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

File No. * SR 2024 - * 85

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 10/10/2024

(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: 2024.10.10 15:42:14 -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 *

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October Fee Changes - 19b4 (refile).d

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 *

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October Fee Changes - Ex1.docx

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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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

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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

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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

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October Fee Changes - Ex5(refile).doc

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

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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 1) increase the credits payable under certain Mid-Point Liquidity (“MPL”) Order pricing tiers, and 2) adopt a lower fee for certain Retail Orders that remove liquidity in securities with a per share price below \$1.00.

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 1) increase the credits payable

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

under certain MPL Order³ pricing tiers, and 2) adopt a lower fee for certain Retail Orders⁴ that remove liquidity in securities with a per share price below \$1.00 (“Sub-Dollar Securities”), as described below.

The Exchange proposes to implement the fee changes effective October 10, 2024.⁵

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.”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

³ A MPL Order is a limit order that is not displayed and does not route, with a working price at the lower (higher) of the midpoint of the Protected Best Bid/Offer or its limit price. See NYSE Arca Rule 7.31-E(d)(3).

⁴ Rule 7.31-E(i)(4)(A) provides that an “order designated with a “retail” modifier is an agency order or a riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person and is submitted to the Exchange by an ETP Holder, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology.”

⁵ The Exchange originally filed to amend the Fee Schedule on October 1, 2024 (SR-NYSEARCA-2024-82). SR-NYSEARCA-2024-82 was subsequently withdrawn and replaced by this filing.

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

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 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

MPL Orders

In response to this competitive environment, the Exchange has already established multiple levels of credits for MPL Orders that allow ETP Holders to passively interact with trading interest on the Exchange and offer potential price improvement to incoming marketable orders submitted to the Exchange.¹² In order to provide an incentive for ETP Holders to provide such liquidity, the credits increase based on increased levels of volume directed to the Exchange. The MPL Order pricing tiers are intended to incentivize ETP Holders to earn increased credits by sending greater amounts of liquidity-providing MPL Orders in Tapes A, B and C securities to the Exchange.

As noted above, the Exchange currently provides multiple levels of credits, ranging from \$0.0015 per share to \$0.0030 per share, to ETP Holders that send MPL Orders that provide liquidity to the Exchange. For the current MPL Order pricing tier, the amount of the per share credit is based on an ETP Holder's ADV of provided liquidity in MPL Orders for Tape A, Tape B and Tape C Securities combined ("MPL Adding ADV").

Under current MPL Tier 8, for ETP Holders that have MPL Adding ADV during a billing month of at least 1.5 million shares, the Exchange currently provides a credit of \$0.0015 per share in Tape A, Tape B and Tape C securities. Under current MPL Tier 7, for ETP Holders with MPL Adding ADV during a billing month of at least 2 million shares, the Exchange currently provides a credit of \$0.0020 per share in Tape A, Tape B and Tape C securities. Under current MPL Tier 6, the Exchange provides a credit of \$0.0025 per share in Tape A, Tape B and Tape C securities to ETP Holders that have MPL Adding

http://markets.cboe.com/us/equities/market_share/.

¹¹ See *id.*

¹² See, e.g., Securities Exchange Act Release No. 54511 (September 26, 2006), 71 FR 58460, 58461 (October 3, 2006) (SR-PCX-2005-53).

ADV during a billing month of at least 3 million shares. ETP Holders can alternatively qualify for the MPL Tier 6 credit if they have MPL Adding ADV during the billing month of at least 1 million shares and have MPL Adding ADV, as a percent of Adding ADV, of at least 50%. Under current MPL Tier 5, the Exchange provides a credit of \$0.0026 per share in Tape A, Tape B and Tape C securities to ETP Holders that have MPL Adding ADV during a billing month of at least 5 million shares. ETP Holders can alternatively qualify for the MPL Tier 5 credit if they have MPL Adding ADV during the billing month of at least 2 million shares and have MPL Adding ADV, as a percent of Adding ADV, of at least 50%. Under MPL Tier 4, for ETP Holders with MPL Adding ADV during a billing month of at least 13 million shares, the Exchange currently provides a credit of \$0.0027 per share in Tape A, Tape B and Tape C securities. Under MPL Tier 3, for ETP Holders with MPL Adding ADV during a billing month of at least 15 million shares, the Exchange currently provides a credit of \$0.0028 per share in Tape A, Tape B and Tape C securities. Under MPL Tier 2, for ETP Holders with MPL Adding ADV during a billing month of at least 25 million shares, the Exchange currently provides a credit of \$0.0029 per share in Tape A, Tape B and Tape C securities. Finally, under MPL Tier 1, for ETP Holders with MPL Adding ADV during a billing month of at least 30 million shares, the Exchange currently provides a credit of \$0.0030 per share in Tape A, Tape B and Tape C securities.¹³

The Exchange now proposes to increase the credits payable for MPL Tier 1, MPL Tier 2, MPL Tier 3 and MPL Tier 4, as follows:

- Increase the credit payable for MPL Tier 1, from \$0.0030 per share to \$0.0033 per share in Tape A, Tape B and Tape C securities, without any change to the volume requirement to qualify for the proposed higher MPL Tier 1 credit;
- Increase the credit payable for MPL Tier 2, from \$0.0029 per share to \$0.0032 per share in Tape A, Tape B and Tape C securities, without any change to the volume requirement to qualify for the proposed higher MPL Tier 2 credit;
- Increase the credit payable for MPL Tier 3, from \$0.0028 per share to \$0.0031 per share in Tape A, Tape B and Tape C securities, without any change to the volume requirement to qualify for the proposed higher MPL Tier 3 credit; and
- Increase the credit payable for MPL Tier 4, from \$0.0027 per share to \$0.0029 per share in Tape A, Tape B and Tape C securities, without any change to the volume requirement to qualify for the proposed higher MPL Tier 4 credit.

With this proposed change, the MPL Order Tiers pricing tier would appear as follows:

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The Exchange charges a fee of \$0.0030 per share for MPL Orders in Tape A, Tape B and Tape C Securities that remove liquidity from the Exchange that are not designated as “Retail Orders.” MPL Orders removing liquidity from the Exchange that are designated as Retail Orders are subject to a fee of \$0.0010 per share. See Fee Schedule.

MPL Order Tiers				
Tier	Minimum Requirement		Credit for MPL Adding	
	MPL Adding ADV	MPL Adding ADV as percent of Adding ADV	Tape A	Tape B and Tape C
MPL Tier 1	30 Million		(\$0.0033)	(\$0.0033)
MPL Tier 2	25 Million		(\$0.0032)	(\$0.0032)
MPL Tier 3	15 Million		(\$0.0031)	(\$0.0031)
MPL Tier 4	13 Million		(\$0.0029)	(\$0.0029)
MPL Tier 5	5 Million or		(\$0.0026)	(\$0.0026)
	2 Million	50%		
MPL Tier 6	3 Million or		(\$0.0025)	(\$0.0025)
	1 Million	50%		
MPL Tier 7	2 Million		(\$0.0020)	(\$0.0020)
MPL Tier 8	1.5 Million		(\$0.0015)	(\$0.0015)

The goal of the proposed rule change is to incentivize ETP Holders to increase the number of MPL Orders they post on the Exchange's Book, which would provide additional price improvement opportunities for incoming orders, and thus qualify for the proposed higher per share credits. MPL Orders allow for additional opportunities for passive interaction with trading interest on the Exchange and are designed to offer potential price improvement to incoming marketable orders submitted to the Exchange. The Exchange believes that by correlating the level of the credit to the level of MPL Adding ADV, the Exchange's fee structure would incentivize ETP Holders to submit more liquidity-providing MPL Orders to the Exchange, thereby increasing the potential for price improvement to incoming marketable orders submitted to the Exchange.

The Exchange believes adopting increased credits payable under the MPL Tiers 1, 2, 3 and 4 would provide an incentive for ETP Holders to send increased order flow to qualify for these tiers. As noted above, the Exchange operates in a competitive environment, particularly as it relates to attracting MPL Orders that are posted on the Exchange's Book. Since the Exchange is not amending the volume requirement to qualify for MPL Tiers 1, 2, 3 and 4, the Exchange believes that the proposed higher credits would incentivize ETP Holders to route a greater number of liquidity-providing orders to the Exchange to qualify for the proposed higher credits.

The Exchange does not know how much order flow ETP Holders choose to route to other exchanges or to off-exchange venues. Without having a view of ETP Holders' activity on other markets and off-exchange venues, the Exchange has no way of knowing whether the proposed fee change would result in any ETP Holder sending more of its liquidity-providing orders to the Exchange to qualify for the proposed higher credits. The Exchange cannot predict with certainty how many ETP Holders would avail themselves of this opportunity, but additional liquidity-providing orders would benefit all market participants because it would provide greater execution opportunities on the Exchange. The Exchange believes the proposed higher credits would provide an incentive for ETP Holders to submit additional MPL Orders to the Exchange to qualify for such credits.

Sub-Dollar Retail Day Remove Tier

As described below, the Exchange proposes to adopt a new pricing tier that would provide ETP Holders the ability to pay a lower fee for Retail Orders in Sub-Dollar Securities with a time-in-force of Day that remove liquidity from the Exchange. Currently, the Exchange charges a fee equal to 0.3% of the total dollar value for all orders in Sub-Dollar Securities that remove liquidity.¹⁴

Specifically, the Exchange proposes to adopt a new pricing tier titled Sub-Dollar Retail Day Remove Tier under Section VIII. Tier Rates - Round Lots and Odd Lots (Per Share Price Below \$1.00). As proposed, ETP Holders that, during the billing month, have Retail Orders in Sub-Dollar Securities with a time-in-force of Day equal to 0.20% of CADV¹⁵ in Sub-Dollar Securities that remove liquidity would be charged a fee of 0.20% of total dollar value. ETP Holders that meet the proposed volume requirement would qualify to pay the proposed lower fee for Retail Orders in Sub-Dollar Securities with a time-in-force of Day that remove liquidity.

The purpose of the proposed rule change is to encourage greater participation from ETP

¹⁴ See Fee Schedule, Section III. Standard Rates - Transactions (applicable when Tier Rates do not apply).

¹⁵ 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.

Holders and promote liquidity in Retail Orders. The Exchange believes that the proposed rule change to adopt a volume requirement to qualify for the proposed fee reduction would incentivize ETP Holders to direct a greater number of Retail Orders in Sub-Dollar Securities to the Exchange that remove liquidity. As described above, ETP Holders have a choice of where to send their Retail Orders in Sub-Dollar Securities that remove liquidity. The Exchange believes that the proposed rule change to reduce fees paid by ETP Holders for Retail Orders in Sub-Dollar Securities could lead to more ETP Holders choosing to route such orders for execution to the Exchange rather than to a competing exchange.

While the Exchange proposes to adopt a volume threshold for the proposed new pricing tier, the Exchange believes ETP Holders will be able to meet the proposed requirement given the increased trading in Sub-Dollar Securities in recent months. ETP Holders that trade in Sub-Dollar Securities would benefit by paying a lower fee for Retail Orders with a time-in-force of Day if they choose to send such orders to the Exchange. Based on their current trading profile on the Exchange, a number of ETP Holders would currently qualify for the proposed lower fee. However, without having a view of ETP Holders' activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in other ETP Holders directing orders to the Exchange in order to qualify for the proposed lower fee. The Exchange cannot predict with certainty how many ETP Holders would avail themselves of this opportunity, but increased activity of Retail Orders in Sub-Dollar Securities would benefit all market participants because it would provide greater execution opportunities on the Exchange.

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

(b) Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁶ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,¹⁷ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Fee Change is Reasonable

As discussed above, the Exchange operates in a highly fragmented and competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(4) and (5).

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.”¹⁸

As the Commission itself recognized, the market for trading services in NMS stocks has become “more fragmented and competitive.”¹⁹ Indeed, equity trading is currently dispersed across 16 exchanges,²⁰ numerous alternative trading systems,²¹ 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 (whether including or excluding auction volume).²² 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.

MPL Orders

The Exchange believes the proposed changes to MPL Tiers 1, 2, 3 and 4 are reasonable because the increased credits payable under these tiers would provide an incentive for ETP Holders to route greater amounts of liquidity-providing orders to the Exchange. As noted above, the Exchange operates in a highly competitive environment, particularly for attracting order flow that provides liquidity on an exchange. The Exchange believes it is reasonable to provide the higher credits under MPL Tiers 1, 2, 3, and 4 for orders that provide liquidity if an ETP Holder meets the qualification for such pricing tiers.

The Exchange believes the proposed increased credits are reasonable as they would provide an additional incentive for ETP Holders to qualify for these new tiers and direct their order flow to the Exchange and provide meaningful added levels of liquidity, thereby contributing to the depth, market quality, and price improvement on the Exchange.

¹⁸ See Regulation NMS, *supra* note 6, 70 FR at 37499.

¹⁹ See Securities Exchange Act Release No. 51808, 84 FR 5202, 5253 (February 20, 2019) (File No. S7-05-18) (Final Rule).

²⁰ See Cboe U.S Equities Market Volume Summary, available at https://markets.cboe.com/us/equities/market_share. See generally <https://www.sec.gov/fast-answers/divisionsmarketregmrexchangeshtml.html>.

²¹ 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>.

²² See Cboe Global Markets U.S. Equities Market Volume Summary, available at http://markets.cboe.com/us/equities/market_share/.

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 increase its liquidity and improve its market share relative to its competitors.

Sub-Dollar Retail Day Remove Tier

The Exchange believes it is reasonable to adopt the proposed Sub-Dollar Retail Day Remove pricing tier because the Exchange believes the proposed lower fee under the proposed pricing tier would encourage greater participation from ETP Holders, which could result in increased execution of Retail Orders in Sub-Dollar Securities. In this regard, an ETP Holder that does not qualify for the proposed lower fees would continue to pay the current fee applicable to Retail Orders in Sub-Dollar Securities that remove liquidity. The proposed new pricing tier would create an added financial incentive for ETP Holders to bring additional retail flow to a public market. The proposed new pricing tier is also reasonable because it would reduce the costs of ETP Holders that represent retail flow and potentially also reduce costs to their customers.

The Exchange believes that it is reasonable that only Retail Orders in Sub-Dollar Securities with a time-in-force designation of Day that remove liquidity would count toward qualifying for the Sub-Dollar Retail Day Remove Tier. The Exchange notes that it currently offers lower fees for Retail Orders with a time-in-force of Day that remove liquidity in securities with a per share price of \$1.00 or above under Retail Tiers 1, 2, and 3 and under Retail Step-Up Tier.²³ The Exchange believes that the proposed volume requirement to qualify for the proposed lower fee is reasonable because it is within a range that the Exchange believes would continue to incentivize ETP Holders to submit Retail Orders in Sub-Dollar Securities to the Exchange to qualify for the proposed lower fee.

The Proposed Fee Change is an Equitable Allocation of Credits and Fees

MPL Orders

The Exchange believes that the adoption of increased credits under MPL Tiers 1, 2, 3 and 4 is equitable because the magnitude of the additional credit is not unreasonably high in comparison to the credit paid with respect to other pricing tiers on the Exchange, and in comparison to the credits paid by other exchanges for orders that provide midpoint liquidity. For example, ETP Holders currently receive credits in Tape A, Tape B and Tape C securities that range between \$0.0010 per share and \$0.0038 per share under Standard and Tiered rates. With respect to credits paid by the Exchange's competitors, the Nasdaq Stock Market LLC provides a credit of \$0.0028 per share to add non-displayed midpoint liquidity in Tape A, Tape B and Tape C Securities on that market for

²³

See Fee Schedule, Retail Tiers under Section VII. Tier Rates - Round Lots and Odd Lots (Per Share Price \$1.00 or Above).

firms that add midpoint liquidity that represents 0.30% TCV or more²⁴ NYSE American LLC, an affiliate of the Exchange, also currently provides a credit of \$0.0030 per share to add MPL liquidity on that market for members that add greater than 3.5 million shares.²⁵

The Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more liquidity to the Exchange thereby improving market-wide quality. ETP Holders that currently qualify for credits associated with MPL Orders will continue to receive credits when they provide liquidity to the Exchange. The Exchange believes that recalibrating the credits for providing liquidity will continue to attract order flow and liquidity to the Exchange, thereby providing additional price improvement opportunities on the Exchange and benefiting investors generally. As to those market participants that do not presently qualify for the credits associated with MPL Orders, the proposal will not adversely impact their existing pricing or their ability to qualify for other credits provided by the Exchange.

Sub-Dollar Retail Day Remove Tier

The Exchange believes that the proposed adoption of the Sub-Dollar Retail Day Remove pricing tier is equitable. The proposed new pricing tier is intended to provide ETP Holders an incentive to send a greater number of Retail Orders in Sub-Dollar Securities to the Exchange in order to pay a lower fee for such orders when removing liquidity from the Exchange, thereby increasing the number of orders that are executed on the Exchange, promoting price discovery and transparency and enhancing order execution opportunities and improving overall liquidity on a public exchange. The Exchange also believes that the proposed change is equitable because the proposed new pricing tier would apply to all similarly situated ETP Holders that remove liquidity. As previously noted, the Exchange operates in a competitive environment, particularly as it relates to attracting Retail Orders to the Exchange.

The Exchange believes that a number of ETP Holders could qualify for the proposed lower fee based on their current trading profile on the Exchange if they choose to direct more of their order flow to the Exchange. However, without having a view of an ETP Holder's activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any ETP Holder directing Retail Orders to the Exchange in order to qualify for the proposed lower fee. The Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more Retail Orders to the Exchange, thereby improving market-wide quality and price discovery.

²⁴ See Rebate to Add Non-Displayed Midpoint Liquidity, at <http://nasdaqtrader.com/Trader.aspx?id=PriceListTrading2>.

²⁵ See Standard Rates under I. Transaction Fees (other than for Transactions by an eDMM in Securities Assigned to an eDMM), at https://www.nyse.com/publicdocs/nyse/markets/nyse-american/NYSE_America_Equities_Price_List.pdf.

The Exchange also believes the proposed Sub-Dollar Retail Day Remove Tier is equitable and not unfairly discriminatory because it is available to all ETP Holders on an equal basis. The Exchange does not believe that it is unfairly discriminatory to offer lower fees to ETP Holders as these participants would be subject to meeting prescribed volume requirements. The Exchange believes that the proposed rule change is also equitable and not unfairly discriminatory because maintaining or increasing the proportion of Retail Orders in exchange-listed securities that are executed on a registered national securities exchange (rather than relying on certain available off-exchange execution methods) would contribute to investors' confidence in the fairness of their transactions and would benefit all investors by deepening the Exchange's liquidity pool, supporting the quality of price discovery, promoting market transparency and improving investor protection.

The Proposed Fee Change is not Unfairly Discriminatory

MPL Orders

The Exchange believes that the adoption of increased credits under MPL Tiers 1, 2, 3 and 4 is not unfairly discriminatory. Moreover, the proposed higher credits neither targets nor will it have a disparate impact on any particular category of market participant. The Exchange believes it is not unfairly discriminatory to provide the increased per share credits under MPL Tiers 1, 2, 3, and 4 as each such credit would be provided on an equal basis to all ETP Holders that add liquidity by meeting the volume requirement of MPL Tiers 1, 2, 3, and 4. The Exchange believes the proposed increased per share credits would incentivize ETP Holders to send more of their MPL Orders to the Exchange to qualify for such credits. The proposed higher credits would apply equally to all ETP Holders as each would be required to provide liquidity in MPL Orders for Tape A, Tape B and Tape C Securities combined during the billing month regardless of whether an ETP Holder currently meets the requirement of another pricing tier.

Sub-Dollar Retail Day Remove Tier

The Exchange believes that the adoption of the proposed Sub-Dollar Retail Day Remove pricing tier is not unfairly discriminatory. The Exchange also believes that the proposal to adopt a volume requirement to qualify for the proposed fee reduction is not unfairly discriminatory. In the prevailing competitive environment, ETP Holders are free to disfavor the Exchange's pricing if they view the proposed fee as excessive. Moreover, the proposal neither targets nor will it have a disparate impact on any particular category of market participant. The Exchange believes that the proposed rule change will incentivize ETP Holders to direct a greater number of Retail Orders to a public exchange to qualify for the proposed reduced fee for removing liquidity, thereby promoting price discovery and transparency and enhancing order execution opportunities for ETP Holders. The proposal does not permit unfair discrimination because the proposed volume requirement for removing liquidity would be applied to all similarly situated ETP Holders, who would all be eligible to pay a reduced fee on an equal basis. Accordingly, no ETP Holder already operating on the Exchange would be disadvantaged by this

allocation of fees. The Exchange believes it is not unfairly discriminatory to provide lower fees for removing liquidity as the proposed fee would be provided on an equal basis to all ETP Holders that remove liquidity by meeting the proposed volume requirement. Further, the Exchange believes the proposed reduced fee would provide an incentive for ETP Holders to execute more of their Retail Orders on the Exchange.

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,²⁶ the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for ETP Holders. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."²⁷

Intramarket Competition. The proposed changes are designed to attract additional order flow to the Exchange. The Exchange believes that the adoption of higher credits under MPL Tiers 1, 2, 3 and 4, would continue to incentivize market participants to direct more orders to the Exchange, and in particular, liquidity-providing MPL Orders. Greater liquidity benefits all market participants on the Exchange by providing more trading opportunities. The proposed changes to the MPL Order pricing tiers should incentivize ETP Holders to send liquidity-providing orders to the Exchange, thereby contributing to robust levels of liquidity, which would benefit all market participants on the Exchange. The proposed higher credits 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. The proposed rule change is also designed to attract Retail Orders in Sub-Dollar Securities to the Exchange. The Exchange believes that the proposed change would incentivize market participants to direct retail order flow to a public market. Greater overall order flow, trading

²⁶ 15 U.S.C. 78f(b)(8).

²⁷ See Regulation NMS, *supra* note 6, 70 FR at 37498-99.

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 their orders to the Exchange, thereby contributing towards a robust and well-balanced market ecosystem. The proposed fee reduction would be available to all similarly situated market participants, and, as such, the proposed change would not impose a disparate burden on competition among market participants on the Exchange. Additionally, the proposed change would apply to all ETP Holders equally in that all ETP Holders would have a reasonable opportunity to meet the volume requirement to qualify for the proposed fee reduction and would pay a lower fee for removing liquidity if such criteria is met.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. As noted above, the Exchange's market share of intraday trading (i.e., excluding auctions) is currently less than 12%. In such an environment, the Exchange must continually review, and consider adjusting its fees and rebates to remain competitive with other exchanges and with off-exchange venues. Because competitors are free to modify their own fees and credits in response, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition.

The Exchange believes that the proposed changes could promote competition between the Exchange and other execution venues, including those that currently offer similar order types and comparable transaction pricing, by encouraging additional orders to be sent to the Exchange for execution.

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 Act²⁸ and subparagraph (f)(2) of Rule 19b-4²⁹ 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

²⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

²⁹ 17 CFR 240.19b-4(f)(2).

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.³⁰

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

³⁰ 15 U.S.C. 78s(b)(2)(B).

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-NYSEARCA-2024-85)

[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 October 10, 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 to amend the NYSE Arca Equities Fees and Charges (“Fee Schedule”) to 1) increase the credits payable under certain Mid-Point Liquidity (“MPL”) Order pricing tiers, and 2) adopt a lower fee for certain Retail Orders that remove liquidity in securities with a per share price below \$1.00. 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 1) increase the credits payable under certain MPL Order⁴ pricing tiers, and 2) adopt a lower fee for certain Retail Orders⁵ that remove liquidity in securities with a per share price below \$1.00 (“Sub-Dollar Securities”), as described below.

The Exchange proposes to implement the fee changes effective October 10, 2024.⁶

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

⁴ A MPL Order is a limit order that is not displayed and does not route, with a working price at the lower (higher) of the midpoint of the Protected Best Bid/Offer or its limit price. See NYSE Arca Rule 7.31-E(d)(3).

⁵ Rule 7.31-E(i)(4)(A) provides that an “order designated with a “retail” modifier is an agency order or a riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person and is submitted to the Exchange by an ETP Holder, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology.”

⁶ The Exchange originally filed to amend the Fee Schedule on October 1, 2024 (SR-NYSEARCA-2024-82). SR-NYSEARCA-2024-82 was subsequently withdrawn and replaced by this filing.

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.”⁷

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.”⁸ Indeed, equity trading is currently dispersed across 16 exchanges,⁹ numerous alternative trading systems,¹⁰ 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.¹¹ 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.¹²

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

⁷ 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”).

⁸ 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).

⁹ See Cboe U.S Equities Market Volume Summary, available at https://markets.cboe.com/us/equities/market_share.

¹⁰ 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>.

¹¹ See Cboe Global Markets U.S. Equities Market Volume Summary, available at http://markets.cboe.com/us/equities/market_share/.

¹² See *id.*

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

MPL Orders

In response to this competitive environment, the Exchange has already established multiple levels of credits for MPL Orders that allow ETP Holders to passively interact with trading interest on the Exchange and offer potential price improvement to incoming marketable orders submitted to the Exchange.¹³ In order to provide an incentive for ETP Holders to provide such liquidity, the credits increase based on increased levels of volume directed to the Exchange. The MPL Order pricing tiers are intended to incentivize ETP Holders to earn increased credits by sending greater amounts of liquidity-providing MPL Orders in Tapes A, B and C securities to the Exchange.

As noted above, the Exchange currently provides multiple levels of credits, ranging from \$0.0015 per share to \$0.0030 per share, to ETP Holders that send MPL Orders that provide liquidity to the Exchange. For the current MPL Order pricing tier, the amount of the per share credit is based on an ETP Holder's ADV of provided liquidity in MPL Orders for Tape A, Tape B and Tape C Securities combined ("MPL Adding ADV").

¹³ See, e.g., Securities Exchange Act Release No. 54511 (September 26, 2006), 71 FR 58460, 58461 (October 3, 2006) (SR-PCX-2005-53).

Under current MPL Tier 8, for ETP Holders that have MPL Adding ADV during a billing month of at least 1.5 million shares, the Exchange currently provides a credit of \$0.0015 per share in Tape A, Tape B and Tape C securities. Under current MPL Tier 7, for ETP Holders with MPL Adding ADV during a billing month of at least 2 million shares, the Exchange currently provides a credit of \$0.0020 per share in Tape A, Tape B and Tape C securities. Under current MPL Tier 6, the Exchange provides a credit of \$0.0025 per share in Tape A, Tape B and Tape C securities to ETP Holders that have MPL Adding ADV during a billing month of at least 3 million shares. ETP Holders can alternatively qualify for the MPL Tier 6 credit if they have MPL Adding ADV during the billing month of at least 1 million shares and have MPL Adding ADV, as a percent of Adding ADV, of at least 50%. Under current MPL Tier 5, the Exchange provides a credit of \$0.0026 per share in Tape A, Tape B and Tape C securities to ETP Holders that have MPL Adding ADV during a billing month of at least 5 million shares. ETP Holders can alternatively qualify for the MPL Tier 5 credit if they have MPL Adding ADV during the billing month of at least 2 million shares and have MPL Adding ADV, as a percent of Adding ADV, of at least 50%. Under MPL Tier 4, for ETP Holders with MPL Adding ADV during a billing month of at least 13 million shares, the Exchange currently provides a credit of \$0.0027 per share in Tape A, Tape B and Tape C securities. Under MPL Tier 3, for ETP Holders with MPL Adding ADV during a billing month of at least 15 million shares, the Exchange currently provides a credit of \$0.0028 per share in Tape A, Tape B and Tape C securities. Under MPL Tier 2, for ETP Holders with MPL Adding ADV during a billing month of at least 25 million shares, the Exchange currently provides a credit of \$0.0029 per share in Tape A, Tape B and Tape C securities. Finally, under MPL Tier 1, for ETP Holders with MPL Adding ADV during a billing month of at least 30 million shares, the Exchange currently provides a credit of \$0.0030

per share in Tape A, Tape B and Tape C securities.¹⁴

The Exchange now proposes to increase the credits payable for MPL Tier 1, MPL Tier 2, MPL Tier 3 and MPL Tier 4, as follows:

- Increase the credit payable for MPL Tier 1, from \$0.0030 per share to \$0.0033 per share in Tape A, Tape B and Tape C securities, without any change to the volume requirement to qualify for the proposed higher MPL Tier 1 credit;
- Increase the credit payable for MPL Tier 2, from \$0.0029 per share to \$0.0032 per share in Tape A, Tape B and Tape C securities, without any change to the volume requirement to qualify for the proposed higher MPL Tier 2 credit;
- Increase the credit payable for MPL Tier 3, from \$0.0028 per share to \$0.0031 per share in Tape A, Tape B and Tape C securities, without any change to the volume requirement to qualify for the proposed higher MPL Tier 3 credit; and
- Increase the credit payable for MPL Tier 4, from \$0.0027 per share to \$0.0029 per share in Tape A, Tape B and Tape C securities, without any change to the volume requirement to qualify for the proposed higher MPL Tier 4 credit.

With this proposed change, the MPL Order Tiers pricing tier would appear as follows:

¹⁴ The Exchange charges a fee of \$0.0030 per share for MPL Orders in Tape A, Tape B and Tape C Securities that remove liquidity from the Exchange that are not designated as “Retail Orders.” MPL Orders removing liquidity from the Exchange that are designated as Retail Orders are subject to a fee of \$0.0010 per share. See Fee Schedule.

MPL Order Tiers				
Tier	Minimum Requirement		Credit for MPL Adding	
	MPL Adding ADV	MPL Adding ADV as percent of Adding ADV	Tape A	Tape B and Tape C
MPL Tier 1	30 Million		(\$0.0033)	(\$0.0033)
MPL Tier 2	25 Million		(\$0.0032)	(\$0.0032)
MPL Tier 3	15 Million		(\$0.0031)	(\$0.0031)
MPL Tier 4	13 Million		(\$0.0029)	(\$0.0029)
MPL Tier 5	5 Million or		(\$0.0026)	(\$0.0026)
	2 Million	50%		
MPL Tier 6	3 Million or		(\$0.0025)	(\$0.0025)
	1 Million	50%		
MPL Tier 7	2 Million		(\$0.0020)	(\$0.0020)
MPL Tier 8	1.5 Million		(\$0.0015)	(\$0.0015)

The goal of the proposed rule change is to incentivize ETP Holders to increase the number of MPL Orders they post on the Exchange's Book, which would provide additional price improvement opportunities for incoming orders, and thus qualify for the proposed higher per share credits. MPL Orders allow for additional opportunities for passive interaction with trading

interest on the Exchange and are designed to offer potential price improvement to incoming marketable orders submitted to the Exchange. The Exchange believes that by correlating the level of the credit to the level of MPL Adding ADV, the Exchange's fee structure would incentivize ETP Holders to submit more liquidity-providing MPL Orders to the Exchange, thereby increasing the potential for price improvement to incoming marketable orders submitted to the Exchange.

The Exchange believes adopting increased credits payable under the MPL Tiers 1, 2, 3 and 4 would provide an incentive for ETP Holders to send increased order flow to qualify for these tiers. As noted above, the Exchange operates in a competitive environment, particularly as it relates to attracting MPL Orders that are posted on the Exchange's Book. Since the Exchange is not amending the volume requirement to qualify for MPL Tiers 1, 2, 3 and 4, the Exchange believes that the proposed higher credits would incentivize ETP Holders to route a greater number of liquidity-providing orders to the Exchange to qualify for the proposed higher credits.

The Exchange does not know how much order flow ETP Holders choose to route to other exchanges or to off-exchange venues. Without having a view of ETP Holders' activity on other markets and off-exchange venues, the Exchange has no way of knowing whether the proposed fee change would result in any ETP Holder sending more of its liquidity-providing orders to the Exchange to qualify for the proposed higher credits. The Exchange cannot predict with certainty how many ETP Holders would avail themselves of this opportunity, but additional liquidity-providing orders would benefit all market participants because it would provide greater execution opportunities on the Exchange. The Exchange believes the proposed higher credits would provide an incentive for ETP Holders to submit additional MPL Orders to the Exchange to qualify for such credits.

Sub-Dollar Retail Day Remove Tier

As described below, the Exchange proposes to adopt a new pricing tier that would provide ETP Holders the ability to pay a lower fee for Retail Orders in Sub-Dollar Securities with a time-in-force of Day that remove liquidity from the Exchange. Currently, the Exchange charges a fee equal to 0.3% of the total dollar value for all orders in Sub-Dollar Securities that remove liquidity.¹⁵

Specifically, the Exchange proposes to adopt a new pricing tier titled Sub-Dollar Retail Day Remove Tier under Section VIII. Tier Rates - Round Lots and Odd Lots (Per Share Price Below \$1.00). As proposed, ETP Holders that, during the billing month, have Retail Orders in Sub-Dollar Securities with a time-in-force of Day equal to 0.20% of CADV¹⁶ in Sub-Dollar Securities that remove liquidity would be charged a fee of 0.20% of total dollar value. ETP Holders that meet the proposed volume requirement would qualify to pay the proposed lower fee for Retail Orders in Sub-Dollar Securities with a time-in-force of Day that remove liquidity.

The purpose of the proposed rule change is to encourage greater participation from ETP Holders and promote liquidity in Retail Orders. The Exchange believes that the proposed rule change to adopt a volume requirement to qualify for the proposed fee reduction would incentivize ETP Holders to direct a greater number of Retail Orders in Sub-Dollar Securities to the Exchange that remove liquidity. As described above, ETP Holders have a choice of where to send their Retail Orders in Sub-Dollar Securities that remove liquidity. The Exchange believes that the proposed rule change to reduce fees paid by ETP Holders for Retail Orders in Sub-Dollar

¹⁵ See Fee Schedule, Section III. Standard Rates - Transactions (applicable when Tier Rates do not apply).

¹⁶ 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.

Securities could lead to more ETP Holders choosing to route such orders for execution to the Exchange rather than to a competing exchange.

While the Exchange proposes to adopt a volume threshold for the proposed new pricing tier, the Exchange believes ETP Holders will be able to meet the proposed requirement given the increased trading in Sub-Dollar Securities in recent months. ETP Holders that trade in Sub-Dollar Securities would benefit by paying a lower fee for Retail Orders with a time-in-force of Day if they choose to send such orders to the Exchange. Based on their current trading profile on the Exchange, a number of ETP Holders would currently qualify for the proposed lower fee. However, without having a view of ETP Holders' activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in other ETP Holders directing orders to the Exchange in order to qualify for the proposed lower fee. The Exchange cannot predict with certainty how many ETP Holders would avail themselves of this opportunity, but increased activity of Retail Orders in Sub-Dollar Securities would benefit all market participants because it would provide greater execution opportunities on the Exchange.

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

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁷ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,¹⁸ in

¹⁷ 15 U.S.C. 78f(b).

¹⁸ 15 U.S.C. 78f(b)(4) and (5).

particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Fee Change is Reasonable

As discussed above, the Exchange operates in a highly fragmented and competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹⁹

As the Commission itself recognized, the market for trading services in NMS stocks has become “more fragmented and competitive.”²⁰ Indeed, equity trading is currently dispersed across 16 exchanges,²¹ numerous alternative trading systems,²² 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 (whether including or excluding auction volume).²³ The Exchange believes that the ever-shifting market share among the

¹⁹ See Regulation NMS, *supra* note 7, 70 FR at 37499.

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

²¹ See Cboe U.S Equities Market Volume Summary, available at https://markets.cboe.com/us/equities/market_share. See generally <https://www.sec.gov/fast-answers/divisionsmarketregmrexchangeshtml.html>.

²² 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>.

²³ See Cboe Global Markets U.S. Equities Market Volume Summary, available at http://markets.cboe.com/us/equities/market_share/.

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.

MPL Orders

The Exchange believes the proposed changes to MPL Tiers 1, 2, 3 and 4 are reasonable because the increased credits payable under these tiers would provide an incentive for ETP Holders to route greater amounts of liquidity-providing orders to the Exchange. As noted above, the Exchange operates in a highly competitive environment, particularly for attracting order flow that provides liquidity on an exchange. The Exchange believes it is reasonable to provide the higher credits under MPL Tiers 1, 2, 3, and 4 for orders that provide liquidity if an ETP Holder meets the qualification for such pricing tiers.

The Exchange believes the proposed increased credits are reasonable as they would provide an additional incentive for ETP Holders to qualify for these new tiers and direct their order flow to the Exchange and provide meaningful added levels of liquidity, thereby contributing to the depth, market quality, and price improvement on the Exchange.

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 increase its liquidity and improve its market share relative to its competitors.

Sub-Dollar Retail Day Remove Tier

The Exchange believes it is reasonable to adopt the proposed Sub-Dollar Retail Day Remove pricing tier because the Exchange believes the proposed lower fee under the proposed

pricing tier would encourage greater participation from ETP Holders, which could result in increased execution of Retail Orders in Sub-Dollar Securities. In this regard, an ETP Holder that does not qualify for the proposed lower fees would continue to pay the current fee applicable to Retail Orders in Sub-Dollar Securities that remove liquidity. The proposed new pricing tier would create an added financial incentive for ETP Holders to bring additional retail flow to a public market. The proposed new pricing tier is also reasonable because it would reduce the costs of ETP Holders that represent retail flow and potentially also reduce costs to their customers.

The Exchange believes that it is reasonable that only Retail Orders in Sub-Dollar Securities with a time-in-force designation of Day that remove liquidity would count toward qualifying for the Sub-Dollar Retail Day Remove Tier. The Exchange notes that it currently offers lower fees for Retail Orders with a time-in-force of Day that remove liquidity in securities with a per share price of \$1.00 or above under Retail Tiers 1, 2, and 3 and under Retail Step-Up Tier.²⁴ The Exchange believes that the proposed volume requirement to qualify for the proposed lower fee is reasonable because it is within a range that the Exchange believes would continue to incentivize ETP Holders to submit Retail Orders in Sub-Dollar Securities to the Exchange to qualify for the proposed lower fee.

The Proposed Fee Change is an Equitable Allocation of Credits and Fees

MPL Orders

The Exchange believes that the adoption of increased credits under MPL Tiers 1, 2, 3 and 4 is equitable because the magnitude of the additional credit is not unreasonably high in

²⁴ See Fee Schedule, Retail Tiers under Section VII. Tier Rates - Round Lots and Odd Lots (Per Share Price \$1.00 or Above).

comparison to the credit paid with respect to other pricing tiers on the Exchange, and in comparison to the credits paid by other exchanges for orders that provide midpoint liquidity. For example, ETP Holders currently receive credits in Tape A, Tape B and Tape C securities that range between \$0.0010 per share and \$0.0038 per share under Standard and Tiered rates. With respect to credits paid by the Exchange's competitors, the Nasdaq Stock Market LLC provides a credit of \$0.0028 per share to add non-displayed midpoint liquidity in Tape A, Tape B and Tape C Securities on that market for firms that add midpoint liquidity that represents 0.30% TCV or more²⁵ NYSE American LLC, an affiliate of the Exchange, also currently provides a credit of \$0.0030 per share to add MPL liquidity on that market for members that add greater than 3.5 million shares.²⁶

The Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more liquidity to the Exchange thereby improving market-wide quality. ETP Holders that currently qualify for credits associated with MPL Orders will continue to receive credits when they provide liquidity to the Exchange. The Exchange believes that recalibrating the credits for providing liquidity will continue to attract order flow and liquidity to the Exchange, thereby providing additional price improvement opportunities on the Exchange and benefiting investors generally. As to those market participants that do not presently qualify for the credits associated with MPL Orders, the proposal will not adversely impact their existing pricing or their ability to qualify for other credits provided by the Exchange.

²⁵ See Rebate to Add Non-Displayed Midpoint Liquidity, at <http://nasdaqtrader.com/Trader.aspx?id=PriceListTrading2>.

²⁶ See Standard Rates under I. Transaction Fees (other than for Transactions by an eDMM in Securities Assigned to an eDMM), at https://www.nyse.com/publicdocs/nyse/markets/nyse-american/NYSE_America_Equities_Price_List.pdf.

Sub-Dollar Retail Day Remove Tier

The Exchange believes that the proposed adoption of the Sub-Dollar Retail Day Remove pricing tier is equitable. The proposed new pricing tier is intended to provide ETP Holders an incentive to send a greater number of Retail Orders in Sub-Dollar Securities to the Exchange in order to pay a lower fee for such orders when removing liquidity from the Exchange, thereby increasing the number of orders that are executed on the Exchange, promoting price discovery and transparency and enhancing order execution opportunities and improving overall liquidity on a public exchange. The Exchange also believes that the proposed change is equitable because the proposed new pricing tier would apply to all similarly situated ETP Holders that remove liquidity. As previously noted, the Exchange operates in a competitive environment, particularly as it relates to attracting Retail Orders to the Exchange.

The Exchange believes that a number of ETP Holders could qualify for the proposed lower fee based on their current trading profile on the Exchange if they choose to direct more of their order flow to the Exchange. However, without having a view of an ETP Holder's activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any ETP Holder directing Retail Orders to the Exchange in order to qualify for the proposed lower fee. The Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more Retail Orders to the Exchange, thereby improving market-wide quality and price discovery.

The Exchange also believes the proposed Sub-Dollar Retail Day Remove Tier is equitable and not unfairly discriminatory because it is available to all ETP Holders on an equal

basis. The Exchange does not believe that it is unfairly discriminatory to offer lower fees to ETP Holders as these participants would be subject to meeting prescribed volume requirements. The Exchange believes that the proposed rule change is also equitable and not unfairly discriminatory because maintaining or increasing the proportion of Retail Orders in exchange-listed securities that are executed on a registered national securities exchange (rather than relying on certain available off-exchange execution methods) would contribute to investors' confidence in the fairness of their transactions and would benefit all investors by deepening the Exchange's liquidity pool, supporting the quality of price discovery, promoting market transparency and improving investor protection.

The Proposed Fee Change is not Unfairly Discriminatory

MPL Orders

The Exchange believes that the adoption of increased credits under MPL Tiers 1, 2, 3 and 4 is not unfairly discriminatory. Moreover, the proposed higher credits neither targets nor will it have a disparate impact on any particular category of market participant. The Exchange believes it is not unfairly discriminatory to provide the increased per share credits under MPL Tiers 1, 2, 3, and 4 as each such credit would be provided on an equal basis to all ETP Holders that add liquidity by meeting the volume requirement of MPL Tiers 1, 2, 3, and 4. The Exchange believes the proposed increased per share credits would incentivize ETP Holders to send more of their MPL Orders to the Exchange to qualify for such credits. The proposed higher credits would apply equally to all ETP Holders as each would be required to provide liquidity in MPL Orders for Tape A, Tape B and Tape C Securities combined during the billing month regardless of whether an ETP Holder currently meets the requirement of another pricing tier.

Sub-Dollar Retail Day Remove Tier

The Exchange believes that the adoption of the proposed Sub-Dollar Retail Day Remove pricing tier is not unfairly discriminatory. The Exchange also believes that the proposal to adopt a volume requirement to qualify for the proposed fee reduction is not unfairly discriminatory. In the prevailing competitive environment, ETP Holders are free to disfavor the Exchange's pricing if they view the proposed fee as excessive. Moreover, the proposal neither targets nor will it have a disparate impact on any particular category of market participant. The Exchange believes that the proposed rule change will incentivize ETP Holders to direct a greater number of Retail Orders to a public exchange to qualify for the proposed reduced fee for removing liquidity, thereby promoting price discovery and transparency and enhancing order execution opportunities for ETP Holders. The proposal does not permit unfair discrimination because the proposed volume requirement for removing liquidity would be applied to all similarly situated ETP Holders, who would all be eligible to pay a reduced fee on an equal basis. Accordingly, no ETP Holder already operating on the Exchange would be disadvantaged by this allocation of fees. The Exchange believes it is not unfairly discriminatory to provide lower fees for removing liquidity as the proposed fee would be provided on an equal basis to all ETP Holders that remove liquidity by meeting the proposed volume requirement. Further, the Exchange believes the proposed reduced fee would provide an incentive for ETP Holders to execute more of their Retail Orders on the Exchange.

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,²⁷ the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for ETP Holders. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."²⁸

Intramarket Competition. The proposed changes are designed to attract additional order flow to the Exchange. The Exchange believes that the adoption of higher credits under MPL Tiers 1, 2, 3 and 4, would continue to incentivize market participants to direct more orders to the Exchange, and in particular, liquidity-providing MPL Orders. Greater liquidity benefits all market participants on the Exchange by providing more trading opportunities. The proposed changes to the MPL Order pricing tiers should incentivize ETP Holders to send liquidity-providing orders to the Exchange, thereby contributing to robust levels of liquidity, which would benefit all market participants on the Exchange. The proposed higher credits would be available to all similarly-situated market participants, and, as such, the proposed changes would not

²⁷ 15 U.S.C. 78f(b)(8).

²⁸ See Regulation NMS, supra note 7, 70 FR at 37498-99.

impose a disparate burden on competition among market participants on the Exchange. The proposed rule change is also designed to attract Retail Orders in Sub-Dollar Securities to the Exchange. The Exchange believes that the proposed change would incentivize market participants to direct retail order flow to a public market. 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 their orders to the Exchange, thereby contributing towards a robust and well-balanced market ecosystem. The proposed fee reduction would be available to all similarly situated market participants, and, as such, the proposed change would not impose a disparate burden on competition among market participants on the Exchange. Additionally, the proposed change would apply to all ETP Holders equally in that all ETP Holders would have a reasonable opportunity to meet the volume requirement to qualify for the proposed fee reduction and would pay a lower fee for removing liquidity if such criteria is met.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. As noted above, the Exchange's market share of intraday trading (i.e., excluding auctions) is currently less than 12%. In such an environment, the Exchange must continually review, and consider adjusting its fees and rebates to remain competitive with other exchanges and with off-exchange venues. Because competitors are free to modify their own fees and credits in response, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition.

The Exchange believes that the proposed changes could promote competition between the Exchange and other execution venues, including those that currently offer similar order types and comparable transaction pricing, by encouraging additional orders to be sent to the Exchange for execution.

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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A)(ii) of the Act,²⁹ and Rule 19b-4(f)(2) thereunder³⁰ the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing. 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

²⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

³⁰ 17 CFR 240.19b-4.

(<https://www.sec.gov/rules/sro.shtml>); or

- Send an email to rule-comments@sec.gov. Please include file number SR-NYSEARCA-2024-85 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-2024-85. 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-2024-85 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.³¹

Sherry R. Haywood,

Assistant Secretary.

³¹ 17 CFR 200.30-3(a)(12).

Additions underlined
Deletions [bracketed]

NYSE Arca Equities

FEES AND CHARGES

Effective Date: October 10, 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)

* * * * *

MPL Order Tiers				
Tier	Minimum Requirement		Credit for MPL Adding	
	MPL Adding ADV	MPL Adding ADV as percent of Adding ADV	Tape A	Tape B and Tape C
MPL Tier 1	30 Million		(\$0.00 <u>33</u> [30])	(\$0.00 <u>33</u> [30])
MPL Tier 2	25 Million		(\$0.00 <u>32</u> [29])	(\$0.00 <u>32</u> [29])
MPL Tier 3	15 Million		(\$0.00 <u>31</u> [28])	(\$0.00 <u>31</u> [28])
MPL Tier 4	13 Million		(\$0.00 <u>29</u> [27])	(\$0.00 <u>29</u> [27])
MPL Tier 5	5 Million or		(\$0.0026)	(\$0.0026)
	2 Million	50%		

MPL Tier 6	3 Million or		(\$0.0025)	(\$0.0025)
	1 Million	50%		
MPL Tier 7	2 Million		(\$0.0020)	(\$0.0020)
MPL Tier 8	1.5 Million		(\$0.0015)	(\$0.0015)

* * * * *

VIII. Tier Rates - Round Lots and Odd Lots (Per Share Price Below \$1.00)³

* * * * *

<u>Sub-Dollar Retail Day Remove Tier</u>		
	<u>Minimum Requirement</u>	<u>Fee for Retail Day Remove of total dollar value</u>
<u>Tier</u>	<u>Retail Day Remove as a percentage of CADV with a per share price below \$1.00</u>	<u>All Tapes</u>
<u>Sub-Dollar Retail Day Remove Tier</u>	<u>0.20%</u>	<u>0.20%</u>

* * * * *