



8011-01

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85126; File No. SR-NYSENAT-2019-01]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Its Schedule of Fees and Rebates to Revise the Requirements to Qualify for the Adding Tier 2 Credits

February 13, 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 January 31, 2019, NYSE National, Inc. (the “Exchange” or “NYSE National”) 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 revise the requirements to qualify for the Adding Tier 2 credits. The Exchange proposes to implement the rule change on February 1, 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.

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 revise the requirements to qualify for the Adding Tier 2 credits.

The Exchange proposes to implement the rule change on February 1, 2019.

Proposed Rule Change

Currently, under 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 at least 5% of the NBBO⁴ in 1,000 or more symbols on an average daily basis, calculated monthly, and execute [sic] 0.25% or more Adding average daily volume ("ADV") as a percentage of US consolidated ADV ("CADV"):

⁴ To satisfy the 5% requirement, ETP Holders must maintain a bid or an offer at the NBB or the NBO for at least 5% of the trading day in round lots in a security for that security to count toward the tier requirement. The terms "NBB," "NBO," "NBBO," and "BBO" are defined in NYSE National Rule 1.1.

- \$0.0005 per share for adding displayed orders;
- \$0.0005 per share for orders that set a new Exchange BBO;⁵
- \$0.0007 per share for adding non-displayed orders; and
- \$0.0005 per share for adding MPL orders.

The Exchange proposes to revise the requirements for the Adding Tier 2 fees.

Specifically, the Exchange proposes that the requirement for ETP Holders to execute 0.25% or more ADV as a percentage of US CADV be lowered to 0.20%. The other requirements for qualifying for Adding Tier 2 as well as the applicable fees would remain unchanged.

For example, in a given month of 20 trading days, if an ETP Holder quotes at least 5% of the NBBO in 3,000 securities each day for the first 10 days and quotes at least 5% of the NBBO in 2,400 securities each day for the last 10 days, the ETP Holder would have 2,700 securities on an average daily basis that meet the 5% NBBO requirement for the billing month. If that same ETP holder executes at least 15 million shares Adding ADV in that same month where US CADV is 7.5 billion shares, or 0.20% as a percentage of US CADV, the qualifications for Adding Tier 2 would be met.

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

⁵ 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.

the Act,⁶ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁷ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that requiring ETP Holders to execute 0.20% or more Adding average daily volume as a percentage of US CADV in addition to quoting at least 5% of the NBBO in 1,000 or more symbols on an average daily basis, calculated monthly, in order to qualify for the Adding Tier 2 fees is reasonable, equitable and not unfairly discriminatory because it would encourage additional liquidity on the Exchange and because ETP Holders benefit from the greater amounts of liquidity that will be present on the Exchange. The Exchange believes the proposed change is equitable and not unfairly discriminatory because it would continue to encourage ETP Holders to send orders, thereby contributing to robust levels of liquidity, which benefits all market participants. The proposed changes will encourage the submission of additional liquidity to a national securities exchange, thereby promoting price discovery and transparency and enhancing order execution opportunities for ETP Holders from the substantial amounts of liquidity that are present on the Exchange. Moreover, the proposed changes are equitable and not unfairly discriminatory because they would apply equally to all qualifying ETP Holders that add liquidity to the Exchange and quote at the NBBO.

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.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4) & (5).

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

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

⁸ 15 U.S.C. 78f(b)(8).

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)⁹ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁰ 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)¹¹ 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-NYSENAT-

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(2).

¹¹ 15 U.S.C. 78s(b)(2)(B).

2019-01 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-2019-01. 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 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-NYSENAT-2019-01 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.¹²

Eduardo A. Aleman,

Deputy Secretary.

¹² 17 CFR 200.30-3(a)(12).

