SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-93520; File No. SR-NYSEArca-2021-94)

November 4, 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 November 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 incentives available to Market Makers. The Exchange proposes to implement the fee change effective November 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 incentives intended to encourage Market Maker posted volume.

Currently, the Fee Schedule provides a variety of incentives to encourage greater participation by Market Makers and Market Maker affiliates, including more favorable rates for higher volumes from posted interest (e.g., the Market Maker Incentive For Non-Penny Interval Issues and the Market Maker Incentives for SPY). The Exchange also offers incentives that reward higher volume from posted interest in conjunction with activity in the NYSE Arca Equity Market (for purposes of this filing, activity in the NYSE Arca Equity Market is referred to as "cross asset activity").

The Exchange now proposes to modify the qualifying criteria for the Market Maker Penny and SPY Posting Credit Tiers[4] by (1) modifying the qualification basis for the additional $0.03 credit on Market Maker posted interest applicable to OTP Holders who qualify for either Super Tier (the "Additional Credit"), and (2) eliminating one of the alternative qualifications for Super Tier II.

The Exchange proposes to implement the fee change on November 1, 2021.

Proposed Rule Change

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4 See Fee Schedule, MARKET MAKER PENNY AND SPY POSTING CREDIT TIERS.

The Exchange proposes to modify the qualifying criteria for the Additional Credit, which is currently applied to electronic executions of Market Maker posted interest in Penny Issues provided an OTP Holder or OTP Firm that qualifies for either Super Tier achieves (i) at least 0.18% of TCADV from Market Maker posted interest in all issues, and (ii) ETP Holder and Market Maker posted volume in Tape B Securities ("Tape B Adding ADV") that is equal to at least 1.50% of US Tape B consolidated average daily volume ("CADV") executed on the NYSE Arca Equity Market for the billing month.[5] The Exchange now proposes to modify the first qualification for the Additional Credit to require at least 0.55% of total combined IWM, QQQ, and SPY industry ADV from Market Maker posted interest in IWM, QQQ, and SPY.[6] The cross asset activity component to qualify for the Additional Credit will remain unchanged; OTP Holders will still be required to achieve ETP Holder and Market Maker posted volume in Tape B Adding ADV equal to at least 1.50% of US Tape B CADV for the billing month executed on NYSE Arca Equity Market to qualify for the Additional Credit. The Exchange believes that the proposed modification will encourage more Market Maker posted interest in certain very high volume products, in combination with cross asset activity.

The Exchange also proposes to eliminate one of the alternative qualifications for Super Tier II.[7] Currently, OTP Holders may achieve Super Tier II by meeting one of three alternative qualifications: (i) at least 0.10% of TCADV from Market Maker posted interest in all issues, plus

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5 This credit does not apply to executions of issues in an LMM's appointment, as Market Makers who are LMMs already receive an additional $0.04 credit on posted interest in Penny issues in their appointment.

6 IWM is the iShares Russell 2000 ETF. QQQ is the Invesco QQQ Trust. SPY is the SPDR S&P 500 ETF Trust.

7 OTP Holders that qualify for Super Tier II receive a $0.42 credit for executions in Penny Interval Program issues and SPY.

ETP Holder and Market Maker posted volume in Tape B Adding ADV that is equal to at least 1.50% of US Tape B CADV for the billing month executed on NYSE Arca Equity Market; (ii) at least 0.10% of TCADV from Market Maker posted interest in all issues, plus at least 0.42% of executed ADV of Retail Orders of U.S. Equity Market Share posted and executed on the NYSE Arca Equity Market; or (iii) at least 1.60% of TCADV from Market Maker interest in all issues, with at least 0.90% of TCADV from Market Maker posted interest in all issues. The Exchange proposes to eliminate the second qualification described above, such that Market Makers that execute 10% of TCADV from Market Maker posted interest in all issues, plus at least 0.42% of executed ADV of Retail Orders of U.S. Equity Market Share Posted and Executed on NYSE Arca Equity will no longer qualify for Super Tier II. Market Makers will still be able to earn the $0.42 credit available to OTP Holders that qualify for Super Tier II by meeting one of two alternative qualification levels. Although the Exchange proposes to eliminate one of the ways in which OTP Holders can qualify for the credit available in Super Tier II, the Exchange believes that the remaining alternative qualifying criteria are attainable and will continue to incentivize participation in greater volume from posted interest, as well as cross asset activity.

The Exchange cannot predict with certainty whether any OTP Holders would seek to qualify for the Additional Credit or to achieve Super Tier II, as modified, but believes that OTP Holders would continue to be encouraged to qualify for the advantages of the Additional Credit and Super Tier II. The Exchange believes the proposed modifications to the qualifying criteria for the Additional Credit and Super Tier II, which encourage increased posted interest from Market Makers in certain high-volume issues as well as cross market activity, would continue to incentivize OTP Holders to submit these types of orders to the Exchange, from all account types, which brings increased liquidity and order flow for the benefit of all market participants.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[9] 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."[10]

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.[11] Therefore, currently no exchange possesses significant pricing power in the execution of

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

9 15 U.S.C. 78f(b)(4) and (5).

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

11 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

multiply-listed equity & ETF options order flow. More specifically, in September 2021, the Exchange had less than 13% market share of executed volume of multiply-listed equity & ETF options trades.[12]

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 modifications to the qualifying criteria for the Additional Credit and Super Tier II are reasonably designed to incent OTP Holders to increase the number and variety of orders sent to the Exchange for execution. Specifically, to the extent that the proposed change attracts more Market Maker posted interest in certain high-volume issues and cross asset activity, this increased order flow would continue to make the Exchange a more competitive venue for, among other things, 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. Although the Exchange proposes to eliminate one of the alternative qualification bases for the credit available in Super Tier II, the Exchange believes that the remaining qualifying criteria will continue to incentivize participation in greater volume from posted interest, as well as cross asset activity.

12 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 was 10.9% for the month of September 2020 and 12.4% for the month of September 2021.

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 OTP Holders may direct their order flow to any of the 16 options exchanges, including those that also offer incentives based on Market Maker posted volume in IWM, QQQ, and SPY.[13] Thus, OTP Holders have a choice of where they direct their order flow, including their Market Maker posted interest and cross asset activity. The proposed rule change is designed to incent OTP Holders to direct liquidity to the Exchange, and in particular, Market Maker posted interest in highly liquid issues and cross asset activity, thereby promoting market depth, price discovery and improvement, and enhanced order execution opportunities for market participants.

At present, whether or when an OTP Holder qualifies for the various incentives set forth in the Market Maker Penny and SPY Posting Credit Tiers in a given month is dependent on market activity and an OTP Holder's mix of order flow. Thus, while the Exchange cannot predict with certainty whether any OTP Holders will seek to qualify for the Additional Credit or Super Tier II, as proposed, the Exchange believes that OTP Holders would continue to be encouraged

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13 See MIAX Pearl Options Exchange Fee Schedule, available at https://www.miaxoptions.com/sites/default/files/fee_schedule-files/MIAX_Pearl_Options_Fee_Schedule_100721.pdf (offering tiered incentives based on Market Maker volume in IWM, QQQ, and SPY); Cboe BZX Options Fee Schedule, available at https://www.cboe.com/us/options/membership/fee_schedule/bzx/ (offering favorable credits as an alternative for Market Maker posting volume in IWM, QQQ, and SPY).

to take advantage of the Additional Credit and Super Tier II $0.42 credit available to qualifying OTP Holders. The Exchange believes the proposed incentives, as modified, which apply to Market Maker posted interest in certain high volume issues and cross asset activity, would provide an incentive for OTP Holders to continue to submit these types of orders to the Exchange, which brings increased liquidity and order flow for the benefit of all market participants.

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 seek to qualify for the incentives or not. Moreover, the proposal is designed to encourage OTP Holders to submit orders from all account types to the Exchange as a primary execution venue. In addition, while the Exchange proposes to modify the available qualification levels for Super Tier II, the Exchange believes that the remaining alternative qualifying criteria are attainable and will continue to incentivize participation in greater volume from posted interest, as well as cross asset activity. To the extent that the proposed change attracts more Market Maker posted interest to the Exchange, as well as increased cross asset activity, 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, 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 the proposed rule change is not unfairly discriminatory because the modified qualifying criteria for both the Additional Credit and the credit available to OTP Holders who achieve Super Tier II would apply and be available equally to all similarly-situated market participants on an equal and non-discriminatory basis.

The proposal is based on the amount and type of business transacted on the Exchange, and OTP Holders are not obligated to try to achieve the qualifications for any of the tiers or execute either Market Maker posted interest or cross asset activity. Rather, the proposal is designed to continue to encourage OTP Holders to utilize the Exchange as a primary trading venue for Market Maker posted interest (if they have not done so previously) and to increase volume sent to the Exchange. To the extent that the proposed change attracts more Market Maker posted interest to the Exchange (particularly in certain high volume issues), 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, 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.

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, 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.”[14]

*Intramarket Competition*. The proposed change is designed to attract additional order flow (particularly Market Maker posted interest in certain high volume issues) to the Exchange. The Exchange believes that the proposed modification to the qualifying criteria for the Additional Credit and the credit available to Super Tier II would continue to encourage market participants to direct their Market Maker posted interest volume to the Exchange, particularly in certain high volume issues, as well as encourage cross asset activity. Greater liquidity benefits all market participants on the Exchange, and increased Market Maker posted interest would increase opportunities for execution of other trading interest. The proposed modifications would apply and be available equally to all similarly-situated market participants that handle Market Maker posted interest and cross asset activity, and, accordingly, 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

14 See Reg NMS Adopting Release, supra note 10, at 37499.

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.[15] Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in September 2021, the Exchange had less than 13% market share of executed volume of multiply-listed equity & ETF options trades.[16]

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 OTP Holders to direct trading interest (particularly Market Maker posted interest and cross asset activity) 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 believes that the proposed change could promote competition between the Exchange and other execution venues, including those that also currently offer incentives based on Market Maker posted volume in IWM, QQQ, and SPY,[17] by encouraging additional orders to be sent to the Exchange for execution.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule

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15 See supra note 11.

16 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 was 10.9% for the month of September 2020 and 12.4% for the month of September 2021.

17 See supra note 13.

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)[18] of the Act and subparagraph (f)(2) of Rule 19b-4[19] 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)[20] 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-2021-94 on the subject line.

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18 15 U.S.C. 78s(b)(3)(A).

19 17 CFR 240.19b-4(f)(2).

20 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-2021-94. 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-2021-94, 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.[21]

J. Matthew DeLesDernier
Assistant Secretary

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[21] 17 CFR 200.30-3(a)(12).