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SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-86121; File No. SR-NYSEArca-2019-42]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the NYSE Arca Equities Fees and Charges
June 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 June 3, 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 modify the per share credit associated with the Retail Order Step-Up Tier 2. The Exchange proposes to implement the fee change effective June 3, 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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 currently provides credits to ETP Holders, including Market Makers, who enter Retail Orders⁴ on the Exchange.⁵ The Exchange has multiple levels of such credits that are based on an ETP Holder's⁶ trading volume of Retail Orders on the Exchange. The Exchange proposes to amend the Fee Schedule to decrease the per share credit under the Retail Order Step-Up Tier 2 for displayed liquidity in Retail Orders. The Exchange proposes to implement the fee change effective June 3, 2019.

Background

The Exchange operates in a highly competitive environment. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining

⁴ A Retail Order is an agency order or a riskless principal order that meets the criteria of Financial Industry Regulatory Authority, Inc. Rule 5320.03 that originates from a natural person and is submitted to the Exchange by a Retail Member Organization ("RMO"), provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. See Securities Exchange Act Release No. 74947 (May 13, 2015), 80 FR 28735 (May 19, 2015) (SR-NYSEArca-2015-39). RMO is defined in Rule 7.44-E(a)(2) as an ETP Holder that is approved by the Exchange to submit Retail Orders. This reference to Retail Orders in the Retail Order Step-Up Tier 2 qualifications means orders that are not executed in the Retail Liquidity Program.

⁵ See Retail Order Tier, Retail Order Step-Up Tier 1 and Retail Order Step-Up Tier 2 on the Fee Schedule at https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf.

⁶ All references to ETP Holders in connection with the Retail Order Step-Up Tiers include Market Makers.

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.”⁷

As the Commission itself recognized, the market for trading services in NMS stocks has become “more fragmented and competitive.”⁸ Indeed, equity trading is currently dispersed across 13 exchanges,⁹ 32 alternative trading systems,¹⁰ and numerous broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange has more than 18% market share (whether including or excluding auction volume).¹¹ Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, in the first quarter of 2019, the Exchange averaged less than 9% market share of executed volume of equity trades.¹² The Exchange believes that the ever-

⁷ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005)

⁸ See Securities Exchange Act Release No. 51808, 84 FR 5202, 5253 (February 20, 2019) (File No. S7-05-18) (Transaction Fee Pilot for NMS Stocks Final Rule) (“Transaction Fee Pilot”).

⁹ See Cboe U.S Equities Market Volume Summary at https://markets.cboe.com/us/equities/market_share

¹⁰ See FINRA ATS Transparency Data (May 6, 2019), *available at* <https://otctransparency.finra.org/otctransparency/AtsIssueData>. Although 54 alternative trading systems were registered with the Commission as of April 30, 2019, only 32 are currently trading. A list of alternative trading systems registered with the Commission is *available at* <https://www.sec.gov/foia/docs/atslist.htm>.

¹¹ See Cboe Global Markets U.S. Equities Market Volume Summary (May 31, 2019), *available at* http://markets.cboe.com/us/equities/market_share/.

¹² Based on Cboe U.S. Equities Market Volume Summary, the Exchange’s market share of intraday trading (excluding auctions) for the months of January 2019, February 2019 and March 2019 was 9.01%, 8.33% and 9.02%, respectively.

shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to fee changes.

The competition for Retail Order flow is even more stark, particularly as it relates to exchange versus off-exchange venues. For example, the Exchange examined Rule 606 disclosures from three prominent retail brokerages: E-Trade, TD Ameritrade and Charles Schwab. For securities listed on the New York Stock Exchange LLC in the first quarter of 2019, TD Ameritrade routed 80% of its limit orders to off-exchange venues.¹³ Similarly, E-Trade Financial and Charles Schwab routed more than 77% and more than 90%,¹⁴ respectively, of its limit orders to off-exchange venues.

The Exchange thus needs to compete in the first instance with non-exchange venues for Retail Order flow, and with the 12 other exchange venues for that Retail Order flow that is not directed off-exchange. This competition is particularly acute for non-marketable Retail Orders, i.e., Retail Orders that provide liquidity, and even more fiercely for non-marketable Retail Orders that provide *displayed* liquidity on an exchange. Accordingly, competitive forces compel the Exchange to use exchange transaction fees and credits, particularly as they relate to competing for Retail Order flow, because market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

To respond to this competitive environment, the Exchange has established Retail Order Step-Up tiers, which are designed to provide an incentive for ETP Holders to route Retail Orders that provide displayed liquidity to the Exchange by providing higher credits correlated to an ETP

¹³ See https://www.tdameritrade.com/retail-en_us/resources/pdf/AMTD2054.pdf

¹⁴ See <https://content.etrade.com/etrade/powerpage/pdf/OrderRouting11AC6.pdf>. See also https://www.schwab.com/public/schwab/nn/legal_compliance/important_notices/order_routing.html.

Holder's higher trading volume in Retail Orders on the Exchange. Specifically, to qualify for the Retail Order Step-Up Tier 2, an ETP Holder must:

- (1) submit an average daily share volume per month of resting limit orders (i.e., provide liquidity) in an amount equal to or greater than 1.10% or more of US CADV,¹⁵ and
- (2) execute during the month, Retail Orders with a time-in-force of Day that is an increase of 0.35% or more of the US CADV from the ETP Holder's April 2018 ADV, taken as a percentage of US CADV.

Currently, if an ETP Holder meets the Retail Order Step-Up Tier 2 qualifications, such ETP Holder is eligible to earn a credit of \$0.0038 per share for Retail Orders in Tape A, Tape B and Tape C Securities that provide displayed liquidity to the Book.

Proposed Rule Change

The Exchange proposes to reduce the credit that would be paid to an ETP Holder that qualifies for the Retail Order Step-Up Tier 2 to \$0.0035. To date, only one ETP Holder has qualified for the Retail Order Step-Up Tier 2 rates. The proposed change would reduce the differences in credits available to Retail Orders that provide displayed liquidity on the Exchange from ETP Holders qualifying for this tier versus the credits available to Retail Orders that provide displayed liquidity on the Exchange from other ETP Holders. The Exchange believes that by lowering the credit available under this tier, it would be more closely align with the credits available for other Retail Orders that provide liquidity on the Exchange.

¹⁵ US CADV means 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.

With this proposed change, the following credits would be available to ETP Holders that provide liquidity in Retail Orders.¹⁶

<i>Tier</i>	<i>Credit for Providing Liquidity</i>
Basic Rate	\$0.0030 (all Tapes)
Retail Order Tier	\$0.0033 (all Tapes)
Retail Order Step-Up Tier 1	\$0.0033 (all Tapes)
Retail Order Step-Up Tier 2	\$0.0035 (all Tapes) (displayed liquidity)

As noted above, under the Retail Order Step-Up Tier 1, an ETP Holder that meets the applicable qualifications is eligible for a credit of \$0.0033 per share for Retail Orders that provide liquidity to the Book. The Exchange believes that the continued difference in per share credit that would be available under the Retail Order Step-Up Tier 2 (\$0.0035) as compared to both the Retail Order Tier (\$0.0033) and the Retail Order Step-Up Tier 1 (\$0.0033) would continue to promote the display of a greater number of Retail Orders 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,¹⁷ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,¹⁸ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other

¹⁶ The Exchange's Fee Schedule is available here: https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf.

¹⁷ 15 U.S.C. 78f(b).

¹⁸ 15 U.S.C. 78f(b)(4) and (5).

charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed rule change provides for the equitable allocation of reasonable dues and fees and is not unfairly discriminatory for the following reasons.

As noted above, the Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. 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.”¹⁹

As the Commission itself recognized, the market for trading services in NMS stocks has become “more fragmented and competitive.”²⁰ Indeed, equity trading is currently dispersed across 13 exchanges,²¹ 32 alternative trading systems,²² and numerous broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange has more than 18% market share (whether including or excluding auction

¹⁹ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005)

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

²¹ See Cboe U.S Equities Market Volume Summary at https://markets.cboe.com/us/equities/market_share

²² See FINRA ATS Transparency Data (May 6, 2019), *available at* <https://otctransparency.finra.org/otctransparency/AtsIssueData>. Although 54 alternative trading systems were registered with the Commission as of April 30, 2019, only 32 are currently trading. A list of alternative trading systems registered with the Commission is *available at* <https://www.sec.gov/foia/docs/atslist.htm>.

volume).²³ Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, in the first quarter of 2019, the Exchange averaged less than 9% market share of executed volume of equity trades (excluding auction volume).²⁴

As noted above, the competition for Retail Order flow is stark given the amount of retail limit orders that are routed to non-exchange venues. 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. This competition is particularly acute for non-marketable, or limit, retail orders, i.e., retail orders that can provide liquidity on an exchange. That competition is even more fierce for retail limit orders that provide *displayed* liquidity on an exchange. Accordingly, competitive forces constrain exchange transaction fees, particularly as they relate to competing for retail orders.

The Exchange believes that the proposed change is reasonable because the new, lower credit under the Retail Order Step-Up Tier 2 would continue to encourage ETP Holders to send Retail Orders to the Exchange to qualify for the pricing tier. As noted above, the Exchange operates in a highly competitive environment, particularly for attracting Retail Order flow that provides displayed liquidity on an exchange. The Exchange believes it is reasonable to continue to provide a higher credit for Retail Orders that provide displayed liquidity if an ETP Holder meets the qualifications for the Retail Order Step-Up Tier 2.

²³ See Cboe Global Markets U.S. Equities Market Volume Summary (May 31, 2019), available at http://markets.cboe.com/us/equities/market_share/.

²⁴ Based on Cboe U.S. Equities Market Volume Summary, the Exchange's market share of intraday trading (excluding auctions) for the months of January 2019, February 2019 and March 2019 was 9.01%, 8.33% and 9.02%, respectively.

The Exchange further believes it is an equitable allocation of reasonable fees to reduce the credit that would be available under the Retail Order Step-Up Tier 2 because it would reduce the difference in credits available for Retail Orders that provide liquidity, while still providing an increased credit to provide an incentive for ETP Holders to route *displayed* liquidity to the Exchange.

Further, given the competitive market for attracting Retail Order flow, the Exchange notes that with this proposed rule change, the Exchange's pricing for Retail Orders would be comparable to credits currently in place on other exchanges that the Exchange competes with for order flow. For example, the Nasdaq Stock Market LLC ("Nasdaq") provides its members with a credit of \$0.0033 per share if such member has an 85% add to total volume (adding liquidity and removing liquidity) ratio during a billing month.²⁵ Cboe BZX Exchange, Inc. ("BZX") provides its members with a credit of \$0.0032 per share for retail orders that add liquidity to that market.²⁶ Also, until recently, the Exchange's current credit of \$0.0038 per share was comparable to the Retail Volume Tier that was in place on Cboe EDGX Exchange, Inc. ("EDGX"), which provided members of that exchange a credit of \$0.0037 per share. EDGX recently eliminated the Retail Volume Tier.²⁷ This proposed rule change is a competitive response to the EDGX filing, and lowers the credit by 9% from the current level.

The Exchange believes the proposed change is also reasonable because it is designed to attract higher volumes of Retail Orders transacted on the Exchange by ETP Holders which would

²⁵ See Nasdaq Price List, Rebate to Add Displayed Designated Retail Liquidity, at <http://nasdaqtrader.com/Trader.aspx?id=PriceListTrading2>.

²⁶ See BZX Fee Schedule, Fee Codes and Associated Fees, at https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/.

²⁷ See Securities Exchange Act Release No. 85852 (May 14, 2019), 84 FR 22919 (May 20, 2019) (SR-CboeEDGX-2019-030).

benefit all market participants by offering greater price discovery, increased transparency, and an increased opportunity to trade on the Exchange.

The Exchange believes that the proposed change is equitable and not unfairly discriminatory because it would apply to all ETP Holders on an equal and non-discriminatory basis. The Exchange further believes that the proposed change is equitable and not unfairly discriminatory because it is reasonably related to the value to the Exchange's market quality associated with higher volume in Retail Orders. The Exchange notes that currently 12 firms submit Retail Orders that add liquidity on the Exchange and of those 12 firms, just one qualifies for the Retail Order Step-Up Tier 2 when one or more of the other 11 firms could achieve the tier and qualify for the same credits and fees if those firms directed more of their Retail Orders to the Exchange.

Further, the Exchange notes that, with this proposed rule change, the difference between the highest credit provided for Retail Orders, \$0.0035 per share, and the credit for Retail Orders that do not qualify for any of the Retail Order pricing tiers, \$0.0030 per share, is \$0.0005, or 15%, which the Exchange believes is small given the requirements that ETP Holders are required to meet to qualify for the higher credit. Similarly, with this proposed rule change, the difference in the highest credit for Retail Orders, \$0.0035 per share, and the credit provided for Retail Orders to those ETP Holders qualifying for the Retail Order Tier or Retail Order Step-Up Tier 1, \$0.0033 per share, would only be \$0.0002 per share, or 6%. Therefore, the Exchange believes the proposed change to the Retail Order Step-Up Tier 2 pricing tier is equitable and not unfairly discriminatory because it is available to all ETP Holders on an equal basis and provides discounts that are reasonably related to the value to the Exchange's market quality associated with higher volumes. In today's competitive marketplace, order flow providers have a choice of

where to direct liquidity-providing order flow, and while only one ETP Holder has qualified to date for these rates, the Exchange believes there are additional ETP Holders that could qualify if they chose to direct their order flow to the Exchange.

The Exchange believes that recalibrating the credits for providing liquidity will continue to attract order flow and liquidity to the Exchange, thereby contributing to price discovery on the Exchange and benefiting investors generally.

The Exchange believes that the proposed rule change is equitable and not unfairly discriminatory because maintaining or increasing the proportion of Retail Orders in exchange-listed securities that are executed on a registered national securities exchange (rather than relying on certain available off-exchange execution methods) would contribute to investors' confidence in the fairness of their transactions and would benefit all investors by deepening the Exchange's liquidity pool, supporting the quality of price discovery, promoting market transparency and improving investor protection. This aspect of the proposed rule change also is consistent with the Act because all similarly situated ETP Holders would pay the same rate, as is currently the case, and because all ETP Holders, would be eligible to qualify for the rates by satisfying the related threshold, where applicable. Furthermore, the submission of Retail Orders is optional for ETP Holders in that they could choose whether to submit Retail Orders and, if they do, the extent of its activity in this regard.

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,²⁸ 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 change would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for ETP Holders. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."²⁹

Intramarket Competition. The proposed change is designed to attract additional order flow to the Exchange. The Exchange believes that the proposed reduced credit would continue to incentivize market participants to submit orders that qualify as Retail Orders to the Exchange. Greater liquidity benefits all market participants on the Exchange by providing more trading opportunities and encourages ETP Holders to send orders, thereby contributing to robust levels of liquidity, which benefits all market participants. The proposed credits would be available 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. The

²⁸ 15 U.S.C. 78f(b)(8).

²⁹ Securities Exchange Act Release No. 51808, 70 FR 37495, 37498-99 (June 29, 2005) (S7-10-04) (Final Rule).

Exchange notes that for the months of January 2019, February 2019 and March 2019, the Exchange's market share of intraday trading (excluding auctions) was 9.01%, 8.33% and 9.02%, respectively.³⁰ 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 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)³¹ of the Act and subparagraph (f)(2) of Rule 19b-4³² 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

³⁰ See note 12, *supra*.

³¹ 15 U.S.C. 78s(b)(3)(A).

³² 17 CFR 240.19b-4(f)(2).

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)³³ 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 e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2019-42 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-2019-42. This file number should be included on the subject line if e-mail 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

³³ 15 U.S.C. 78s(b)(2)(B).

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-2019-42 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁴

Vanessa A. Countryman,
Acting

Secretary.

³⁴ 17 CFR 200.30-3(a)(12).

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