SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-90629; File No. SR-NYSEArca-2020-109)

December 10, 2020

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Modifying the NYSE Arca Options Fee Schedule Regarding the Criteria to Qualify for the Market Maker Incentive for Penny Issues

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 December 7, 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 the criteria to qualify for a Market Maker Incentive for Penny Issues. The Exchange proposes to implement the fee change effective December 7, 2020.[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.

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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 originally filed to amend the Fee Schedule on December 1, 2020 (SR-NYSEArca-2020-106) and withdrew such filing on December 7, 2020.

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.

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 modify the criteria to qualify for a Market Maker Incentive For Penny Issues. The Exchange proposes to implement the rule change on December 7, 2020.

The Exchange currently provides several incentives for OTP Holders and OTP Firms (collectively, "OTPs") designed to encourage OTPs to direct additional order flow to the Exchange to achieve more favorable pricing and higher credits. Among these incentives are enhanced posted liquidity credits based on achieving certain percentages of Total Industry Customer equity and ETF option average daily volume ("TCADV").[5]

Currently, Market Maker orders in Penny Issues that post liquidity and are executed on the Exchange earn a base credit of ($0.28) per contract, and may be eligible for increased credits based on the participant's activity. The Fee Schedule provides for three Penny Credit Tiers for Market Makers, with increasing minimum volume thresholds (as well as increasing credits)

5 TCADV includes OCC calculated Customer volume of all types, including Complex Order Transactions and QCC transactions, in equity and ETF options. See Endnote 8 to the Fee Schedule.

associated with each tier, ranging from per contract credits of ($0.32) to ($0.42) for Market Makers that achieve the Select Tier up to Super Tier II, respectively.[6] The Exchange also offers various incentives that increase the possible posting credit applied to a Market Maker's orders, such as cross asset incentives for activity on the NYSE Arca Equity Market. One such incentive is the Market Maker Incentive For Penny Issues (the "Incentive").

Currently, there are two components to the qualification for the Incentive, the first being at least 0.75% of TCADV from affiliated or appointed Order Flow Provider Customer posted interest in all issues. The second component of the qualification currently is an ADV from Market Maker posted interest equal to 0.70% of TCADV.

The Exchange proposes to modify the qualifying criteria for the Incentive to (1) lower the minimum volume threshold of the Market Maker posted interest component from 0.70% to 0.40% of TCADV, and (2) specify that volume from SPY[7] would be excluded from the qualifying volume for the credit.[8] The amount of the credit will remain the same, ($0.41) per contract. The Exchange believes that the proposed change to exclude volume from SPY but lower the minimum volume threshold to qualify for the Incentive would still encourage OTPs to achieve the Incentive with increased Market Maker posted interest in issues other than SPY,[9] which would bring increased liquidity and order flow to the Exchange for the benefit of all market participants.

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6 See Fee Schedule, NYSE Arca OPTIONS: TRADE-RELATED CHARGES FOR STANDARD OPTIONS, MARKET MAKER PENNY AND SPY POSTING CREDIT TIERS.

7 SPY is the trading acronym for SPDR S&P 500 ETF Trust.

8 See proposed Fee Schedule, NYSE Arca OPTIONS: TRADE-RELATED CHARGES FOR STANDARD OPTIONS, Market Maker Incentive For Penny Issues.

9 The Exchange notes that there are separate incentives specifically related to Market Maker posted interest in SPY.

The Exchange cannot predict with certainty whether any OTPs would qualify for the incentive under the modified criteria; however, the Exchange believes that the proposed Incentive would continue to encourage OTPs to increase Market Maker posted volume in issues other than SPY to qualify for this Incentive.

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]

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

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").

than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[13] Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in August 2020, the Exchange had slightly more than 10% market share of executed volume of multiply-listed equity and 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, changes to exchange transaction fees and rebates can have a direct effect on the ability of an exchange to compete for order flow, including with options exchanges that offer similar posting credits on Market Maker executions.[15]

The Exchange believes that the proposed modification to the criteria to qualify for the Incentive is reasonably designed to continue to incent OTPs to increase the amount and type of Market Maker posted interest sent to the Exchange. The Exchange notes that Market Makers are still eligible to qualify for Market Maker Penny and SPY Posting Credit Tiers based on a specified benchmark in posted interest in all issues from Market Maker posted interest.[16] By

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13 The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available at: https://www.theocc.com/market-data/volume/default.jsp.

14 Based on OCC data, the Exchange's market share in equity-based options was 9.59% for the month of August 2019 and 10.20% for the month of August 2020. See id.

15 See e.g., MIAX Pearl Fee Schedule, available at: https://www.miaxoptions.com/sites/default/files/fee_schedule-files/MIAX_PEARL_Fee_Schedule_11052020.pdf (regarding Market Maker Posting credits).

16 See supra note 5.

continuing to provide alternative methods to qualify for enhanced Penny posting credits, the Exchange believes OTPs will have increased opportunities to qualify for credits, which benefits all participants through increased volume to the Exchange.

To the extent that the proposed change attracts to the Exchange more Market Maker posted interest in both Penny and non-Penny issues, 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 cannot predict with certainty whether any Market Makers would qualify for the Incentive under the modified criteria; however, the Exchange believes that OTPs would continue to be encouraged to increase Market Maker posted volume to qualify for this Incentive.

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 OTPs can opt to avail themselves of the modified criteria to qualify for the Incentive or not. Moreover, the proposal is designed to incent OTPs to aggregate all Customer posting interest and Market Maker interest at the Exchange as a primary execution venue. To the extent that the proposed change attracts more Market Maker posting interest 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 change would improve market quality for all market participants on the Exchange and, therefore, 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 that the proposed rule change is not unfairly discriminatory because all similarly-situated market participants would be eligible to qualify for the Incentive pursuant to the modified criteria on an equal and non-discriminatory basis.

The proposal is based on the amount and type of business transacted on the Exchange, and Market Makers are not obligated to try to qualify for the Incentive, as modified, nor are they obligated to execute posted interest. Rather, the proposal is designed to encourage OTPs to utilize the Exchange as a primary trading venue for Customer posted interest and Market Maker posted interest (if they have not done so previously) or increase volume sent to the Exchange. To the extent that the proposed change attracts to the Exchange more Market Maker interest, including posted interest, 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, 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 change 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."[17]

Intramarket Competition. The proposed change is designed to attract additional order flow (particularly Market Maker posted interest) to the Exchange. The Exchange believes that the proposed modification to the Incentive would continue to incent Market Makers to direct their posted interest to the Exchange. Greater liquidity benefits all market participants on the Exchange, and increased Market Maker interest would increase opportunities for execution of other trading interest. The proposed modification would be available to all similarly-situated market participants that execute Customer posted interest and also make markets, and, accordingly, would not impose a disparate burden on competition among market participants on the Exchange.

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

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[17] See Reg NMS Adopting Release, supra note 9, at 37499.

equity and ETF options trades.[18] Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in August 2020, the Exchange had slightly more than 10% market share of executed volume of multiply-listed equity and ETF options trades.[19]

The Exchange believes that the proposed modification to the criteria to qualify for the Incentive reflects this competitive environment because it modifies the Exchange's fees in a manner designed to encourage Market Makers to continue to direct trading interest (particularly Market Maker posted interest) to the Exchange, provide liquidity, and 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 believes that the proposed change could promote competition between the Exchange and other execution venues, including those that currently offer similar Market Maker posting credits, 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.

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18 The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available at: https://www.theocc.com/market-data/volume/default.jsp.

19 Based on OCC data, the Exchange's market share in equity-based options was 9.59% for the month of August 2019 and 10.20% for the month of August 2020. See id.

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-4[21] 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:

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-2020-109 on the subject line.

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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).

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-2020-109. 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-2020-109, 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).