SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-92917; File No. SR-NYSEArca-2021-79)

September 9, 2021

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, 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, 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 certain pricing incentives. The Exchange proposes to implement the fee change effective September 1, 2021. 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

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

2 15 U.S.C. 78a.

3 17 CFR 240.19b-4.

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 certain pricing incentives. Specifically, the Exchange proposes to modify the "Discount in Take Liquidity Fees for Professional Customer and Non-Customer Liquidity Removing Interest," the "Market Maker Penny and SPY Posting Credit Tiers," and the "Market Maker Incentive For Non-Penny Issues," as described below. The Exchange proposes to implement the fee change effective September 1, 2021.

Discount in Take Liquidity Fees for Professional Customers and Non-Customer Liquidity Removing Interest (the "Take Fee Discount")

If an OTP Holder or OTP Firm (collectively "OTP Holders") executes a transaction that removes or "takes" liquidity on the Exchange, the OTP Holder is charged a "Take Liquidity" fee (referred to herein as "Take Fees") and such liquidity may be referred to as "Liquidity Removing" or liquidity taking.[4] To offset such costs and to encourage market participants to direct order flow to the Exchange, the Exchange offers, among other incentives, the Take Fee Discounts for executions in Penny Issues.

The Exchange proposes to modify one of the Take Fee Discounts. Under the current Fee

[4] See Fee Schedule, NYSE Arca OPTIONS: TRADE-RELATED CHARGES FOR STANDARD OPTIONS, TRANSACTION FEE FOR ELECTRONIC EXECUTIONS - PER CONTRACT (setting forth a per contract Take Fee of $0.50 for such Penny executions in Professional Customer, Firm, Broker Dealer, and Market Maker range as compared to a per contract take fee of $0.49 for such Penny executions in the Customer range).

Schedule, OTP Holders that execute at least 0.80% of Total Industry Customer equity and ETF option average daily volume ("TCADV")[5] from Customer posted interest in all issues, plus executed ADV of 0.30% ADV of U.S. Equity Market Share Posted and Executed on NYSE Arca Equity Market, may qualify for a $0.04 per contract Take Fee Discount on liquidity-taking executions by Professional Customers or Non-Customers in Penny Issues.

The Exchange proposes that this $0.04 Take Fee Discount would apply only if the executing buyer and seller in the qualifying transaction are either the same OTP Holder or an Affiliated or Appointed OFP or Appointed MM of the OTP Holder (collectively referred to as "Affiliates" herein), otherwise, the Take Fee Discount would be $0.03 (instead of $0.04). In other words, when an OTP Holder or its Affiliate trades against itself (e.g., Firm 1 MM trades against Firm 1 Customer or Firm 1 MM trades against Customer of an Affiliate of Firm 1), the $0.04 Take Fee Discount would apply. If, however, the OTP Holder trades against another OTP Holder (e.g., Firm 1 MM trades against Firm 2 Customer), the $0.03 Take Fee Discount would apply. The Exchange proposes to add language to the Fee Schedule that adds this provision.

The Exchange believes the proposed fee change is reasonable because the Exchange already offers certain transaction fee discounts to OTP Holders and their Affiliates that aggregate their order flow on these types of transactions.[6] The Exchange also notes that this proposed change is being made for business and competitive reasons to align Exchange fee incentives with

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

6 See, e.g., Fee Schedule, CUSTOMER PENNY POSTING CREDIT TIERS and Endnote 15 (providing per contract credits to OTP Holders and Affiliates that meet certain minimum volume thresholds) and MARKET MAKER PENNY AND SPY POSTING CREDIT TIERS (same).

those charged by other options exchanges.[7] The Exchange believes that it will still remain highly competitive and that its Take Fees Discounts, as modified, would continue to attract order flow to the Exchange.

Market Maker Incentive for Non-Penny Issues and Market Maker Penny and SPY Posting Credit Tiers (the "Market Maker Posting Tiers")

The Exchange also proposes to modify the criteria for Market Makers to qualify for enhanced posting credits in Penny Issues and SPY (i.e., the "Market Maker Posting 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 modify one of the alternative qualification bases for achieving the Super Tier by lowering the minimum volume threshold and limiting which interest can qualify for that threshold. Currently, to qualify for the Super Tier, OTP Holders must execute at least 1.60% of TCADV from all interest in all issues, all account types, with at least 0.80% TCADV from posted interest in all issues. The Exchange proposes to modify this qualification bases such that to qualify, an OTP Holder would have to execute least 1.60% of TCADV from all interest in all issues, all account types (which would be unchanged), with at least 0.15% TCADV from Market Maker posted interest in all

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7 See, e.g., MIAX Pearl Options Fee Schedule, available at https://www.miaxoptions.com/sites/default/files/fee_schedule-files/MIAX_Pearl_Options_Fee_Schedule_08122021.pdf (providing a lower "take rate" for "executed MIAX Pearl Market Maker Orders when the executing buyer and seller are the same Member or Affiliates" and, a higher "take rate" for "executed MIAX Pearl Market Maker Orders when the executing buyer and seller are *not* the same Member or Affiliates") (emphasis added); Nasdaq Options 7 Pricing Schedule, Section 2 Nasdaq Options Market - Fees and Rebates, available at https://listingcenter.nasdaq.com/rulebook/nasdaq/rules/nasdaq-options-7 (providing that Nasdaq participants that add 1.30% of Customer, Professional, Firm, Broker-Dealer or Non-NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols of TCADV per day in a month will pay "a $0.48 per contract Penny Symbols Fee for Removing Liquidity when the Participant is (i) both the buyer and the seller or (ii) the Participant removes liquidity from another Participant under Common Ownership", otherwise such participants pay $0.50 per contract on such interest).

issues. The per contract credit for OTP Holders that achieve the Super Tier remains unchanged (i.e., $0.37, and $0.39 per contract credit, respectively, for electronic executions of Market Maker Posted Interest in Penny Issues excluding SPY and for such executions in SPY).

The Exchange believes that the proposed change would continue to attract order flow to the Exchange because the limitation on the qualifying interest (from all posted interest to Market Maker posted interest) would be offset by the significantly reduced volume requirement (from 0.80% to 0.15%). In addition, notwithstanding the proposed modification to the Super Tier, OTP Holders are still eligible to qualify for the existing alternative (and unchanged) Super Tier qualification basis for executions in Penny Issues and SPY.[8] By continuing to provide such alternative methods to qualify for Take Fee Discounts, the Exchange believes the opportunities to qualify for credits is increased, which benefits all participants through increased volume to the Exchange.

Market Maker Incentive for Non-Penny Issues (the "Market Maker Non-Penny Incentive")

To mirror the proposed change to the Super Tier (of the Market Maker Posting Tiers) the Exchange also proposes to modify one of the alternative qualification bases to achieve the Market Maker Non-Penny Incentive. Specifically, under the current Fee Schedule, OTP Holders must execute at least 1.60% of TCADV from all orders in all issues, all account types, with at least 0.80% TCADV from posted interest in all issues. First, the Exchange proposes to replace reference to "TCADV from all orders" with "TCADV from all interest" to make clear that liquidity may include orders or quotes. Next, the Exchange proposes to modify this qualification bases such that (identical to the proposed change to the Super Tier), to qualify, an OTP Holder

8 OTP Holder may (still) qualify for the Super Tier by executing at least 0.55% of TCADV from Market Maker posted interest in all issues.

would have to execute least 1.60% of TCADV from all interest in all issues, all account types, with at least 0.15% TCADV from Market Maker posted interest in all issues. The $0.55 per contract credit for OTP Holders that achieve the minimum volume threshold remains unchanged.

The Exchange believes that the proposed change would continue to attract order flow to the Exchange because the limitation on the qualifying interest (from all posted interest to Market Maker posted interest) is offset by the significantly reduced volume requirement (from 0.80% to 0.15%). In addition, notwithstanding this proposed modification, OTP Holders are still eligible to qualify for the existing alternative (and unchanged) Market Maker Non-Penny Incentive qualification basis for executions in Non-Penny Issues.[9] By continuing to provide such alternative methods to qualify for Take Fee Discounts, the Exchange believes the opportunities to qualify for credits is increased, which benefits all participants through increased volume to the Exchange.

The Exchange cannot predict with certainty whether any OTP Holders will avail themselves of the proposed changes to the Take Fee Discount, the Market Maker Posting Tiers, or Market Maker Non-Penny Incentive. At present, whether or when an OTP Holder would qualify for the enhanced credit varies month-to-month. Thus, the Exchange cannot predict with any certainty the number of OTP Holders that may qualify for the proposed new qualifications, but believes that OTP Holders (including those acting as Market Makers) would be encouraged to increase volume to take advantage of the available credits and discounts.

2. Statutory Basis

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

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[9] OTP Holder may (still) qualify for the Market Maker Posting Incentive by executing at least 0.55% of TCADV from Market Maker posted interest in all issues.

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 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 & ETF options order flow. More specifically, in July of 2021, the

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").

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/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics.

Exchange had less than 13% 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. In response to this competitive environment, the Exchange has established incentives, such as the Take Fee Discount, Market Maker Non-Penny Incentive, and Market Maker Posting Tiers.

Finally, the Exchange believes the proposed non-substantive change to the Fee Schedule (i.e., replacing reference to "orders" with "interest" in the Market Maker Non-Penny Incentive) is reasonable, equitable, and not unfairly discriminatory because the change would add clarity, transparency and internal consistency to the Fee Schedule making it easier to navigate and comprehend, which would benefit all market participants.

The Take Fee Discount

The Exchange believes that the proposed modification to the Take Fee Discount to encourage OTP Holders to send both sides of a transaction to the Exchange is reasonably designed to continue to incent OTP Holders to increase the amount of interest sent to the Exchange, especially liquidity-taking interest. The Exchange believes the proposed fee change is reasonable because the Exchange already offers certain transaction fee discounts to OTP Holders and their Affiliates that aggregate their order flow on these types of transactions.[15] The Exchange

14 Based on OCC data for monthly volume of equity-based options and monthly volume of ETF-based options, see id., the Exchange's market share in equity-based options increased from 10.71% for the month of July 2020 to 12.15% for the month of July 2021.

15 See supra note 6.

also notes that this proposed change is being made for business and competitive reasons to align Exchange fee incentives with those charged by other options exchanges.[16] The Exchange believes that, notwithstanding the proposed change, it will still remain highly competitive and would continue to attract order flow to the Exchange.

The Market Maker Posting Tiers and Market Maker Non-Penny Incentive

The Exchange believes that the proposed (identical) change to the Market Maker Posting Tiers and Market Maker Non-Penny Incentive would continue to attract order flow to the Exchange because the limitation on the qualifying interest (from all posted interest to Market Maker posted interest) is offset by the significantly reduced volume requirement (from 0.80% to 0.15%). In addition, notwithstanding this proposed modification, the Exchange notes that OTP Holders are still eligible to qualify for the existing alternative (and unchanged) qualification basis in each of the Market Maker Posting Tiers and Market Maker Non-Penny Incentive for eligible executions.[17] By continuing to provide such alternative methods to qualify for the Market Maker Posting Tiers and Market Maker Non-Penny Incentive, the Exchange believes the opportunities to qualify for credits is increased, which benefits all participants through increased volume to the Exchange.

Finally, the proposed modification to the Market Maker Posting Tiers and Market Maker Non-Penny Incentive is designed to incent OTP Holders to transact more Market Maker volume on the Exchange, which may result in an increase of volume and liquidity for all market participants by providing more trading opportunities and tighter spreads, and may lead to a corresponding increase in order flow from other market participants.

16 See supra note 7.

17 See supra notes 8 and 9.

To the extent the proposed rule change continues to attract greater volume and liquidity, by encouraging OTP Holders (and their affiliates) to increase their options volume on the Exchange in an effort to achieve higher credits, 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 changes are a reasonable attempt by the Exchange to increase the depth of its market and improve its market share relative to its competitors.

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 OTP Holders can opt to avail themselves of the credits and discounts or not. Moreover, the proposal is designed to incent OTP Holders to aggregate all liquidity-taking interest at the Exchange as a primary execution venue and to continue to attract Market Maker posting interest on the Exchange. To the extent that the proposed change attracts more opportunities for execution of Customer and Market Maker posted interest on 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 Proposed Rule Change is not Unfairly Discriminatory

The Exchange believes it is not unfairly discriminatory to modify the Take Fee Discount because the proposed modification would align Exchange fees with similar fees on other options markets[18] and would be available to all similarly-situated market participants on an equal and non-discriminatory basis. The Exchange believes the proposed changes are not unfairly discriminatory because the discounts and credits are available to all similarly-situated market participants on an equal and non-discriminatory basis.

The proposals are based on the amount and type of business transacted on the Exchange and OTP Holders are not obligated to try to achieve the enhanced qualifications, nor are they obligated to execute liquidity-taking interest or posted interest. To the extent that the proposed change attracts more interest, including liquidity-taking and Market Maker posting interest, 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

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18 See supra note 7.

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."[19]

Intramarket Competition. The proposed change is designed to attract additional order flow to the Exchange, including take-liquidity interest and Market Maker posting interest. The Exchange believes that the proposed modifications would incent OTP Holders to direct their liquidity-taking and Market Maker order flow to the Exchange. Greater liquidity benefits all market participants on the Exchange and increased liquidity-taking order flow and posted Market Maker interest would increase opportunities for execution of other trading interest. The proposed modifications 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.

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

equity and ETF options trades.[20] Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in July 2021, the Exchange had less than 13% market share of executed volume of multiply-listed equity & ETF options trades.[21]

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 OTP Holders to direct trading interest (particularly both sides of a transaction and Market Maker interest) to the Exchange, to provide liquidity and to attract order flow, which would align Exchange fee incentives with those charged by other options exchanges.[22] 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 discounts for sending both sides of a transaction, 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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20 See supra note 13.

21 Based on OCC data for monthly volume of equity-based options and monthly volume of ETF-based options, see id., the Exchange's market share in equity-based options increased from 10.71% for the month of July 2020 to 12.15% for the month of July 2021.

22 See supra note 7.

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)[23] of the Act and subparagraph (f)(2) of Rule 19b-4[24] 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)[25] 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-2021-79 on the subject line.

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23 15 U.S.C. 78s(b)(3)(A).

24 17 CFR 240.19b-4(f)(2).

25 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-2021-79. 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-2021-79, 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.[26]

J. Matthew DeLesDernier
Assistant Secretary

[26] 17 CFR 200.30-3(a)(12).