

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-100083; File No. SR-NYSEARCA-2024-37)

May 9, 2024

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) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 1, 2024, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Equities Fees and Charges (“Fee Schedule”) to amend the Mid-Point Liquidity (“MPL”) Order pricing tiers. The Exchange proposes to implement the fee changes effective May 1, 2024. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

The Exchange proposes to amend the Fee Schedule to amend the MPL Order³ pricing tiers. More specifically, the Exchange proposes to adopt new MPL Tiers 1 and 2. The Exchange proposes to implement the fee changes effective May 1, 2024.

Background

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

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

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).

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 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

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

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.*

orders submitted to the Exchange.¹⁰ 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 \$0.0028 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 6, 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 5, 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 4, 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 4 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 3, the Exchange provides a credit of \$0.0026 per share in Tape A, Tape B and Tape C securities to ETP Holders

¹⁰ See, e.g., Securities Exchange Act Release No. 54511 (September 26, 2006), 71 FR 58460, 58461 (October 3, 2006) (SR-PCX-2005-53).

that have MPL Adding ADV during a billing month of at least 5 million shares. ETP Holders can alternatively qualify for the MPL Tier 3 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 2, 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. Finally, under MPL Tier 1, 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.¹¹

The Exchange now proposes to adopt new MPL Order pricing tiers, MPL Tiers 1 and 2. Under proposed new MPL Tier 1, the Exchange would provide a credit of \$0.0030 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 30 million shares.

Next, under proposed new MPL Tier 2, the Exchange would provide a credit of \$0.0029 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 25 million shares.

Finally, in connection with the proposed addition of new MPL Tiers 1 and 2, the Exchange proposes to rename current MPL Tier 1, MPL Tier 2, MPL Tier 3, MPL Tier 4, MPL Tier 5 and MPL Tier 6 as MPL Tier 3, MPL Tier 4, MPL Tier 5, MPL Tier 6, MPL Tier 7 and MPL Tier 8, respectively, without any change to the volume requirements or credits payable under each of the pricing tiers.

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

¹¹ 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		(\$0.0030)	(\$0.0030)
MPL Tier 2	25 Million		(\$0.0029)	(\$0.0029)
MPL Tier 3	15 Million		(\$0.0028)	(\$0.0028)
MPL Tier 4	13 Million		(\$0.0027)	(\$0.0027)
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 with higher per share credits to increase the number of MPL Orders they post on the Exchange's Book, which would provide additional price improvement opportunities for incoming orders. 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 proposed MPL Tiers 1 and 2 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. Because each of the proposed MPL Tiers 1 and 2 pricing tiers would require ETP Holders to provide increased liquidity, the Exchange believes that the proposed higher credits would incentivize ETP Holders to route additional liquidity-providing orders to the Exchange to qualify for the proposed pricing tiers.

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 new pricing tiers would result in any ETP Holders sending more of their liquidity-providing orders to the Exchange to qualify for the proposed new 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.

As noted above, the Exchange operates in a competitive environment, particularly as it relates to attracting non-marketable, providing liquidity that would be displayed on the Exchange. The proposed rule change is designed to incentivize ETP Holders to increase the orders sent to the Exchange that would provide displayed liquidity, which would support the quality of price discovery and transparency on the Exchange. The Exchange believes that by correlating the level of the credit to the level of executed providing volume on the Exchange, the Exchange's fee structure would incentivize ETP Holders to submit more displayed, liquidity-providing orders to the Exchange that are likely to be executed (i.e., are not orders that are intended to be displayed, but are priced such that they are not likely to be executed), thereby increasing the potential for incoming marketable orders submitted to the Exchange to receive an execution.

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,¹² in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,¹³ 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

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(4) and (5).

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.”¹⁴

As the Commission itself recognized, the market for trading services in NMS stocks has become “more fragmented and competitive.”¹⁵ Indeed, equity trading is currently dispersed across 16 exchanges,¹⁶ numerous alternative trading systems,¹⁷ 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).¹⁸ 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

¹⁴ See Regulation NMS, *supra* note 5, 70 FR at 37499.

¹⁵ See Securities Exchange Act Release No. 51808, 84 FR 5202, 5253 (February 20, 2019) (File No. S7-05-18) (Final Rule).

¹⁶ 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/divisionsmarketregmrexchangesshtml.html>.

¹⁷ 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>.

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

other venues to be more favorable.

The Exchange believes the proposed changes to the MPL Order pricing tiers, including the adoption of new MPL Tier 1 and MPL Tier 2 is reasonable because the increased credits under the proposed MPL Tier 1 and MPL Tier 2 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 the proposed MPL Tier 1 and MPL Tier 2 for orders that provide liquidity if an ETP Holder meets the qualification for such pricing tiers.

Because the proposed MPL Tier 1 and MPL Tier 2 would be new with a requirement to submit greater amounts of MPL Adding ADV, no ETP Holder currently qualifies for the proposed new 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 and market quality 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.

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

The Exchange believes the proposed fee change is an equitable allocation of its fees and credits. The Exchange believes that the adoption of increased credits under proposed MPL Tier 1 and MPL Tier 2 pricing tiers 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 \$0.0025 per share to add non-displayed midpoint liquidity in Tape A, Tape B and Tape C Securities on that market for members that add greater than 5 million shares of midpoint liquidity and add 8 million shares on non-displayed liquidity.¹⁹

NYSE American LLC, an affiliate of the Exchange, 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.²⁰

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. With the proposed new MPL Tier 1 and MPL Tier 2, all ETP Holders would be eligible to qualify for the higher credit if they increase their MPL Adding ADV. 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

¹⁹ See Rebate to Add Non-Displayed Midpoint Liquidity, at <http://nasdaqtrader.com/Trader.aspx?id=PriceListTrading2>.

²⁰ 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.

impact their existing pricing or their ability to qualify for other credits provided by the Exchange.

The Proposed Fee Change is not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. Moreover, this proposed rule change 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 proposed MPL Tier 1 and MPL Tier 2 as each such credit would be provided on an equal basis to all ETP Holders that add liquidity by meeting the requirements of the proposed new MPL Order pricing tiers. The Exchange believes the proposed increased per share credits would incentivize ETP Holders that meet the current tiered requirements to send more of their MPL Orders to the Exchange to qualify for such credits. The Exchange also believes that the proposed changes are not unfairly discriminatory because they are reasonably related to the value of the Exchange's market quality associated with higher volume. 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.

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,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. 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."²²

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 proposed MPL Tier 1 and MPL Tier 2, 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 tier 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 new 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.

²¹ 15 U.S.C. 78f(b)(8).

²² See Regulation NMS, supra note 5, 70 FR at 37498-99.

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

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.

²³ 15 U.S.C. 78s(b)(3)(A).

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-2024-37 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-2024-37. 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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. 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-2024-37, and should be submitted on or before [INSERT 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).