

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-89741; File No. SR-NYSEArca-2020-79)

September 2, 2020

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 September 1, 2020, 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”) regarding credits for certain Qualified Contingent Cross (“QCC”) transactions. The Exchange proposes to implement the fee change effective September 1, 2020. 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 places

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 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 adopt new credits for certain QCC transactions, which are designed to encourage an increase in billable manual volume executed on the Exchange, including QCC transactions.⁴ The Exchange proposes to implement the rule change on September 1, 2020.

Currently, Floor Brokers earn a credit for executed QCC orders of (\$0.07) per contract for the first 300,000 contracts or (\$0.10) per contract in excess of 300,000.⁵ The Exchange currently limits the maximum Floor Broker credit to \$375,000 per month per Floor Broker firm.⁶

The Exchange proposes to amend the Fee Schedule to provide an additional (\$0.02) per contract credit on the first 300,000 eligible QCC contracts to Floor Brokers that meet a certain minimum level of average daily volume ("ADV").⁷ Specifically, the Exchange proposes that a

⁴ A QCC is defined as an originating order to buy or sell at least 1000 contracts that is identified as being part of a qualified contingent trade, coupled with a contraside order or orders totaling an equal number of contracts. See Rule 6.62-O(bb).

⁵ See Fee Schedule, Qualified Contingent Cross ("QCC") Transactions Fees and Credits, available here, https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf.

⁶ See id., Endnote 13. The Floor Broker credit is paid only on volume within the applicable tier and is not retroactive to the first contract traded. QCC executions in which a Customer is on both sides of the QCC trade will not be eligible for the Floor Broker credit. See id.

⁷ See proposed Endnote 13 to Fee Schedule.

Floor Broker would be entitled to the enhanced credit provided the Floor Broker executes the greater of:

- at least 150% of the Floor Broker's First Quarter ("Q1") 2019 billable contract sides ADV; or
- at least 30,000 billable contract sides ADV.⁸

As proposed, the calculation for billable contract sides ADV applies to manual executions and QCCs, but excludes Customer volume, Professional Customer QCC volume, Firm Facilitation and Broker Dealer facilitating a Customer trades, and any volume calculated to achieve the Firm and Broker Dealer Monthly Fee Cap and the Strategy Execution Fee Cap, regardless of whether either of these caps is achieved.⁹ In short, any volume (or contract side) for which a Floor Broker is (potentially) not billed, including because of monthly fee caps, would not count towards achieving the enhanced credit. The proposed enhanced credit would not impact the maximum allowable monthly Floor Broker credit, which would continue to be limited to \$375,000 per month per Floor Broker firm.

The Exchange believes that 30,000 contract sides in billable ADV (i.e., 150% of 20,000 contract sides) is a reasonable minimum threshold for a Floor Broker, including one that is new to the Exchange, to achieve given that most Floor Brokers exceeded this volume requirement during several months of 2019, even though it was not required. Similarly, the Exchange believes that the minimum alternative threshold of 150% of a Floor Broker's total billable ADV in contract sides during the Q1 2019 is reasonable for those Floor Brokers that achieve more than 30,000 ADV billable contract sides, given the increased options volume executed by Floor

⁸ See id.

⁹ See id.

Brokers in 2020—pre-COVID-19, which manual volume levels the Exchange believes will rise again post-COVID-19, as market participants return to their normal capacity and workflow.

The Exchange cannot predict with certainty whether any Floor Brokers would avail themselves of the proposed fee change. However, all Floor Brokers are eligible for this enhanced credit.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,¹¹ 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.”¹²

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4) and (5).

¹² See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7-10-04) (“Reg NMS Adopting Release”).

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.¹³ Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in June 2020, the Exchange had slightly more than 10% market share of executed volume of multiply-listed equity & ETF options trades.¹⁴

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

To respond to this competitive marketplace, the Exchange has established incentives to assist Floor Brokers in attracting more business to the Exchange—including credits on QCC transactions—as such participants serve an important function in facilitating the execution of orders via open outcry, which promotes price discovery on the public markets.

The Exchange believes that the proposed enhanced credit is reasonable because it is designed to incent Floor Brokers to increase the number and type of manual billable transactions sent to the Exchange, including QCC transactions. To the extent that the proposed change

¹³ 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/volume/default.jsp>.

¹⁴ Based on OCC data, see id., the Exchange's market share in equity-based options was 9.59% for the month of June 2019 and 10.69% for the month of June 2020.

attracts more volume to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for order execution, 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 notes that all market participants stand to benefit from any increase in volume by Floor Brokers, which promotes market depth, facilitates tighter spreads and enhances price discovery, and may lead to a corresponding increase in order flow from other market participants. In addition, any increased liquidity on the Exchange would result in enhanced market quality for all participants.

Floor Brokers have the option of attempting to trade sufficient volume to achieve the proposed credit and those Floor Brokers that do not meet the minimum volume thresholds would still be eligible for the current (\$0.07) per contract credit on the first 300,000 QCC transactions executed on the Exchange.

Finally, to the extent the proposed change continues to attract greater volume and liquidity, the Exchange believes the proposed change would improve the Exchange's overall competitiveness and strengthen 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 increase the depth of its market and improve its market share relative to its competitors. The Exchange's fees are constrained by intermarket competition, as Floor Brokers may direct their order flow to any of the 16 options exchanges, including those with similar QCC credits.¹⁵ Thus, Floor Brokers have a choice of where they direct their order flow—including their QCC transactions. The proposed rule change is designed

¹⁵ See e.g., Nasdaq ISE fee schedule, Section 6 A. (QCC and Solicitation Rebate). Nasdaq ISE offers rebates on QCC and Solicitation mechanism transactions from (\$0.05) on 100,000 to 199,000 contracts, up to (\$0.11) per contract beyond 1,000,000 contracts in a month.

to incent Floor Brokers to direct liquidity to the Exchange—in particular billable manual volume and QCC orders, thereby promoting market depth, price discovery and improvement and enhancing order execution opportunities for market participants.

The Exchange cannot predict with certainty whether any Floor Brokers would avail themselves of the proposed fee change.

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

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits. The proposal is based on the amount and type of business transacted on the Exchange and Floor Brokers can opt to attempt to trade sufficient volume to achieve the enhanced credit or not. All Floor Brokers have the ability to qualify for the same enhanced credit under two alternatives offered (i.e., the greater of at least 30,000 contract sides in billable ADV or 150% of the Floor Broker's total billable ADV in contract sides during the Q1 2019).

In addition, the proposed change applies to qualifying Floor Brokers equally and would encourage and support Floor Brokers facilitating the execution of orders via open outcry.

Moreover, the proposed enhanced credit is designed to incent Floor Brokers to encourage OTP Holders to aggregate their executions—particularly billable volumes—at the Exchange as a primary execution venue. To the extent that the proposed changes attract more volume to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for, among other things, order execution. Thus, the Exchange believes the proposed rule changes would improve market quality for all market participants on the Exchange and, as a consequence, attract more order flow 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 add an enhanced Floor Broker credit because the proposed modification would be available to all similarly-situated Floor Brokers on an equal and non-discriminatory basis. The proposed enhanced credit is not unfairly discriminatory to non-Floor Brokers because Floor Brokers serve an important function in facilitating the execution of orders via open outcry, which as a price-improvement mechanism, the Exchange wishes to encourage and support.

The proposal is based on the amount and type of business transacted on the Exchange and Floor Brokers are not obligated to try to achieve the enhanced credit, nor are they obligated to execute QCC orders. Rather, the proposal is designed to encourage Floor Brokers to utilize the Exchange as a primary trading venue for manual transactions (if they have not done so previously) or increase volume sent to the Exchange. To the extent that the proposed change attracts more billable manual volume, including QCC orders to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for order execution. Thus, the Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange thereby improving market-wide quality and price discovery. 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.

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."¹⁶

Intramarket Competition. The proposed enhanced credit is designed attract additional order flow to the Exchange (particularly in Floor Brokers' billable manual volume, including QCC transactions), which would enhance the quality of quoting and may increase the volumes of contracts traded on the Exchange. Greater liquidity benefits all market participants on the Exchange and increased billable manual volume would increase opportunities for execution of other trading interest. The proposed enhanced credit would be available to all similarly-situated Floor Brokers that executed manual trades, and, as such, the proposed change would not impose a disparate burden on competition among market participants on the Exchange. To the extent that there is an additional competitive burden on non-Floor Brokers, the Exchange believes that this is appropriate because Floor Brokers serve an important function in facilitating the execution of orders via open outcry, which as a price-improvement mechanism, the Exchange wishes to encourage and support.

¹⁶ See Reg NMS Adopting Release, supra note 12, at 37499.

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. 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.¹⁷ Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in June 2020, the Exchange had slightly more than 10% market share of executed volume of multiply-listed equity & ETF options trades.¹⁸

The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees in a manner designed to incent Floor Brokers to direct trading interest (particularly billable manual volume and QCC transactions) 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 and increased opportunities for price improvement.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change

¹⁷ 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/volume/default.jsp>.

¹⁸ Based on OCC data, see id., the Exchange's market share in equity-based options was 9.51% for the month of June 2019 and 10.65% for the month of June 2020.

reflects this competitive environment. And, in fact, the Exchange believes that the proposed change could promote competition between the Exchange and other execution venues, including those that currently offer similar QCC credits, by encouraging additional orders to be sent to the Exchange for execution.¹⁹

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)²⁰ of the Act and subparagraph (f)(2) of Rule 19b-4²¹ 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)²² 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:

¹⁹ See supra note 15 (regarding Nasdaq ISE QCC and Solicitation Rebate).

²⁰ 15 U.S.C. 78s(b)(3)(A).

²¹ 17 CFR 240.19b-4(f)(2).

²² 15 U.S.C. 78s(b)(2)(B).

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-2020-79 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-2020-79. 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-2020-79, 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.²³

J. Matthew DeLesDernier
Assistant Secretary

²³ 17 CFR 200.30-3(a)(12).