

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-94578; File No. SR-NYSEArca-2022-20)

April 1, 2022

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)<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 March 31, 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 modify the NYSE Arca Options Fee Schedule (“Fee Schedule”) regarding fees and credits relating to Complex Orders. The Exchange proposes to implement the fee change effective April 1, 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.

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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<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.

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 fees and credits for electronic Complex Orders. Specifically, the Exchange proposes to (1) establish a surcharge applicable to electronic Non-Customer Complex Orders that execute against a Customer Complex Order, as well as discounts available on such surcharge, and (2) introduce credits on electronic executions of Customer Complex interest against Non-Customer Complex interest. The Exchange proposes to implement the rule change on April 1, 2022.

*Non-Customer Complex Surcharge*

Currently, the Exchange charges a per contract transaction fee based on whether the trade participant is a Customer or Non-Customer, and whether the trade is in a Penny Issue or a Non-Penny Issue.<sup>4</sup>

The Exchange now proposes to establish a surcharge of \$0.12 per contract that would be applied to an electronic Non-Customer Complex Order that executes against a Customer Complex Order (the “Non-Customer Complex Surcharge”). The Exchange notes that the proposed Non-Customer Complex Surcharge is consistent with similar surcharges imposed by other option exchanges.<sup>5</sup>

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<sup>4</sup> See Fee Schedule, ELECTRONIC COMPLEX, ORDER EXECUTIONS, TRANSACTION FEE - PER CONTRACT.

<sup>5</sup> See, e.g., NYSE American Options Fee Schedule, Section I.A. (Rates for Options transactions), footnote 5 (assessing \$0.12 per contract surcharge to any Electronic Non-

The Exchange also proposes to offer two alternative discounts on the Non-Customer Complex Surcharge. OTP Holders and OTP Firms (collectively, “OTP Holders”) that achieve ADV from Non-Customer posted interest in all issues other than SPY<sup>6</sup> equal to at least 0.10% of TCADV from Non-Customer posting would earn a \$0.05 per contract discount on the Non-Customer Complex Surcharge. OTP Holders may earn a \$0.07 per contract discount applied to the Non-Customer Complex Surcharge by achieving either at least 1.50% of TCADV from Customer posted interest in all issues or at least 0.75% of TCADV in Complex executions from all account types. OTP Holders may earn the greater of the discounts for which they qualify.

#### *Customer Complex Credit Tiers*

The Exchange also proposes to introduce new credits applicable to electronic executions of Customer Complex interest against Non-Customer Complex interest (the “Customer Complex Credit Tiers”). OTP Holders would continue to receive a \$0.39 credit for such executions in Penny issues and a \$0.75 credit for such executions in non-Penny issues (as already set forth in the Fee Schedule)<sup>7</sup> and may qualify for enhanced credits across four tiers if they achieve volume levels based on percentages of TCADV from Complex executions from all account types, as outlined in the table below. The proposed credits would not apply to Customer Complex Orders executed against individual orders in the Consolidated Book, but volume from Complex Orders that execute against individual orders would count towards the qualification basis for the Customer Complex Credit Tiers. The Exchange notes that the proposed credits are similar in

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Customer Complex Order that executes against a Customer Complex Order); MIAX Options Fee Schedule, Sections 1)a)i)-ii) (assessing a \$0.12 per contract surcharge for trading against a Priority Customer Complex Order for Penny and Non-Penny classes).

<sup>6</sup> SPY is the symbol for the SPDR S&P 500 ETF Trust.

<sup>7</sup> See note 4, supra.

structure to incentives relating to Customer Complex Orders offered by other options exchanges.<sup>8</sup>

Tier	Qualification Basis (Average Electronic Executions Per Day)		Credit Applied to Electronic Executions of Customer Complex Interest against Non-Customer Complex Interest	
			Penny	Non-Penny
Base	-		(\$0.39)	(\$0.75)
Tier 1	At least 0.40% of TCADV from Complex executions, all account types		(\$0.41)	(\$0.77)
Tier 2	At least 0.60% of TCADV from Complex executions, all account types, or	At least 2.75% of TCADV from Customer posted interest in all issues and 2.75% of TCADV from Professional Customer and Non-Customer taking volume	(\$0.44)	(\$0.80)
Tier 3	At least 0.75% of TCADV from Complex executions, all account types		(\$0.49)	(\$0.85)
Tier 4	At least 1.00% of TCADV from Complex executions, all account types		(\$0.50)	(\$0.90)

The Exchange also proposes an alternative qualification for Tier 2. An OTP holder that meets at least 2.75% of TCADV from Customer posting volume in all issues and at least 2.75% of TCADV from Professional Customer and Non-Customer taking volume would also qualify for the credits offered in Tier 2.

<sup>8</sup> See, e.g., Nasdaq ISE, Options 7 Pricing Schedule, Section 4. Complex Order Fees and Rebates (providing for tiered rebates on Priority Customer Complex orders based on qualifying Complex Order volume); Cboe EDGX Options Exchange Fee Schedule (providing for tiered rebates on Customer Complex orders based on qualifying Complex Order volume).

Finally, the Exchange proposes that existing Endnotes 8 and 15 in the Fee Schedule would apply to the Customer Complex Credit Tiers. Endnote 8 provides that the calculations for qualifications for monthly posting credits or discounts only include electronic executions and the Exchange will include the activity of either (i) affiliates or (ii) an Appointed OFP or Appointed MM, per Endnote 15. Endnote 15 in turn provides for the inclusion of transaction volume from an OTP Holder's or OTP Firm's affiliates or its Appointed OFP or Appointed MM.<sup>9</sup>

The Exchange believes that the proposed Non-Customer Complex Surcharge, the proposed discounts on the Non-Customer Complex Surcharge, and the proposed Customer Complex Credit Tiers would, on balance, incent OTP Holders to direct Complex Orders (and, in particular, Customer Complex Orders), to the Exchange, thereby creating more trading opportunities for all market participants.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>10</sup> in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,<sup>11</sup> in particular, because it provides for the equitable allocation of reasonable dues, fees, and other

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<sup>9</sup> An "Appointed MM" is an NYSE Arca Market Maker that has been designated by an Order Flow Provider ("OFP") (as defined in NYSE Arca Rule 6.1A-O(a)(21)). An "Appointed OFP" is an OFP that has been designated by an NYSE Arca Market Maker.

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(4) and (5).

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.”<sup>12</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>13</sup> Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in February 2022, the Exchange had less than 14% market share of executed volume of multiply-listed equity and ETF options trades.<sup>14</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

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<sup>12</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>13</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>14</sup> Based on a compilation of OCC data for monthly volume of equity-based options and

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 changes are reasonably designed to incent OTP Holders to increase the amount of Customer interest sent to the Exchange, especially posted interest and Complex Order interest. An increase in Customer volume would create more trading opportunities for all market participants and would in turn attract Non-Customer activity to the Exchange. A resulting increase in Non-Customer activity may facilitate tighter spreads, which may lead to an additional increase of order flow from other market participants, further contributing to a deeper, more liquid market to the benefit of all market participants.

The proposed Non-Customer Complex Surcharge is reasonable because it is designed to offset costs associated with the proposed credits on Customer Complex executions offered in the Customer Complex Credit Tiers, which are intended to attract more Customer Complex Orders to the Exchange. To the extent this purpose is achieved, the Exchange believes that the Non-Customer Complex Surcharge would not disincentivize Non-Customer Complex activity because increased Customer Complex order flow would benefit Non-Customers as well by providing more opportunities to trade. The proposed discounts on the Non-Customer Complex Surcharge are also reasonably designed to incent OTP Holders (and their affiliates) to transact more options volume on the Exchange and to provide OTP Holders with an opportunity to decrease the surcharge on electronic Non-Customer Complex Orders that execute against a Customer Complex Order. The resulting increase in volume and liquidity would benefit all market participants by providing more trading opportunities and tighter spreads and may lead to a

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monthly volume of ETF-based options, see id., the Exchange's market share in equity-based options increased from 10.74% for the month of February 2021 to 13.99% for the month of February 2022.

corresponding increase in order flow from other market participants. The Exchange also believes that the Non-Customer Complex Surcharge, as proposed, is reasonable because it is consistent with similar surcharges imposed by other options exchanges.<sup>15</sup>

The proposed Customer Complex Credit Tiers are reasonably designed to encourage increased Complex Order executions and are similar in structure to incentive programs relating to Customer Complex executions offered by competing options exchanges.<sup>16</sup> The Exchange also believes that the proposed credits, which are intended to attract more Customer Complex Orders to the Exchange, are reasonable because increased Customer volume would in turn provide more opportunities to trade for Non-Customers.

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 the proposed discounts offered on the Non-Customer Complex Surcharge and/or the proposed Customer Complex Credit Tiers, the Exchange believes the proposed changes 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 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 is based on the amount and type of business transacted on the Exchange, and OTP Holders can opt to try to earn the Non-Customer Complex Surcharge discounts or achieve

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<sup>15</sup> See note 5, supra.

<sup>16</sup> See note 8, supra.



the Customer Complex Credit Tiers or not. The Exchange also believes that the proposed Non-Customer Complex Surcharge is equitable because it is designed to balance costs associated with encouraging Customer Complex Order flow to the Exchange, and an increase in such orders would in turn enhance trading opportunities for Non-Customers. The Exchange further believes that the proposed changes are equitably designed to provide credits to OTP Holders that transact more options volume on the Exchange, and, with respect to the Non-Customer Complex Surcharge, would mitigate the impact of the proposed fee.

Moreover, the proposal is designed to incent OTP Holders to aggregate all Customer posting interest at the Exchange as a primary execution venue and to attract more Complex Order executions on the Exchange. To the extent that the proposed change attracts more Complex Order interest to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for, among other things, order execution. Thus, the Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, 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 impose a surcharge on Non-Customer Complex executions against Customer Complex interest because the proposed modification, along with the proposed discounts, would apply to all Non-Customers equally, and as discussed above, the Exchange believes it is not unfairly discriminatory to incent Customer order flow, which would enhance liquidity on the Exchange to the benefit of all market participants. The Exchange also believes that the proposed Customer Complex Credit Tiers are

not unfairly discriminatory because they would be available 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 enhanced qualifications. Rather, the proposal is designed to encourage OTP Holders to utilize the Exchange as a primary trading venue for Customer Complex interest (if they have not done so previously). To the extent that the proposed change attracts more Complex interest from all account types to the Exchange, and, in particular, more Customer Complex interest, 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.

**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>17</sup>

*Intramarket Competition.* The proposed change is designed to attract additional order flow (particularly Complex interest) to the Exchange. The Exchange believes that the proposed surcharge on Non-Customer Complex executions against Customer interest, the proposed discounts to the Non-Customer Complex Surcharge, and the proposed Customer Complex Credit Tiers would, on balance, incent OTP Holders to direct their Complex Orders to the Exchange. Greater liquidity benefits all market participants on the Exchange and increased Complex order flow would increase opportunities for execution of other trading interest. The proposed modifications would apply and be available to all similarly-situated market participants that execute Complex interest, and, accordingly, the proposed changes 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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<sup>17</sup> See Reg NMS Adopting Release, supra note 12, at 37499.

equity and ETF options trades.<sup>18</sup> Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in February 2022, the Exchange had less than 14% market share of executed volume of multiply-listed equity & ETF options trades.<sup>19</sup>

The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees in a manner designed to continue to incent OTP Holders to direct trading interest (particularly Complex interest and Customer posted interest) 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 currently apply a similar surcharge or offer similarly structured Customer Complex incentives,<sup>20</sup> 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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<sup>18</sup> See note 13, supra.

<sup>19</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 10.74% for the month of February 2021 to 13.99% for the month of February 2022.

<sup>20</sup> See notes 5 & 8, supra.

### 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>21</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>22</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>23</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-2022-20 on the subject line.

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<sup>21</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>22</sup> 17 CFR 240.19b-4(f)(2).

<sup>23</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-2022-20. 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-2022-20, 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>24</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>24</sup> 17 CFR 200.30-3(a)(12).