

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-94125; File No. SR-NYSEArca-2022-05)

February 1, 2022

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the NYSE Arca Options Fee Schedule

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 January 25, 2022, 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 amend the NYSE Arca Options Fee Schedule (the “Fee Schedule”) regarding eligibility for certain tiers, incentives, and discounts during the Exchange’s migration to a new trading platform. The Exchange proposes to implement the fee change effective January 25, 2022. 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.

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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.

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 provide OTP Holders and OTP Firms (collectively, “OTP Holders”) with certainty regarding their eligibility for certain tiers, incentives, and discounts during the Exchange’s migration to a new electronic trading platform, as an effort to mitigate fees during this transition period.

Currently, the Exchange conducts options trading on an electronic platform known as “OX.” OX refers to the Exchange’s electronic order delivery, execution, and reporting system for designated option issues through which orders and quotes of Users are consolidated for execution and/or display.<sup>4</sup> On or about February 7, 2022, the Exchange anticipates beginning the migration of its options trading to a new technology platform known as Pillar.<sup>5</sup>

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<sup>4</sup> See NYSE Arca Rule 6.1A-O(a)(13).

<sup>5</sup> The Exchange has announced that, pending regulatory approval, it will begin migrating Exchange-listed options to Pillar on February 7, 2022, available here: <https://www.nyse.com/trader-update/history#110000322291>. See also Securities Exchange Act Release No. 92304 (June 30, 2021), 86 FR 36440 (July 9, 2021) (SR-NYSEArca-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) and Amendment No. 4 to SR-NYSEArca-2021-47, available here:

The Exchange currently offers various volume- and performance-based incentives and discounts to encourage OTP Holders to use the Exchange as their primary venue for order routing and execution and for market making activity. Many of these incentive and discount programs include multiple tiers, which are intended to encourage greater participation in the programs and to incent OTP Holders to continually grow their business on the Exchange in order to qualify for the benefits offered in a higher tier.

In advance of the Exchange's migration to the Pillar platform, the Exchange has noted concern among OTP Holders regarding their ability to achieve various volume qualifications and thresholds during the migration. Specifically, because OTP Holders may choose to moderate their order flow and quotation sizes to reduce risk as they familiarize themselves with the new trading platform, they may not achieve the tier(s), incentive(s), and discount(s) they qualified for pre-migration. Accordingly, the Exchange believes that providing OTP Holders with certainty with respect to certain pricing they would receive during the transition to Pillar would provide OTP Holders with an opportunity to adjust to new functionality and new order handling mechanisms without taking on an additional financial burden.

To this end, the Exchange proposes to amend Endnote 8 of the Fee Schedule to provide that for the month during which the Exchange commences its migration to the Pillar platform (the "Migration Month"), OTP Holders will receive the tier(s), incentive(s), and discount(s) they achieved in the month prior to the Migration Month or the tier(s), incentive(s), and discount(s) achieved during the Migration Month, whichever are better. Specifically, the Exchange will compare an OTP Holder's performance in each of the programs set forth below during the

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<https://www.sec.gov/comments/sr-nysearca-2021-47/srnysearca202147-20112491-265389.pdf>.

Migration Month and during the month prior (currently anticipated to be January 2022) and will bill the OTP Holder for the Migration Month at the most favorable rates based on each qualification level achieved.

The following tiers, incentives, and discount programs would be covered by the proposed change:

- Customer Penny Posting Credit Tiers
- Firm and Broker Dealer Penny Posting Credit Tiers
- Firm and Broker Dealer Incentive Program
- Non-Customer, Non-Penny Posting Credit Tiers
- Customer Incentive Program
- Customer Posting Credit Tiers in Non-Penny Issues
- Discount in Take Liquidity Fees for Professional Customer and Non-Customer Liquidity Removing Interest
- Market Maker Incentive For Penny Issues
- Market Maker Incentive For Non-Penny Issues
- Market Maker Incentives for SPY
- Market Maker Penny and SPY Posting Credit Tiers
- LMM Rights Fee Discount

The Exchange believes that, to the extent OTP Holders choose to modify their trading activity during the Migration Month, the proposed change would mitigate the impact of potential pricing disruption by providing OTP Holders with certainty regarding the tier(s), incentive(s), and discount(s) they would be eligible for in the Migration Month, which would in turn encourage OTP Holders to continue to send orders and quotes to the Exchange during the

transition to Pillar.

In addition, by offering OTP Holders the better pricing of the month before the Migration Month or the Migration Month, the Exchange believes OTP Holders will be incented to take full advantage of new Pillar functionality and possibly even increase their volume and participation during the migration.

The Exchange is not proposing any changes to the underlying tiers, incentives, or discounts covered by the proposed change described above.

The Exchange proposes to implement this change effective January 25, 2022.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,<sup>7</sup> 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

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<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(4) and (5).

promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>8</sup>

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.<sup>9</sup> Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in December 2021, the Exchange had less than 14% market share of executed volume of multiply-listed equity & ETF options trades.<sup>10</sup>

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.

The Exchange believes that the proposed change is reasonably designed to continue to incent OTP Holders to maintain active participation on the Exchange during the Pillar migration by offering OTP Holders pricing at each of the tier(s), incentive(s), and discount(s) they qualify for during either the Migration Month or in the month prior to the Migration Month, whichever

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<sup>8</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7-10-04) (“Reg NMS Adopting Release”).

<sup>9</sup> 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>.

<sup>10</sup> Based on a compilation of 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 9.65% for the month of December 2020 to 13.21% for the month of December 2021.

is more favorable to the OTP Holder. The Exchange further believes that the proposed change would lessen the impact of the migration on OTP Holders by enabling them to adapt their trading activity as needed to transition to Pillar functionality during the Migration Month and would thus encourage OTP Holders to promptly transition to the more efficient Pillar platform.

To the extent the proposed rule change encourages OTP Holders to migrate to the new platform while maintaining their level of trading activity, the Exchange believes the proposed change would sustain the Exchange's overall competitiveness and 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 mitigate the expense of the migration without affecting its competitiveness.

#### 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 because it would be available to all OTP Holders. In addition, the proposal is based on each OTP Holder's activity levels before and during the Migration Month and would afford OTP Holders the flexibility to moderate their activity as needed during the Migration Month and still receive the more favorable rates between the tier(s), incentive(s), and discount(s) they achieve in the Migration Month or in the month prior. Thus, the Exchange believes the proposed rule change would facilitate a smooth transition to the Pillar technology platform for all market

participants on the Exchange by encouraging OTP Holders to send orders and quotes to the Exchange during the transition period, thereby improving market-wide quality.

The Proposed Rule Change is not Unfairly Discriminatory

The Exchange believes the proposed rule change is not unfairly discriminatory because it would be available to all similarly-situated market participants on an equal and non-discriminatory basis.

The proposal is based on an OTP Holder's achievement of tiers, incentives, and discounts prior to and during the Migration Month and would provide all OTP Holders with certainty that they would at least qualify for the same tier(s), incentive(s), and discount(s) as in the month prior to the Migration Month. The proposed change would thus allow OTP Holders to adjust their interactions with Exchange systems during the Migration Month as needed and take advantage of the new functionality offered by Pillar by mitigating the impact of potential pricing disruptions. Thus, to the extent the proposal encourages OTP Holders to maintain or increase their current level of activity on the Exchange, such activity would result in trading opportunities for 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 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.”<sup>11</sup>

*Intramarket Competition.* The Exchange does not believe the proposed rule change would impose any burden on intramarket competition that is not necessary or appropriate because it would apply equally to all OTP Holders that submit orders and quotes electronically to the Exchange. All OTP Holders would be eligible to receive the rates under each of the tier(s), incentive(s), and discount(s) they achieved in the Migration Month or in the month prior to the Migration Month, whichever are better.

*Intermarket Competition.* The Exchange operates in a highly competitive market in which market participants can readily favor one of the 16 competing option exchanges if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.<sup>12</sup> Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in December 2021, the Exchange had less than 14% market share of executed volume of multiply-

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<sup>11</sup> See Reg NMS Adopting Release, supra note 8, at 37499.

<sup>12</sup> See supra note 9.

listed equity & ETF options trades.<sup>13</sup>

The Exchange does not believe the proposed rule change would impose any burden on intermarket competition that is not necessary or appropriate because the Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchanges if they deem fee levels at those other venues to be more favorable. The Exchange believes that its fees are constrained by the robust competition for order flow among exchanges and thus believes that the proposed change is reasonably designed to encourage OTP Holders to transition to the Pillar platform while mitigating the risk of a significant change to the fees they would be subject to during the Migration Month. Accordingly, the Exchange believes that the proposed change would continue to make the Exchange a competitive venue for order execution by enabling OTP Holders to maintain their current levels of interaction with the Exchange (or make adjustments as needed) during the Migration Month, thus encouraging prompt migration to the newer, more efficient Pillar technology platform and sustained activity on the Exchange during the Pillar transition.

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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<sup>13</sup> Based on a compilation of 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 9.65% for the month of December 2020 to 13.21% for the month of December 2021.

### 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)<sup>14</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>15</sup> 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)<sup>16</sup> 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2022-05 on the subject line.

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<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(2).

<sup>16</sup> 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-2022-05. 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-2022-05, 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>17</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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