

Required fields are shown with yellow backgrounds and asterisks.

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. * SR 2024 - * 50

Amendment No. (req. for Amendments *)

Filing by NYSE Arca, Inc.

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
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Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	Rule		
			<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input checked="" type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010
Section 806(e)(1) *

Section 806(e)(2) *

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 3C(b)(2) *

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Proposal to amend the NYSE Arca Equities Fees and Charges

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Samir Last Name * Patel

Title * Senior Counsel, NYSE Group Inc.

E-mail * Samir.Patel@ice.com

Telephone * (212) 656-2030 Fax (212) 656-8101

Signature

Pursuant to the requirements of the Securities Exchange of 1934, NYSE Arca, Inc. has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 06/03/2024

(Title *)

By Patrick Troy

Associate General Counsel

(Name *)

NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Patrick Troy Digitally signed by Patrick Troy
Date: 2024.06.03 15:04:23 -04'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information *

Add Remove View

June Fee Change - CADV Calculation

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

Add Remove View

Ex. 1 June Fee Change CADV Calcul

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A - Notice of Proposed Rule Change, Security-Based Swap Submission, or Advanced Notice by Clearing Agencies *

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Exhibit 2- Notices, Written Comments, Transcripts, Other Communications

Add Remove View

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

Add Remove View

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit Sent As Paper Document

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add Remove View

June Fee Change - CADV Calculation

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change

Partial Amendment

Add Remove View

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

- (a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b-4 thereunder,² NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) proposes to amend the NYSE Arca Equities Fees and Charges (“Fee Schedule”) to provide an additional calculation for purposes of determining whether an ETP Holder qualifies for fees and credits that pertain to providing liquidity under certain pricing tiers. The Exchange proposes to implement the fee change effective June 3, 2024.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1, and the text of the proposed rule change is attached as Exhibit 5.

- (b) The Exchange does not believe that the proposed rule change will have any direct effect, or any significant indirect effect, on any other Exchange rule in effect at the time of this filing.
- (c) Not applicable.

2. Procedures of the Self-Regulatory Organization

Senior management has approved the proposed rule change pursuant to authority delegated to it by the Board of the Exchange. No further action is required under the Exchange’s governing documents. Therefore, the Exchange’s internal procedures with respect to the proposed rule change are complete.

The persons on the Exchange staff prepared to respond to questions and comments on the proposed rule change are:

Samir Patel
Senior Counsel
NYSE Group, Inc.
(212) 656-2030

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

- (a) Purpose

The Exchange proposes to amend the Fee Schedule to provide an additional calculation for purposes of determining whether an ETP Holder qualifies for fees and credits that

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

pertain to providing liquidity under certain pricing tiers. More specifically, the proposed additional calculation would apply to the following pricing tiers in Section VII. of the Fee Schedule: Adding Tiers,³ Limit Non-Display Step Up Tier and Tape C Tiers for Adding.⁴ The Exchange proposes to implement the fee change effective June 3, 2024.

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 most important to investors and listed companies.”⁵

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.”⁶ Indeed, equity trading is currently dispersed across 16 exchanges,⁷ numerous alternative trading systems,⁸ and broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly available information, no single exchange currently has more than 20% market share.⁹ Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, the Exchange currently has less than 12% market share of executed volume of equities trading.¹⁰

³ Adding Tiers refers to Tiers 1 through 5 under the Adding Tiers pricing tier table on the Fee Schedule.

⁴ Tape C Tiers for Adding refers to Tiers 1 through 3 under the Tape C Tiers for Adding pricing tier table on the Fee Schedule.

⁵ 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”).

⁶ 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).

⁷ See Cboe U.S Equities Market Volume Summary, available at https://markets.cboe.com/us/equities/market_share.

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/atlist.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.*

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 which the firm routes order flow. Accordingly, competitive forces compel the Exchange to use exchange transaction fees and credits because market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

Proposed Rule Change

The Exchange currently provides ETP Holders with various tiered credits for executing orders that add liquidity to the Exchange and charges them various fees for executing orders that remove liquidity from the Exchange, as set forth in Section VII. of the Fee Schedule, titled "Tier Rates - Round Lots and Odd Lots. The fees and credits enumerated in Section VII. apply all securities priced at \$1 or more that are executed on the Exchange. ETP Holders may qualify for tiers of discounted fees and premium credits based, in part, upon the volume of their activities on the Exchange as a percentage of total "Consolidated Average Daily Volume" or "CADV."

Pursuant to Section I. of the Fee Schedule, the term "CADV" means, unless otherwise stated, the United States consolidated average daily volume of transactions reported to a securities information processor ("SIP"). Transactions that are not reported to a SIP are not included in the CADV. If CADV is preceded by a reference to a Tape or to Sub-Dollar, then CADV would refer to all consolidated average daily volume of transactions reported to a SIP for all securities in that Tape or to all Sub-Dollar securities. Per the Fee Schedule, trade activity on days when the market closes early and on the date of the annual reconstitution of the Russell Investment Indexes does not count toward volume tiers.¹¹ For purposes of determining trade related fees and credits based on CADV, the Exchange may exclude any day that (1) the Exchange is not open for the entire trading day and/or (2) a disruption affects an Exchange system that lasts for more than 60 minutes during regular trading hours.¹²

Generally, the ratio of consolidated volumes in securities priced at or above \$1 ("dollar plus volume") relative to consolidated volumes inclusive of securities priced below a dollar is usually stable from month to month, such that "CADV" has been a reasonable baseline for determining tiered incentives for ETP Holders that execute dollar plus volume on the Exchange. However, there have been a few months where volumes in securities priced below a dollar ("sub-dollar volume") have been elevated, thereby impacting the ratio mentioned above.

¹¹ See Fee Schedule, Footnote 1.

¹² Id.

Anomalous rises in sub-dollar volume stand to have a material adverse impact on ETP Holders' qualifications for pricing tiers/incentives because such qualifications depend upon ETP Holders achieving threshold percentages of volumes as a percentage of CADV, and an extraordinary rise in sub-dollar volume stands to elevate CADV. As a result, ETP Holders may find it more difficult, if not practically impossible, to qualify for or to continue to qualify for their existing incentives during months where there are such rises in sub-dollar volumes, even if their dollar plus volumes have not diminished relative to prior months.

The Exchange believes that it would be unfair for ETP Holders that execute significant dollar plus volumes on the Exchange to fail to achieve or to lose their existing incentives for such volumes due to anomalous behavior that is extraneous to them. Therefore, the Exchange wishes to amend the Fee Schedule to help avoid extraordinary spikes in sub-dollar volumes from adversely affecting an ETP Holder's qualification of incentives for their dollar plus stock executions.

Accordingly, the Exchange proposes to amend footnote 1 of the Fee Schedule to state that, for purposes of calculating an ETP Holder's qualifications for fees and credits that pertain to providing liquidity, the Exchange will calculate an ETP Holder's equity volume and total equity CADV twice for the following tiers: Adding Tiers, Limit Non-Display Step Up Tier and Tape C Tiers for Adding. First, the Exchange will calculate an ETP Holder's equity volume and total equity CADV inclusive of volume that consists of executions in securities priced less than \$1. Second, the Exchange will calculate an ETP Holder's equity volume and total equity CADV exclusive of volume that consists of executions in securities priced less than \$1. As proposed, the Exchange will then assess which of these two calculations would qualify the ETP Holder for the most advantageous fees and credits for the month and then the Exchange will apply those to the ETP Holder. Another market recently amended its rules to provide its members with a similar remedy.¹³

Although the Exchange wishes to avoid extraordinary spikes in sub-dollar volumes from adversely affecting an ETP Holder's qualification of incentives for their dollar plus stock executions, the Exchange proposes to limit the application of the proposed calculation to efficiently allocate the Exchange's limited resources for incentives. Specifically, as noted above, the Exchange proposes to apply the proposed calculation excluding sub-dollar volumes to the incentives that pertain to providing liquidity under the Adding Tiers, the Limit Non-Display Step Up Tier and the Tape C Tiers for Adding. The Exchange wishes to impose such limitations in order to limit the cost impact on the Exchange, while still providing some relief to ETP Holders in months with extraordinary spikes in sub-dollar volumes. It is appropriate for the Exchange to devote to incentive programs in a meaningful way and to reallocate these incentives periodically in a manner that best achieves the Exchange's overall mix of objectives.

¹³

See Securities Exchange Act Release No. 99535 (February 14, 2024), 89 FR 13125 (SR-NASDAQ-2024-005) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Equity 7, Section 118).

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.

(b) 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.

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 a threshold matter, the Exchange is subject to significant competitive forces in the market for equity securities transaction services that constrain its pricing determinations in that market.

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for equity security transaction services. The Exchange is only one of several equity venues to which market participants may direct their order flow. Competing equity exchanges offer similar tiered pricing structures to that of the Exchange, including credits and fees that apply based upon members achieving certain volume thresholds. 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 or reduce use of certain categories of products, in response to fee changes. Accordingly, the Exchange’s fees are reasonably constrained by competitive alternatives and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

The Exchange believes that the proposal to amend the Fee Schedule is reasonable and equitable because, in its absence, ETP Holders may experience material adverse impacts on their ability to qualify for certain incentives during a month with an anomalous rise in sub-dollar volumes. The Exchange does not wish to penalize ETP Holders that execute significant volumes on the Exchange due to anomalous and extraneous trading activities

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(4) and (5).

¹⁶ See Regulation NMS, supra note 5, 70 FR at 37499.

of a small number of firms in sub-dollar securities. The proposed rule would seek to provide a means for ETP Holders that provide liquidity to avoid such a penalty by determining whether calculating ETP Holder equity volume and total equity CADV to include or exclude sub-dollar volume would result in ETP Holders qualifying for the most advantageous fees and credits, and then applying the calculations that would result in the incentives for providing liquidity that are most advantageous to each ETP Holder. The Exchange believes it is reasonable to limit the proposal by applying the proposed calculation to incentives that pertain to providing liquidity to a limited number of pricing tiers because the pricing tiers that are the subject of this proposed rule change are those that are the most impacted by anomalous spikes in sub-dollar volumes, and by applying the additional calculation to those specified pricing tiers would alleviate burden on ETP Holders from being disadvantaged by trading over which it has little or no control. The Exchange believes that the proposed rule change is an equitable allocation and is not unfairly discriminatory because the Exchange does not intend for the proposal to advantage any particular ETP Holders and the Exchange will apply the proposed calculation to all similarly situated ETP Holders.

On the backdrop of the competitive environment in which the Exchange currently operates, the proposed rule change is a reasonable attempt by the Exchange to maintain, if not improve its market share relative to its competitors.

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.

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

In accordance with Section 6(b)(8) of the Act,¹⁷ 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.

Intramarket Competition. The Exchange does not believe that its proposal would place any category of Exchange participant at a competitive disadvantage. The Exchange intends for its proposed changes to the fees and credits to reallocate its limited resources more efficiently and to align them with the Exchange's overall mix of objectives. The proposed rule change is intended to help avoid pricing disadvantages due to anomalous spikes in sub-dollar volumes and is not intended to provide a competitive advantage to any one particular ETP Holder. The proposed calculation would be available to all

¹⁷

15 U.S.C. 78f(b)(8).

similarly-situated market participants, and, as such, the proposed changes would not impose a disparate burden on competition among market participants on the Exchange.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchanges 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 12%. In such an environment, the Exchange must continually review, and consider adjusting its fees and credits to remain competitive with other exchanges and with off-exchange venues. Because competitors are free to modify their own fees and credits in response, 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 comparable transaction pricing, by encouraging additional orders to be sent to the Exchange for execution.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act¹⁸ and subparagraph (f)(2) of Rule 19b-4¹⁹ 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) of the Act to determine whether the proposed rule change should be approved or disapproved.²⁰

¹⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁹ 17 CFR 240.19b-4(f)(2).

²⁰ 15 U.S.C. 78s(b)(2)(B).

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed rule change is not based on the rules of another self-regulatory organization or of the Commission.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

Exhibit 1 – Form of Notice of the Proposed Rule Change for Publication in the Federal Register

Exhibit 5 – Text of the Proposed Rule Change

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-NYSEARCA-2024-50)

[Date]

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

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on June 3, 2024, 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 provide an additional calculation for purposes of determining whether an ETP Holder qualifies for fees and credits that pertain to providing liquidity under certain pricing tiers. The Exchange proposes to implement the fee change effective June 3, 2024. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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

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

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

1. Purpose

The Exchange proposes to amend the Fee Schedule to provide an additional calculation for purposes of determining whether an ETP Holder qualifies for fees and credits that pertain to providing liquidity under certain pricing tiers. More specifically, the proposed additional calculation would apply to the following pricing tiers in Section VII. of the Fee Schedule: Adding Tiers,⁴ Limit Non-Display Step Up Tier and Tape C Tiers for Adding.⁵ The Exchange proposes to implement the fee change effective June 3, 2024.

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

⁴ Adding Tiers refers to Tiers 1 through 5 under the Adding Tiers pricing tier table on the Fee Schedule.

⁵ Tape C Tiers for Adding refers to Tiers 1 through 3 under the Tape C Tiers for Adding pricing tier table on the Fee Schedule.

promoting market competition in its broader forms that are 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 20% 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 12% 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

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 U.S Equities Market Volume Summary, available at https://markets.cboe.com/us/equities/market_share.

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.*

of the registered exchanges or non-exchange venues to which the firm routes order flow. Accordingly, competitive forces compel the Exchange to use exchange transaction fees and credits because market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

Proposed Rule Change

The Exchange currently provides ETP Holders with various tiered credits for executing orders that add liquidity to the Exchange and charges them various fees for executing orders that remove liquidity from the Exchange, as set forth in Section VII. of the Fee Schedule, titled “Tier Rates - Round Lots and Odd Lots. The fees and credits enumerated in Section VII. apply all securities priced at \$1 or more that are executed on the Exchange. ETP Holders may qualify for tiers of discounted fees and premium credits based, in part, upon the volume of their activities on the Exchange as a percentage of total “Consolidated Average Daily Volume” or “CADV.”

Pursuant to Section I. of the Fee Schedule, the term “CADV” means, unless otherwise stated, the United States consolidated average daily volume of transactions reported to a securities information processor (“SIP”). Transactions that are not reported to a SIP are not included in the CADV. If CADV is preceded by a reference to a Tape or to Sub-Dollar, then CADV would refer to all consolidated average daily volume of transactions reported to a SIP for all securities in that Tape or to all Sub-Dollar securities. Per the Fee Schedule, trade activity on days when the market closes early and on the date of the annual reconstitution of the Russell Investment Indexes does not count toward volume tiers.¹² For purposes of determining trade related fees and credits based on CADV, the Exchange may exclude any day that (1) the Exchange is not open for the entire trading day and/or (2) a disruption affects an Exchange

¹² See Fee Schedule, Footnote 1.

system that lasts for more than 60 minutes during regular trading hours.¹³

Generally, the ratio of consolidated volumes in securities priced at or above \$1 (“dollar plus volume”) relative to consolidated volumes inclusive of securities priced below a dollar is usually stable from month to month, such that “CADV” has been a reasonable baseline for determining tiered incentives for ETP Holders that execute dollar plus volume on the Exchange. However, there have been a few months where volumes in securities priced below a dollar (“sub-dollar volume”) have been elevated, thereby impacting the ratio mentioned above.

Anomalous rises in sub-dollar volume stand to have a material adverse impact on ETP Holders’ qualifications for pricing tiers/incentives because such qualifications depend upon ETP Holders achieving threshold percentages of volumes as a percentage of CADV, and an extraordinary rise in sub-dollar volume stands to elevate CADV. As a result, ETP Holders may find it more difficult, if not practically impossible, to qualify for or to continue to qualify for their existing incentives during months where there are such rises in sub-dollar volumes, even if their dollar plus volumes have not diminished relative to prior months.

The Exchange believes that it would be unfair for ETP Holders that execute significant dollar plus volumes on the Exchange to fail to achieve or to lose their existing incentives for such volumes due to anomalous behavior that is extraneous to them. Therefore, the Exchange wishes to amend the Fee Schedule to help avoid extraordinary spikes in sub-dollar volumes from adversely affecting an ETP Holder’s qualification of incentives for their dollar plus stock executions.

Accordingly, the Exchange proposes to amend footnote 1 of the Fee Schedule to state that, for purposes of calculating an ETP Holder’s qualifications for fees and credits that pertain

¹³ Id.

to providing liquidity, the Exchange will calculate an ETP Holder's equity volume and total equity CADV twice for the following tiers: Adding Tiers, Limit Non-Display Step Up Tier and Tape C Tiers for Adding. First, the Exchange will calculate an ETP Holder's equity volume and total equity CADV inclusive of volume that consists of executions in securities priced less than \$1. Second, the Exchange will calculate an ETP Holder's equity volume and total equity CADV exclusive of volume that consists of executions in securities priced less than \$1. As proposed, the Exchange will then assess which of these two calculations would qualify the ETP Holder for the most advantageous fees and credits for the month and then the Exchange will apply those to the ETP Holder. Another market recently amended its rules to provide its members with a similar remedy.¹⁴

Although the Exchange wishes to avoid extraordinary spikes in sub-dollar volumes from adversely affecting an ETP Holder's qualification of incentives for their dollar plus stock executions, the Exchange proposes to limit the application of the proposed calculation to efficiently allocate the Exchange's limited resources for incentives. Specifically, as noted above, the Exchange proposes to apply the proposed calculation excluding sub-dollar volumes to the incentives that pertain to providing liquidity under the Adding Tiers, the Limit Non-Display Step Up Tier and the Tape C Tiers for Adding. The Exchange wishes to impose such limitations in order to limit the cost impact on the Exchange, while still providing some relief to ETP Holders in months with extraordinary spikes in sub-dollar volumes. It is appropriate for the Exchange to devote to incentive programs in a meaningful way and to reallocate these incentives periodically in a manner that best achieves the Exchange's overall mix of objectives.

¹⁴ See Securities Exchange Act Release No. 99535 (February 14, 2024), 89 FR 13125 (SR-NASDAQ-2024-005) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Equity 7, Section 118).

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

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.”¹⁷ As a threshold matter, the Exchange is subject to significant competitive forces in the market for equity securities transaction services that constrain its pricing determinations in that market.

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for equity security transaction services. The Exchange is only one of several equity venues to which market participants may direct their

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(4) and (5).

¹⁷ See Regulation NMS, supra note 6, 70 FR at 37499.

order flow. Competing equity exchanges offer similar tiered pricing structures to that of the Exchange, including credits and fees that apply based upon members achieving certain volume thresholds. 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 or reduce use of certain categories of products, in response to fee changes. Accordingly, the Exchange's fees are reasonably constrained by competitive alternatives and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

The Exchange believes that the proposal to amend the Fee Schedule is reasonable and equitable because, in its absence, ETP Holders may experience material adverse impacts on their ability to qualify for certain incentives during a month with an anomalous rise in sub-dollar volumes. The Exchange does not wish to penalize ETP Holders that execute significant volumes on the Exchange due to anomalous and extraneous trading activities of a small number of firms in sub-dollar securities. The proposed rule would seek to provide a means for ETP Holders that provide liquidity to avoid such a penalty by determining whether calculating ETP Holder equity volume and total equity CADV to include or exclude sub-dollar volume would result in ETP Holders qualifying for the most advantageous fees and credits, and then applying the calculations that would result in the incentives for providing liquidity that are most advantageous to each ETP Holder. The Exchange believes it is reasonable to limit the proposal by applying the proposed calculation to incentives that pertain to providing liquidity to a limited number of pricing tiers because the pricing tiers that are the subject of this proposed rule change are those that are the most impacted by anomalous spikes in sub-dollar volumes, and by applying the additional calculation to those specified pricing tiers would alleviate burden on ETP Holders from being

disadvantaged by trading over which it has little or no control. The Exchange believes that the proposed rule change is an equitable allocation and is not unfairly discriminatory because the Exchange does not intend for the proposal to advantage any particular ETP Holders and the Exchange will apply the proposed calculation to all similarly situated ETP Holders.

On the backdrop of the competitive environment in which the Exchange currently operates, the proposed rule change is a reasonable attempt by the Exchange to maintain, if not improve its market share relative to its competitors.

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,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.

Intramarket Competition. The Exchange does not believe that its proposal would place any category of Exchange participant at a competitive disadvantage. The Exchange intends for its proposed changes to the fees and credits to reallocate its limited resources more efficiently and to align them with the Exchange's overall mix of objectives. The proposed rule change is intended to help avoid pricing disadvantages due to anomalous spikes in sub-dollar volumes and

¹⁸ 15 U.S.C. 78f(b)(8).

is not intended to provide a competitive advantage to any one particular ETP Holder. The proposed calculation would be available to all similarly-situated market participants, and, as such, the proposed changes would not impose a disparate burden on competition among market participants on the Exchange.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchanges 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 12%. In such an environment, the Exchange must continually review, and consider adjusting its fees and credits to remain competitive with other exchanges and with off-exchange venues. Because competitors are free to modify their own fees and credits in response, 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 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 has become effective upon filing pursuant to Section 19(b)(3)(A)¹⁹ of the Act and paragraph (f) thereunder. At any time within 60 days of the filing

¹⁹ 15 U.S.C. 78s(b)(3)(A).

of the 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.

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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSEARCA-2024-50 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-2024-50. 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 (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSEARCA-2024-50 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

Sherry R. Haywood,

Assistant Secretary.

²⁰ 17 CFR 200.30-3(a)(12).

Additions underlined
Deletions [bracketed]

NYSE Arca Equities

FEES AND CHARGES

Effective Date: [May 1]June 3, 2024

NYSE ARCA MARKETPLACE: TRADE RELATED FEES AND CREDITS¹

EXCHANGE TRANSACTIONS

ETP HOLDERS AND MARKET MAKERS²

Round Lots and Odd Lots (Per Share Price \$1.00 or Above and Per Share Price Below \$1.00)

* * * * *

¹ Trade activity on days when the market closes early and on the date of the annual reconstitution of the Russell Investments Indexes does not count toward volume tiers. For purposes of determining trade related fees and credits based on ADV and US CADV (as defined below), the Exchange may exclude any day that (1) the Exchange is not open for the entire trading day and/or (2) a disruption affects an Exchange system that lasts for more than 60 minutes during regular trading hours. For purposes of calculating an ETP Holder's qualifications for fees and credits that pertain to providing liquidity, the Exchange will calculate an ETP Holder's equity volume and total equity CADV twice for the following pricing tiers:

- Adding Tiers
- Limit Non-Display Step Up Tier
- Tape C Tiers for Adding

First, the Exchange will calculate an ETP Holder's equity volume and total equity CADV inclusive of volume that consists of executions in securities priced less than \$1. Second, the Exchange will calculate an ETP Holder's equity volume and total equity CADV exclusive of volume that consists of executions in securities priced less than \$1. The Exchange will then assess which of these two calculations would qualify the ETP Holder for the most advantageous fees and credits for the month and then it will apply those to the ETP Holder.