ensure that the ICC Clearing Rules provide a consistent and enforceable legal basis for clearing and settling CDS contracts to which the NTCE Supplement applies in light of the amendments made by the NTCE Supplement.

Therefore, the Commission finds that the proposed rule change is consistent with Rule 17Ad–22(d)(1).

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A(b)(3)(F) of the Act [32] and Rule 17Ad–22(d)(1) thereunder.[33]

It is therefore ordered pursuant to Section 19(b)(2) of the Act [34] that the proposed rule change (SR–ICC–2019–013), be, and hereby is, approved.[35]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[36]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–00915 Filed 1–21–20; 8:45 am]

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[32] 15 U.S.C. 78q–1(b)(3)(F).

[33] 17 CFR 240.17Ad–22(d)(1).

[34] 15 U.S.C. 78s(b)(2).

[35] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[36] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87978; File No. SR–NYSEArca–2020–03]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Equities Fees and Charges To Introduce a New Lead Market Maker Credit

January 15, 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 January 2, 2020, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''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.

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) introduce a new Lead Market Maker (''LMM'') credit, (2) introduce a new LMM rebate, and (3) replace the rebate applicable to ETP Holders and Market Makers with a monthly rebate payable on a per-security basis that is tied to quoting requirements in NYSE Arca-listed securities. The Exchange proposes to implement the fee changes effective January 2, 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 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) introduce a new LMM [3] credit, (2) introduce a new LMM rebate, and (3) replace the rebate applicable to ETP Holders [4] with a monthly rebate payable on a per-security basis that is tied to quoting requirements in NYSE Arca-listed securities.

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 January 2, 2020.

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.'' [5]

As the Commission itself recognized, the market for trading services in NMS stocks has become ''more fragmented and competitive.'' [6] Indeed, equity trading is currently dispersed across 13 exchanges,[7] 31 alternative trading systems,[8] and numerous broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information for November 2019, no single exchange has more than 18% market share (whether including or excluding auction volume).[9] Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, in November 2019, the Exchange had 7.6% market share of executed volume of equity trades (excluding auction volume).[10]

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-

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

[2] 17 CFR 240.19b–4.

[3] 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.

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

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

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

[7] *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/divisionsmarketregmr exchangesshtml.html.*

[8] *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.*

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

[10] *See id.*

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 and 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.

The Exchange currently provides incentives in the form of tiered and/or incremental credits to ETP Holders and LMMs 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 participants send to the Exchange.

As described in greater detail below, the Exchange proposes the following changes:

- Adopt a new incremental 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;
- Adopt a new monthly rebate that ranges between $100 per security and $50 per security payable to LMMs that quote and trade in NYSE Arca-listed Tape B Securities that are not actively traded; and
- Adopt an ETF Incentive Program that provides a monthly rebate on a per-security basis to ETP Holders that meet certain quoting requirements.

LMM Credits

The Exchange currently provides tier-based incremental credits to LMMs [11] and to ETP Holders affiliated with the LMM that provide displayed liquidity to the NYSE Arca Book in Tape B Securities. 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 0.0010% of Consolidated Tape B ADV, whichever is greater (''Less Active ETP Securities''), and the ETP Holders affiliated with such LMMs, currently receive an additional credit for orders that provide displayed liquidity to the Book in any Tape B Securities that trade on the Exchange.[12] 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 300 Less Active ETP Securities
- An additional credit of $0.0003 per share if an LMM is registered as the LMM in at least 200 but less than 300 Less Active ETP Securities
- 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

With this proposed rule change, the Exchange proposes to adopt a new incremental credit of $0.00005 per share if a LMM is registered as the LMM in at least 50 but less than 75 Less Active ETP Securities.

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 by offering incremental credits, which would support the quality of price discovery in Less Active ETP Securities on the Exchange and provide additional liquidity for incoming orders for the benefit of all market participants. The Exchange believes that providing increased credits to LMMs and ETP Holders that are affiliated with a LMM that add liquidity in Tape B securities to the Exchange could lead to more LMMs to register to quote and trade in Less Active ETP Securities. The Exchange believes the incremental credit for adding liquidity could also encourage competition in Tape B securities quoted and traded on the Exchange.

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 2 LMMs that meet the requirements of the proposed tier and that would qualify for the incremental credit.[13] 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 the proposed new 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.

Additionally, with this proposed rule change, the Exchange proposes to adopt a new rebate as another incentive for LMMs to actively improve market quality in the opening and closing auctions in NYSE Arca-listed securities that are not actively traded. As proposed, LMMs registered as the LMM in a NYSE Arca-listed security where the security has been listed on NYSE Arca for an entire calendar month would be eligible for a rebate payable each month provided that there has been either an opening auction or a closing auction of at least one round-lot conducted in the security each day during the billing month, and where, in the case of an opening auction, the security's opening auction price is within 1.50% of the Auction Reference Price (as defined in Rule 7.35–E), and in the case of a closing auction, the security's closing auction price is within 0.50% of the Auction Reference Price, for every auction in that security during the billing month. Qualifying LMMs in a security that meets the criteria described above would receive a monthly rebate, as follows:

- $100 per security for each security that had a CADV in the previous month of less than 100,000 shares;
- $75 per security for each security that had a CADV in the previous month between 100,000 shares and up to 175,000 shares;
- $50 per security for each security that had a CADV in the previous month between 175,000 shares and up to 250,000 shares.

The purpose of the proposed rule change is to incentivize LMMs to increase auction liquidity in less liquid NYSE Arca-listed securities to support price discovery in the Exchange's opening and closing auctions for the

[11] 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.

[12] 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.

[13] As of November 27, 2019, there are 13 LMMs on the Exchange that could qualify for the incremental rebates for Less Active ETP Securities, all of whom are affiliated with an ETP holder.

benefit of all market participants. The Exchange believes that providing monthly rebates on a per-security basis could lead to more LMMs to register in less liquid securities and encourage greater participation in the opening and closing auctions on the Exchange. The Exchange believes the proposed monthly rebate, in addition to the incremental credit for adding liquidity, could encourage competition in Tape B securities quoted and traded on the Exchange.

ETF Incentive Program

The Exchange proposes to replace the rebate applicable to ETP Holders with a monthly rebate payable on a per-security basis that is tied to quoting requirements in NYSE Arca-listed securities. The Exchange believes that the proposed ETF Incentive Program (''EIP Program'') would encourage ETP Holders to maintain better market quality in NYSE Arca-listed securities, and, in particular, in lower volume securities.

The Exchange currently offers an Exchange Traded Fund Liquidity Provider Program (''ELP Program'') pursuant to which the Exchange provides an incremental credit of $0.0001 per share to ETP Holders for providing displayed liquidity that result in an execution to ETP Holders that meet prescribed quoting standards in NYSE Arca-listed securities that have a CADV in the previous month of less than 250,000 shares. Under the ELP Program, for each billing month, in at least 50 qualifying securities, an ETP Holder must quote at the National Best Bid or Offer (''NBBO'') for at least an average of 15% of the time, and display at least 2,500 shares that are priced no more than 2% away from the NBBO at least 90% of the time. The Exchange proposes to eliminate the ELP Program and replace it with the EIP Program.

The Exchange is now proposing to adopt an incentive program that would provide ETP Holders with a monthly rebate for each NYSE Arca-listed security that has been listed on the Exchange for an entire calendar month and that had a CADV in the previous month of less than 10,000 shares (''EIP Security''). To qualify for the proposed rebate, an EIP Security must have a time-weighted quoting size at the NBBO. Specifically, for each billing month, ETP Holders must quote at the NBBO with average time-weighted minimum bid and minimum offer of at least 300 on each side (''Share Size''). An ETP Holder with the largest Share Size in an EIP Security would receive a rebate of $60 per security that meets the Share Size requirements for the billing month. An ETP Holder with the second largest Share Size in an EIP Security would receive a rebate of $40 per security. No registration is required to participate in the program.

For example, assume a NYSE Arca-listed security had a CADV in the previous month of 5,000 shares, and is listed on the Exchange for every day of a billing month. Further, assume the following:

- ETP Holder 1 has a time-weighted bid size of 800 shares and a time-weighted offer size of 600 shares, for an average Share Size of 700 shares.
- The LMM registered as the LMM in the security has a time-weighted bid size of 400 shares and a time-weighted offer size of 800 shares, for an average Share Size of 600 shares.
- ETP Holder 2 has a time-weighted bid size of 2,000 shares and a time-weighted offer size of 200 shares, for an average Share Size of 1,100 shares.

In the example above, ETP Holder 1 would qualify for the $60 rebate with an average Share Size of 700 shares, and the LMM would qualify for the $40 rebate with an average Share Size of 600 shares. While ETP Holder 2 has the largest average Share Size with 1,100 shares, ETP Holder 2 had a time-weighted offer size of 200 shares, which is less than the 300 share requirement, and therefore ETP Holder 2 would not qualify for the rebate.

The Exchange will calculate the Share Size for each ETP Holder, on a daily basis, up to and including the last trading day of a calendar month to determine at the end of each month whether an ETP Holder is meeting the requirements of the EIP Program.

The purpose of the proposed rule change is to provide superior market quality and price discovery for NYSE Arca-listed securities, specifically securities that are less active, through a quoting size requirement that would also promote liquidity in the opening and closing auction in such securities. The proposed program is intended to provide a more meaningful incentive to ETP Holders to provide liquidity in less active securities. The proposed EIP Program would allow the Exchange to provide financial incentives to ETP Holders as long as they meet certain prescribed quoting criteria. The Exchange believes this type of an incentive, which provides a rebate on a per-security basis rather on a per-transaction basis, would encourage ETP Holders to provide meaningful quotes in the less active securities that are the focus of the proposed EIP Program.

Additionally, for newly listed and low volume ETP securities, the cost to a firm for making a market, such as holding inventory in the security, is often not fully offset by the revenue through rebates provided by the Exchange. In some cases, ETP Holders may even operate at a loss in new and low volume ETFs. The Exchange believes the proposed EIP Program, which would compensate ETP Holders on a per-security basis as long as they meet the prescribed quoting requirement, is a more deterministic program from an ETP Holder's perspective. The ETP Holder would decide how many, if any, low volume securities in which it wants to provide tight and deep markets. The more securities it provides heightened quoting in, the more the ETP Holder could collect in the form of the proposed per-security rebate.

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,[14] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[15] 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.''[16]

As the Commission itself recognized, the market for trading services in NMS stocks has become ''more fragmented

[14] 15 U.S.C. 78f(b).

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

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

and competitive.'' [17] Indeed, equity trading is currently dispersed across 13 exchanges,[18] 31 alternative trading systems,[19] and numerous 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, 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.

The Exchange believes the proposed rule change to introduce a new $0.00005 per share incremental credit is reasonable because it is intended to encourage LMMs to promote price discovery and market quality in Less Active ETP Securities for the benefit of all market participants. The Exchange believes the proposed rule change is reasonable and appropriate in that the credits are based on the amount of business transacted on the Exchange. The Exchange notes that the proposed incremental credit is similar to market quality incentive programs already in place on other markets, such as the Qualified Market Maker incentive on the Nasdaq Stock Market LLC (''Nasdaq''), which requires a member on that exchange to provide meaningful and consistent support to market quality and price discovery by quoting at the National Best Bid and Offer in a large number of securities. In return, Nasdaq provides such member with an incremental rebate.[20] Nasdaq PHLX LLC (''PHLX'') also provides enhanced credits to Market Makers on certain volumes based on an affiliate's activity. Specifically, PHLX offers a tiered Customer Rebate Program that qualifies either a Specialist or Market Maker or its affiliate under Common Ownership [21] to an additional rebate provided the Specialist or Market Maker has reached the Monthly Market Maker Cap.[22] The Exchange believes that providing increased credits to ETP Holders and Market Makers that are affiliated with a LMM that add liquidity in Tape B securities to the Exchange is reasonable because the Exchange believes that by providing increased rebates to affiliated ETP Holders and Market Makers of a LMM, more LMMs will register to quote and trade in Less Active ETP Securities. The Exchange believes the proposed incremental credit for adding liquidity is also reasonable because it will encourage liquidity and competition in Tape B securities quoted and traded on the Exchange. Moreover, the Exchange believes that the proposed fee change will incentivize LMMs to register as an LMM in Less Active ETP Securities and thus, add more liquidity in 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.

The Exchange believes that proposal to adopt market quality based incentives under the proposed EIP Program is a reasonable means to incentivize liquidity provision in ETPs listed on the Exchange. The marketplace for listings is extremely competitive and the Exchange is not the only venue for listing ETPs. Competition in ETPs is further exacerbated by the fact that listings can and do transfer from one listing market to another. The proposed EIP Program is intended to help the Exchange compete as an ETP listing venue. Further, the Exchange notes that the proposed incentives are not transaction fees, nor are they fees paid by participants to access the Exchange. Rather, the proposed rebates are based on achieving certain objective market quality metrics. The Exchange believes providing monthly rebates for the two largest Share Sizes in less active securities will allow ETP Holders to anticipate their revenue as participants of the EIP Program and will incentivize ETP Holders to participate in the EIP Program.

Given the proposed EIP Program is a new program, the Exchange cannot be certain that ETP Holders will choose to actively compete for this incentive. For ETP Holders that do choose to actively participate by increasing their quoting at the NBBO with a time-weighted minimum bid and minimum offer of at least 300 shares on each side of their quote, the Exchange generally expects ETP Holders would receive payments comparable to what they currently receive under the ELP Program, with the potential for additional upside when they meet the quoting requirement in a greater number of less active securities.

The Exchange believes that eliminating the existing ELP Program is reasonable because the Exchange is not required to maintain the program and the Exchange is proposing to implement the new EIP Program in its place, as described above. The Exchange notes that only 2 ETP Holders qualified for the ELP Program in November 2019.

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

The Exchange believes the proposed rule change to amend the LMM credits are equitable because they provide discounts that are reasonably related to the value to the Exchange's market quality associated with higher volumes. The Exchange further believes that the proposed incremental rebate is equitable because it is consistent with the market quality and competitive benefits associated with the fee program and because the magnitude of the additional rebate is not unreasonably high in

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

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

[19] *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.*

[20] *See* Equity 7 Pricing Schedule, Section 114. Market Quality Incentive Programs, at *http://nasdaq.cchwallstreet.com/NASDAQTools/PlatformViewer.asp?selectednode=chp%5F1%5F1%5F2%5F3&manual=%2Fnasdaq%2Fmain%2Fnasdaq%2Dllcrules%2F.*

[21] The term ''Common Ownership'' is defined as meaning ''members or member organizations under 75% common ownership or control.'' *See* PHLX fee schedule, at *http://www.nasdaqtrader.com/Micro.aspx?id=phlxpricing.*

[22] *See* Options 7 Pricing Schedule, Section I, B. Customer Rebate Program, at *http://nasdaqphlx.cchwallstreet.com/NASDAQPHLXTools/PlatformViewer.asp?selectednode=chp%5F1%5F1%5F2&manual=%2Fnasdaqomxphlx%2Fphlx%2Fphlx%2Dllcrules%2F. See also* Securities Exchange Act Release No. 70969 (December 3, 2013), 78 FR 73906 (December 9, 2013) (SR–Phlx–2013–114).

comparison to the rebate paid with respect to other displayed liquidity-providing orders. The Exchange believes that it is equitable to offer increased rebates to LMMs as LMMs are subject to additional requirements and obligations (such as quoting requirements) that other market participants are not. When PHLX adopted its proposal to provide enhanced credits, it noted its belief that the additional rebate it provides was equitable, and not unfairly discriminatory because, among other things, PHLX Specialists and Market Makers ''have burdensome quoting obligations,'' to the market that other market participants do not, and ''also serve an important role on the Exchange with regard to order interaction and they provide liquidity in the marketplace.'' [23] PHLX further noted that the ''proposed differentiation as between Specialists and Market Makers as compared to other market participants recognizes the differing contributions made to the trading environment on the Exchange by these market participants.'' The Exchange also believes that allowing ETP Holders to receive enhanced credits based on activities of their affiliates is equitable and not unfairly discriminatory because the Exchange believes that ETP Holders affiliated with LMMs may qualify to earn enhanced credits in recognition of their shared economic interest, which includes the heightened obligations imposed on LMMs. ETP Holders unaffiliated with LMMs do not share the same type of economic interests. Further, ETP Holders not affiliated with a LMM have an opportunity to establish such affiliation by several means, including but not limited to, a business combination or the establishment of their own market making operation, which each unaffiliated firm has the potential to establish.

The Exchange believes that the proposed EIP Program represents an equitable allocation of payments because ETP Holders would be required to meet prescribed quoting requirements in order to qualify for the payments, as described above. Where an ETP Holder does not achieve the largest Share Size in an EIP Security or second largest Share Size in an EIP Security, it will not receive the payments. Further, all ETP Holders on the Exchange are eligible to participate in the program and could do so by simply meeting the quoting requirement. The Exchange has designed the EIP Program to be sustainable over the long-term and generally expects that payments made to ETP Holders under the program will be comparable to payments the Exchange currently makes under the ELP Program. As such, the Exchange believes that the proposal represents an equitable allocation of payments.

The Exchange believes that eliminating the existing ELP Program is equitable because the Exchange is not required to maintain the program and the Exchange is eliminating the program for all ETP Holders.

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.

The Exchange believes it is not unfairly discriminatory to adopt an additional incremental credit applicable to a LMM, and ETP Holders affiliated with such LMM, for orders that provide displayed liquidity in NYSE Arca-listed securities for which they are registered as the LMM, as the proposed credits would be provided on an equal basis to all such participants. Further, the Exchange believes the proposed additional incremental credit would incentivize LMMs that meet the current tiered requirements to send more orders to the Exchange to qualify for higher 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 introduce an additional LMM 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 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.

The Exchange believes that the proposed EIP Program is not unfairly discriminatory because ETP Holders would be required to meet prescribed quoting requirements in order to qualify for the payments, as described above. Where an ETP Holder does not achieve the largest Share Size in an EIP Security or second largest Share Size in an EIP Security, it will not receive the payments. Further, all ETP Holders on the Exchange are eligible to participate in the program and could do so by simply meeting the quoting requirement. The Exchange has designed the EIP Program to be sustainable over the long-term and generally expects that payments made to ETP Holders under the program will be comparable to payments the Exchange currently makes under the ELP Program. As such, the Exchange believes that the proposal is not unfairly discriminatory.

The Exchange believes that eliminating the existing ELP Program is not unfairly discriminatory because the Exchange is not required to maintain the program and the Exchange is eliminating the program for all ETP Holders.

Finally, the submission of orders to the Exchange is optional for 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,[24] 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 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.'' [25]

Intramarket Competition. The proposed change is designed to attract additional order flow to the Exchange. The Exchange believes that the new incremental credit applicable to LMMs would continue to incentivize market participants to direct their displayed order flow to the Exchange. Greater

[23] *See* Securities Exchange Act Release No. 70969 (December 3, 2013), 78 FR 73906 (December 9, 2013) (SR–Phlx–2013–114).

[24] 15 U.S.C. 78f(b)(8).

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

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 new incremental credit 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. The Exchange believes the proposed EIP Program would enhance competition as it is intended to increase the Exchange's competitiveness in NYSE Arca-listed ETPs, and all ETP Holders would be able to participate in the program uniformly. Accordingly, the Exchange does not believe that the proposed change will impair the ability of ETP Holders to maintain their competitive standing.

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 market share of intraday trading (*i.e.,* excluding auctions) was 7.6% in November 2019. 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) [26] of the Act and subparagraph (f)(2) of Rule 19b–4 [27] 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) [28] 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–2020–03 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–2020–03. 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–NYSEArca–2020–03, and should be submitted on or before February 12, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–00918 Filed 1–21–20; 8:45 am]

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[26] 15 U.S.C. 78s(b)(3)(A).

[27] 17 CFR 240.19b–4(f)(2).

[28] 15 U.S.C. 78s(b)(2)(B).

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Release No. 34–87976; File No. SR–CboeEDGX–2020–001]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Amend Its Rules Governing the Give Up of a Clearing Member by a User on Exchange Transactions

January 15, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 2, 2020, Cboe EDGX Exchange, Inc. (the ''Exchange'' or '''''EDGX'''') 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 Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] 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] 17 CFR 240.19b–4.

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

[4] 17 CFR 240.19b–4(f)(6).