

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-94017; File No. SR-NYSEArca-2022-03)

January 20, 2022

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the NYSE Arca Options Fee Schedule to Cap Certain Port Fees

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on January 14, 2022, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend the NYSE Arca Options Fee Schedule (the “Fee Schedule”) to cap certain port fees in connection with the Exchange’s migration to a new trading platform. 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

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

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 purpose of this filing is to amend the Fee Schedule to cap certain port fees during the Exchange’s migration of options trading to a new electronic trading platform.

Currently, the Exchange conducts options trading on an electronic platform known as “OX.” OX refers to the Exchange’s electronic order delivery, execution, and reporting system for designated option issues through which orders and quotes of Users are consolidated for execution and/or display.<sup>4</sup>

On or about February 7, 2022, the Exchange anticipates beginning the migration of its options trading to a new technology platform known as Pillar.<sup>5</sup> The Exchange proposes to adopt a cap on the monthly fees assessed for the use of certain ports connecting to the Exchange, which will go into effect on the day the Exchange commences its migration to the Pillar platform and remain in effect until the end of the month in which the migration is completed (the “Migration Period”).

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<sup>4</sup> See NYSE Arca Rule 6.1A-O(a)(13).

<sup>5</sup> The Exchange has announced that, pending regulatory approval, it will begin migrating Exchange-listed options to Pillar on February 7, 2022, available here: <https://www.nyse.com/trader-update/history#110000387355>. See also Securities Exchange Act Release No. 92304 (June 30, 2021), 86 FR 36440 (July 9, 2021) (SR-NYSEArca-2021-47) (Notice of Filing of Proposed Rule Change for New Rules 6.1P-O, 6.37AP-O, 6.40P-O, 6.41P-O, 6.62P-O, 6.64P-O, 6.76P-O, and 6.76AP-O and Amendments to Rules 1.1, 6.1-O, 6.1A-O, 6.37-O, 6.65A-O and 6.96-O) and Amendment No. 2 to SR-NYSEArca-2021-47, available here: <https://www.sec.gov/comments/sr-nysearca-2021-47/srnysearca202147-20109876-264219.pdf>.

Specifically, the Exchange proposes to cap the monthly fees charged to an OTP Holder or OTP Firm (collectively, “OTP Holders”) for the use of Order/Quote Entry Ports, Quote Takedown Ports, and Drop Copy Ports (collectively, the “Port Fees”) during the Migration Period (the “Migration Cap”). The Migration Cap will be based on the number of ports an OTP Holder is billed for in the month preceding the beginning of the Exchange’s migration to the Pillar platform, except that if an OTP Holder reduces the number of ports used during the Migration Period (i.e., incurs Port Fees below the Migration Cap), the OTP Holder would only be billed for the actual number of ports used.

Without this proposed rule change, the Fee Schedule provides that OTP Holders would be charged for the use of both legacy OX platform ports and new Pillar platform ports, which could significantly increase costs to OTP Holders during the Migration Period. Thus, the proposed Migration Cap is intended to encourage OTP Holders to maintain the same levels of interaction with Exchange during the Migration Period, as well as promptly migrate to the more efficient Pillar technology platform, without incurring additional Port Fees as a result of the transition.<sup>6</sup>

The Exchange proposes to implement this fee change on the day it commences its migration to the Pillar technology platform.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of

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<sup>6</sup> The Exchange notes that the NYSE Arca Equities exchange adopted a similar fee cap in connection with its migration to the Pillar technology platform in 2017 so that its member organizations would not incur additional charges during the transition period. See Securities Exchange Act Release No. 81573 (September 11, 2017), 82 FR 43430 (September 15, 2017) (SR-NYSEArca-2017-97) (providing for a temporary cap on monthly fees for use of ports during Pillar transition).

the Act,<sup>7</sup> in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,<sup>8</sup> 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 Rule Change is Reasonable

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>9</sup>

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.<sup>10</sup> Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in November 2021, the Exchange had less than 13% market share of executed volume of multiply-listed equity and ETF

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<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>9</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7-10-04) (“Reg NMS Adopting Release”).

<sup>10</sup> The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: <https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics>.

options trades.<sup>11</sup>

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, competitive forces constrain options exchange fees, including fees for connectivity.

The Exchange believes that the proposed Migration Cap is reasonably designed to continue to incent OTP Holders to maintain sufficient active connections to the Exchange during its migration to a new trading platform. Without the proposed change, OTP Holders would be subject to fees for the use of both legacy ports and the new ports using Pillar technology during the Migration Period. Accordingly, the Exchange believes that the proposed Migration Cap is reasonably designed to lessen the impact of the migration on OTP Holders and will thus encourage OTP Holders to both promptly transition to the more efficient Pillar technology platform and maintain their current level of trading activity on the Exchange.

To the extent the proposed rule change encourages OTP Holders to migrate to the new Pillar technology platform while maintaining their level of trading activity, the Exchange believes the proposed change would sustain the Exchange's overall competitiveness and its market quality for all market participants. In the backdrop of the competitive environment in which the Exchange operates, the proposed rule change is a reasonable attempt by the Exchange to mitigate the expense of the migration without affecting its competitiveness.

#### The Proposed Rule Change is an Equitable Allocation of Credits and Fees

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<sup>11</sup> Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of ETF-based options, see id., the Exchange's market share in equity-based options increased from 10.35% for the month of November 2020 to 12.99% for the month of November 2021.

The Exchange believes the proposed change is an equitable allocation of its fees and credits because the Migration Cap, which would apply equally to all OTP Holders, would be calculated based on the number of ports each OTP Holder uses. OTP Holders can opt to adjust their port usage, if desired, in advance of the Migration Period, and to the extent OTP Holders choose to use fewer ports during the Migration Period (i.e., incur Port Fees below the Migration Cap), their Port Fees would be reduced accordingly. Thus, the Exchange believes the proposed rule change would facilitate a smooth transition to the Pillar technology platform for OTP Holders and mitigate the impact of the migration process for all market participants on the Exchange, thereby sustaining market-wide quality.

The Proposed Rule Change is not Unfairly Discriminatory

The Exchange believes the Migration Cap is not unfairly discriminatory because it would be available to all similarly-situated market participants on an equal and non-discriminatory basis.

The proposed Migration Cap would be based on an OTP Holder's Port Fees billed for the month preceding the beginning of the Exchange's migration to the Pillar technology platform and would be adjusted to the extent an OTP Holder chooses to utilize fewer such ports during the Migration Period. The Exchange believes that the Migration Cap will permit OTP Holders to maintain the same level of interaction with Exchange systems during the Migration Period without incurring additional Port Fees as a result of the transition from OX to the Pillar technology platform. The Exchange also believes that the Migration Cap would allow OTP Holders to maintain their existing level of connectivity to the Exchange at no additional cost during the Migration Period, thereby supporting continued trading opportunities for all market participants, which would promote just and equitable principles of trade, remove impediments to

and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

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

In accordance with Section 6(b)(8) of the Act, the Exchange does not believe that the proposed rule change would 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 all market participants. 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>12</sup>

*Intramarket Competition.* The Exchange does not believe the proposed rule change would impose any burden on intramarket competition that is not necessary or appropriate because it would apply equally to all OTP Holders. All OTP Holders, regardless of the number of ports they utilize, will be eligible for the Migration Cap beginning on the day the Exchange commences its migration to the Pillar technology platform through the end of the Migration Period.

*Intermarket Competition.* The Exchange operates in a highly competitive market in which market participants can readily favor one of the 16 competing option exchanges if they deem fee

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<sup>12</sup> See Reg NMS Adopting Release, supra note 9, at 37499.

levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.<sup>13</sup> Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in November 2021, the Exchange had less than 13% market share of executed volume of multiply-listed equity and ETF options trades.<sup>14</sup>

The Exchange does not believe the proposed rule change would impose any burden on intermarket competition that is not necessary or appropriate because the Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchanges if they deem fee levels at those other venues to be more favorable. The Exchange believes that fees for connectivity are constrained by the robust competition for order flow among exchanges. Accordingly, the Exchange believes that the proposed Migration Cap would continue to make the Exchange a competitive venue for order execution by enabling OTP Holders to maintain their current levels of interaction with the Exchange during the Migration Period without incurring additional Port Fees and facilitating OTP Holders' migration to the newer, more efficient Pillar technology platform.

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

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<sup>13</sup> See supra note 10.

<sup>14</sup> Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of ETF-based options, see id., the Exchange's market share in equity-based options increased from 10.35% for the month of November 2020 to 12.99% for the month of November 2021.



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 is effective upon filing pursuant to Section 19(b)(3)(A)<sup>15</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>16</sup> thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>17</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

### 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 (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2022-03 on the subject line.

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

<sup>16</sup> 17 CFR 240.19b-4(f)(2).

<sup>17</sup> 15 U.S.C. 78s(b)(2)(B).

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-2022-03. This file number should be included on the subject line if e-mail 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 (<http://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. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All

submissions should refer to File Number SR-NYSEArca-2022-03, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>18</sup> 17 CFR 200.30-3(a)(12).