

Loans 6 S.À R.L., Barings SLA 6 LLC, Barings SS4 (LUX) LLC, Barings Umbrella Fund (LUX)—Barings Global Special Situations Credit Fund 4 (LUX) Fund, Barings Global Special Situations Credit 4 (LUX) S.À R.L., Barings Global Credit Fund (LUX)—Barings Global Special Situations Credit Fund 3, Barings Global Special Situations Credit 3 S.À R.L., Barings Global Umbrella Fund—Barings Developed and Emerging Markets High Yield Bond Fund, Barings—MM Revolver Fund LP, Barings North American Private Loan Fund (Cayman)-A, L.P., Barings North American Private Loan Fund, L.P., Barings North American Private Loan Fund (Cayman), LP, Barings Small Business Fund, L.P., Barings Middle Market CLO Ltd. 2017–I, Barings CLO Ltd. 2018–I, Barings CLO Ltd. 2018–II, Barings CLO Ltd. 2018–III, Barings CLO Ltd. 2018–IV, Barings Middle Market CLO Ltd. 2018–I, Barings CLO Ltd. 2019–I, Barings CLO Ltd. 2019–II, Barings CLO Ltd. 2019–III, Barings Middle Market CLO Ltd. 2019–I, Barings CLO Ltd. 2020–I, Barings CLO Ltd. 2020–IV, Barings CLO Ltd. 2021–I, Barings CLO Ltd. 2021–II, Barings CLO Ltd. 2021–III, Barings Middle Market CLO Ltd. 2021–I, Barings CLO Ltd. 2016–II, Babson CLO Ltd. 2014–I, Barings CLO Ltd. 2015–I, Barings CLO Ltd. 2016–I, Barings CLO Ltd. 2017–I, Barings U.S. High Yield Collective Investment Fund, MassMutual High Yield Fund, MassMutual Ascend Life Insurance Company, MassMutual Trad Private Equity LLC, Barings Global Investment Funds plc—Global Multi-Credit Strategy Fund 1, Barings Global Multi-Credit Strategy 1 Limited, Barings Global Investment Funds 2 plc—Global Multi-Credit Strategy Fund 3, Barings Global Multi-Credit Strategy 3 Limited, Barings Global Investment Funds plc—Global Multi-Credit Strategy Fund 4, Barings Global Multi-Credit Strategy 4 Limited, BME SCSp, BME Investment S.À R.L., Barings North American Private Loan Fund II (Cayman)-A, LP, NAPLF (Cayman)-A Senior Funding I LLC, Barings North American Private Loan Fund II (Cayman), L.P., NAPLF (Cayman) Senior Funding I LLC, Barings North American Private Loan Fund II (Unlevered), L.P., NAPLF Senior Funding I LLC, NAPLF (Cayman)-A Senior Funding II LLC, NAPLF (Cayman) Senior Funding II LLC, OTTP—BNAPLF II LP, OTTP—BNAPLF II Funding LP, Barings Global Special Situations Credit Fund 4 (Delaware) L.P., Tryon Street Funding III Ltd., Barings Global Investment Funds plc—European Loan Strategy Fund 1, Barings

European Loan Strategy 1 Limited, BPC Funding LLC, and BPCC Holdings, Inc.

**Filing Dates:** The application was filed on July 20, 2023, and amended on October 25, 2023 and December 4, 2023.

**Hearing or Notification of Hearing:** An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at [Secretarys-Office@sec.gov](mailto:Secretarys-Office@sec.gov) and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on March 11, 2024, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at [Secretarys-Office@sec.gov](mailto:Secretarys-Office@sec.gov).

**ADDRESSES:** The Commission: [Secretarys-Office@sec.gov](mailto:Secretarys-Office@sec.gov). Applicants: Jill Dinerman, Chief Legal Officer, Barings LLC at [jill.dinerman@barings.com](mailto:jill.dinerman@barings.com).

**FOR FURTHER INFORMATION CONTACT:** Matthew Cook, Senior Counsel, or Terri Jordan, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

**SUPPLEMENTARY INFORMATION:** For Applicants' representations, legal analysis, and conditions, please refer to Applicants' second amended and restated application, dated December 4, 2023, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at <http://www.sec.gov/edgar/searchedgar/legacy/companysearch.html>. You may also call the SEC's Public Reference Room at (202) 551–8090.

For the Commission, by the Division of Investment Management, under delegated authority.

Dated: February 14, 2024.

**Sherry R. Haywood,**  
Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99538; File No. SR–NYSEARCA–2024–13]

### 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

February 14, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> notice is hereby given that on February 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 introduce additional base credit adjustments for Lead Market Makers for Adding Displayed Liquidity in certain assigned Exchange Traded Products listed on the Exchange. The Exchange proposes to implement the proposed changes effective February 1, 2024. The proposed rule change is available on the Exchange's website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

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

<sup>2</sup> 17 CFR 240.19b–4.

*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 introduce additional base credit adjustments for Lead Market Makers ("LMMs")<sup>3</sup> for Adding Displayed Liquidity in certain assigned Exchange Traded Products ("ETPs") listed on the Exchange. The Exchange proposes to implement the proposed changes effective February 1, 2024.

Current Market and Competitive Environment

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."<sup>4</sup>

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."<sup>5</sup> Indeed, cash equity trading is currently dispersed across 16 exchanges,<sup>6</sup> numerous alternative trading systems,<sup>7</sup> 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.<sup>8</sup> Therefore, no exchange possesses significant pricing power in the execution of cash equity

order flow. More specifically, the Exchange's share of executed volume of equity trades in Tapes A, B and C securities is less than 12%.<sup>9</sup>

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products. While it is not possible to know a firm's reason for shifting order flow, the Exchange believes that one such reason is because of fee changes at any of the registered exchanges or non-exchange venues to which the firm routes order flow. Accordingly, competitive forces compel the Exchange to use exchange transaction fees and credits because market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

Proposed Rule Change

The Exchange currently provides financial incentives to LMMs that are based on whether the LMM meets certain prescribed metrics. Specifically, the Exchange provides incremental credits to LMMs based on how many performance metrics an LMM meets in each NYSE Arca-listed security. The financial incentives are intended to encourage LMMs to maintain better market quality in securities in which they are registered as the LMM, including in lower volume and newly-listed securities.

The Exchange notes that its listing business operates in a highly competitive market in which market participants, including issuers of securities, LMMs, and other liquidity providers, can readily transfer their listings, or direct order flow to competing venues if they deem fee levels, liquidity provision incentive programs, or other factors at a particular venue to be insufficient or excessive. The proposed rule change reflects the current competitive pricing environment and is designed to incentivize market participants to

participate as LMMs, and thereby, further enhance the market quality on all securities listed on the Exchange and encourage issuers to list new products on the Exchange.

Currently, under the Lead Market Maker Transaction Fees and Credits section of the Fee Schedule, pursuant to Section II titled "LMM Base Fees and Credits per Share," the Exchange currently charges LMMs a base fee of \$0.0029 per share for orders that remove liquidity and provides the following base credits:

- \$0.0033 per share for orders that provide liquidity in securities for which the LMM is registered as the LMM and which have a CADV in the previous month greater than 3,000,000 shares;
- \$0.0040 per share for orders that provide liquidity in securities for which the LMM is registered as the LMM and which have a CADV in the previous month of between 1,000,000 and 3,000,000 shares; and
- \$0.0045 per share for orders that provide liquidity in securities for which the LMM is registered as the LMM and which have a CADV in the previous month of less than 1,000,000 shares.

Additionally, LMMs are provided a credit of \$0.0030 per share for orders that provide undisplayed liquidity in Non-Routable Limit Orders in securities for which the LMM is registered as the LMM, and a credit of \$0.0015 per share for Non-Displayed Limit Orders that provide liquidity in securities for which the LMM is registered as the LMM. The Exchange also does not charge LMMs a fee for orders executed in the Closing Auction.

Further, pursuant to Section III titled "LMM Performance Metrics-based Incremental Base Credit Adjustments," the base credit earned by an LMM for Adding Displayed Liquidity (as provided in Section II) in an assigned ETP is adjusted based on the number of Performance Metrics<sup>10</sup> met by the LMM in the billing month for each assigned ETP, as follows:

Number of performance metrics met	Incremental base credit adjustment per ETP	Incremental base credit adjustment per leveraged ETP
4 .....	(\$0.0001)	(\$0.0001)

<sup>3</sup> The term "Lead Market Maker" is defined in Rule 1.1(w) to mean a registered Market Maker that is the exclusive Designated Market Maker in listings for which the Exchange is the primary market.

<sup>4</sup> 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").

<sup>5</sup> 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).

<sup>6</sup> See Cboe U.S. Equities Market Volume Summary, available at [https://markets.cboe.com/us/equities/market\\_share](https://markets.cboe.com/us/equities/market_share). See generally <https://www.sec.gov/fastanswers/divisionsmarketregmr/exchangesshtml.html>.

<sup>7</sup> 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>.

<sup>8</sup> See Cboe Global Markets U.S. Equities Market Volume Summary, available at [https://markets.cboe.com/us/equities/market\\_share/](https://markets.cboe.com/us/equities/market_share/).

<sup>9</sup> See id.

<sup>10</sup> The Performance Metrics are enumerated on the Fee Schedule in Section III under LMM Transaction Fees and Credits.

Number of performance metrics met	Incremental base credit adjustment per ETP	Incremental base credit adjustment per leveraged ETP
3 .....	(0.00005)	(0.00005)
2 .....	0.0000	0.0000
1 .....	0.0001	0.0000
0 .....	0.0002	0.0000

The Exchange proposes to introduce four new categories of ETPs in which a LMM is registered as the LMM and provide an incremental credit to such LMMs based on the number of Performance Metrics met by the LMM in the billing month for each assigned ETP. The proposed new categories of ETPs are Less Active ETP,<sup>11</sup> Less Active Leveraged ETP,<sup>12</sup> New ETP<sup>13</sup> and New Leveraged ETP.

As proposed, LMMs that are registered as the LMM in a Less Active ETP would be able to earn an incremental credit of \$0.0001 per share if the LMM meets 3 Performance Metrics or earn an incremental credit of \$0.0002 per share if the LMM meets all 4 Performance Metrics. There would be no adjustment to the base credit payable to the LMM if the LMM meets 2 Performance Metrics. LMMs that meet just 1 Performance Metric would have their base credit reduced by \$0.0002 per

share and LMMs that do not meet any Performance Metric would have their base credit reduced by \$0.0004 per share.

Further, as proposed, LMMs that are registered as the LMM in a Less Active Leveraged ETP would be able to earn an incremental credit of \$0.0001 per share if the LMM meets 3 Performance Metrics or earn an incremental credit of \$0.0002 per share if the LMM meets all 4 Performance Metrics. There would be no adjustment to the base credit payable to the LMM if the LMM meets 1 or 2 Performance Metrics or if the LMM does not meet any Performance Metric.

Additionally, as proposed, LMMs that are registered as the LMM in a New ETP would be able to earn an incremental credit of \$0.0002 per share if the LMM meets 3 Performance Metrics or earn an incremental credit of \$0.0004 per share if the LMM meets all 4 Performance Metrics. LMMs that meet 2 Performance

Metrics would have their base credit reduced by \$0.0002 per share while LMMs that meet just 1 Performance Metric would have their base credit reduced by of \$0.0004 per share. LMMs that do not meet any Performance Metric would have their base credit reduced by \$0.0005 per share.

Lastly, as proposed, LMMs that are registered as the LMM in a New Leveraged ETP would be able to earn an incremental credit of \$0.0002 per share if the LMM meets 3 Performance Metrics or earn an incremental credit of \$0.0004 per share if the LMM meets all 4 Performance Metrics. There would be no adjustment to the base credit payable to the LMM if the LMM meets 1 or 2 Performance Metrics or if the LMM does not meet any Performance Metric.

The table below illustrates the proposed new incremental base credit adjustments discussed above.

Number of performance metrics met	Incremental base credit adjustment per less active ETP	Incremental base credit adjustment per less active leveraged ETP	Incremental base credit adjustment per new ETP	Incremental base credit adjustment per new leveraged ETP
4 .....	(\$0.0002)	(\$0.0002)	(\$0.0004)	(\$0.0004)
3 .....	(0.0001)	(0.0001)	(0.0002)	(0.0002)
2 .....	0.0000	0.0000	0.0002	0.0000
1 .....	0.0002	0.0000	0.0004	0.0000
0 .....	0.0004	0.0000	0.0005	0.0000

The Exchange believes the proposed rule change would further enhance market quality on New ETPs and Less Active ETPs by incentivizing LMMs to meet the Performance Metrics across all ETPs, including Less Active ETPs (and Less Active Leveraged ETPs) and New ETPs (and New Leveraged ETPs), which would support the quality of price discovery in such securities on the Exchange and provide additional liquidity for incoming orders for the benefit of all market participants.

The Exchange believes the proposed rule change would also provide superior market quality and price discovery for Exchange-listed securities, specifically securities that are new or less active, through new financial incentives for achieving various performance metrics illustrated in Section III under the Lead Market Maker Transaction Fees and Credits section of the Fee Schedule, *i.e.*, LMM spread, LMM shares within 1% of NBBO and LMM quoting size requirements in Core Open Auction and Closing Auction, thus promoting

liquidity in in such securities. The proposed rule change is intended to provide a more meaningful incentive to LMMs to provide liquidity in new and less active securities by providing financial incentives to the Exchange's members as long as they meet certain prescribed quoting criteria. The Exchange believes that a performance-driven incentive would encourage such members to provide meaningful quotes and size in new and less active securities listed and traded on the Exchange.

<sup>11</sup> A "Less Active ETP" is currently defined on the Fee Schedule in Section I under LMM Transaction Fees and Credits to mean "ETPs that have a CADV in the prior calendar quarter that is the greater of either less than 100,000 shares or less than 0.013% of Consolidated Tape B ADV."

<sup>12</sup> A "Leveraged ETP" is currently defined on the Fee Schedule in Section I under LMM Transaction Fees and Credits to mean "an ETP that tracks an underlying index by a ratio other than on a one-to-one basis."

<sup>13</sup> The Exchange proposes to adopt a definition of New ETP on the Fee Schedule in Section I under

LMM Transaction Fees and Credits. As proposed, a "New ETP would mean an ETP for the first 12 months of listing on NYSE Arca." Under the proposal, the Exchange would treat an ETP listed for the first 12 months as a New ETP even if it qualifies as a Less Active ETP.

Additionally, for newly-listed and less active ETPs, the cost to a firm for making a market, such as holding inventory in the security, is often not fully offset by the revenue through rebates provided by the Exchange. In some cases, firms may even operate at a loss in new and less active ETPs. The Exchange believes the proposed incentives, which would compensate members as long as they meet the prescribed performance metrics, is a more deterministic program from a member's perspective. The member would decide how many, if any, new and less active ETPs it wants to provide tight and deep markets in. The more securities the member provides heightened quoting in, the more the member could collect in the form of a rebate.

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 the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>14</sup> Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>15</sup> which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>16</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange notes that its ETP listing business operates in a highly-competitive market in which market participants, which includes LMMs, as well as ETP issuers, can opt not to participate on the Exchange or readily transfer their listings from the Exchange, respectively, if they deem fee levels, liquidity provision incentive programs, or any other factor at a particular venue to be insufficient or excessive. The proposed rule change reflects a competitive pricing structure designed to incentivize issuers to list new products and transfer existing products

to the Exchange and market participants to enroll and participate as LMMs on the Exchange, which the Exchange believes will enhance market quality in all ETPs listed on the Exchange.

## The Proposed Change Is Reasonable

The Exchange believes that the proposal to adopt market quality-based incentives is a reasonable means to incentivize liquidity provision in ETPs listed on the Exchange. The marketplace for listings is extremely competitive and the Exchange is not the only venue for listing ETPs. Competition in ETPs is further exacerbated by the fact that listings can and do transfer from one listing market to another. The proposed rule change is intended to help the Exchange compete as a listing venue for ETPs, specifically New and Less Active ETPs. Further, the Exchange notes that the proposed incentives are not transaction fees, nor are they fees paid by participants to access the Exchange. Rather, the proposed rebates are based on achieving certain objective market quality metrics. The Exchange believes providing rebates that are based on the quality of the market in individual ETPs that generally have low volume, or are newly-listed, will allow ETP Holders to anticipate their revenue and will incentivize them to provide tight and deep markets in those securities.

The Exchange cannot be certain that LMMs will choose to actively compete for the proposed incentives. For LMMs that do choose to actively participate by providing deep and tight markets in Less Active ETPs and New ETPs, the Exchange expects those members to receive payments comparable to what they currently receive, with the potential for additional upside when they meet the Performance Metrics in a greater number of securities. The Exchange believes the proposed incentives, which would compensate LMMs as long as they meet the prescribed Performance Metrics, is also reasonable because it is a more deterministic program from an ETP Holder's perspective.

The Exchange believes the proposed rule change is intended to encourage LMMs to promote price discovery and market quality in Less Active ETPs and New ETPs for the benefit of all market participants. The Exchange believes the proposed rule change is reasonable and appropriate in that the incentives are based on the amount of business transacted on the Exchange. The Exchange notes that the proposed incremental credits offered by the Exchange is similar to market quality incentive programs already in place on other markets, such as the Designated

Liquidity Provider incentives on the Nasdaq Stock Market LLC ("Nasdaq"), which requires a member on that exchange to provide meaningful and consistent support to market quality and price discovery in low volume exchange-traded products by quoting at the National Best Bid and Offer and adding liquidity in a minimum number of such securities. In return, Nasdaq provides the member with an incremental rebate.<sup>17</sup>

## The Proposal Is an Equitable Allocation of Fees

The Exchange believes the proposed rule change is equitable because the proposal would provide discounts that are reasonably related to the value to the Exchange's market quality associated with higher volumes and improved quoting in Less Active ETPs and New ETPs. The Exchange further believes that the proposed incentives are equitable because they are consistent with the market quality and competitive benefits associated with the fee program and because the magnitude of the proposed incentives are not unreasonably high in comparison to the rebate paid with respect to other displayed liquidity-providing orders. The Exchange believes that it is equitable to offer increased rebates to LMMs as they are currently subject to obligations specified in Rule 7.23-E, which are not applicable to non-Market Maker ETP Holders, and LMMs would be subject to additional requirements and obligations (such as meeting Performance Metrics) that other market participants are not.

The Exchange believes that the proposal to offer incentives tied to market quality metrics represents an equitable allocation of payments because LMMs would be required to not only meet their Rule 7.23-E obligations, but also meet prescribed quoting requirements to qualify for the credits, as described above. Where an LMM does not meet at least 3 Performance Metrics, that member will not receive any additional financial benefit. Further, all LMMs on the Exchange are eligible to participate and could do so by simply registering in a Less Active ETP and/or a New ETP and meeting the prescribed market quality metrics. The Exchange has designed the proposed pricing incentives to be sustainable over the long-term and generally expects that credits paid to LMMs will be comparable to credits the Exchange

<sup>14</sup> 15 U.S.C. 78f(b).

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

<sup>16</sup> 15 U.S.C. 78f(b)(5).

<sup>17</sup> See Equity 7 Pricing Schedule, Section 114. Market Quality Incentive Programs, at [https://listing.center.nasdaq.com/rulebook/nasdaq/rules/Nasdaq%20Equity%207#section\\_114\\_market\\_quality\\_incentive\\_programs](https://listing.center.nasdaq.com/rulebook/nasdaq/rules/Nasdaq%20Equity%207#section_114_market_quality_incentive_programs).

currently provides to its members and comparable to pricing incentives offered by the Exchange's competitors. As such, the Exchange believes that the proposal represents an equitable allocation of dues, fees and credits.

#### The Proposal Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. In the prevailing competitive environment, LMMs are free to disfavor the Exchange's pricing if they believe that alternatives offer them better value.

The Exchange believes it is not unfairly discriminatory to adopt incremental credits applicable to LMMs because LMMs are already subject to additional obligations, as specified in Rule 7.23-E, and the proposed additional credits would be provided on an equal basis to all similarly-situated participants provided each such participant meets the prescribed market quality metrics. If an LMM does not meet the required number of Performance Metrics, the LMM would not receive any incremental credit. Further, the Exchange believes the incremental credit would incentivize each of these participants to register in Less Active ETPs and New ETPs and send more orders to the Exchange to qualify for higher credits. The Exchange also believes that the proposed rule change is not unfairly discriminatory because it is reasonably related to the value to the Exchange's market quality associated with higher volume.

The proposal to offer an additional credit tied to meeting certain market quality requirements neither targets nor will it have a disparate impact on any particular category of market participant. The proposal does not permit unfair discrimination because LMMs already have increased obligations vis-à-vis non-Market Maker ETP Holders, as specified in Rule 7.23-E, and the proposed requirements would be applied to all similarly-situated LMMs equally.

The Exchange believes that the proposed rule change is not unfairly discriminatory because all LMMs that choose to qualify for the incremental credits would be required to meet a minimum number of Performance Metrics in order to receive the credits. Where a participant does not achieve a certain number of Performance Metrics, it will not receive any incremental credits. Further, all LMMs on the Exchange are eligible to participate in the program and could do so by being registered as the LMM in Less Active ETPs and/or New ETPs and meeting a minimum number of Performance

Metrics. The Exchange has designed the pricing incentives proposed herein to be sustainable over the long-term and generally expects that credits provided to LMMs would be comparable to credits the Exchange currently provides to its LMMs and comparable to pricing incentives offered by the Exchange's competitors. As such, the Exchange believes that the proposal is not unfairly discriminatory.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,<sup>18</sup> the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, 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 LMMs. 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."<sup>19</sup>

*Intramarket Competition.* The proposed change is designed to attract additional order flow to the Exchange. The Exchange believes that the proposed Performance Metrics-based incremental credit applicable to LMMs in Less Active ETPs (including Less Active Leveraged ETPs) and New ETPs (including New Leveraged ETPs) in which they are registered as the LMM would continue to incentivize market participants to direct their displayed order flow to the Exchange. Greater liquidity benefits all market participants on the Exchange by providing more trading opportunities and encourages LMMs to send additional orders to the Exchange, thereby contributing to robust levels of liquidity. The proposed pricing incentive would be applicable to all similarly-situated market participants that have obligations under Rule 7.23-E to meet specified obligations, and, as such, the proposed changes would not impose a disparate burden on competition among market participants

on the Exchange. Accordingly, the Exchange does not believe that the proposed change will impair the ability of LMMs to maintain their competitive standing. The Exchange does not believe that the proposed change represents a significant departure from previous pricing offered by the Exchange or its competitors.

*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 adjust 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, and because market participants may readily adjust their order routing practices, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition. The Exchange believes that the proposed rule change could promote competition between the Exchange and other execution venues, including those that currently offer comparable transaction pricing, by encouraging additional orders to be sent to the Exchange for execution.

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

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

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

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)<sup>20</sup> of the Act and paragraph (f) thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and

<sup>18</sup> 15 U.S.C. 78f(b)(8).

<sup>19</sup> See Securities Exchange Act Release No. 51808, 70 FR 37495, 37498-99 (June 29, 2005) (S7-10-04) (Final Rule).

<sup>20</sup> 15 U.S.C. 78s(b)(3)(A).

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](mailto:rule-comments@sec.gov). Please include file number SR-NYSEARCA-2024-13 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-2024-13. 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-2024-13, and should be submitted on or before March 13, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>21</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-99537; File No. SR-Phlx-2024-04]**

### **Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Equity 7, Section 3(a)**

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 1, 2024, Nasdaq PHLX LLC ("Phlx" or "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 its pricing schedule at Equity 7, Section 3(a), as described further below.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/phlx/rules>, 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 Exchange 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 these 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 aspects of such statements.

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

##### **1. Purpose**

The purpose of the proposed rule change is to provide an additional calculation for purposes of determining whether a member qualifies for credits set forth in Equity 7, Section 3(a) that pertain to providing liquidity.

Presently, the Exchange provides its members with various credits for executing orders that add liquidity to the Exchange and charges them various fees for executing orders, that remove liquidity from the Exchange, as set forth in Equity 7, Section 3(a) of the Exchange's Rules. The charges and credits in Equity 7, Section 3(a) apply to the use of the order execution and routing services of the Nasdaq PSX System by members for all securities priced at \$1 or more that it trades. Members may qualify for tiers of discounted fees and premium credits based, in part, upon their volume on the Exchange as a percentage of total "Consolidated Volume."

Pursuant to Equity 7, Section 3(a), the term "Consolidated Volume" means the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot. For purposes of calculating Consolidated Volume and the extent of a member's trading activity, the following are excluded from both total Consolidated Volume and the member's trading activity: (1) the date of the annual reconstitution of the Russell Investments Indexes; (2) the dates on which stock options, stock index options, and stock index futures expire (*i.e.*, the third Friday of March, June, September, and December); (3) the dates of the rebalance of the MSCI Equities Indexes (*i.e.*, on a quarterly basis); (4) the dates of the rebalance of the S&P 400, S&P 500, and S&P 600 Indexes (*i.e.*, on a quarterly basis); and (5) the date of the annual reconstitution of the Nasdaq-100 and Nasdaq Biotechnology Indexes.

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

<sup>21</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b-4.