

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-92887; File No. SR-NYSEArca-2021-75)

September 7, 2021

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify the Arca Options Deep Market Data Product

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 August 24, 2021, 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 and II 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 Arca Options Deep market data product. 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 Exchange proposes to modify the Arca Options Deep market data product.

The Exchange currently offers the following real-time options market data feeds: “Arca Options Top,” “Arca Options Deep,” and “Arca Options Complex” (the “Arca Options Products”). “Arca Options Top” is a single market data product that combines last sale data, best bids and offers (“BBO”), order imbalance information and series status and underlying status messages. “Arca Options Complex,” also a single market data product, provides subscribers NYSE Arca Options quote and trade information (including orders/quotes, requests for responses, and trades) for the complex order book on a real-time basis. “Arca Options Deep” is also a single market data product that provides subscribers NYSE Arca Options quotes and orders at the first three price levels in each series on a real-time basis.

The Exchange charges a single fee for Arca Options Products and subscribers of Arca Options Products receive all three data feeds described above.<sup>4</sup> The Exchange charges a separate

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<sup>4</sup> See Securities Exchange Act Release No. 68005 (October 9, 2012), 77 FR 63362 (October 16, 2012) (SR-NYSEArca-2012-106) (establishing fees for certain proprietary options market data products). See also Securities Exchange Act Release Nos. 69523 (May 6, 2013), 78 FR 27452 (May 10, 2013) (SR-NYSEArca-2013-41) (establishing a schedule of NYSE Arca Options proprietary market data fees); 69554 (May 10, 2013), 78 FR 28917 (May 16, 2013) (SR-NYSEArca-2013-47) (establishing non-display usage fees and amending the professional end-user fees); 71933 (April 11, 2014), 79 FR 21821 (April 17, 2014) (SR-NYSEArca-2014-34) (amending the professional user fees); 73010 (September 5, 2014), 79 FR 54307 (September 11, 2014) (SR-NYSEArca-2014-94) (amending fees for non-display use); 76023 (September 29, 2015), 80 FR 60208 (October 5, 2015) (SR-NYSEArca-2015-83) (modifying certain proprietary options data products); and 77111 (February 11, 2016), 81 FR 8291 (February 18, 2016) (SR-NYSEArca-2016-

fee for Arca Options Complex for subscribers that seek to obtain this data feed on a standalone basis.<sup>5</sup>

The Exchange proposes to modify the Arca Options Deep market data product so that quotes and orders would be available for the full order book in each series on a real-time basis rather than at the first three price levels. As modified, Arca Options Deep would provide vendors and subscribers with a unified view of events, in sequence, as they appear on the Exchange's matching engine. The modified Arca Options Deep would include depth of book order data, last sale data, opening imbalance data, series status updates (e.g., trade corrections and trading halts) and series summary messages. The series summary message would update every minute and would include the opening price, high price, low price, closing price, and cumulative volume for each series traded on the Exchange. The Exchange is not making any changes to the current product other than providing quotes and orders for the full order book rather than at the first three price levels and the inclusion of opening imbalance data.

The Exchange believes that Arca Options Deep, as modified, addresses requests received from vendors and subscribers that would like to receive the data described above in an integrated fashion. An integrated data feed would provide greater efficiencies and reduce errors for vendors and subscribers that currently choose to integrate the data after receiving it from the Exchange. The Exchange believes that providing vendors and subscribers with the option of a market data product that both integrates existing products and includes additional market data would allow vendors and subscribers to choose the best solution for their specific businesses

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29) (Modifying the Arca Options Deep market data product).

<sup>5</sup> See Securities Exchange Act Release No. 73588 (November 13, 2014), 79 FR 68922 (November 19, 2014) (SR-NYSEArca-2014-129) (establishing fees for the complex order book feed).

while also enhancing the functionality of the product.

The proposed modification to the Arca Options Deep data feed will allow subscribers who currently obtain depth of market data at three price levels to receive the full order book market data in a single data feed. Offering a data product that provides the full order book in one market data product would provide greater efficiencies and better sequencing for vendors and subscribers. As it does currently, Arca Options Deep would continue to provide last sale and BBO information on a real-time basis as reported to the Options Price Reporting Authority (“OPRA”) and disseminated on a consolidated basis under the OPRA Plan.<sup>6</sup>

The Exchange does not propose to make any change to the fees for Arca Options Deep. The single fee charged for the Arca Options Products that comprise the Arca Options Top, Arca Options Deep and Arca Options Complex would continue to apply. The separate fee that now applies to Arca Options Complex, would likewise continue to apply to the Arca Options Complex market data product.

Arca Options Deep would continue to be offered through the Exchange’s Liquidity Center Network (“LCN”), a local area network in the Exchange’s Mahwah, New Jersey data center that is available to users of the Exchange’s co-location services. The Exchange would

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<sup>6</sup> The OPRA Plan is a national market system plan approved by the Securities and Exchange Commission (“Commission”) pursuant to Section 11A of the Act and Rule 608 thereunder (formerly Rule 11Aa3-2). See Securities Exchange Act Release No. 17638 (March 18, 1981), 22 S.E.C. Docket 484 (March 31, 1981). The full text of the OPRA Plan is available at <https://www.opraplan.com/>. The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the participant exchanges. Section 5.2(c) of the OPRA Plan also permits OPRA Plan participants to disseminate unconsolidated market information to certain of their members under certain circumstances. The manner in which the Exchange proposes to disseminate the products would comply with Section 5.2(c) of the OPRA Plan, pursuant to which the Exchange may not disseminate the products “on any more timely basis than the same information is furnished to the OPRA System for inclusion in OPRA’s consolidated dissemination of Options Information.”

also continue to offer the Arca Options Deep through the Exchange's Secure Financial Transaction Infrastructure ("SFTI") network, through which all other users and members access the Exchange's trading and execution systems and other proprietary market data products.

The Exchange plans to introduce the modified Arca Options Deep market data product when the Exchange transitions to the Pillar trading platform, anticipated for the fourth quarter of 2021.<sup>7</sup> The Exchange will announce the exact date that the modified Arca Options Product market data product will become available through a NYSE Trader Update.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b)<sup>8</sup> of the Act, in general, and furthers the objectives of Section 6(b)(5)<sup>9</sup> of the Act, in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to 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, and it is not designed to permit unfair discrimination among customers, brokers, or dealers.

The Exchange also believes this proposal is consistent with Section 6(b)(5) of the Act because it protects investors and the public interest and promotes just and equitable principles of trade by providing investors with improved options for receiving market data. The proposed rule

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<sup>7</sup> See Securities Exchange Act Release No. 92304 (June 30, 2021), 86 FR 36440 (July 9, 2021) (SR-NYSE-Arca-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).

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

<sup>9</sup> 15 U.S.C. 78f(b)(5).

change would benefit investors by facilitating their prompt access to the additional real-time information contained in a modified Arca Options Deep market data product.

The Exchange believes the proposed change is reasonable because it would provide vendors and subscribers with a higher quality market data product.

In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to consumers of such data. It was believed that this authority would expand the amount of data available to users and consumers of such data and also spur innovation and competition for the provision of market data. The Exchange believes that the options data product changes proposed herein are precisely the sort of market data product evolutions that the Commission envisioned when it adopted Regulation NMS. The Commission concluded that Regulation NMS – by lessening regulation of the market in proprietary data – would itself further the Act’s goals of facilitating efficiency and competition:

[E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.<sup>10</sup>

By removing “unnecessary regulatory restrictions” on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its

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<sup>10</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

legislative history.

The proposed modified Arca Options Deep market data feed will help to protect a free and open market by providing additional data to the marketplace and give investors greater choices. In addition, the proposal would not permit unfair discrimination because the products will be available to all of the Exchange's customers and broker-dealers through both the LCN and SFTI.

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

In accordance with Section 6(b)(8) of the Act,<sup>11</sup> the Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The market for proprietary data products is currently competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data. Numerous exchanges compete with each other for listings, trades, and market data itself, providing virtually limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. This proprietary data is produced by each individual exchange, as well as other entities (such as internalizing broker-dealers and various forms of alternative trading systems, including dark pools and electronic communication networks), in a vigorously competitive market. It is common for market participants to further and exploit this competition by sending their order flow and transaction reports to multiple markets, rather than providing them all to a single market. Because the Exchange's competitors already offer similar products, the proposed modified Arca Options Deep market data product will enhance competition. For example, Arca Options Deep would

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<sup>11</sup> 15 U.S.C. 78f(b)(8).

provide an alternative to Nasdaq ITCH-to-Trade Options, offered by The Nasdaq Stock Market, Inc. (“Nasdaq”).<sup>12</sup>

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>13</sup> and Rule 19b-4(f)(6) thereunder.<sup>14</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

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<sup>12</sup> See Nasdaq ITCH-to-Trade Options (ITTO), <https://www.nasdaqtrader.com/micro.aspx?id=Dapos> (ITTO is designed to provide full quote and order depth . ITTO uses a series of messages to track the life of a quote or order through the Nasdaq Options Market (NOM). ITTO supports NOM last sale data as well as Net Order Imbalance data for the opening auction).

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

#### 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-2021-75 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-2021-75. 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-2021-75, 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>15</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(12).