

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 31

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

File No. * SR 2024 - * 67

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"/>
--	---	--	--	--	---

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 08/14/2024 (Title *)
By David De Gregorio 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.

David De Gregorio
Digitally signed by David De Gregorio
Date: 2024.08.14 15:41:33 -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

August Fee Changes - Tape B Tiers -

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 Re-file Arca August Fee Change

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 *

Add Remove View

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 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

Add Remove View

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

August Fee Changes - Tape B Tiers -

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 adopt an alternative requirement to qualify for the Tape B Tier 3 pricing tier and increase the cap of the additional credit payable for providing liquidity under the Tape B Tiers pricing tier.

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 adopt an alternative requirement to qualify for the Tape B Tier 3 pricing tier and increase the cap of the additional credit

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

payable for providing liquidity under the Tape B Tiers pricing tier. The Exchange proposes to implement the fee changes effective August 14, 2024.³

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.”⁴

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.”⁵ Indeed, equity trading is currently dispersed across 16 exchanges,⁶ numerous alternative trading systems,⁷ 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.⁸ 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.⁹

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

³ The Exchange originally filed to amend the Fee Schedule on August 1, 2024 (SR-NYSEARCA-2024-64). SR-NYSEARCA-2024-64 was subsequently withdrawn and replaced by this filing.

⁴ 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”).

⁵ 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).

⁶ See Cboe U.S Equities Market Volume Summary, available at https://markets.cboe.com/us/equities/market_share/.

⁷ 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>.

⁸ See Cboe Global Markets U.S. Equities Market Volume Summary, available at http://markets.cboe.com/us/equities/market_share/.

⁹ See *id.*

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

Tape B Tier 3

Currently, under the Tape B Tier 3 pricing tier, an ETP Holder could qualify for a credit of \$0.0025 per share¹⁰ for adding liquidity in Tape B Securities by meeting one of the following two requirements. An ETP Holder could qualify for the current credit if such ETP Holder (1) has Adding ADV of Tape B CADV that is equal to at least 0.20% of the Tape B CADV and (2) has Market Maker Electronic Posting Volume of TCADV of at least 0.50% by an OTP Holder or OTP Firm affiliated with the ETP Holder.

Alternatively, the ETP Holder could qualify for the current credit if such ETP Holder has Adding ADV of Tape B CADV that is equal to at least 0.15% over the ETP Holder's April 2020 Adding ADV taken as a percentage of Tape B CADV.¹¹

The Exchange proposes to adopt another alternative method that ETP Holders could utilize to qualify for the Tape B Tier 3 credit. As proposed, an ETP Holder could qualify for the Tape B Tier 3 credit of \$0.0025 per share for adding liquidity in Tape B securities if such ETP Holder is registered as a Lead Market Maker¹² or Market Maker¹³ in at least

¹⁰ Under Section III of the Fee Schedule - Standard Rates, ETP Holders receive a credit of \$0.0020 per share for orders that add liquidity in Tape B securities. Additionally, in securities priced at or above \$1.00, an additional credit in Tape B securities may be available to Lead Market Makers ("LMMs") and to Market Makers affiliated with LMMs that add displayed liquidity based on the number of Less Active ETP Securities in which the LMM is registered as the LMM. The applicable tiered-credits are noted on the Fee Schedule under LMM Transaction Fees and Credits.

¹¹ See Fee Schedule, Tier 3 under Tape B Tiers pricing table.

¹² 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.

¹³ Pursuant to Rule 7.23-E(a)(1), all registered Market Makers, including LMMs, have an obligation to maintain continuous, two-sided trading interest in those securities in which the Market Maker is registered to trade. In addition, pursuant to Rule 7.24-E(b), LMMs are held to higher performance standards in the securities in which they are registered as LMM. LMMs can earn additional financial incentives for meeting the higher performance standards specified from time to time in the Fee Schedule. Only one LMM can be registered in a NYSE-Arca listed security, but that security can have an unlimited number of registered Market Makers. Market Makers can also be registered in securities that trade on an unlisted trading privileges basis on the Exchange.

50¹⁴ Less Active ETPs¹⁵ in which it meets at least two Performance Metrics.¹⁶ The Exchange is not proposing any change to the level of Tape B Tier 3 credits.¹⁷

The proposed rule change to adopt the proposed alternative method to qualify for the existing credit is designed to incentivize ETP Holders to increase liquidity-providing orders in NYSE Arca-listed securities, including in lower volume securities, in which they are registered as a LMM or Market Maker, that they send to the Exchange, which would support the quality of price discovery on the Exchange and provide additional liquidity for incoming orders for the benefit of all market participants.

The Exchange notes that its listing business operates in a highly competitive market in which market participants, including issuers of securities, LMMs, and other liquidity providers, can readily transfer their listings, or direct order flow to competing venues if they deem fee levels, liquidity provision incentive programs, or other factors at a particular venue to be insufficient or excessive. The proposed rule change reflects the current competitive pricing environment and is designed to incentivize market participants to participate as LMMs or Market Makers, especially in Less Active ETPs, and thereby, further enhance the market quality on such securities listed on the Exchange and encourage issuers to list new products on the Exchange.

Tape B - Additional Credit

The Exchange currently provides an increased cap applicable under the Tape B Tiers pricing table. Specifically, if an ETP Holder is registered as a LMM or Market Maker in at least 100 Less Active ETPs in which it meets at least two Performance Metrics, where the ETP Holder, together with any affiliates, has Adding Tape B ADV that is an increase of at least 60% over the ETP Holder's Adding ADV in Q3 2019, as a percentage of Tape B CADV, then such ETP Holder receives a combined credit of up to:

- \$0.0033 per share if the ETP Holder, together with any affiliates, has Tape B Adding ADV equal to at least 0.65% of Tape B CADV, or
- \$0.0034 per share if the ETP Holder, together with any affiliates, has Tape B Adding ADV equal to at least 0.70% of Tape B CADV.

¹⁴ The number of Less Active ETPs for a billing month would be calculated as the average number of Less Active ETPs in which an ETP Holder is registered as a LMM or Market Maker on the first and last business day of the previous month.

¹⁵ Pursuant to Section I under the LMM Transaction Fees and Credits, the term "Less Active ETPs" means ETPs that have a CADV in the prior calendar quarter that is the greater of either less than 100,000 shares or less than 0.013% of Consolidated Tape B ADV. The term "ETP" means Exchange Traded Product listed on NYSE Arca.

¹⁶ The applicable Performance Metrics are specified in Section III under LMM Transaction Fees and Credits on the Fee Schedule.

¹⁷ With this proposed rule change, the Exchange also proposes to reformat the Tape B Tiers table by adopting a new column titled "NYSE Arca Listed Equities" with a description in the new column of the requirement as proposed in this filing.

The Exchange proposes to increase the combined credit, from \$0.0034 per share to \$0.0035 per share, if a qualifying ETP Holder that, together with any affiliates, has Tape B Adding ADV equal to at least 0.70% of Tape B CADV.

The Exchange believes increasing the combined credit payable to ETP Holders, from up to \$0.0034 per share to up to \$0.0035 per share would provide an incentive to ETP Holders to register as LMMs or Market Makers and incentivize such liquidity providers to increase the number of orders sent to the Exchange.

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any significant problems that market participants would have in complying with the proposed changes.

(b) Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁸ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,¹⁹ 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.”²⁰ 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

¹⁸ 15 U.S.C. 78f(b).

¹⁹ 15 U.S.C. 78f(b)(4) and (5).

²⁰ See Regulation NMS, supra note 4, 70 FR at 37499.

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.

Tape B Tier 3

The Exchange believes that the proposal to adopt an alternative method to qualify for the Tape B Tier 3 credit is reasonable because it provides an additional opportunity for ETP Holders to receive an existing rebate on qualifying orders in a manner that incentivizes order flow on the Exchange. The Exchange believes the proposed alternative method to qualify for the Tape B Tier 3 pricing tier is reasonable because it provides ETP Holders with an additional way to qualify for the pricing tier's credit by incentivizing ETP Holders to increase liquidity-providing orders in NYSE Arca-listed securities, including in lower volume securities, in which they are registered as a LMM or Market Maker, that they send to the Exchange, which would support the quality of price discovery on the Exchange and provide additional liquidity for incoming orders for the benefit of all market participants. The Exchange also believes it is reasonable to require ETP Holders to register as a LMM or Market Maker in a minimum number of Less Active ETPs and to meet at least two Performance Metrics in such securities as the Exchange believes this requirement would enhance market quality in Less Active ETPs and support the quality of price discovery in such securities.

The Exchange believes the proposed change to adopt an alternative method to qualify for existing credits is reasonable as these changes would provide an incentive for ETP Holders to direct their order flow to the Exchange and provide meaningful added levels of liquidity in order to qualify for the existing credit, thereby contributing to depth and market quality on the Exchange. As noted above, the Exchange operates in a highly competitive environment, particularly for attracting order flow that provides displayed liquidity on an exchange. More specifically, the Exchange notes that greater add volume order flow may provide for deeper, more liquid markets and execution opportunities at improved prices, which the Exchange believes would incentivize liquidity providers to submit additional liquidity and enhance execution opportunities.

The Exchange believes that the proposal to adopt an alternative method to qualify for the Tape B Tier 3 credit represents an equitable allocation of fees and credits and is not unfairly discriminatory because it would apply uniformly to all ETP Holders, in that all ETP Holders would be eligible for the existing credit and have the opportunity to meet the tier's criteria by registering as a LMM or Market Maker in a Less Active ETP and meeting the market quality metrics. The Exchange believes that the proposal to offer rebates tied to market quality metrics represents an equitable allocation of payments because LMMs and Market Makers would be required to not only meet their Rule 7.23-E obligations, but also meet prescribed quoting requirements in order to qualify for the credit. Further, all LMMs and Market Makers on the Exchange are eligible to participate and could do so by simply registering in a Less Active ETP and meeting the proposed market quality metrics.

Under the proposal, the existing rebate would apply automatically and uniformly to all ETP Holders that register as a LMM or Market Maker in at least 50 Less Active ETPs in which it meets at least two Performance Metrics.

While the Exchange has no way of knowing whether the proposed alternative method to qualify for the Tape B Tier 3 pricing tier would definitively result in any particular ETP Holder qualifying for the existing credit, the Exchange anticipates a number of ETP Holders will seek to qualify for the rebate by registering as a LMM or Market Maker in at least 50 Less Active ETPs and meet the required performance metrics.

The Exchange believes it is not unfairly discriminatory to provide an alternative way to qualify for the per share credit under the Tape B Tier 3 pricing tier, as the credit would be provided on an equal basis to all ETP Holders that meet the proposed requirement. Further, the Exchange believes the proposed alternative method would incentivize ETP Holders to register in Less Active ETPs and send more order to the Exchange to qualify for the Tape B Tier 3 credit.

The Exchange believes that the proposed alternative method to qualify for the Tape B Tier 3 credit is not unfairly discriminatory because it would be available to all ETP Holders on an equal and non-discriminatory basis. In this regard, the Exchange notes that ETP Holders that do not meet the proposed alternative criteria would continue to have the opportunity to qualify for the Tape B Tier 3 credit by satisfying the two current requirements, which would not change as a result of this proposal.

The Exchange also believes that the proposed rule change is not unfairly discriminatory because it is reasonably related to the value to the Exchange's market quality associated with higher volumes. The Exchange believes that increased liquidity and higher volumes improves market quality on the Exchange, which increases the likelihood of orders being executed at prices desired by ETP Holders and thereby incentivizing ETP Holders to direct more order flow to the Exchange. The Exchange places a higher value on displayed liquidity because the Exchange believes that displayed liquidity is a public good that benefits investors generally by providing greater price transparency and enhancing price discovery on a public exchange, which ultimately lead to substantial reductions in transaction costs.

The proposed change to the Tape B Tier 3 pricing tier is designed as an incentive to ETP Holders interested in meeting the tier criteria to submit additional order flow to the Exchange and each will receive the existing rebate if the tier criteria is met. The Exchange also notes that the proposed rule change will not adversely impact any ETP Holder's pricing or its ability to qualify for other tiers. Rather, should an ETP Holder not meet the Tape B Tier 3 pricing tier's criteria, the ETP Holder will merely not receive the corresponding rebate.

Tape B - Additional Credit

The Exchange believes the proposed rule change to increase the combined credit, from up to \$0.0034 per share to up to \$0.0035 per share, payable to ETP Holders if an ETP Holder, together with any affiliates, has Tape B Adding ADV equal to at least 0.70% of Tape B CADV is a reasonable means of attracting additional liquidity to the Exchange. The Exchange believes the increased financial incentive, which is among the highest paid by the Exchange, would encourage ETP Holders to submit additional liquidity to a national securities exchange and receive the proposed higher rebate. The Exchange believes it is reasonable to require ETP Holders to meet the applicable volume threshold to qualify for the increased credit, given the higher combined credit up to of \$0.0035 per share that the Exchange would pay if the tier criteria were met.

The Exchange believes that submission of increased liquidity to the Exchange would promote price discovery and transparency and enhance order execution opportunities for ETP Holders from the substantial amounts of liquidity present on the Exchange. The Exchange also believes it is reasonable to require ETP Holders to register as a LMM or Market Maker in a minimum number of Less Active ETPs and to meet at least two Performance Metrics in such securities as the Exchange believes this requirement would enhance market quality in Less Active ETPs and support the quality of price discovery in such securities.

The Exchange believes the proposed rule change to increase the combined credit, from up to \$0.0034 per share to up to \$0.0035 per share, payable to ETP Holders if a ETP Holder, together with any affiliates, has Tape B Adding ADV equal to at least 0.70% of Tape B CADV equitably allocates its fees and credits among market participants because it is reasonably related to the value of the Exchange's market quality associated with higher equities volumes. The Exchange believes that increased liquidity and higher volumes improves market quality on the Exchange, which increases the likelihood of orders being executed at prices desired by ETP Holders and thereby incentivizing ETP Holders to direct more order flow to the Exchange. The Exchange places a higher value on displayed liquidity because the Exchange believes that displayed liquidity is a public good that benefits investors generally by providing greater price transparency and enhancing price discovery on a public exchange, which ultimately lead to substantial reductions in transaction costs. As proposed, the Exchange would continue to provide qualifying ETP Holders with some of the highest credits payable by the Exchange provided they continue to participate as LMMs or Market Makers and continue to provide increased Tape B adding ADV. The more an ETP Holder participates, the greater the credit that ETP Holder would receive. The Exchange believes the proposed increase credit would encourage ETP Holders to continue to send orders that add liquidity to the Exchange, thereby contributing to robust levels of liquidity, which would benefit all market participants.

The Exchange believes it is not unfairly discriminatory to increase the combined credit payable to ETP Holders because the increased credits would be paid to all ETP Holders that qualify for the credit on an equal basis. Additionally, the proposed rule change to increase the combined credit payable to qualifying ETP Holders neither targets nor will it have a disparate impact on any particular category of market participant.

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,²¹ 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 believes the proposed amendment to its Fee Schedule would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed change represents a significant departure from previous pricing offered by the Exchange or its competitors. The proposed change is designed to attract additional order flow to the Exchange, in particular with respect to Tape B securities. The Exchange believes that the proposed adoption of an alternative method to qualify for an established credit under the Tape B Tier 3 pricing tier would incentivize market participants to participate as LMMs or Market Makers and direct liquidity adding order flow to the Exchange, bringing with it additional execution opportunities for market participants and improved price transparency. Greater overall order flow, trading opportunities, and pricing transparency would benefit all market participants on the Exchange by enhancing market quality and would continue to encourage ETP Holders to send orders to the Exchange, thereby contributing towards a robust and well-balanced market ecosystem.

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

²¹ 15 U.S.C. 78f(b)(8).

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 Act²² and subparagraph (f)(2) of Rule 19b-4²³ 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.²⁴

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.

²² 15 U.S.C. 78s(b)(3)(A)(ii).

²³ 17 CFR 240.19b-4(f)(2).

²⁴ 15 U.S.C. 78s(b)(2)(B).

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-2024-67)

[Date]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend to 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 August 14, 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 adopt an alternative requirement to qualify for the Tape B Tier 3 pricing tier and increase the cap of the additional credit payable for providing liquidity under the Tape B Tiers pricing tier. 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

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 adopt an alternative requirement to qualify for the Tape B Tier 3 pricing tier and increase the cap of the additional credit payable for providing liquidity under the Tape B Tiers pricing tier. The Exchange proposes to implement the fee changes effective August 14, 2024.⁴

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

⁴ The Exchange originally filed to amend the Fee Schedule on August 1, 2024 (SR-NYSEARCA-2024-64). SR-NYSEARCA-2024-64 was subsequently withdrawn and replaced by this filing.

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”).

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

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. With respect to non-marketable order flow that would provide liquidity on an Exchange against which market makers can quote, ETP Holders can choose from any one of the 16 currently operating registered exchanges to route such order flow. Accordingly, competitive forces compel the Exchange to use exchange transaction fees and credits because market participants can readily

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.

trade on competing venues if they deem pricing levels at those other venues to be more favorable.

Proposed Rule Change

Tape B Tier 3

Currently, under the Tape B Tier 3 pricing tier, an ETP Holder could qualify for a credit of \$0.0025 per share¹¹ for adding liquidity in Tape B Securities by meeting one of the following two requirements. An ETP Holder could qualify for the current credit if such ETP Holder (1) has Adding ADV of Tape B CADV that is equal to at least 0.20% of the Tape B CADV and (2) has Market Maker Electronic Posting Volume of TCADV of at least 0.50% by an OTP Holder or OTP Firm affiliated with the ETP Holder. Alternatively, the ETP Holder could qualify for the current credit if such ETP Holder has Adding ADV of Tape B CADV that is equal to at least 0.15% over the ETP Holder's April 2020 Adding ADV taken as a percentage of Tape B CADV.¹²

The Exchange proposes to adopt another alternative method that ETP Holders could utilize to qualify for the Tape B Tier 3 credit. As proposed, an ETP Holder could qualify for the Tape B Tier 3 credit of \$0.0025 per share for adding liquidity in Tape B securities if such ETP Holder is

¹¹ Under Section III of the Fee Schedule - Standard Rates, ETP Holders receive a credit of \$0.0020 per share for orders that add liquidity in Tape B securities. Additionally, in securities priced at or above \$1.00, an additional credit in Tape B securities may be available to Lead Market Makers ("LMMs") and to Market Makers affiliated with LMMs that add displayed liquidity based on the number of Less Active ETP Securities in which the LMM is registered as the LMM. The applicable tiered-credits are noted on the Fee Schedule under LMM Transaction Fees and Credits.

¹² See Fee Schedule, Tier 3 under Tape B Tiers pricing table.

registered as a Lead Market Maker¹³ or Market Maker¹⁴ in at least 50¹⁵ Less Active ETPs¹⁶ in which it meets at least two Performance Metrics.¹⁷ The Exchange is not proposing any change to the level of Tape B Tier 3 credits.¹⁸

The proposed rule change to adopt the proposed alternative method to qualify for the existing credit is designed to incentivize ETP Holders to increase liquidity-providing orders in NYSE Arca-listed securities, including in lower volume securities, in which they are registered as a LMM or Market Maker, that they send to the Exchange, which would support the quality of price discovery on the Exchange and provide additional liquidity for incoming orders for the benefit of all market participants.

The Exchange notes that its listing business operates in a highly competitive market in which market participants, including issuers of securities, LMMs, and other liquidity providers, can readily transfer their listings, or direct order flow to competing venues if they deem fee levels,

¹³ 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.

¹⁴ Pursuant to Rule 7.23-E(a)(1), all registered Market Makers, including LMMs, have an obligation to maintain continuous, two-sided trading interest in those securities in which the Market Maker is registered to trade. In addition, pursuant to Rule 7.24-E(b), LMMs are held to higher performance standards in the securities in which they are registered as LMM. LMMs can earn additional financial incentives for meeting the higher performance standards specified from time to time in the Fee Schedule. Only one LMM can be registered in a NYSE-Arca listed security, but that security can have an unlimited number of registered Market Makers. Market Makers can also be registered in securities that trade on an unlisted trading privileges basis on the Exchange.

¹⁵ The number of Less Active ETPs for a billing month would be calculated as the average number of Less Active ETPs in which an ETP Holder is registered as a LMM or Market Maker on the first and last business day of the previous month.

¹⁶ Pursuant to Section I under the LMM Transaction Fees and Credits, the term “Less Active ETPs” means ETPs that have a CADV in the prior calendar quarter that is the greater of either less than 100,000 shares or less than 0.013% of Consolidated Tape B ADV. The term “ETP” means Exchange Traded Product listed on NYSE Arca.

¹⁷ The applicable Performance Metrics are specified in Section III under LMM Transaction Fees and Credits on the Fee Schedule.

¹⁸ With this proposed rule change, the Exchange also proposes to reformat the Tape B Tiers table by adopting a new column titled “NYSE Arca Listed Equities” with a description in the new column of the requirement as proposed in this filing.

liquidity provision incentive programs, or other factors at a particular venue to be insufficient or excessive. The proposed rule change reflects the current competitive pricing environment and is designed to incentivize market participants to participate as LMMs or Market Makers, especially in Less Active ETPs, and thereby, further enhance the market quality on such securities listed on the Exchange and encourage issuers to list new products on the Exchange.

Tape B - Additional Credit

The Exchange currently provides an increased cap applicable under the Tape B Tiers pricing table. Specifically, if an ETP Holder is registered as a LMM or Market Maker in at least 100 Less Active ETPs in which it meets at least two Performance Metrics, where the ETP Holder, together with any affiliates, has Adding Tape B ADV that is an increase of at least 60% over the ETP Holder's Adding ADV in Q3 2019, as a percentage of Tape B CADV, then such ETP Holder receives a combined credit of up to:

- \$0.0033 per share if the ETP Holder, together with any affiliates, has Tape B Adding ADV equal to at least 0.65% of Tape B CADV, or
- \$0.0034 per share if the ETP Holder, together with any affiliates, has Tape B Adding ADV equal to at least 0.70% of Tape B CADV.

The Exchange proposes to increase the combined credit, from \$0.0034 per share to \$0.0035 per share, if a qualifying ETP Holder that, together with any affiliates, has Tape B Adding ADV equal to at least 0.70% of Tape B CADV.

The Exchange believes increasing the combined credit payable to ETP Holders, from up to \$0.0034 per share to up to \$0.0035 per share would provide an incentive to ETP Holders to register as LMMs or Market Makers and incentivize such liquidity providers to increase the number of orders sent to the Exchange.

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any significant problems that market participants would have in complying with the proposed changes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁹ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,²⁰ 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.”²¹ 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

¹⁹ 15 U.S.C. 78f(b).

²⁰ 15 U.S.C. 78f(b)(4) and (5).

²¹ See Regulation NMS, supra note 5, 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.

Tape B Tier 3

The Exchange believes that the proposal to adopt an alternative method to qualify for the Tape B Tier 3 credit is reasonable because it provides an additional opportunity for ETP Holders to receive an existing rebate on qualifying orders in a manner that incentivizes order flow on the Exchange. The Exchange believes the proposed alternative method to qualify for the Tape B Tier 3 pricing tier is reasonable because it provides ETP Holders with an additional way to qualify for the pricing tier's credit by incentivizing ETP Holders to increase liquidity-providing orders in NYSE Arca-listed securities, including in lower volume securities, in which they are registered as a LMM or Market Maker, that they send to the Exchange, which would support the quality of price discovery on the Exchange and provide additional liquidity for incoming orders for the benefit of all market participants. The Exchange also believes it is reasonable to require ETP Holders to register as a LMM or Market Maker in a minimum number of Less Active ETPs and to meet at least two Performance Metrics in such securities as the Exchange believes this requirement would enhance market quality in Less Active ETPs and support the quality of price discovery in such securities.

The Exchange believes the proposed change to adopt an alternative method to qualify for existing credits is reasonable as these changes would provide an incentive for ETP Holders to direct their order flow to the Exchange and provide meaningful added levels of liquidity in order to qualify for the existing credit, thereby contributing to depth and market quality on the Exchange. As noted above, the Exchange operates in a highly competitive environment, particularly for attracting order flow that provides displayed liquidity on an exchange. More specifically, the Exchange notes that greater add volume order flow may provide for deeper, more liquid markets and execution opportunities at improved prices, which the Exchange believes would incentivize liquidity providers to submit additional liquidity and enhance execution opportunities.

The Exchange believes that the proposal to adopt an alternative method to qualify for the Tape B Tier 3 credit represents an equitable allocation of fees and credits and is not unfairly discriminatory because it would apply uniformly to all ETP Holders, in that all ETP Holders would be eligible for the existing credit and have the opportunity to meet the tier's criteria by registering as a LMM or Market Maker in a Less Active ETP and meeting the market quality metrics. The Exchange believes that the proposal to offer rebates tied to market quality metrics represents an equitable allocation of payments because LMMs and Market Makers would be required to not only meet their Rule 7.23-E obligations, but also meet prescribed quoting requirements in order to qualify for the credit. Further, all LMMs and Market Makers on the Exchange are eligible to participate and could do so by simply registering in a Less Active ETP and meeting the proposed market quality metrics.

Under the proposal, the existing rebate would apply automatically and uniformly to all ETP Holders that register as a LMM or Market Maker in at least 50 Less Active ETPs in which it

meets at least two Performance Metrics.

While the Exchange has no way of knowing whether the proposed alternative method to qualify for the Tape B Tier 3 pricing tier would definitively result in any particular ETP Holder qualifying for the existing credit, the Exchange anticipates a number of ETP Holders will seek to qualify for the rebate by registering as a LMM or Market Maker in at least 50 Less Active ETPs and meet the required performance metrics.

The Exchange believes it is not unfairly discriminatory to provide an alternative way to qualify for the per share credit under the Tape B Tier 3 pricing tier, as the credit would be provided on an equal basis to all ETP Holders that meet the proposed requirement. Further, the Exchange believes the proposed alternative method would incentivize ETP Holders to register in Less Active ETPs and send more order to the Exchange to qualify for the Tape B Tier 3 credit.

The Exchange believes that the proposed alternative method to qualify for the Tape B Tier 3 credit is not unfairly discriminatory because it would be available to all ETP Holders on an equal and non-discriminatory basis. In this regard, the Exchange notes that ETP Holders that do not meet the proposed alternative criteria would continue to have the opportunity to qualify for the Tape B Tier 3 credit by satisfying the two current requirements, which would not change as a result of this proposal.

The Exchange also believes that the proposed rule change is not unfairly discriminatory because it is reasonably related to the value to the Exchange's market quality associated with higher volumes. The Exchange believes that increased liquidity and higher volumes improves market quality on the Exchange, which increases the likelihood of orders being executed at prices desired by ETP Holders and thereby incentivizing ETP Holders to direct more order flow to the Exchange. The Exchange places a higher value on displayed liquidity because the

Exchange believes that displayed liquidity is a public good that benefits investors generally by providing greater price transparency and enhancing price discovery on a public exchange, which ultimately lead to substantial reductions in transaction costs.

The proposed change to the Tape B Tier 3 pricing tier is designed as an incentive to ETP Holders interested in meeting the tier criteria to submit additional order flow to the Exchange and each will receive the existing rebate if the tier criteria is met. The Exchange also notes that the proposed rule change will not adversely impact any ETP Holder's pricing or its ability to qualify for other tiers. Rather, should an ETP Holder not meet the Tape B Tier 3 pricing tier's criteria, the ETP Holder will merely not receive the corresponding rebate.

Tape B - Additional Credit

The Exchange believes the proposed rule change to increase the combined credit, from up to \$0.0034 per share to up to \$0.0035 per share, payable to ETP Holders if an ETP Holder, together with any affiliates, has Tape B Adding ADV equal to at least 0.70% of Tape B CADV is a reasonable means of attracting additional liquidity to the Exchange. The Exchange believes the increased financial incentive, which is among the highest paid by the Exchange, would encourage ETP Holders to submit additional liquidity to a national securities exchange and receive the proposed higher rebate. The Exchange believes it is reasonable to require ETP Holders to meet the applicable volume threshold to qualify for the increased credit, given the higher combined credit up to of \$0.0035 per share that the Exchange would pay if the tier criteria were met.

The Exchange believes that submission of increased liquidity to the Exchange would promote price discovery and transparency and enhance order execution opportunities for ETP Holders from the substantial amounts of liquidity present on the Exchange. The Exchange also

believes it is reasonable to require ETP Holders to register as a LMM or Market Maker in a minimum number of Less Active ETPs and to meet at least two Performance Metrics in such securities as the Exchange believes this requirement would enhance market quality in Less Active ETPs and support the quality of price discovery in such securities.

The Exchange believes the proposed rule change to increase the combined credit, from up to \$0.0034 per share to up to \$0.0035 per share, payable to ETP Holders if a ETP Holder, together with any affiliates, has Tape B Adding ADV equal to at least 0.70% of Tape B CADV equitably allocates its fees and credits among market participants because it is reasonably related to the value of the Exchange's market quality associated with higher equities volumes. The Exchange believes that increased liquidity and higher volumes improves market quality on the Exchange, which increases the likelihood of orders being executed at prices desired by ETP Holders and thereby incentivizing ETP Holders to direct more order flow to the Exchange. The Exchange places a higher value on displayed liquidity because the Exchange believes that displayed liquidity is a public good that benefits investors generally by providing greater price transparency and enhancing price discovery on a public exchange, which ultimately lead to substantial reductions in transaction costs. As proposed, the Exchange would continue to provide qualifying ETP Holders with some of the highest credits payable by the Exchange provided they continue to participate as LMMs or Market Makers and continue to provide increased Tape B adding ADV. The more an ETP Holder participates, the greater the credit that ETP Holder would receive. The Exchange believes the proposed increase credit would encourage ETP Holders to continue to send orders that add liquidity to the Exchange, thereby contributing to robust levels of liquidity, which would benefit all market participants.

The Exchange believes it is not unfairly discriminatory to increase the combined credit payable to ETP Holders because the increased credits would be paid to all ETP Holders that qualify for the credit on an equal basis. Additionally, the proposed rule change to increase the combined credit payable to qualifying ETP Holders neither targets nor will it have a disparate impact on any particular category of market participant.

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,²² 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 believes the proposed amendment to its Fee Schedule would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed change represents a significant departure from previous pricing offered by the Exchange or its

²² 15 U.S.C. 78f(b)(8).

competitors. The proposed change is designed to attract additional order flow to the Exchange, in particular with respect to Tape B securities. The Exchange believes that the proposed adoption of an alternative method to qualify for an established credit under the Tape B Tier 3 pricing tier would incentivize market participants to participate as LMMs or Market Makers and direct liquidity adding order flow to the Exchange, bringing with it additional execution opportunities for market participants and improved price transparency. Greater overall order flow, trading opportunities, and pricing transparency would benefit all market participants on the Exchange by enhancing market quality and would continue to encourage ETP Holders to send orders to the Exchange, thereby contributing towards a robust and well-balanced market ecosystem.

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)²³ of the Act and paragraph (f) thereunder. At any time within 60 days of the filing 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-2024-67 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.

²³ 15 U.S.C. 78s(b)(3)(A).

All submissions should refer to file number SR-NYSEARCA-2024-67. 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-2024-67 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.²⁴

Sherry R. Haywood,

Assistant Secretary.

²⁴ 17 CFR 200.30-3(a)(12).

Additions underlined
Deletions [bracketed]

NYSE Arca Equities

FEES AND CHARGES

Effective Date: August 14, 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)

* * * * *

Tape B Tiers							
	<u>Minimum Requirement</u>						
	[Minimum Requirement for] Tape B			<u>NYSE Arca Listed Equities</u>	[Minimum Requirement for]NYSE Arca Options	Credit for Tape B Adding	
Tier	Adding ADV of Tape B CADV	Adding Increase in Tape B of Tape B CADV	Adding Increase Baseline	<u># of Less Active ETPs per LMM/Market Maker Meeting At Least Two Performance Metrics in Prior Month</u>	Market Maker Electronic Posting Volume of TCADV by OTP Holder or OTP Firm affiliated with the ETP Holder	Tape B Credit	Tape B Additional Credit ^(f)
Tier 1 ^(g)	1.50%					(\$0.0030)	
Tier 2 ^(g)	1.00% or					(\$0.0028)	

	0.25% above April 2020						
Tier 3^(g)	0.15% above April 2020 or					(\$0.0025)	
	0.20% or				0.50%		
				50			
Step Up	0.50%	20%	Q3 2019				(\$0.0002)
	0.50%	30%	Q3 2019				(\$0.0003)
	0.50%	40%	Q3 2019				(\$0.0004)

(f) This credit shall be in addition to the ETP Holder’s Tiered or Standard credit(s) and such combined credit(s) in Tape B shall not exceed \$0.0032, except that for ETP Holders registered as a Lead Market Maker or Market Maker in at least 100 Less Active ETPs in which it meets at least two Performance Metrics, where the ETP Holder, together with any affiliates, has Adding Tape B ADV that is an increase of at least 60% over the ETP Holder’s Adding ADV in Q3 2019, as a percentage of Tape B CADV, in which case the ETP Holder can receive a combined credit of up to:

- \$0.0033 per share if the ETP Holder, together with any affiliates, has Tape B Adding ADV equal to at least 0.65% of Tape B CADV, or
- \$0.0035[34] per share if the ETP Holder, together with any affiliates, has Tape B Adding ADV equal to at least 0.70% of Tape B CADV.

(g) No Change.

* * * * *