SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-86458; File No. SR-NYSEARCA-2019-52)

July 24, 2019

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

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b-4 thereunder,[3] notice is hereby given that, on July 11, 2019, 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 modify the NYSE Arca Options Fee Schedule ("Fee Schedule"). The Exchange proposes to implement the fee change effective July 11, 2019.[4] 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

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1 15 U.S.C.78s(b)(1).

2 15 U.S.C. 78a.

3 17 CFR 240.19b-4.

4 The Exchange filed to amend the Fee Schedule for effectiveness on July 1, 2019, (SR-NYSEArca-2019-48) and withdrew such filing on July 11, 2019.

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 purpose of this filing is to amend the Fee Schedule to modify the criteria for Market Makers to qualify for enhanced posting credits in Penny Pilot issues and SPY (the "Penny Credit Tiers"). Specifically, to encourage Market Makers and Lead Market Makers (collectively, "Market Makers") to direct orders and quotes to the Exchange, this proposed rule change would lower the minimum volume threshold that Market Makers are required to trade in order to receive the credits in the highest of the Penny Credit Tiers (i.e., Super Tier II), thus making it easier to qualify for these credits. The associated per contract credit remains the same. The Exchange proposes to implement the fee changes effective July 11, 2019.

Background

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."[5]

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

[5] See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[6] Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in the first quarter of 2019, the Exchange had less than 10% market share of executed volume of multiply-listed equity & ETF options trades.[7] Similarly, the equities markets too face stark competition, which is relevant because the Exchange offers "cross-asset pricing," which is designed to incentivize participants to execute a certain amount of volume on both the Exchange's equities and options platform. As the Commission itself recognized, the market for trading services in NMS stocks has become "more fragmented and competitive." Indeed, equity trading is currently dispersed across 13 exchanges, 32 alternative trading systems, and numerous broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange has more than 18% market share (whether including or excluding auction volume). Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, in the first quarter of 2019, the Exchange averaged less than 9% market share of executed volume of equity trades (excluding auction volume).

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 transaction fees. And, as such, the Exchange has employed cross-asset pricing to encourage Market Makers and their and their affiliated or

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6 The Options Clearing Corporation ("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/volume/default.jsp.

7 Based on OCC data, see id., the Exchange's market share in equity-based options declined from 9.57% for the month of January to 9.52% for the month of April.

Appointed OFP(s) (collectively, their OFP(s)) to direct volume to both NYSE Arca Options ("Arca Options") and NYSE Arca Equity ("Arca Equity").[8] The Exchange notes that others Exchanges offer tiers with cross-asset criteria requirements.[9]

In response to this competitive environment, the Exchange has established incentives to encourage Market Makers to provide liquid and active markets on the Exchange, including the Penny Credit Tiers. Pursuant to the Penny Credit Tiers, Market Makers receive additional credits (beyond the base credit of $0.28 per contract) if their trading exceeds certain minimum volume thresholds on the Exchange.[10] To receive these additional credits, Market Makers may aggregate their volume traded on Arca Options and Arca Equities with any of their OFP(s). By allowing Market Makers to include these other participants' trading volume in calculating the Market Makers' eligibility for additional credits, Market Makers may encourage an increased level of activity from these other participants.

Super Tier II has the highest volume requirements, includes cross-asset pricing, and the largest associated credit ($0.42 per contract) of the Penny Credit Tiers. The Exchange is proposing to modify the minimum options volume threshold for one of the Super Tier II

8 An OFP refers to any OTP that submits, as agent, orders to the Exchange, per Rule 6.1A-O(a)(21). See Fee Schedule, infra note 9, Endnote 15. An "affiliate" of an OTP is "a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified," per Rule 1.1(a). See id., Endnote 8. An "Appointed OFP" is an OFP that has been designated by an NYSE Arca Market Maker. See id., Endnote 15.

9 See, e.g., Cboe BZX U.S. Equities Exchange Fee Schedule, Footnote 1 and Cboe EDGX Options Exchange Fee Schedule, Footnote 4.

10 The base credit is available for executions of Market Maker posted interest in Penny Pilot Issues and SPY and has no minimum volume threshold requirement. See Fee Schedule, NYSE Arca OPTIONS: TRADE-RELATED CHARGES FOR STANDARD OPTIONS, Market Maker Penny Pilot and SPY Posting Credit Tiers, available here, https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf.

qualification methods.

Proposed Rule Change

The Exchange proposes to modify one of the qualification volume thresholds for Super Tier II, and will not modify the $0.42 per contract credit associated with this Tier. Specifically, the Exchange proposes to change the method of qualifying for Super Tier II that currently requires:

- A Market Maker to trade at least 0.20% of Total Customer Average Daily Volume ("TCADV")[11] on the Exchange against such Market Maker's posted interest in all issues (the "options threshold"), and
- A Market Maker and its OFP(s)[12] to post and trade in Tape B Securities at least 1.50% of US Tape B consolidated average daily volume ("CADV")[13] for the billing month on the Arca Equity market (the "equities threshold").[14]

The Exchange proposes to reduce from 0.20% to 0.10% of TCADV for the options

11 TCADV refers to Total Industry Customer equity and ETF option average daily volume. TCADV includes OCC calculated Customer volume of all types, including Complex Order transactions and QCC transactions, in equity and ETF options.

12 The Fee Schedule refers to ETP Holders and not OFPs, but the relationship between a Market Maker and an ETP must be by affiliation or appointment in order to allow volume to be aggregated. See Fee Schedule, supra note 10, Endnote 15.

13 CADV means Consolidated Average Daily Volume for transactions reported to the Consolidated Tape, excluding odd lots through January 31, 2014 (except for purposes of Lead Market Maker pricing), and excludes volume on days when the market closes early and on the date of the annual reconstitution of the Russell Investments Indexes. Transactions that are not reported to the Consolidated Tape are not included in CADV.

14 The Exchange is not modifying the other two bases for a Market Maker to receive the enhanced credit under Super Tier II, which require (1) a Market Maker to trade at least 0.10% of TCADV on the Exchange against such Market Maker's posted interest in all issues, and the Market Maker and its OFP, collectively, post and trade at least 0.42% ADV of Retail Orders of U.S. Equity Market Share Posted on the Arca Equity market; or (2) a Market Maker to trade at least 1.60% of TCADV on the Exchange against such Market Maker's interest in all issues, with at least 0.90% of TCADV from such Market Maker's posted interest in all issues.

threshold requirement. The Exchange is not proposing to alter the equities threshold, which will remain 1.50% of US Tape B CADV.

As noted above, the Exchange operates in a competitive environment. This proposed change is designed to incent Market Makers to increase their trading volume on the Arca Equities market to qualify for Super Tier II (while making it easier to meet the options volume threshold to qualify for the based on the lower minimum threshold). The Exchange believes Market Makers may, in turn, encourage their OFPs to direct additional order flow to both the Arca Equities and Arca Options platforms. The Exchange notes that Market Makers as well as non-Market Makers stand to benefit from an increase in orders and quotes on the Exchange, which facilitates tighter spreads and enhances price discovery, and may lead to a corresponding increase in order flow from other market participants.

This proposed fee change is targeted at Market Makers. Market Makers serve a crucial role in the options markets by providing liquidity to facilitate market efficiency and functioning. Market Makers add additional value beyond other market participants through continuous quoting and the commitment of capital. Because Market Makers have obligations and regulatory requirements that are not applicable to other market participants, the Exchange believes that the proposed change to make it easier for Market Makers to qualify for Super Tier II, is equitable and not unfairly discriminatory in light of their obligations and the costs associated therewith. The Exchange's fees are constrained by intermarket competition, as Market Makers can register on any or all of the 16 options exchanges. Thus, Market Makers that are also members of other exchanges have a choice of where they post orders and quotes. The proposed rule change is designed to incentivize Market Makers to post liquidity to the Exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for market participants. Moreover, because Market Makers are able to aggregate qualifying volume of their OFPs, Market Makers may encourage their OFPs to direct order flow to the Exchange as well as to NYSE Arca Equities, which would likewise support the quality of price discovery and transparency on the Exchange.

The Exchange cannot predict with certainty whether any Market Maker would avail themselves of this proposed fee change. Market Makers may be registered on other options exchanges and may choose to post their orders and quotes to those exchanges based on available incentives. That said, there is currently one firm that receives the Super Tier II credit under the current options (and equities) threshold(s). Assuming historical behavior can be predictive of future behavior, the Exchange believes that at least one additional firm may qualify for Super Tier II as proposed to be modified herein. The Exchange believes the proposed lower options threshold (with the equity volume threshold unchanged and the same $0.42 per contract credit) would provide an incentive for Market Makers to provide additional liquidity to the exchange to qualify for the higher Super Tier II credit.

2. <u>Statutory Basis</u>

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[15] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[16] 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.

<u>The Proposed Rule Change is Reasonable</u>

The Exchange operates in a highly competitive market. The Commission has repeatedly

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15 15 U.S.C. 78f(b).

16 15 U.S.C. 78f(b)(4) and (5).

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."[17]

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.[18] Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in the first quarter of 2019, the Exchange had less than 10% market share of executed volume of multiply-listed equity & ETF options trades.[19] In addition, give the cross-asset component of Super Tier II, it is important to note that the equities market is likewise subject to stark competition. As the Commission itself recognized, the market for trading services in NMS stocks has become "more fragmented and competitive." Indeed, equity trading is currently dispersed across 13 exchanges, 32 alternative trading systems, and numerous broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange has more than 18% market share (whether including or excluding auction volume). Therefore, no exchange

17 See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

18 See supra note 6.

19 Based on OCC data, see supra note 7, in 2019, the Exchange's market share in equity-based options declined from 9.57% for the month of January to 9.52% for the month of April.

possesses significant pricing power in the execution of equity order flow. More specifically, in the first quarter of 2019, the Exchange averaged less than 9% market share of executed volume of equity trades (excluding auction volume).

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 transaction fees. Stated otherwise, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

The Exchange believes that the proposed modification to Super Tier II is reasonable because reducing the options threshold makes it easier for Market Makers to qualify for the Tier, which in turn, should attract more liquidity to the Exchange (as well as to the Arca Equities market), which benefits all market participants. In addition, the Exchange believes the proposed modification would encourage participants to increase their order flow to interact with Market Maker orders and quotes, which potential increase in order flow would benefit all market participants by improving order execution and price discovery, which, in turn, promotes just and equitable principles of trade and removes impediments to and perfects the mechanism of a free and open market and a national market system.

The Exchange cannot predict with certainty whether any Market Maker would avail themselves of this proposed fee change. Market Makers may be registered on other options exchanges and may choose to post orders and quotes to those exchanges based on available incentives. That said, there is currently one firm that receives the Super Tier II credit under the current options (and equities) threshold(s). Assuming historical behavior can be predictive of future behavior, the Exchange believes that at least one additional firm may qualify for Super Tier II as modified herein. The Exchange believes the proposed lower options threshold (with the equity volume threshold unchanged and the same $0.42 per contract credit) would provide an incentive for Market Makers to post their orders and quotes to the Exchange to qualify for the higher Super Tier II credit.

On the backdrop of the competitive environment in which the Exchange operates, the proposed rule change is a reasonable attempt by the Exchange to increase the depth of its market and improve its market share relative to its competitors.

<u>The Proposed Rule Change is an Equitable Allocation of Credits and Fees</u>

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits. The Exchange is constrained by intermarket competition, as Market Makers are free to register on any one of the 16 option exchanges. Market Makers serve a crucial role in financial markets by providing liquidity to facilitate market efficiency and price discovery. Market Makers, unlike other market participants, add additional value through continuous quoting and the commitment of capital and have specified obligations and regulatory requirements that are not required of other participants. As noted above, the Exchange is subject to competitive forces such that Market Makers may post their orders and quotes to any of the other 15 option exchanges of which they are a member. The proposed change, which is targeted at Market Makers, is designed to encourage Market Makers to post their orders and quotes to the Exchange, thereby promoting market quality, price discovery and transparency and enhancing order execution opportunities for all market participants -- Marker Maker and non-Market Maker alike. Further, encouraging Market Maker activity on the Exchange would also contribute to the Exchange’s depth of book as well as to the top of book liquidity to the benefit of all market participants.

The Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more Market Maker orders and quotes to the Exchange thereby improving market-wide quality and price discovery.

The Proposed Rule Change is not Unfairly Discriminatory

The Exchange believes it is not unfairly discriminatory to reduce the minimum options volume trading activity associated with Super Tier II as discussed herein because the proposed modification would be available to all similarly-situated market participants on an equal and non-discriminatory basis. Further the proposal should incent Market Makers to qualify for Super Tier II, including by increasing trading on the equities market. The Exchange notes that Market Makers are still eligible to qualify for Super Tier II under the other two existing qualification methods (see supra note 14). By continuing to provide such alternative (unchanged) methods to qualify for a Tier, and reducing the options threshold for one of the methods to qualify for Super Tier II, the Exchange believes the opportunities to qualify for credits is increased, which benefits all participants through increased Market Maker activity. Further, encouraging Market Maker activity on the Exchange would also contribute to the Exchange's depth of book as well as to the top of book liquidity.

To the extent that Market Maker activity is increased by the proposal, market participants will increasingly compete for the opportunity to trade on the Exchange. The resulting increased volume and liquidity would provide more trading opportunities and tighter spreads to all market participants and thus 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, to 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.

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,[20] 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 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."[21]

Intramarket Competition. The proposed change is designed to attract additional order flow to the Exchange. The Exchange believes that the proposed reduced options threshold to meet one of the qualifying bases of Super Tier II would continue to incentivize market participants, Market Makers in particular, to direct their orders and quotes to the Exchange. Greater liquidity benefits all market participants on the Exchange by encouraging OFPs to send orders to the Exchange which results in providing more trading opportunities for all market participants on the Exchange. The proposed reduced options threshold (and Super Tier II credit)

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20 15 U.S.C. 78f(b)(8).

21 Securities Exchange Act Release No. 51808, 70 FR 37495, 37498-99 (June 29, 2005) (S7-10-04) (Final Rule).

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.

The Exchange further notes that Market Makers, unlike other market participants, add additional value through continuous quoting and the commitment of capital and are subject to unique regulatory obligations. Because other market participants do not need to occur the same costs to begin trading on the Exchange, the Exchange believes that offering the proposed fee change to Market Makers would not create an undue burden on non-Market Makers.

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 levels at a particular venue to be excessive. Market Maker have the option of registering on more than one exchange, including NYSE Arca, and may post their orders and quotes to the most attractive venue. 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. And with regard to the cross-asset component of Super Tier II, the Arca Equities exchange similarly operates in a competitive environment. Based on publicly-available information, no single exchange has more than 18% market share (whether including or excluding auction volume). Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, in the first quarter of 2019, the Exchange averaged less than 9% market share of executed volume of equity trades (excluding auction volume). The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange’s fees in a manner designed to encourage Market Makers to direct trading interest to the Exchange, to provide liquidity and to attract order flow.

To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market quality.

The Exchange further believes that the proposed pricing changes would increase both intermarket and intramarket competition by attracting new entrants to the Exchange at a lower fee for a limited time. By offering the reduced Covered Fees, the Exchange believes that it would retain and attract Market Makers, which participants are an integral component of the option industry marketplace. Further, the incentive would be available to all similarly-situated participants, and, as such, the proposed change would not impose a disparate burden on competition either among or between classes of market participants and may, in fact, encourage intermarket competition.

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 is effective upon filing pursuant to Section 19(b)(3)(A)[22] of the Act and subparagraph (f)(2) of Rule 19b-4[23] 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

22 15 U.S.C. 78s(b)(3)(A).

23 17 CFR 240.19b-4(f)(2).

Commission shall institute proceedings under Section 19(b)(2)(B)[24] 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. Please include File Number SR-NYSEARCA-2019-52 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-2019-52. 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

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[24] 15 U.S.C. 78s(b)(2)(B).

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-2019-52 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.[25]

Jill M. Peterson
Assistant Secretary

[25] 17 CFR 200.30-3(a)(12).