SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-96763; File No. SR-NYSEARCA-2023-09)

January 27, 2023

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 January 26, 2023, 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 and II 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 the Floor Broker Fixed Cost Prepayment Incentive Program and certain manual execution fees. The Exchange proposes to implement the fee change effective January 26, 2023.[4] 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.

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

2 15 U.S.C. 78a.

3 17 CFR 240.19b-4.

4 The Exchange originally filed to amend the Fee Schedule on December 30, 2022 (SR-NYSEARCA-2022-86), with an effective date of January 3, 2023, then withdrew such filing and amended the Fee Schedule on January 13, 2023 (SR-NYSEARCA-2023-08), which latter filing the Exchange withdrew on January 26, 2023.

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 modify the Floor Broker Fixed Cost Prepayment Incentive Program (the "FB Prepay Program") and to modify certain fees relating to manual executions. The Exchange proposes to implement the rule change on January 26, 2023.

Professional Customer Manual Executions

The Exchange proposes to modify the fees for Professional Customer manual executions ("Professional Customer Manual Fees").[5] The Fee Schedule currently provides for a $0.25 per contract fee for such executions, which fee the Exchange has waived for the period August 1, 2022 to December 31, 2022.[6] The Exchange now proposes to make the waiver permanent by modifying the fee for Professional Customer manual executions to $0.00.[7] The Exchange also

[5] See Fee Schedule, NYSE Arca OPTIONS: TRADE-RELATED CHARGES FOR STANDARD OPTIONS, TRANSACTION FEE FOR MANUAL EXECUTIONS - PER CONTRACT.

[6] See Securities Exchange Act Release No. 95412 (August 3, 2022), 87 FR 48523 (August 9, 2022) (SR-NYSEARCA-2022-47) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify the NYSE Arca Options Fee Schedule) (the "Professional Customer Manual Fee Filing").

[7] The Professional Customer Manual Fee Filing also modified the Fee Schedule's description of the FB Prepay Program to provide that volume from Professional

proposes to delete the asterisk-denoted statement regarding the period of the waiver, as the language would no longer be relevant in light of this proposed change and following the expiration of the waiver period on December 31, 2022. The proposed change is intended to continue to attract manually executed Professional Customer orders to the Exchange, and the Exchange believes that all market participants stand to benefit from an increase in such volume, 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.

Firm and Broker Dealer Monthly Fee Cap

The Exchange also proposes to modify the Firm and Broker Dealer Monthly Fee Cap (the "Monthly Fee Cap").[8] Currently, combined Firm proprietary fees and Broker Dealer fees for transactions in standard option contracts cleared in the customer range for manual executions and QCC transactions are capped at $100,000 per month. A Firm or Broker Dealer currently may also qualify for a decreased fee cap by achieving Customer Penny Posting Credit Tier levels.[9]

The Exchange proposes to raise the Monthly Fee Cap to $150,000 per month and to eliminate the decreased fee caps for Firms or Broker Dealers that achieve Customer Penny Posting Credit Tiers, such that all Firms and Broker Dealers would be eligible for a $150,000 monthly fee cap. Accordingly, the Exchange proposes to modify the Fee Schedule to replace $100,000 with $150,000 in the description of the Monthly Fee Cap and to delete the sentence and

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Customer manual executions would still be included in the calculation of billable volume for purposes of the FB Prepay Program when Professional Customer manual execution fees are waived. See id. The Exchange proposes to delete this statement further to its proposal to eliminate the fee for Professional Customer manual executions and consistent with the proposed changes to the FB Prepay Program as described below.

8 See Fee Schedule, NYSE Arca OPTIONS: TRADE-RELATED CHARGES FOR STANDARD OPTIONS, FIRM AND BROKER DEALER MONTHLY FEE CAP.

9 See id. at CUSTOMER PENNY POSTING TIERS.

table describing decreased fee caps offered to Firms or Broker Dealers that achieve Customer Penny Posting Credit Tiers. The Exchange does not otherwise propose any changes to the provisions of the Monthly Fee Cap. Strategy executions, royalty fees, and firm trades executed via a Joint Back Office agreement will continue to be excluded from fees to which the Monthly Fee Cap would apply. The incremental service fee of $0.01 per contract for Firm or Broker Dealer manual transactions other than QCC transactions (for which there is no incremental service fee) will continue to apply once the Monthly Fee Cap has been reached.

The Exchange believes that the proposed change, despite increasing the amount of the Monthly Fee Cap, would continue to incentivize Firms and Broker Dealers to direct order flow to the Exchange to achieve the benefits of a fee cap. The Exchange also notes that the proposed change would provide for a uniform fee cap amount that would be applicable to all Firms and Broker Dealers and sets the Monthly Fee Cap at an amount similar to the firm fee cap established by other options exchanges.[10]

FB Prepay Program

The FB Prepay Program is a prepayment incentive program that allows Floor Brokers to prepay certain of their annual Eligible Fixed Costs in exchange for volume rebates. Currently, the FB Prepay Program offers participating Floor Brokers who prepay certain annual fixed costs an opportunity to qualify for rebates by achieving growth in billable manual volume by a certain percentage as measured against one of two benchmarks (the “Percentage Growth Incentive”).[11]

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10 See, e.g., NYSE American Options Fee Schedule, Section I.I., Firm Monthly Fee Cap (providing for $150,000 cap on fees associated with firm manual transactions); Nasdaq PHLX LLC, Options 7 Pricing Schedule, Section 4 (providing for a “Monthly Firm Fee Cap” capping firm fees at $150,000). The Exchange believes its proposed fee cap is of a comparable amount to those offered by these other options exchanges, although the volumes considered to qualify for the various fee caps differ.

11 See Fee Schedule, FLOOR BROKER FIXED COST PREPAYMENT INCENTIVE

Specifically, the Percentage Growth Incentive is designed to encourage Floor Brokers to increase their average daily volume in billable manual contract sides to qualify for a Tier; each Tier of the FB Prepay Program corresponds to an annual rebate equal to the greater of the "Total Percentage Reduction of pre-paid annual Eligible Fixed Costs" or the "Alternative Rebate."[12] In either case, participating Floor Brokers receive their annual rebate amount in the following January.[13] Floor Brokers that wish to participate in the FB Prepay Program for the following calendar year must notify the Exchange no later than the last business day of December in the current year.[14]

The Exchange now proposes to simplify the FB Prepay Program by eliminating the Percentage Growth Incentive and accompanying annual rebates[15] and instead providing FB Prepay Program participants with monthly rebates through the Manual Billable Rebate Program. Specifically, all Floor Brokers that participate in the FB Prepay Program are eligible for a rebate on manual billable volume of ($0.08) per billable side. In addition, FB Prepay Program participants that achieve more than 500,000 billable sides in a month will be eligible for an

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PROGRAM (the "FB Prepay Program"). "Eligible Fixed Costs" include the OTP Trading Participant Rights fee for a Floor Broker, Floor Broker Order Capture Device - Market Data Fees, Floor Booth fees, the Options Floor Access Fee, and Wire Services fees, as set forth in the table in the Fee Schedule.

12 See id. The Percentage Growth Incentive excludes Customer volume, Firm Facilitation and Broker Dealer facilitating a Customer trades, and QCCs. Any volume calculated to achieve the Firm and Broker Dealer Monthly Fee Cap and the Limit of Fees on Options Strategy Executions ("Strategy Cap"), will likewise be excluded from the Percentage Growth Incentive because fees on such volume are already capped and therefore do not increase billable manual volume. See id.

13 See id.

14 See id.

15 To effect the proposed change to eliminate the Percentage Growth Incentive and related rebates, the Exchange also proposes to delete the last sentence of the description of the FB Prepay Program (which currently provides that Floor Brokers in the FB Prepay Program will receive their rebate in the following January), as such text would no longer apply to the FB Prepay Program, as modified.

additional rebate of ($0.02) per billable side, which would be payable back to the first billable side. The calculation of volume on which rebates earned through the Manual Billable Rebate Program would be paid is based on transactions including at least one side for which manual transaction fees are applicable and excludes QCCs.[16] The Exchange proposes to continue to exclude any volume calculated to achieve the Strategy Cap, regardless of whether the cap is achieved, because fees on such volume are already capped and therefore such volume does not increase billable manual volume.[17]

The Exchange further proposes to provide that Submitting Broker QCC credits[18] and Floor Broker rebates earned through the Manual Billable Rebate Program shall not combine to exceed $2,000,000 per month per firm.

Finally, the Exchange proposes to modify the date it will use for the calculation of a Floor Broker's Eligible Fixed Costs for the following calendar year. The FB Prepay Program

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16 The Exchange proposes to continue to exclude volume from QCC transactions from the calculation of eligible volume for rebates paid through the Manual Billable Rebate Program, as proposed, because Floor Brokers would be eligible for separate credits and rebates for QCC transactions.

17 The Exchange proposes to remove references to the exclusion of Customer volume and Firm Facilitation and Broker Dealer facilitating a Customer trades as redundant because such volume is not billable. The Exchange also proposes that it would no longer exclude volume calculated to achieve the Monthly Fee Cap from the Manual Billable Rebate Program and proposes conforming changes to reflect the deletion of references to the same. The Exchange proposes to include volume calculated to achieve the Monthly Fee Cap in calculations for the Manual Billable Rebate Program in light of the proposed change to the Monthly Fee Cap (as described in this filing), which would result in more non-facilitation Firm and Broker Dealer volume being subject to regular transaction fees.

18 See Fee Schedule, NYSE Arca OPTIONS: TRADE-RELATED CHARGES FOR STANDARD OPTIONS, QUALIFIED CONTINGENT CROSS ("QCC") TRANSACTION FEES AND CREDITS. The Exchange provides a ($0.22) per contract credits to Submitting Brokers for Non-Customer vs. Non-Customer QCC transactions and a ($0.16) per contract credit to Submitting Brokers for Customer vs. Non-Customer QCC transactions.

currently specifies that a Floor Broker that commits to the program will be invoiced in January for Eligible Fixed Costs, based on annualizing their Eligible Fixed Costs incurred in November 2020. The Exchange proposes to modify the Fee Schedule to specify that the annualization of Eligible Fixed Costs would be based on costs incurred in November 2022, which the Exchange believes would more accurately reflect Eligible Fixed Costs for the coming calendar year.

Although the Exchange cannot predict with certainty whether the proposed changes to the FB Prepay Program would encourage Floor Brokers to participate in the program or to increase either their manual billable volume, the Exchange believes that the proposed changes would continue to incentivize Floor Brokers to participate in the FB Prepay Program by simplifying the structure of the program, modifying the qualifying criteria and rebates offered through the program to be on a monthly (rather than annual) basis, and offering additional rebates on manual billable volume through the Manual Billable Rebate Program. All Floor Brokers are eligible to participate in the FB Prepay Program and qualify for the proposed rebates, and the rebates are achievable in any given month without regard to volumes from any other month.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[19] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[20] 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

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19 15 U.S.C. 78f(b).

20 15 U.S.C. 78f(b)(4) and (5).

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."[21]

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.[22] Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in November 2022, the Exchange had less than 13% market share of executed volume of multiply-listed equity and ETF options trades.[23]

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,

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

22 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.

23 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 decreased from 12.99% for the month of November 2021 to 12.31% for the month of November 2022.

competitive forces constrain options exchange transaction fees. Stated otherwise, modifications 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 changes are reasonable because they are designed to incent OTP Holders to increase the number of manual transactions sent to the Exchange by offering rebates to Floor Brokers on manual transactions with at least one billable side and eliminating Professional Customer Manual Fees. The proposed increase to the Monthly Fee Cap is likewise reasonable because the Exchange believes the fee cap, although higher, would continue to incentivize Firms and Broker Dealers to direct order flow to the Exchange to receive the benefits of capped fees. Moreover, the proposed Monthly Fee Cap would provide for a cap amount that would be applicable to all Firms and Broker Dealers (regardless of their qualification for Customer Penny Posting Credit Tiers) and establishes a cap amount similar to that offered by other options exchanges.[24] The Exchange also believes that the proposed maximum monthly amount that a firm could earn from Submitting Broker QCC credits and Floor Broker rebates on manual billable volume is set at an amount that would encourage OTP Holders to direct QCC transactions and manual billable volume to the Exchange to receive the existing credits and proposed rebates.

With respect to the FB Prepay Program, the Exchange also believes that the proposed changes are reasonable because participation in the program is optional, and Floor Brokers can elect to participate in the program to be eligible for the rebates offered through the Manual Billable Rebate Program or not. The Exchange also believes that the proposed modification of the FB Prepay Program is reasonable because it is designed to simplify the program, to continue

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[24] See note 10, supra.

to encourage Floor Brokers to participate in the FB Prepay Program, and to provide liquidity on the Exchange. Specifically, the Exchange believes that the proposed restructuring of the FB Prepay Program to offer participating Floor Brokers rebates on manual billable volume is reasonable because it would streamline both the incentives offered to Floor Brokers and the qualification basis for such incentives; all Floor Brokers participating in the FB Prepay Program would be eligible for the same rebate on manual billable volume and would qualify for the same additional rebate on manual billable volume by meeting a set volume threshold (which the Exchange believes is reasonable and attainable based on recent manual billable volume executed by Floor Brokers). The Exchange also believes that the proposed modification of the qualifying criteria for and rebates offered through the FB Prepay Program to be on a monthly basis is reasonable and could increase opportunities for participating Floor Brokers to qualify for and receive the benefit of the incentives offered. The Exchange further believes that the proposed change to focus the FB Prepay Program on manual billable volume is reasonable because the proposed change is intended to incentivize Floor Brokers to increase manual billable volume executed on the Exchange, and any increase in such volume would benefit all market participants. Finally, the Exchange believes the proposed rebate amounts are reasonable and comparable to rebate amounts offered by another options exchange to Floor Brokers on manual transactions.[25]

To the extent that the proposed changes attract more volume to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for order execution, which, in turn, promotes just and equitable principles of trade and removes

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25 See, e.g., BOX Options Exchange Fee Schedule, Section V.C. (offering rebates to Floor Brokers on orders presented on the Trading Floor, including a $0.075 rebate for Broker Dealer and Market Maker orders).

impediments to and perfects the mechanism of a free and open market and a national market system. The Exchange notes that all market participants stand to benefit from any increase in volume entered by Floor Brokers, which could promote market depth, facilitate tighter spreads and enhance price discovery, to the extent the proposed change encourages OTP Holders to utilize the Exchange as a primary trading venue, and may lead to a corresponding increase in order flow from other market participants. In addition, any increased liquidity on the Exchange would result in enhanced market quality for all participants.

The Exchange also believes that the proposed change to update the date used for the calculation of Eligible Fixed Costs from November 2020 to November 2022 is reasonable because it expects Floor Broker organizations' more recent November 2022 costs to provide a more accurate basis for annualizing Eligible Fixed Costs for the coming calendar year based on anticipated fixed costs in 2023.

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 an exchange offering Floor Broker rebates on manual transactions.[26] Thus, OTP Holders have a choice of where they direct their order flow, including their manual transactions. The proposed rule changes are designed to continue to incent OTP Holders to direct liquidity

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[26] See id.

and, in particular, manual transactions to the Exchange. In addition, to the extent OTP Holders are incentivized to aggregate their trading activity at the Exchange, that increased liquidity could promote market depth, price discovery and improvement, and enhanced order execution opportunities for 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 because the proposal is based on the amount and type of business transacted on the Exchange. Professional Customers can opt to submit orders for trading electronically or for manual execution on the Trading Floor. Floor Brokers are not obligated to participate in the FB Prepay Program, and those who do can choose to execute manual billable volume to earn rebates through the Manual Billable Rebate Program or not. The Exchange also believes that the proposed modification of the qualifying criteria for and rebates offered through the FB Prepay Program to be on a monthly basis is equitable because it could provide participating Floor Brokers opportunities each month to qualify for and receive the benefit of the incentives offered through the program. In addition, the proposed Manual Billable Rebate Program is equally available to all Floor Brokers that participate in the FB Prepay Program (with the additional rebate available to all participating Floor Brokers that execute the required number of manual billable transactions), and the proposed monthly limit on the amount that firms could earn from Floor Broker manual billable rebates and Submitting Broker QCC credits combined would apply to all firms equally. The proposed elimination of Professional Customer Manual Fees would likewise equally impact all Professional Customers executing manual transactions. The Exchange also believes that the proposed modification of the Monthly Fee Cap is equitable because it would apply to all Firms and Broker Dealers equally and, by eliminating the decreased caps available to Firms and Broker Dealers that achieve Customer Penny Posting Credit Tiers, would provide for the same fee cap amount for all Firms and Broker Dealers. To the extent the proposed changes continue to encourage increased liquidity to the Exchange, all market participants would benefit from enhanced opportunities for price improvement and order execution.

The Exchange also notes that the proposed changes are designed to encourage Floor Brokers that have previously enrolled in the FB Prepay Program to reenroll for the upcoming year, as well as to attract Floor Brokers that have not yet participated in the program. Moreover, the Exchange believes that the proposed modifications to the FB Prepay Program are an equitable allocation of fees and credits because they would apply to participating Floor Brokers equally and are intended to encourage the role performed by Floor Brokers in facilitating the execution of orders via open outcry, a function which the Exchange wishes to support for the benefit of all market participants. The Exchange further believes that the proposed change with respect to the calculation of Eligible Fixed Costs is equitable because it would continue to be based on each Floor Broker organization's annualized costs and because the November 2022 basis for annualizing costs would provide a more accurate reflection of Eligible Fixed Costs for the coming calendar year based on anticipated fixed costs in 2023.

Moreover, the proposed changes are designed to continue to incent Floor Brokers to encourage OTP Holders to aggregate their executions at the Exchange as a primary execution venue. To the extent that the proposed change achieves its purpose in attracting more 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.

The Proposed Rule Change is not Unfairly Discriminatory

The Exchange believes the proposed change is not unfairly discriminatory because it is based on the amount and type of business transacted on the Exchange. Floor Brokers are not obligated to execute manual billable transactions or participate in the FB Prepay Program, and the proposed rebates offered through the Manual Billable Rebate Program are available to all Floor Brokers that participate in the FB Prepay Program on a non-discriminatory basis. The proposed changes are designed to streamline the structure of the FB Prepay Program by offering all participating Floor Brokers the same rebate on manual billable volume (and, for qualifying Floor Brokers, the same additional rebate on such volume) and to encourage Floor Brokers to utilize the Exchange as a primary trading venue for all transactions (if they have not done so previously) and increase manual billable volume sent to the Exchange.

The Exchange believes that the proposed change to Professional Customer Manual Fees is not unfairly discriminatory because it would apply to all manually executed Professional Customer orders on an equal and non-discriminatory basis. The proposed change is also 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 continue to encourage manually executed Professional Customer orders by eliminating the fee charged for such orders, which would apply to all similarly situated Professional Customers on an equal and non-discriminatory basis.

The Exchange also believes that the proposed changes to the Monthly Fee Cap are not unfairly discriminatory because the fee cap, as proposed, would be available to all similarly situated Firms and Broker Dealers, any of which could continue to be incentivized to direct order flow to the Exchange to qualify for the fee cap. Moreover, the proposed change to the Monthly Fee Cap is not unfairly discriminatory because it would apply the same fee cap amount to all Firms and Broker Dealers, regardless of whether they achieve Customer Penny Posting Credit Tiers. Similarly, the proposed monthly maximum amount of Submitting Broker credits paid for QCC trades and rebates paid through the Manual Billable Rebate Program is not unfairly discriminatory because it would apply to all Firms and Broker Dealers equally. The Exchange notes that offering the Monthly Fee Cap to Firms and Broker Dealers but not other market participants is not unfairly discriminatory because the Monthly Fee Cap would not be meaningful for Customers or Professional Customers because neither Customers nor Professional Customers pay transaction charges for manual transactions (as proposed) or QCC transactions and is not unfairly discriminatory towards Market Makers, as Market Makers are generally charged a lower fee for manual executions and have alternative avenues to reduce transaction fees.[27]

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[27] See generally Fee Schedule (various incentives available to Market Makers for posted monthly volume, including on executions in penny issues, non-penny issues, and SPY).

The Exchange further believes that the proposed change with respect to the calculation of Eligible Fixed Costs is not unfairly discriminatory because it would continue to be based on each Floor Broker organization's annualized costs and because the Exchange expects that using November 2022 as the basis for annualizing costs would provide a more accurate reflection of Eligible Fixed Costs for the coming calendar year.

To the extent that the proposed change attracts more manual transactions to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for order execution. Thus, the Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange, thereby improving market-wide quality and price discovery. The resulting increased volume and liquidity would provide more trading opportunities and tighter spreads to all market participants and thus would promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, 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 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 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."[28]

Intramarket Competition. The proposed rebates on manual billable volume and the proposed modification of Professional Customer Manual Fees are designed to attract additional order flow to the Exchange (particularly in manual billable transactions), which could increase the volumes of contracts traded on the Exchange. The proposed modification of the FB Prepay Program is likewise intended to incent Floor Brokers specifically to direct manual billable transactions to the Exchange, as well as encourage Floor Brokers to participate in the program. The proposed rebates would be available to all similarly situated Floor Brokers that participate in the FB Prepay Program. Greater liquidity benefits all market participants on the Exchange, and increased manual transactions could increase opportunities for execution of other trading interest. The modification of the monthly maximum Submitting Broker credits paid for QCC trades and rebates paid through the Manual Billable Rebate Program, would likewise apply equally to all similarly situated Floor Brokers, as would the elimination of Professional Customer Manual Fees impact all Professional Customers equally.

With respect to the modification of the Monthly Fee Cap, the Exchange believes that the proposed change (even though it would raise the amount of the fee cap) would continue to incentivize Firms and Broker Dealers to direct order flow to the Exchange to be eligible for the benefits of capped fees on Manual transactions, thereby promoting liquidity on the Exchange to the benefit of all market participants

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28 See Reg NMS Adopting Release, supra note 21, at 37499.

To the extent that the proposed changes impose an additional competitive burden on non-Floor Brokers or, with respect to the proposed elimination of Professional Customer Manual Fees, on market participants other than Professional Customers, the Exchange believes that any such burden would be appropriate because Floor Brokers serve an important function in facilitating the execution of orders and price discovery for all market participants and, 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 also benefit all market participants by promoting opportunities for price discovery.

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.[29] Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in November 2022, the Exchange had less than 13% market share of executed volume of multiply-listed equity and ETF options trades.[30]

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29 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.

30 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 decreased from 12.99% for the month of November 2021 to 12.31%

The Exchange believes that the proposed changes reflect this competitive environment because they modify the Exchange's fees and rebates in a manner designed to continue to incent OTP Holders to direct trading interest (particularly manual transactions) to the Exchange, to provide liquidity and to attract order flow. To the extent that Floor Brokers are encouraged to participate in the FB Prepay Program and/or incentivized to utilize the Exchange as a primary trading venue for all transactions, all of the Exchange's market participants should benefit from the improved market quality and increased opportunities for price improvement. The Exchange similarly believes that the proposed change relating to Professional Customer Manual Fees would continue to encourage Professional Customers to direct manual orders to the Exchange, 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 further believes that the proposed change could promote competition between the Exchange and other execution venues, including those that currently offer rebates on manual transactions and similar firm fee caps, by encouraging additional orders to be sent to the Exchange for execution.[31]

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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for the month of November 2022.

31 See notes 10 & 25, 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)[32] of the Act and subparagraph (f)(2) of Rule 19b-4[33] 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)[34] 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-2023-09 on the subject line.

32 15 U.S.C. 78s(b)(3)(A).

33 17 CFR 240.19b-4(f)(2).

34 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-2023-09. 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-2023-09, 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.[35]

Sherry R. Haywood,
Assistant Secretary.

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[35] 17 CFR 200.30-3(a)(12).