

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-95412; File No. SR-NYSEARCA-2022-47)

August 3, 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)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on August 1, 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”) to waive fees for manual executions by Professional Customers. The Exchange proposes to implement the fee change effective August 1, 2022. 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

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 modify the Fee Schedule to provide for the waiver of fees for manually executed Professional Customer orders (“Professional Customer Manual Fees”). Specifically, the Exchange proposes to waive Professional Customer Manual Fees for the period of August 1, 2022 through December 31, 2022.

The Exchange also proposes to add clarifying language to the Fee Schedule’s description of the Floor Broker Fixed Cost Prepayment Incentive Program (the “FB Prepay Program”), to provide that manually executed Professional Customer orders will continue to be included in the calculation of “billable volume” for purposes of the FB Prepay Program while Professional Customer Manual Fees are waived.

The Exchange proposes to implement the rule change on August 1, 2022.

Background

In connection with the Exchange’s migration to the new Pillar trading platform (the “Pillar Migration”), the Exchange has introduced a new Electronic Order Capture System (“EOC”) device for order systemization and execution reporting for manual orders on the Trading Floor. The Exchange believes the improved workflow offered by the EOC device will enhance Floor Brokers’ processing of manual orders, especially those submitted by Professional Customers, and allow Floor Brokers to provide improved service to Professional Customers. To attract more manually executed Professional Customer orders with enhanced order handling by

Floor Brokers via the EOC device, the Exchange proposes to waive Professional Customer Manual Fees for the balance of the year (i.e., until December 31, 2022).

The Exchange believes the proposed waiver would encourage additional Professional Customer volume executed by Floor Brokers on the Exchange, with the enhanced workflow offered by the EOC device as market participants continue to adapt to trading post-Pillar Migration, and that all market participants stand to benefit from such increase, which would promote market depth, facilitate tighter spreads and enhance price discovery, and may lead to a corresponding increase in order flow from other market participants as well.

The Exchange believes that the proposed change relating to the FB Prepay Program would obviate any confusion about the impact of the proposed waiver of Professional Customer Manual Fees on participating Floor Brokers' ability to qualify for incentives offered through the FB Prepay Program. The Exchange believes that the proposed change would make clear that volume from manually executed Professional Customer orders would continue to count towards billable volume relevant to the FB Prepay Program when Professional Customer Manual Fees are waived.

2. Statutory Basis

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

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(4) and (5).

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.”⁶

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.⁷ Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in June 2022, the Exchange had less than 13% market share of executed volume of multiply-listed equity & ETF options trades.⁸

⁶ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7-10-04) (“Reg NMS Adopting Release”).

⁷ 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>.

⁸ Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of equity-based ETF options, see id., the Exchange’s market share in equity-based options increased from 9.07% for the month of June 2021 to 12.23% for the month of June 2022.

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 waiver of Professional Customer Manual Fees is reasonable because it is designed to incent Professional Customers to submit orders to Floor Brokers and increase familiarity with the improved workflow offered via the new EOC device on the Pillar platform, thereby encouraging increased manually executed Professional Customer orders on the Exchange. The Exchange notes that all market participants stand to benefit from any increase in Professional Customer volume executed by Floor Brokers, which promotes market depth, facilitates tighter spreads and enhances price discovery, and may lead to a corresponding increase in order flow from other market participants.

To the extent the proposed waiver attracts 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 proposed rule change is designed to incent Professional Customers to direct liquidity to the Exchange, thereby promoting market depth, price discovery and improvement and enhancing order execution opportunities for market participants.

The Exchange believes the proposed change relating to the FB Prepay Program is reasonable because it would provide clarity in the Fee Schedule relating to volume that is counted towards the billable volume relevant to the FB Prepay Program when Professional Customer Manual Fees are waived, as proposed.

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 type of business transacted on the Exchange, and Professional Customers can opt to submit orders for trading electronically or for manual execution on the Trading Floor. The proposed waiver of Professional Customer Manual Fees is intended to encourage Professional Customers to submit orders to be manually executed by Floor Brokers and, in addition, in connection with the Pillar Migration, the Exchange believes that the improved order handling that Floor Brokers can provide through the use of the EOC device will demonstrate to Professional Customers the value of submitting orders for manual execution on the Trading Floor.

The proposed waiver is also designed to incent Professional Customers to direct orders to the Exchange as a primary execution venue. To the extent that the proposed change attracts more manual Professional Customer volume 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.

With respect to the proposed change relating to the FB Prepay Program, the Exchange believes that the proposed clarification would support an equitable allocation of fees and credits

because it would make clear that volume from Professional Customer manual executions would still count towards a Floor Broker's qualification for the incentives offered through the FB Prepay Program when Professional Customer Manual Fees are waived, as proposed, thereby promoting the continued equitable allocation of fees and credits set forth in the Fee Schedule.

The Proposed Rule Change is not Unfairly Discriminatory

The Exchange believes that the proposed waiver is not unfairly discriminatory because the waiver would apply to manually executed Professional Customer orders on an equal and non-discriminatory basis. The proposed waiver is not unfairly discriminatory to other market participants because Professional Customers are an important source of order flow to the Exchange for execution via open outcry, which promotes price discovery, and the Exchange thus believes that it is appropriate to incentivize manually executed Professional Customer orders and encourage Professional Customers to experience the improved order handling offered via the new EOC device in connection with the Pillar Migration.

The proposed change is also designed to encourage Professional Customers to utilize the Exchange as a primary trading venue (if they have not done so previously) and to increase manually executed Professional Customer orders sent to the Exchange. To the extent that the proposed change attracts more order flow to the Exchange (and, in particular, to the Floor), 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.

The Exchange also believes that the proposed change to clarify that volume from manually executed Professional Customer orders would continue to count towards billable volume for purposes of the FB Prepay Program is not unfairly discriminatory. The proposed change, which specifies that such volume will continue to be accounted for in determining participating Floor Brokers' eligibility for incentives available pursuant to the FB Prepay Program, would instead permit the program to continue to be administered in a non-discriminatory manner.

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 change 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 changes further 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."⁹

⁹ See Reg NMS Adopting Release, supra note 6, at 37499.

Intramarket Competition. The proposed waiver is designed to attract additional manually executed Professional Customer orders to the Exchange (and, in particular, to the Floor, with the enhanced workflow offered by the EOC tool introduced in the Pillar Migration), which may increase the volume of contracts traded on the Exchange. To the extent that the proposed change imposes an additional competitive burden on other market participants, the Exchange believes that any such burden would be appropriate because, to the extent the proposed change encourages Professional Customers to submit additional orders to the Exchange to be executed via open outcry, such increase in manually executed Professional Customer orders would benefit all market participants by promoting opportunities for price discovery.

To the extent that this purpose is achieved, all of the Exchange's market participants should benefit from the improved market liquidity. Enhanced market quality and increased transaction volume that results from the anticipated increase in order flow directed to the Exchange will benefit all market participants and improve competition on the Exchange.

The Exchange does not believe that the proposed change relating to the FB Prepay Program would impact intramarket competition, as it merely clarifies that the proposed waiver of Professional Customer Manual Fees would not affect the current operation of the FB Prepay Program.

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 currently has more than 16% of the market share of executed volume of

multiply-listed equity and ETF options trades.¹⁰ Therefore, no exchange currently possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in June 2022, the Exchange had less than 13% market share of executed volume of multiply-listed equity & ETF options trades.¹¹

The Exchange believes that the proposed change reflects this competitive environment because the proposed waiver of Professional Customer Manual Fees is intended to encourage Professional Customers to direct manual orders to the Exchange and experience the benefits of the enhanced technology provided by the Pillar Migration, which in turn would provide liquidity and attract order flow to the Exchange. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market quality and increased trading opportunities.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment. The Exchange also believes that the proposed change could promote competition between the Exchange and other execution venues, by encouraging additional orders to be sent to the Exchange for execution, including to the Floor in particular, and encouraging the use of technology introduced in connection with the Pillar Migration.

¹⁰ See supra note 8.

¹¹ Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of equity-based ETF options, supra note 7, the Exchange's market share in equity-based options increased from 9.07% for the month of June 2021 to 12.23% for the month of June 2022.

The Exchange does not believe that the proposed change relating to the FB Prepay Program would have any effect on intermarket competition, as it merely clarifies that the proposed waiver of Professional Customer Manual Fees would not impact the current operation of the FB Prepay Program.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)¹² of the Act and subparagraph (f)(2) of Rule 19b-4¹³ 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)¹⁴ 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:

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(2).

¹⁴ 15 U.S.C. 78s(b)(2)(B).

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-2022-47 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEARCA-2022-47. 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-2022-47, 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.¹⁵

J. Matthew DeLesDernier

Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).