' [9] Indeed, equity trading is currently dispersed across 13 exchanges,[10] numerous alternative trading systems,[11] and broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange currently has more than 20% market share (whether including or excluding auction volume).[12] Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, the Exchange currently has less than 12% market share of executed volume of equity.[13]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow or discontinue or reduce use of certain categories of products. While it is not possible to know a firm's reason for shifting order flow, the Exchange believes that one such reason is because of fee changes at any of the registered exchanges or non-exchange venues to which a firm routes order flow. With respect to non-marketable order flow that would provide displayed liquidity on an Exchange against which market makers can quote, ETP Holders and LMMs can choose from any one of the 13 currently operating registered exchanges to route such order flow. Accordingly, competitive forces constrain exchange transaction fees and credits that relate to orders that would provide displayed liquidity on an exchange.

Proposed Rule Change

The proposed rule change is designed to be available to all ETP Holders on the Exchange, and with respect to the LMM credits, the proposed rule change is designed to be available to all LMMs on the Exchange, and is intended to provide ETP Holders and LMMs an opportunity to receive enhanced rebates by quoting and trading more on the Exchange.

Tape B Tier 1

The Exchange currently provides credits to ETP Holders who submit orders that provide displayed liquidity on the Exchange. The Exchange currently has multiple levels of credits for orders that provide displayed liquidity that are based on the amount of volume of such orders that ETP Holders send to the Exchange.

Currently, a Tape B Tier 1 credit of $0.0030 [14] per share applies to ETP Holders that, on a daily basis, measured monthly, directly execute providing volume in Tape B securities that is equal to at least 1.50% of US Tape B CADV [15] for the billing month.[16] Alternatively, ETP Holders could qualify for the Tape B Tier 1 credit if an ETP Holder who is affiliated with an OTP Holder or OTP Firm that provides an ADV of electronic posted executions for the account of a market maker in all issues on NYSE Arca Options (excluding mini options) of at least 0.55% of total Customer equity and ETF option ADV as reported by The Options Clearing Corporation (''OCC'') and the ETP Holder directly executes providing volume in Tape B securities during the billing month that is equal to

- at least 1.00% of US Tape B CADV for the billing month of February 2020.
- at least 1.15% of US Tape B CADV for the billing month of March 2020.
- at least 1.25% of US Tape B CADV for the billing month of April 2020 and each billing month thereafter.[17]

The Exchange proposes to amend the 1.00% CADV requirement so that it would continue to apply for an additional three months, *i.e.,* for each of March, April and May 2020; amend the 1.15% CADV requirement so that it would apply during each of June, July and August 2020, rather than March 2020; and amend the 1.25% CADV requirement so that it would apply during the billing month of September 2020 and each month thereafter, rather than April 2020.

The Exchange is not proposing any change to the level of credits applicable under the Tape B Tier 1 pricing tier.

The proposed rule change would allow a greater number of ETP Holders to qualify for the pricing tier as the lower CADV requirement would remain in place for an additional period of time. The proposed rule change would continue to encourage ETP Holders to promote price discovery and market quality for the benefit of all market participants. As noted above, the Exchange operates in a competitive environment, particularly as it relates to attracting non-marketable orders, which

[5] The term ''Lead Market Maker'' is defined in Rule 1.1(w) to mean a registered Market Maker that is the exclusive Designated Market Maker in listings for which the Exchange is the primary market.

[6] All references to ETP Holders in connection with this proposed fee change include Market Makers.

[7] The Exchange originally filed to amend the Fee Schedule on March 2, 2020 (SR–NYSEArca–2020–19). SR–NYSEArca–2020–19 was subsequently withdrawn and replaced by this filing.

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

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

[10] *See* Cboe U.S Equities Market Volume Summary, available at *https://markets.cboe.com/us/equities/market_share. See generally https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html.*

[11] *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.*

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

[13] *See id.*

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

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

[16] *See* Securities Exchange Act Release No. 76084 (October 6, 2015), 80 FR 61529 (October 13, 2015) (SR–NYSEArca–2015–87).

[17] *See* Securities Exchange Act Release No. 88194 (February 13, 2020), 85 FR 9820 (February 20, 2020) (SR–NYSEArca–2020–12).

add liquidity to the Exchange. Because, as proposed, the tier requires an ETP Holder increase the volume of its trades against orders that add liquidity in Tape B securities at increasing levels, the Exchange believes the current credit provides an incentive for ETP Holders to route additional liquidity to the Exchange in order to qualify for it.

Routing Fees

Currently, under Tier 1, Tier 2 and Basic Rates sections of the Fee Schedule, the Exchange currently charges a per share fee of $0.0010 for PO Orders in Tape C securities that are routed to Nasdaq and execute in the opening or closing auction.[18] The Exchange proposes to increase the fee to $0.0030 per share and proposes to streamline the Fee Schedule by eliminating reference to this routing fee from Tier 1 and Tier 2 because the routing fee is not a tier-based fee and therefore should not be in Tier 1 and Tier 2.

Additionally, the Exchange proposes to adopt a fee of $0.0030 per share in the Basic Rates section of the Fee Schedule for PO Orders in Tape B securities that are routed to Cboe BZX for execution in the opening or closing auction on that market. The Exchange currently does not charge a fee for routing PO Orders to Cboe BZX. The purpose of the proposed fee is to simplify the Fee Schedule and maintain consistency with respect to the fee charged by the Exchange when it routes orders for execution in an away market's auction.

Step Up Tier 4

The Exchange currently has multiple levels of step-up pricing tiers, Step Up Tiers 1–4, which are designed to encourage ETP Holders that provide displayed liquidity on the Exchange to increase that order flow, which would benefit all ETP Holders by providing greater execution opportunities on the Exchange. In order to provide an incentive for ETP Holders to direct providing displayed order flow to the Exchange, the credits increase in the various tiers based on increased levels of volume directed to the Exchange.

Currently, the following credits are available to ETP Holders that provide increased levels of displayed liquidity on the Exchange:

Tier	Credit for providing displayed liquidity
Step Up Tier	$0.0030 (Tape A). $0.0023 (Tape B).
Step Up Tier 2 ...	$0.0031 (Tape C). $0.0028 (Tape A and C). $0.0022 (Tape B).
Step Up Tier 3 ...	$0.0025 (Tape A and C). $0.0022 (Tape B).
Step Up Tier 4 ...	$0.0033 (Tape A and C). $0.0034 (Tape B).

Under the Step Up Tier 4, if an ETP Holder increases its providing liquidity on the Exchange by a specified percentage over the level that such ETP Holder provided liquidity in September 2019, it is eligible to earn higher credits for providing displayed liquidity. Specifically, to qualify for the credits under the Step Up Tier 4, an ETP Holder must directly execute providing average daily volume (ADV) per month that is an increase of no less than 0.55% of US CADV for that month over the ETP Holder's providing ADV in September 2019, taken as a percentage of US CADV.

Currently, if an ETP Holder meets these Step Up Tier 4 qualifications, such ETP Holder is eligible to earn a credit of:

- $0.0033 per share for orders that provide displayed liquidity to the Book in Tape A and Tape C Securities, and
- $0.0034 per share for orders that provide displayed liquidity to the Book in Tape B Securities.[19]

With this proposed rule change, the Exchange proposes to adopt a cap applicable to the Step Up Tier 4 credit in Tape B securities. As proposed, ETP Holders that qualify for Step Up Tier 4 would not receive any additional incremental Tape B Tier credits for providing displayed liquidity, including any incremental credits associated with Less Active ETP Securities.[20]

The purpose of the proposed rule change is to continue to incentivize order flow providers to send liquidity-providing orders to the Exchange while capping the level of credit that such participants would receive. The Exchange believes that, although it is proposing to limit the financial incentive for orders that provide displayed liquidity in Tape B securities, the current rebate, *i.e.,* $0.0034 per share, is among one of the higher credits paid by the Exchange and should continue to serve as an incentive for ETP Holders to direct displayed liquidity providing orders to the Exchange.

The Exchange is not proposing any change to the level of credits applicable under the Step Up Tier 4.

LMM Credits

The Exchange currently provides tier-based incremental credits for orders that provide displayed liquidity in Tape B securities to the NYSE Arca Book.[21] Specifically, LMMs that are registered as the LMM in Tape B securities that have a consolidated average daily volume (''CADV'') in the previous month of less than 100,000 shares, or 0.010% of Consolidated Tape B ADV, whichever is greater (''Less Active ETP Securities''), and the ETP Holders affiliated with such LMMs, currently receive an incremental credit for orders that provide displayed liquidity to the Book in any Tape B securities that trade on the Exchange.[22] The current incremental credits and volume thresholds are as follows:

- An additional credit of $0.0004 per share if an LMM is registered as the LMM in at least 400 Less Active ETP Securities or at least 300 Less Active ETP Securities if the LMM and ETP Holders and Market Makers affiliated with such LMM add liquidity in all securities of at least 1.00% of US CADV.
- An additional credit of $0.0003 per share if an LMM is registered as the LMM in at least 200 but less than 400 Less Active ETP Securities or in at least 200 but less than 300 Less Active ETP Securities if the LMM and ETP Holders and Market Makers affiliated with such LMM add liquidity in all securities of at least 1.00% of US CADV.
- An additional credit of $0.0002 per share if an LMM is registered as the LMM in at least 100 but less than 200 Less Active ETP Securities.
- An additional credit of $0.0001 per share if an LMM is registered as the LMM in at least 75 but less than 100 Less Active ETP Securities.
- An additional credit of $0.00005 per share if an LMM is registered as the LMM in at least 50 but less than 75 Less Active ETP Securities.

The number of Less Active ETP Securities for the billing month is based on the number of Less Active ETP Securities in which an LMM is

[18] *See* Securities Exchange Act Release No. 62843 (September 3, 2010), 75 FR 55624 (September 13, 2010) (SR–NYSEArca–2010–81).

[19] *See* Securities Exchange Act Release Nos. 86122 (June 17, 2019), 84 FR 29258 (June 21, 2019) (SR–NYSEArca–2019–43); and 87292 (October 11, 2019), 84 FR 55603 (October 17, 2019) (SR–NYSEArca–2019–70).

[20] Under Step Up Tier 4, ETP Holders currently do not receive any incremental Tape C Tier credits for providing displayed liquidity.

[21] *See* Securities Exchange Act Release Nos. 76084 (October 6, 2015), 80 FR 61529 (October 13, 2015) (SR–NYSEArca–2015–87); 79597 (December 19, 2016), 81 FR 94460 (December 23, 2016) (SR–NYSEArca–2016–165); and 85094 (February 11, 2019), 84 FR 4579 (February 15, 2019) (SR–NYSEArca–2019–05).

[22] The Exchange defines ''affiliate'' to ''mean any ETP Holder under 75% common ownership or control of that ETP Holder.'' *See* Fee Schedule, NYSE Arca Marketplace: General.

registered as the LMM on the average of the first and last business day of the previous month.

With this proposed rule change, the Exchange proposes that the CADV requirement of less than 100,000 shares, or 0.010% of Consolidated Tape B ADV, which is currently determined on a previous month basis, would instead be determined on a prior calendar quarter basis.

The purpose of the proposed rule change is to encourage LMMs and ETP Holders to enhance the market quality in Tape B securities that are listed and traded on the Exchange and the Exchange believes that amending the benchmark from previous month to prior calendar quarter would serve to stabilize the number of Less Active ETP Securities and provide LMMs more consistency in the number of Less Active ETP Securities in which it is registered as the LMM, and should therefore provide LMMs increased opportunities to earn incremental credits. The Exchange believes the proposal would also encourage competition in Tape B securities quoted and traded on the Exchange. To illustrate, for the billing month of March 2020, the CADV requirement would currently be measured based on February 2020 volume. With this proposed rule change, the CADV requirement would now be measured based on volume from the prior calendar quarter, *i.e.,* October 2019, November 2019 and December 2019.

The Exchange does not know how much order flow LMMs and ETP Holders choose to route to other exchanges or to off-exchange venues. The incremental credits in NYSE Arca-listed securities are available to all LMMs that are registered as the LMM in a security, and to ETP Holders that are affiliated with a LMM. Currently, there are no LMMs that qualify for the $0.0003 per share credit and 2 LMMs that qualify for the $0.0004 per share credit.[23] Without having a view of a LMM's activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in more LMMs sending their orders in NYSE Arca-listed securities to the Exchange to qualify for the existing credits or whether this proposed rule change would result in LMMs to send more of their orders in NYSE Arca-listed securities to the Exchange to qualify for such credits. The Exchange cannot predict with certainty how many LMMs would avail themselves of this opportunity but additional liquidity-providing orders would benefit all market participants because it would provide greater execution opportunities on the Exchange.

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

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[24] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[25] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Fee Change Is Reasonable

As discussed above, the Exchange operates in a highly fragmented and competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [26]

As the Commission itself recognized, the market for trading services in NMS stocks has become ''more fragmented and competitive.'' [27] Indeed, equity trading is currently dispersed across 13 exchanges,[28] numerous alternative trading systems,[29] and broker-dealer internalizers and wholesalers, all competing for order flow. As noted above, no exchange possesses significant pricing power in the execution of equity order flow.

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to fee changes. With respect to non-marketable order which provide liquidity on an Exchange, LMMs and ETP Holders can choose from any one of the 13 currently operating registered exchanges to route such order flow. Accordingly, competitive forces reasonably constrain exchange transaction fees that relate to orders that would provide displayed liquidity on an exchange. Stated otherwise, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

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

Tape B Tier 1

The Exchange believes the proposed amendment to Tape B Tier 1 is reasonable because it would maintain the current threshold in place for an additional three months before increasing levels of activity is implemented to qualify for the Tape B Tier 1 credits. The Exchange believes that keeping the current requirement in place would allow a greater number of ETP Holders to qualify for the pricing tier. The Exchange believes the proposed rule change would continue to incentivize ETP Holders to bring additional order flow to a public exchange, thereby encouraging greater participation and liquidity.

The Exchange notes that volume-based incentives and discounts have been widely adopted by exchanges, including the Exchange, and are reasonable, equitable and not unfairly discriminatory because they are available to all ETP Holders on an equal basis. They also provide additional benefits or discounts that are reasonably related to the value of the Exchange's market quality and associated higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns. Additionally, as noted above, the Exchange operates in a highly competitive market. The Exchange is one of several venues and off-exchange venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. Competing exchanges

[23] As of February 28, 2020, there are 18 registered LMMs on the Exchange that could qualify for the incremental rebates for Less Active ETP Securities, all of whom are affiliated with one or more ETP holders.

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

[25] 15 U.S.C. 78f(b)(4) and (5).

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

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

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

[29] *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.*

offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based on members achieving certain volume thresholds.

Moreover, the Exchange believes the proposed amendment to Tape B Tier 1 is a reasonable means to encourage ETP Holders to increase their liquidity on the Exchange and their participation on NYSE Arca Options. Increased liquidity benefits all investors by deepening the Exchange's liquidity pool, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection.

Routing Fees

The Exchange believes the proposed amendment to the routing fees is reasonable because it seeks to standardize the fee for routing PO Orders to away markets that conduct an opening and closing auction. The Exchange periodically reviews its fees and rebates and determined that it does not currently charge a fee for routing orders to Cboe BZX. The Exchange believes it is reasonable to adopt a fee when it routes orders to away markets. The Exchange also considered the fees charged by its affiliates, NYSE,[30] NYSE Chicago,[31] NYSE National [32] and NYSE American,[33] all of whom have a fee comparable to that proposed by the Exchange. In determining the routing fees, the Exchange considered transaction fees assessed by Nasdaq and Cboe BZX to which the Exchange routes orders for execution on those markets' opening and closing auctions. The Exchange believes that because the proposed fees are comparable to fees charged by the Exchange's affiliates, ETP Holders may choose to continue to send routable orders to the Exchange, thereby directing order flow to be entered on the Exchange. The Exchange believes it is reasonable to increase the fee for orders routed to Nasdaq for execution in that market's opening or closing auction as the proposed fee would be uniform with those charged by the Exchange's affiliates, who similarly charge $0.0030 per share for routing orders to away markets for execution.

As noted above, the Exchange's proposal to charge a fee of $0.0030 per share for orders in securities priced at or above $1.00 that are routed to Nasdaq and Cboe BZX for execution in the opening auction or closing auction on those markets is consistent with fees charged by the Exchange's affiliates NYSE, NYSE Chicago, NYSE National and NYSE American.

Step Up Tier 4

The Exchange believes the proposed rule change to cap the credit applicable to the Step Up Tier 4 credit in Tape B securities is reasonable because the current credit is among the highest paid by the Exchange, and the Exchange believes the level of the current rebate would continue to encourage ETP Holders to submit additional liquidity to a national securities exchange. Submission of additional liquidity to the Exchange would promote price discovery and transparency and enhance order execution opportunities for ETP Holders from the substantial amounts of liquidity present on the Exchange. All ETP Holders would benefit from the greater amounts of liquidity that will be present on the Exchange, which would provide greater execution opportunities.

LMM Credits

The Exchange believes the proposed rule change to amend the requirement to qualify for the incremental LMM credits is reasonable because it is intended to continue to encourage LMMs, and ETP Holders affiliated with such LMMs, to promote price discovery and market quality in Less Active ETP Securities for the benefit of all market participants. The Exchange believes that amending the benchmark from previous month to prior calendar quarter would serve to stabilize the number of Less Active ETP Securities and provide LMMs more consistency in the number of Less Active ETP Securities in which it is registered as the LMM, and should therefore provide LMMs increased opportunities to earn incremental credits. The Exchange believes the proposed amendment to qualify for the current incremental credit for adding liquidity is also reasonable because it would encourage liquidity and competition in all securities quoted and traded on the Exchange. Moreover, the Exchange believes that the proposed change could incentivize LMMs to register as an LMM in Less Active ETP Securities and thus, add more liquidity in all securities, and in particular Tape B securities, to the benefit of all market participants.

Submission of additional liquidity to the Exchange would promote price discovery and transparency and enhance order execution opportunities for LMMs from the substantial amounts of liquidity present on the Exchange. All participants, including LMMs, would benefit from the greater amounts of liquidity that will be present on the Exchange, which would provide greater execution opportunities.

On the backdrop of the competitive environment in which the Exchange currently operates, the proposed rule change is a reasonable attempt to increase liquidity on the Exchange and improve the Exchange's market share relative to its competitors.

The Proposed Fee Change is an Equitable Allocation of Fees and Credits

Tape B Tier 1

The Exchange believes the proposed amendment to Tape B Tier 1 equitably allocates its fees and credits among market participants because it is reasonably related to the value of the Exchange's market quality associated with higher equities and options volume. Additionally, a number of ETP Holders have a reasonable opportunity to satisfy the pricing tier's criteria.[34]

The Exchange does not know how much order flow ETP Holders choose to route to other exchanges or to off-exchange venues. The current pricing tier is available to all ETP Holders that are also OTP Holders or OTP Firms. There are currently 3 ETP Holders that qualify for the Tape B Tier 1 credit and would continue to receive the credit under the pricing tier if they maintain the same level of trading activity for the next three months. And as noted above, there are 54 firms that are both ETP Holders and OTP Holders and a number of such firms could qualify for Tape B Tier 1 credits. Without having a view of an ETP Holder's activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any ETP Holder to increase participation in the Exchange's equities and options markets to qualify for the existing credits. The Exchange cannot predict with certainty how many ETP Holders would avail themselves of this opportunity. The Exchange believes that maintaining the current

[30] *See* New York Stock Exchange Price List, Routing Fee, at *https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf.* NYSE charges a routing fee of $0.0035 per share, except that for member organizations that have adding ADV in Tapes A, B, and C combined that is at least 0.20% of Tapes A, B and C CADV combined, the routing fee is $0.0030 per share.

[31] *See* Fee Schedule of NYSE Chicago, Inc., Section E.1., Routing Fee, at *https://www.nyse.com/publicdocs/nyse/NYSE_Chicago_Fee_Schedule.pdf.*

[32] *See* NYSE National Schedule of Fees and Rebates, Section II, Routing Fees, at *https://www.nyse.com/publicdocs/nyse/regulation/nyse/NYSE_National_Schedule_of_Fees.pdf.*

[33] *See* NYSE American Equities Price List, Section III, Fees for Routing for all ETP Holders, at *https://www.nyse.com/publicdocs/nyse/markets/nyseamerican/NYSE_America_Equities_Price_List.pdf.*

[34] There are currently 54 firms that are both ETP Holders and OTP Holders.

requirement for an additional three months could provide an incentive for other ETP Holders to submit additional liquidity on the Exchange and on NYSE Arca Options to qualify for the rebate. To the extent an ETP Holder participates on the Exchange but not on NYSE Arca Options, the Exchange believes that the proposal is still reasonable, equitable and not unfairly discriminatory with respect to such ETP Holder based on the overall benefit to the Exchange resulting from the success of NYSE Arca Options. In particular, such success would allow the Exchange to continue to provide and potentially expand its existing incentive programs to the benefit of all participants on the Exchange, whether they participate on NYSE Arca Options or not.

Routing Fees

The Exchange believes that the proposed rule change constitutes an equitable allocation of reasonable fees because the proposed fee is designed to reflect the costs incurred by the Exchange for orders submitted by ETP Holders that remove liquidity from auctions conducted on away markets and would apply equally to all ETP Holders that choose to use the Exchange to route PO Orders to Nasdaq and Cboe BZX. Furthermore, the Exchange notes that routing through the Exchange is voluntary, and, because the Exchange operates in a highly competitive environment as discussed below, ETP Holders that do not favor the Exchange's pricing can readily direct order flow directly to Nasdaq or Cboe BZX or through competing venues or providers of routing services. The proposed change may impact the submission of orders to a national securities exchange, and to the extent that ETP Holders continue to submit PO Orders to the Exchange, the proposed rule change would not have a negative impact to ETP Holders trading on the Exchange because the proposed fee would be in line with the routing fee charged by the Exchange's affiliates. However, without having a view of ETP Holder's activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in a change in trading behavior by ETP Holders.

Step Up Tier 4

The Exchange believes the proposed amendment to Step Up Tier 4 equitably allocates its fees and credits among market participants because it is reasonably related to the value of the Exchange's market quality associated with higher equities volume. First, the Exchange is not proposing to adjust the amount of the Step Up Tier 4 credits, which will remain at the current level for all ETP Holders. Rather, the proposal caps an already high level of the credit paid for displayed liquidity in Tape B securities and is similar to the cap currently in place for Tape C securities that provide displayed liquidity. The Exchange believes the current level of credit would continue to encourage ETP Holders to send orders that add liquidity to the Exchange, thereby contributing to robust levels of liquidity, which benefit all market participants.

LMM Credits

The Exchange believes the proposed rule change to amend the benchmark threshold to qualify for the incremental LMM credits is equitable because it provides discounts that are reasonably related to the value to the Exchange's market quality associated with higher volumes. The Exchange further believes that amending the benchmark from previous month to prior calendar quarter would serve to stabilize the number of Less Active ETP Securities and provide LMMs more consistency in the number of Less Active ETP Securities in which it is registered as the LMM, and should therefore provide LMMs increased opportunities to earn incremental credits.

The Proposed Fee Change Is Not Unfairly Discriminatory

The Exchange believes that the proposed rule change is not unfairly discriminatory. In the prevailing competitive environment, LMMs and ETP Holders are free to disfavor the Exchange's pricing if they believe that alternatives offer them better value.

Tape B Tier 1

The Exchange believes it is not unfairly discriminatory to extend the current CADV requirement for an additional three months for ETP Holders to qualify for per share credits, as the proposed change would be applied on an equal basis to all ETP Holders. Further, the Exchange believes that maintaining the current requirement for an additional period of time could provide an incentive for other ETP Holders to submit additional liquidity on the Exchange and on NYSE Arca Options to qualify for the rebate. The Exchange also believes that the proposed change is not unfairly discriminatory because it is reasonably related to the value to the Exchange's market quality associated with higher volume.

The proposal to maintain the CADV requirement at current levels to qualify for the Tape B Tier 1 credit neither targets nor will it have a disparate impact on any particular category of market participant. The proposal does not permit unfair discrimination because the amended threshold would be applied to all similarly situated ETP Holders, who would all be eligible for the same credit on an equal basis. Accordingly, no ETP Holder already operating on the Exchange would be disadvantaged by this allocation of fees.

Routing Fees

The proposal to amend the routing fee for PO Orders routed to Nasdaq and adopting routing fees for PO Orders routed to Cboe BZX for execution in each market's opening or closing auction is not unfairly discriminatory because the fee would be applied on an equal basis to all ETP Holders that choose to send PO Orders to the Exchange. Additionally, the proposed rule change neither targets nor will it have a disparate impact on any particular category of market participant. The proposal does not permit unfair discrimination because the proposed fees would be applied to all ETP Holders, who would all be charged the same fee on an equal basis. Accordingly, no ETP Holder already operating on the Exchange would be disadvantaged by this allocation of fees.

Step Up Tier 4

The Exchange believes it is not unfairly discriminatory to cap the credit payable under Step Up Tier 4 for providing displayed liquidity in Tape B securities because the proposed cap would be applied on an equal basis to all ETP Holders, who would all be subject to the proposed cap on an equal basis. Additionally, the proposal neither targets nor will it have a disparate impact on any particular category of market participant. The proposal does not permit unfair discrimination because the proposed cap would be applied to all ETP Holders, who would all be subject to the proposed cap on an equal basis. Accordingly, no ETP Holder already operating on the Exchange would be disadvantaged by this allocation of fees.

LMM Credits

The Exchange believes it is not unfairly discriminatory to amend the benchmark threshold to qualify for the incremental LMM credits, as the amended requirements would apply on an equal basis to all LMMs. Further, the Exchange believes that amending the benchmark from previous month to prior calendar quarter would serve to stabilize the number of Less Active ETP Securities and provide LMMs more

consistency in the number of Less Active ETP Securities in which it is registered as the LMM, and should therefore incentivize LMMs to send more orders to the Exchange resulting in increased opportunities to earn incremental credits. The Exchange also believes that the proposed change is not unfairly discriminatory because it is reasonably related to the value to the Exchange's market quality associated with higher volume.

The proposal to amend the benchmark threshold to qualify for the incremental rebates neither targets nor will it have a disparate impact on any particular category of market participant. The proposal does not permit unfair discrimination because the proposed threshold would be applied to all similarly situated LMMs, who would all be eligible for the same credit on an equal basis. Accordingly, no LMM already operating on the Exchange would be disadvantaged by this allocation of fees.

Finally, the submission of orders to the Exchange is optional for LMMs and ETP Holders in that they could choose whether to submit orders to the Exchange and, if they do, the extent of its activity in this regard. The Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

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

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

In accordance with Section 6(b)(8) of the Act,[35] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for LMMs and ETP Holders. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [36]

Intramarket Competition. The proposed change is designed to attract additional order flow to the Exchange. The Exchange believes that the proposed amendment to the volume requirement under Tape B Tier 1 and the proposed cap to the credit payable under Step Up Tier 4 would continue to incentivize market participants to direct providing displayed order flow to the Exchange. Further, as noted above, the Exchange would uniformly assess the routing fee on all ETP Holders who choose to route orders through the Exchange to Nasdaq or Cboe BZX for execution in an auction conducted on those markets. Finally, the Exchange believes that the amended benchmark to qualify for the incremental credit applicable to LMMs, and ETP Holders affiliated with such LMMs, would continue to incentivize market participants to direct their displayed order flow to the Exchange. Greater liquidity benefits all market participants on the Exchange by providing more trading opportunities and encourages LMMs, to send orders to the Exchange, thereby contributing to robust levels of liquidity, which benefits all market participants. The proposed rule change would be applicable to all similarly-situated market participants, and, as such, the proposed change would not impose a disparate burden on competition among market participants 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 current market share of intraday trading (*i.e.,* excluding auctions) is less than 12%. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with off-exchange venues. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition.

The Exchange believes that the proposed change could promote competition between the Exchange and other execution venues, including those that currently offer similar order types and comparable transaction pricing, by encouraging additional orders to be sent to the Exchange for execution.

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

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

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

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [37] of the Act and subparagraph (f)(2) of Rule 19b–4 [38] 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) [39] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2020–21 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2020–21. 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/*

[35] 15 U.S.C. 78f(b)(8).

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

[37] 15 U.S.C. 78s(b)(3)(A).

[38] 17 CFR 240.19b–4(f)(2).

[39] 15 U.S.C. 78s(b)(2)(B).

rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2020–21, and should be submitted on or before April 16, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[40]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–06298 Filed 3–25–20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88434; File No. SR–ISE–2020–10]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Complex Orders

March 20, 2020.

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 March 9, 2020, Nasdaq ISE, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''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

The Exchange proposes to amend Options 3, Section 7, ''Types of Orders,'' and Options 3, Section 14, ''Complex Orders'' to permit the Exchange to determine the availability of order types and time-in-force provisions and to add other existing order types to the list of single-leg and Complex Order types.

The text of the proposed rule change is available on the Exchange's website at *http://ise.cchwallstreet.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 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 Exchange proposes to amend Options 3, Section 7, ''Types of Orders,'' and Options 3, Section 14, ''Complex Orders'' to: (1) Provide that the Exchange may determine which order types and times-in-force provisions are available on a class or system basis; and (2) to add other existing order types to the list of single-leg and Complex Order types.

The Exchange proposes to add a sentence to Options 3, Section 14, Complex Orders, which states, ''The Exchange may determine to make certain order types and/or times-in-force available on a class or System basis.'' This sentence exists today within Nasdaq ISE, LLC (''ISE'') Options 3, Section 7, ''Types of Orders.'' [3] This proposed change is based on the rules of ISE Options 3, Section 7 and the rules of Cboe BZX Exchange, Inc. (''BZX Options''),[4] Rule 21.1, Cboe EDGX Exchange, Inc. (''EDGX Options'') Rule 21.1(d),[5] Cboe Exchange, Inc. (''Cboe'') Rule 5.6(a) [6] and Cboe C2 Exchange, Inc. (''C2'') Rule 6.10(a).[7]

The purpose of this rule change is to provide the Exchange with appropriate flexibility to address different trading characteristics, market models, and the investor base of each class, as well as to handle any System issues that may arise and require the Exchange to temporarily not accept certain order types. This rule is consistent with BZX Options Rule 21.1(d) and (f), EDGX Options Rules 21.1(d) and (f), Cboe Rule 5.6(a) and C2 Rule 6.10(a), each of which provides these exchanges with substantially the

[40] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 88294 (February 26, 2020), 85 FR 12629 (March 3, 2020) (SR–ISE–2020–07).

[4] BZX Options Rule 21.1(d), Definitions, provides ''The term 'Order Type' shall mean the unique processing prescribed for designated orders, subject to the restrictions set forth in paragraph (l) below with respect to orders and bulk messages submitted through bulk ports, that are eligible for entry into the System. Unless otherwise specified in the Rules or the context indicates otherwise, the Exchange determines which of the following Order Types are available on a class or system basis.'' BZX Options Rule 21.1(f), Definitions, provides ''The term 'Time in Force' shall mean the period of time that the System will hold an order, subject to the restrictions set forth in paragraph (l) below with respect to bulk messages submitted through bulk ports, for potential execution. Unless otherwise specified in the Rules or the context indicates otherwise, the Exchange determines which of the following Times-in-Force are available on a class or system basis.''

[5] EDGX Options Rule 21.1(d), Definitions, provides, ''The term 'Order Type' shall mean the unique processing prescribed for designated orders, subject to the restrictions set forth in paragraph (j) below with respect to orders and bulk messages submitted through bulk ports, that are eligible for entry into the System. Unless otherwise specified in the Rules or the context indicates otherwise, the Exchange determines which of the following Order Types are available on a class, system, or trading session basis. Rule 21.20 sets forth the Order Types the Exchange may make available for complex orders.'' EDGX Options Rule 21.1(f), Definitions, provides, ''The term 'Time in Force' means the period of time that the System will hold an order, subject to the restrictions set forth in paragraph (j) below with respect to bulk messages submitted through bulk ports, for potential execution. Unless otherwise specified in the Rules or the context indicates otherwise, the Exchange determines which of the following Times-in-Force are available on a class, system, or trading session basis. Rule 21.20 sets forth the Times-in-Force the Exchange may make available for complex orders.''

[6] Cboe Rule 5.6, Order Types, Order Instructions, and Times-in-Force at subsection (a), Availability, provides, ''Unless otherwise specified in the Rules or the context indicates otherwise, the Exchange determines which of the following order types, Order Instructions, and Times-in-Force are available on a class, system, or trading session basis.''

[7] C2 Rule 6.10, Availability of Orders, at subsection (a) provides, ''*Availability.* Unless otherwise specified in the Rules or the context indicates otherwise, the Exchange determines which of the following order types, Order Instructions, and Times-in-Force are available on a class, system, or trading session basis. Rule 6.13 sets forth the order types, Order Instructions, and Times-in-Force the Exchange may make available for complex orders.''