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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90668; File No. SR-NYSEARCA-2020-107]

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

December 15, 2020.

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 December 3, 2020, 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 adjust the credits applicable to a step up tier for ETP Holders adding liquidity in Round Lots and Odd Lots in Tapes A, B and C securities with a per share price below \$1.00. The Exchange proposes to implement the fee changes effective December 3, 2020. 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

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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

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

1. Purpose

The Exchange proposes to amend the Fee Schedule to adjust the credits applicable to a step up tier for ETP Holders⁴ adding liquidity in Round Lots and Odd Lots in Tapes A, B and C securities with a per share price below \$1.00.

The proposed changes are intended to address an inadvertent mistake regarding the level of credits applicable to the step up tier adopted by the Exchange in August 2020.⁵

The Exchange proposes to implement the fee changes effective December 3, 2020.

Background

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. 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

⁴ All references to ETP Holders in connection with this proposed fee change include Market Makers.

⁵ See Securities Exchange Act Release No. 89607 (August 18, 2020), 85 FR 52179 (August 24, 2020) (SR-NYSEArca-2020-75).

most important to investors and listed companies.”⁶

While Regulation NMS has enhanced competition, it has also fostered a “fragmented” market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that “such competition can lead to the fragmentation of order flow in that stock.”⁷ Indeed, equity trading is currently dispersed across 16 exchanges,⁸ numerous alternative trading systems,⁹ and broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange currently has more than 18% market share.¹⁰ Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, the Exchange currently has less than 10% market share of executed volume of equities trading.¹¹

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

⁶ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (File No. S7-10-04) (Final Rule) (“Regulation NMS”).

⁷ See Securities Exchange Act Release No. 61358, 75 FR 3594, 3597 (January 21, 2010) (File No. S7-02-10) (Concept Release on Equity Market Structure).

⁸ See Cboe Global Markets, 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>.

⁹ 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/atlist.htm>.

¹⁰ See Cboe Global Markets, U.S. Equities Market Volume Summary, available at http://markets.cboe.com/us/equities/market_share/.

¹¹ See *id.*

which a firm routes order flow. With respect to non-marketable order flow that would provide liquidity on an Exchange against which market makers can quote, ETP Holders can choose from any one of the 16 currently operating registered exchanges to route such order flow. Accordingly, competitive forces constrain exchange transaction fees that relate to orders that would provide liquidity on an exchange.

In response to the competitive environment described above, the Exchange has established incentives for ETP Holders who submit orders that provide liquidity on the Exchange. The proposed fee change is designed to attract additional order flow to the Exchange by offering increased credits for executing Round Lots and Odd Lots in Tapes A, B and C securities with a share price of less than \$1.00 (“Sub-Dollar Securities”).

Proposed Rule Change

The Exchange’s Fee Schedule currently provides for tiered credits to ETP Holders adding liquidity in Sub-Dollar Securities. Specifically, ETP Holders who have an Adding ADV of 1 million shares with a per share price below \$1.00 (“Sub-Dollar Adding Orders”), and who directly execute providing volume in Sub-Dollar Adding Orders equal to at least 0.20% of the US Consolidated ADV (“CADV”)¹² with a per share price below \$1.00 (“Sub-Dollar CADV”) over the ETP Holder’s July 2020 Sub-Dollar Adding ADV taken as a percentage of Sub Dollar CADV (“Sub-Dollar Baseline”), receive a credit for orders that provide liquidity to the Book in Sub-Dollar Adding Orders, as follows:

- 0.0005% of the total dollar value for an increase of at least 0.20% more but less than 0.50% of Sub-Dollar CADV over the Sub-Dollar Baseline;

¹² 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.

- 0.0010% of the total dollar value for an increase of at least 0.50% more but less than 0.75% of Sub-Dollar CADV over the Sub-Dollar Baseline;
- 0.00125% of the total dollar value for an increase of at least 0.75% more but less than 1.0% of Sub-Dollar CADV over the Sub-Dollar Baseline; and
- 0.0015% of the total dollar value for an increase of at least 1.0% more of Sub-Dollar CADV over the Sub-Dollar Baseline.

When the Exchange originally filed in August 2020 to adopt the step up tier for Sub-Dollar Securities, it inadvertently included two additional zeroes in the level of the credit. With this proposed rule change, the Exchange proposes to adjust the level of each of the above credits on the Exchange's Fee Schedule to the following:

- 0.05% of the total dollar value for an increase of at least 0.20% more but less than 0.50% of Sub-Dollar CADV over the Sub-Dollar Baseline;
- 0.10% of the total dollar value for an increase of at least 0.50% more but less than 0.75% of Sub-Dollar CADV over the Sub-Dollar Baseline;
- 0.125% of the total dollar value for an increase of at least 0.75% more but less than 1.0% of Sub-Dollar CADV over the Sub-Dollar Baseline; and
- 0.15% of the total dollar value for an increase of at least 1.0% more of Sub-Dollar CADV over the Sub-Dollar Baseline.

The Exchange believes these levels of credit for Sub-Dollar Securities will continue to incentivize ETP Holders to increase the liquidity-providing orders in Sub-Dollar Securities they send to the Exchange, and would support the quality of price discovery on the Exchange while also providing additional liquidity for incoming orders. The credits offered by the Exchange for adding liquidity in Sub-Dollar Securities are intended to increase order flow that would interact with liquidity present on the Exchange.

As noted above, the Exchange operates in a competitive environment, particularly

as it relates to attracting non-marketable orders, which add liquidity to the Exchange. Because the step up tier requires an ETP Holder to increase the volume of its trades in orders that add liquidity over that ETP Holder's July 2020 baseline, the Exchange believes that these credits provide an added incentive for all ETP Holders to send additional liquidity to the Exchange.

The Exchange does not know how much order flow ETP Holders choose to route to other exchanges or to off-exchange venues. The Exchange believes the credits it offers for adding liquidity in Sub-Dollar Securities should serve as an incentive for ETP Holders to direct more of their orders in these securities to the Exchange. However, without having a view of ETP Holders' 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 directing orders to the Exchange in order to qualify for the pricing tier. The Exchange cannot predict with certainty how many ETP Holders 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,¹³ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,¹⁴ 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

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(4) and (5).

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.”¹⁵

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 orders that provide liquidity on an Exchange, ETP Holders can choose from any one of the 16 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.

The Exchange believes the proposal to adjust the level of credits under the step up tier for adding liquidity in Sub-Dollar Securities is reasonable as it would continue to serve as an incentive to ETP Holders to send orders in Sub-Dollar Securities directly to

¹⁵ See Regulation NMS, 70 FR at 37499.

NYSE Arca and therefore provide liquidity that supports the quality of price discovery and promotes market transparency. The Exchange believes the pricing tier for Sub-Dollar Securities is reasonable because it allows ETP Holders to receive increased credits commensurate with their trading on the Exchange. i.e., the more they trade in Sub-Dollar Securities, the higher the credit they receive. Moreover, the pricing tier benefits market participants whose increased order flow provides meaningful added levels of liquidity thereby contributing to the depth and market quality on the Exchange.

The Exchange notes that volume-based incentives and discounts have been widely adopted by exchanges,¹⁶ including the Exchange,¹⁷ and are reasonable, equitable and non-discriminatory because they are open to all ETP Holders on an equal basis and provide additional credits that are reasonably related to the value to an exchange's market quality and associated higher levels of market activity.

Against 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

The Exchange believes its proposal equitably allocates its fees among its market participants by fostering liquidity provision and stability in the marketplace.

The Exchange believes the proposed rule change is equitable because it allows

¹⁶ See e.g., Cboe BZX U.S. Equities Exchange ("BZX") Fee Schedule, Footnote 1, Add Volume Tiers which provide enhanced rebates between \$0.0028 and \$0.0032 per share for displayed orders where BZX members meet certain volume thresholds. For Sub-Dollar Securities, BZX provides a base credit of \$0.00009 per share, and provides additional credits of up to \$0.0006 per share under its Lead Market Maker pricing tier. See BZX Fee Schedule, Add Volume Tiers under Lead Market Maker Pricing.

¹⁷ See e.g., Fee Schedule, Step Up Tier, Step Up Tier 2, Step Up Tier 3 and Step Up Tier 4, which provide enhanced rebates between \$0.0025 and \$0.0033 per share in Tape A Securities, between \$0.0022 and \$0.0034 per share in Tape B Securities, and between \$0.0025 and \$0.0033 per share in Tape C Securities for orders that provide displayed liquidity where ETP Holders meet certain volume thresholds.

ETP Holders to receive increased credits for providing liquidity in Sub-Dollar Securities. Moreover, the step up pricing tier is intended to benefit market participants whose order flow in Sub-Dollar Securities would provide meaningful added levels of liquidity thereby contributing to the depth and market quality on the Exchange. There are a number of ETP Holders that currently qualify for the step up pricing tier and would continue to qualify under the proposed rule change if they maintain their level of trading in Sub-Dollar Securities on the Exchange. However, without having a view of ETP Holders' activity on other markets and on off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any additional ETP Holders qualifying for this tier. The Exchange believes the current pricing tier, which requires an ETP Holder to increase the volume of its trades in orders that add liquidity over that ETP Holder's July 2020 baseline, provides an incentive for ETP Holders to continue to submit liquidity-providing order flow, which promotes price discovery and increases execution opportunities for all ETP Holders. The increased credits the Exchange provides therefore encourages the submission of additional liquidity in Sub-Dollar Securities to a national securities exchange, thus promoting price discovery and transparency and enhancing order execution opportunities for ETP Holders from the substantial amounts of liquidity present on the Exchange, which benefits all market participants on the Exchange.

The Exchange believes that offering higher step up credits for providing liquidity if the step up requirements for Sub-Dollar securities are met, will continue to attract increased order flow and liquidity to the Exchange, thereby providing additional price improvement opportunities on the Exchange and benefiting investors generally. As to those market participants that do not qualify for the adding liquidity credits by increasing order flow and liquidity, the proposal will not adversely impact their existing pricing or their ability to qualify for other credits provided by the Exchange.

The Proposed Fee Change is not Unfairly Discriminatory

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

The proposal is also not unfairly discriminatory because it neither targets nor will it have a disparate impact on any particular category of market participant.

The Exchange believes it is not unfairly discriminatory to provide incrementally higher credits in Sub-Dollar Securities because the higher credits would encourage all ETP Holders to provide additional liquidity on the Exchange in Sub-Dollar Securities. The current pricing tier also serves as an incentive to ETP Holders to increase the number of orders in Sub-Dollar Securities sent directly to NYSE Arca in order to qualify for, and receive, increased credits. The Exchange believes that the proposed rule change provides an incentive for ETP Holders to send additional liquidity to the Exchange in order to qualify for increased 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 Exchange believes that the proposed rule change is not unfairly discriminatory because maintaining or increasing the proportion of Sub-Dollar Securities that are executed on a registered national securities exchange (rather than relying on certain available off-exchange execution methods) contributes to investors' confidence in the fairness of their transactions and benefits all investors by deepening the Exchange's liquidity pool, supporting the quality of price discovery, promoting market transparency and improving investor protection. Finally, the submission of orders in Sub-Dollar Securities to the Exchange is optional for ETP Holders in that they can choose whether and to what extent to submit such orders to the Exchange.

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,¹⁸ 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 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 integrated competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."¹⁹

Intramarket Competition. The proposed changes are designed to respond to the current competitive environment and to attract additional order flow to the Exchange. The Exchange believes that the proposed changes would continue to incentivize market participants to direct order flow 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 on the Exchange. The credits for trading in Sub-Dollar Securities 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. As such, the Exchange believes the proposed amendments to its Fee Schedule would not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intermarket Competition. The Exchange operates in a highly competitive market

¹⁸ 15 U.S.C. 78f(b)(8).

¹⁹ See Regulation NMS, 70 FR at 37498-99.

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 market share of intraday trading (i.e., excluding auctions) is currently less than 10%. 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)²⁰ of the Act and subparagraph (f)(2) of Rule 19b-4²¹ 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

²⁰ 15 U.S.C. 78s(b)(3)(A).

²¹ 17 CFR 240.19b-4(f)(2).

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)²² 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-2020-107 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-2020-107. 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

²² 15 U.S.C. 78s(b)(2)(B).

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-2020-107 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.²³

J. Matthew DeLesDernier,
Assistant Secretary.

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²³ 17 CFR 200.30-3(a)(12).