

*Paper Comments*

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

All submissions should refer to File Number SR-ICC-2019-004. 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, security-based swap submission, or advance notice that are filed with the Commission, and all written communications relating to the proposed rule change, security-based swap submission, or advance notice 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 such filings will also be available for inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit's website at <https://www.theice.com/clear-credit/regulation>. 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-ICC-2019-004 and should be submitted on or before May 14, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 2019-08107 Filed 4-22-19; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85674; File No. SR-NYSENAT-2019-09]

### Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Schedule of Fees and Rebates

April 17, 2019.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on April 9, 2019, NYSE National, Inc. ("NYSE National" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II 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 (1) charge a fee for removing liquidity; (2) offer the current adding tier fees (Adding Tier 1, Adding Tier 2, Adding Tier 3, Adding Tier 4, and Step Up Adding Tier) for adding displayed liquidity in Tape B and Tape C securities and introduce separate fees for adding liquidity in Tape A securities; and (3) replace the current Taking Tier with three Taking Tiers (Tiers 1, 2 and 3). The Exchange proposes to implement the rule change on April 9, 2019. The proposed rule change is available on the Exchange's website at [www.nyse.com](http://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 the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange proposes to amend its Schedule of Fees and Rebates to (1) charge a fee for removing liquidity; (2) offer the current adding tier fees (Adding Tier 1, Adding Tier 2, Adding Tier 3, Adding Tier 4, and Step Up Adding Tier) for adding displayed liquidity in Tape B and Tape C securities and introduce separate fees for adding displayed liquidity in Tape A securities; and (3) replace the current Taking Tier with three Taking Tiers (Tiers 1, 2 and 3).

The Exchange proposes to implement the rule change on April 9, 2019.<sup>4</sup>

##### Proposed Rule Change

##### Liquidity Removing Fees

The Exchange currently does not charge a fee for executions on the Exchange of orders that remove liquidity from the Exchange in securities priced at or above \$1.00. The Exchange proposes to charge a fee of \$0.0005 per share for executions on the Exchange of orders that remove liquidity from the Exchange in securities priced at or above \$1.00, unless a better tiered credit or fee set forth in the Schedule of Fees and Rebates applies. Hence, for example, an ETP Holder that would meet the requirements for the proposed Taking Tier 1 credit discussed below would not be charged the proposed fee of \$0.0005 per share for removing liquidity.

##### Proposed Changes to Adding Tiers

##### Adding Tier 1

Under current Adding Tier 1, 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 has at least 0.015% of Adding average daily volume ("ADV") as a percent of US consolidated ADV ("CADV"):<sup>5</sup>

- \$0.0020 per share for displayed orders;

<sup>4</sup> The Exchange originally filed to amend the Schedule of Fees and Rebates on March 29, 2019 (SR-NYSENAT-2019-06). SR-NYSE-2019-06 [sic] was subsequently withdrawn and replaced by this filing.

<sup>5</sup> The Adding Tier 1 volumes are currently waived. See footnote \* in the current Schedule of Fees and Rebates.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>16</sup> 17 CFR 200.30-3(a)(12).

- \$0.0018 per share for orders that set a new Exchange BBO;
- \$0.0022 per share for non-displayed orders; and

- \$0.0005 per share for MPL orders.

The Exchange proposes to retain the current fee structure for Tape B and Tape C securities and introduce new fees for Tape A securities.

For transactions in stocks with a per share price of \$1.00 or more when adding liquidity to the Exchange if the ETP Holder has at least 0.015% of Adding ADV as a percent of CADV, the proposed fees would be as follows:

- \$0.0020 per share for displayed orders in Tapes B and C securities and \$0.0022 per share for displayed orders in Tape A securities;
- \$0.0018 per share for orders that set a new Exchange BBO in Tapes B and C securities and \$0.0020 per share in Tape A securities;
- \$0.0022 per share for non-displayed orders in Tapes B and C securities and \$0.0024 per share for non-displayed orders in Tape A securities; and
- \$0.0005 per share for MPL orders, which would remain unchanged.

#### Adding Tier 2

Under current 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: (i) At least 5% of the NBBO<sup>6</sup> in 1,000 or more symbols on an average daily basis, calculated monthly, and 0.20% or more Adding ADV as a percentage of US CADV, or (ii) at least 5% of the NBBO in 2,500 or more symbols on an average daily basis, calculated monthly, and 0.10% or more Adding ADV as a % of US CADV:

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

The Exchange proposes to retain the current fee structure for Tape B and Tape C securities and introduce new fees for Tape A securities.

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: (i) At least 5% of the NBBO in 1,000 or more symbols on an average daily basis, calculated monthly, and 0.20% or more Adding ADV as a percentage of US CADV, or (ii) at least 5% of the NBBO in 2,500 or more symbols on an average daily basis,

calculated monthly, and 0.10% or more Adding ADV as a % of US CADV, the proposed fees would be as follows:

- \$0.0005 per share for adding displayed orders in Tape B and C securities and \$0.0008 per share in Tape A securities;
- \$0.0005 per share for orders that set a new Exchange BBO in Tape B and C securities and \$0.0008 per share in Tape A securities;
- \$0.0007 per share for adding non-displayed orders in Tape B and C securities and \$0.0010 per share in Tape A securities; and
- \$0.0005 per share for MPL orders, which would remain unchanged.

#### Adding Tier 3

Under current Adding Tier 3, 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 NBBO in 2000 or more symbols on an average daily basis, calculated monthly, and executes 0.10% or more Adding ADV as a percentage of US CADV:

- \$0.0009 per share for adding displayed orders;
- \$0.0009 per share for orders that set a new Exchange BBO;
- \$0.0011 per share for adding non-displayed orders; and
- \$0.0005 per share for MPL orders.

The Exchange proposes to retain the current fee structure for Tape B and Tape C securities and introduce new fees for Tape A securities.

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 NBBO in 2000 or more symbols on an average daily basis, calculated monthly, and executes 0.10% or more Adding ADV as a percentage of US CADV, the proposed fees would be as follows:

- \$0.0009 per share for adding displayed orders in Tape B and C securities and \$0.0012 per share in Tape A securities;
- \$0.0009 per share for orders that set a new Exchange BBO in Tape B and C securities and \$0.0012 per share in Tape A securities;
- \$0.0011 per share for adding non-displayed orders in Tape B and C securities and \$0.0014 per share in Tape A securities; and
- \$0.0005 per share for MPL orders, which would remain unchanged.

#### Adding Tier 4

Under current Adding Tier 4, 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 NBBO in 600 or more symbols on an average daily basis, calculated monthly:

- \$0.0012 per share for adding displayed orders;
- \$0.0012 per share for orders that set a new Exchange BBO;
- \$0.0014 per share for adding non-displayed orders; and
- \$0.0005 per share for MPL orders.

The Exchange proposes to retain the current fee structure for Tape B and Tape C securities and introduce new fees for Tape A securities.

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 NBBO in 600 or more symbols on an average daily basis, calculated monthly, the proposed fees would be as follows:

- \$0.0012 per share for adding displayed orders in Tape B and C securities and \$0.0014 per share in Tape A securities;
- \$0.0012 per share for orders that set a new Exchange BBO in Tape B and C securities and \$0.0014 per share in Tape A securities;
- \$0.0014 per share for adding non-displayed orders in Tape B and C securities and \$0.0016 per share in Tape A securities; and
- \$0.0005 per share for MPL orders, which would remain unchanged.

#### Step Up Adding Tier

Under the current Step [sic] Adding Tier, 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 has 0.04% or more of Adding ADV as a percent of US CADV over the ETP Holder's Adding ADV as a % of US CADV in November 2018:

- \$0.0015 per share for adding displayed orders;
- \$0.0015 per share for orders that set a new Exchange BBO3 [sic];
- \$0.0017 per share for adding non-displayed orders; and
- \$0.0005 per share for MPL orders.

The Exchange proposes to retain the current fee structure for Tape B and Tape C securities and introduce new fees for Tape A securities.

For transactions in stocks with a per share price of \$1.00 or more when adding liquidity to the Exchange if the ETP Holder has 0.04% or more of Adding ADV as a percent of US CADV over the ETP Holder's Adding ADV as a % of US CADV in November 2018 the proposed fees would be as follows:

- \$0.0015 per share for adding displayed orders in Tape B and C securities and \$0.0018 per share in Tape A securities;

<sup>6</sup> See footnote \*\* in the current Schedule of Fees and Rebates.

- \$0.0015 per share for orders that set a new Exchange BBO in Tape B and C securities and \$0.0018 per share in Tape A securities;

- \$0.0017 per share for adding non-displayed orders in Tape B and C securities and \$0.0020 per share in Tape A securities; and

- \$0.0005 per share for MPL orders, which would remain unchanged.

#### Proposed Changes to Taking Tiers

Under the current Taking Tier, the Exchange offers the following credits for transactions in stocks with a per share price of \$1.00 or more when removing liquidity from the Exchange if the ETP Holder has at least 50,000 shares of Adding ADV:

- (\$0.0020) per share for orders; and
- (\$0.0002) per share for MPL orders.

The Exchange proposes to replace the current Taking Tier with three Taking Tiers, as follows.

Proposed Taking Tier 1 would offer the same credits as the current Taking Tier—(\$0.0020) per share for orders and (\$0.0002) per share for MPL orders—for transactions in stocks with a per share price of \$1.00 or more when removing liquidity from the Exchange if the ETP Holder has at least:

- 0.025% Adding ADV as a percentage of US CADV; or
- 0.0125% Adding ADV as a percentage of US CADV and 0.032% removing ADV as a percentage of US CADV; or
- 0.00125% Adding ADV as a percentage of US CADV and 0.25% removing ADV as a percentage of US CADV.

Under proposed Taking Tier 2, the Exchange would offer the following credits for transactions in stocks with a per share price of \$1.00 or more when removing liquidity from the Exchange if the ETP Holder has at least 0.0125% Adding ADV as a percentage of US CADV:

- (\$0.0018) per share for orders; and
- (\$0.0002) per share for MPL orders, which would remain unchanged.

Finally, under proposed Taking Tier 3, the Exchange would offer the following credits for transactions in stocks with a per share price of \$1.00 or more when removing liquidity from the Exchange if the ETP Holder has at least 50,000 shares of Adding ADV:

- (\$0.0010) per share for orders; and
- (\$0.0002) per share for MPL orders, which would remain unchanged.

As previously noted, an ETP Holder that meets the requirements of either proposed Taking Tiers 1, 2 or 3 would be eligible for the relevant rate and would not be charged the proposed fee of \$0.0005 per share for removing

liquidity. For example, an ETP Holder with at least 0.0125% Adding ADV as a % of US CADV in a given month would receive a credit of (\$0.0018) per share for removing liquidity from the Exchange under proposed Taking Tier 2 and would not pay the proposed fee of \$0.0005 per share for removing liquidity discussed above.

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 the Act,<sup>7</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>8</sup> 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.

#### Liquidity Removing Fees

The Exchange believes that charging \$0.0005 per share for removing liquidity from the Exchange will incentivize submission of additional liquidity to a public exchange, thereby promoting price discovery and transparency and enhancing order execution opportunities for ETP Holders. Specifically, the Exchange believes that introducing a charge for removing liquidity would incentivize ETP Holders to send additional liquidity to the Exchange in order to receive a higher credit and avoid the proposed fee by meeting the higher liquidity requirements for a Taking Tier credit.

The Exchange also believes that the proposed fee is equitable because it would apply to all similarly situated ETP Holders. The proposed fee also is equitable and not unfairly discriminatory because it would be consistent with the applicable rate on other marketplaces. For example, Investors Exchange charges a Standard Match Fee of \$0.0009 and a Reduced Match Fee of \$0.0003.<sup>9</sup>

#### Proposed Changes to Adding Tiers

The Exchange believes that the proposed changes to the tiered adding requirements for displayed and non-displayed orders in Tape A, Tape B and

Tape C securities priced at or above \$1.00 are reasonable, equitable and not unfairly discriminatory, as follows.

The proposed Adding Tier 1, Adding Tier 2, Adding Tier 3, Adding Tier 4 and Step Up Adding Tier fees for adding liquidity in Tape B and C securities and the proposed Adding Tier 1, Adding Tier 2, Adding Tier 3, Adding Tier 4 and Step Up Adding Tier fees for Tape A securities for ETP Holders meeting the current requirements for each tier, which the Exchange does not propose to change, are reasonable because the proposed rates would contribute to incent ETP Holders to provide increased liquidity on the Exchange. Specifically, the proposed rates for Tapes B and C, which the Exchange does not propose to change, would continue to provide the same incentives to ETP Holders to provide liquidity to the Exchange on those tapes while the higher rates for Tape A would incentive ETP Holders to provide additional liquidity on the Exchange in Tape A securities, both of which benefit all ETP Holders. The proposed fees in Tape A securities are also equitable and not unfairly discriminatory because those fees would be consistent with or lower than the applicable rate on other marketplaces that charge for adding liquidity. For example, Cboe BYX charges a standard fee of \$0.0019 per share, and their lowest fee for adding is \$0.0012.<sup>10</sup>

In addition, the Exchange believes that the proposed Adding Tier 1, Adding Tier 2, Adding Tier 3, Adding Tier 4 and Step Up Adding Tier fees for adding liquidity in Tape B and C securities and the proposed Adding Tier 1, Adding Tier 2, Adding Tier 3, Adding Tier 4 and Step Up Adding Tier fees for Tape A securities fees are equitable and not unfairly discriminatory as all similarly situated market participants will be subject to the same fees on an equal and non-discriminatory basis.

#### Proposed Changes to Taking Tiers

The Exchange believes that the proposed replacement of the current Taking Tier with three taking tiers for orders that remove liquidity in securities priced at or above \$1.00 are reasonable, equitable and not unfairly discriminatory, as follows.

The proposed Taking Tier 1 credits of (\$0.0020) per share for orders that remove liquidity and (\$0.0002) per share for MPL for ETP Holders with at least (1) 0.025% Adding ADV as a percentage of US CADV, or (2) 0.0125% Adding ADV as a percentage of US

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(4) & (5).

<sup>9</sup> See Investors Exchange Fee Schedule, available at <https://iextrading.com/trading/fees/>.

<sup>10</sup> See Cboe BYX U.S. Equities Exchange Fee Schedule, available at [https://markets.cboe.com/us/equities/membership/fee\\_schedule/byx/](https://markets.cboe.com/us/equities/membership/fee_schedule/byx/).

CADV and 0.032% removing ADV as a percentage of US CADV, or (3) 0.00125% Adding ADV as a percentage of US CADV and 0.25% removing ADV as a percentage of US CADV; the proposed Taking Tier 2 credits of (\$0.0018) per share and (\$0.0002) per share for MPL for ETP Holders with at least 0.0125% Adding ADV as a % of US CADV; and (3) the proposed Taking Tier 3 credits of (\$0.0010) per share and (\$0.0002) per share for ETP Holders with at least 50,000 Adding ADV in securities with a per share price of \$1.00 or more when removing liquidity from the Exchange is reasonable, equitable and not unfairly discriminatory because the proposed fees are in line with the fees for removing liquidity on other exchanges.<sup>11</sup> For example, Cboe BYX offers tiered credits of (\$0.0015), (\$0.0016), and (\$0.0017) per share.<sup>12</sup> The Exchange notes that the (\$0.0002) per share credit for taking MPL is unchanged from the current Taking Tier.

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,<sup>13</sup> 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 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)<sup>14</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>15</sup> thereunder. 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)<sup>16</sup> 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSENAT-2019-09 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.

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For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 2019-08102 Filed 4-22-19; 8:45 am]

**BILLING CODE 8011-01-P**

<sup>11</sup> See CBOE BYX Exchange Fee Schedule at [https://markets.cboe.com/us/equities/membership/fee\\_schedule/byx/](https://markets.cboe.com/us/equities/membership/fee_schedule/byx/).

<sup>12</sup> See Cboe BYX U.S. Equities Exchange Fee Schedule, available at [https://markets.cboe.com/us/equities/membership/fee\\_schedule/byx/](https://markets.cboe.com/us/equities/membership/fee_schedule/byx/).

<sup>13</sup> 15 U.S.C. 78f(b)(8).

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(2).

<sup>16</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>17</sup> 17 CFR 200.30-3(a)(12).