

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-97241; File No. SR-NYSEARCA-2023-26)

April 3, 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and Immediate Effectiveness of Proposed Rule Change to Modify the NYSE Arca Options Fee Schedule to Delete Text that is No Longer in Effect

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on March 29, 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proposes to modify the NYSE Arca Options Fee Schedule (“Fee Schedule”) to delete text relating to pricing that is no longer in effect. The Exchange proposes to implement the fee changes effective March 29, 2023. 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 delete text relating to discontinued or expired pricing. The Exchange proposes to implement the rule change on March 20, 2023.

The Exchange proposes to remove text relating to now-expired pricing programs that were implemented in connection with the Exchange’s migration to the Pillar trading platform (the “Pillar Migration”), which completed in July 2022. First, the Exchange proposes to remove outdated NYSE Arca Market Maker OTP fees from the Fee Schedule, which fees are no longer effective following the restructuring of Market Maker OTP fees in connection with the Pillar Migration.<sup>4</sup> The Exchange also proposes to eliminate text providing for a temporary cap on fees for Order/Quote Entry Ports, Quote Takedown Ports, and Drop Copy Ports (collectively, “Port Fees”); the cap on Port Fees was only effective during the period of the Pillar Migration and no longer applies to any OTP Holders.<sup>5</sup> The Exchange further proposes to modify the table setting

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<sup>4</sup> See Securities Exchange Act Release No. 95142 (June 23, 2022), 87 FR 38786 (June 29, 2022) (SR-NYSEArca-2022-36) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Options Fee Schedule) (providing for new Market Maker OTP fees, which became effective August 1, 2022).

<sup>5</sup> See Securities Exchange Act Release No. 94017 (January 20, 2022), 87 FR 4095 (January 26, 2022) (SR-NYSEArca-2022-03) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Options Fee Schedule To Cap Certain Port Fees) (providing that Port Fees would be capped for the month of July 2022).

forth Port Fees to eliminate fees for Quote Takedown Ports altogether, as such ports no longer exist following the Pillar Migration.<sup>6</sup> Finally, the Exchange proposes to delete the last sentence of Endnote 8, which currently sets forth pricing intended to provide OTP Holders with certainty regarding their eligibility for certain tiers, incentives, and discounts during the Pillar Migration and which was effective only for the month during which the Pillar Migration occurred.<sup>7</sup>

The Exchange next proposes to amend the Fee Schedule to remove text relating to certain other pricing that is no longer in effect. First, the Exchange proposes to eliminate text that provided for a waiver of the Options Regulatory Fee from November 1, 2022 to January 31, 2023, as the waiver period has now ended.<sup>8</sup> The Exchange also proposes to eliminate the section

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<sup>6</sup> The Fee Schedule currently provides that, for each order/quote entry port utilized, NYSE Arca Market Makers may utilize, free of charge, one port dedicated to quote cancellation or “quote takedown.” Any such port(s) are not included in the count of order/quote entry ports utilized, but any quote takedown port in excess of the number of order/quote entry ports utilized will be counted and charged as an order/quote entry port. See Fee Schedule, PORT FEES. The Exchange proposes to delete this text, as well as the reference to quote takedown ports in connection with how the Exchange would aggregate ports of affiliates for purposes of calculating the number of ports utilized. The Exchange notes that it began offering dedicated quote takedown ports to minimize latency for quote takedown. See Securities Exchange Act Release No. 74841 (April 29, 2015), 80 FR 25758 (May 5, 2015) (SR-NYSEARCA-2015-32) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Modifying its Rules to Provide for the Use of Ports that Provide Connectivity to the Exchange’s Trading Systems Solely for the Cancellation or “Takedown” of Quotes and Changes to the NYSE Arca Options Fee Schedule Related to Quote Takedown Service). Order/quote entry ports on Pillar process more efficiently than their pre-Pillar counterparts because the Pillar trading platform is designed to optimize throughput and provide minimal latency; accordingly, Market Makers can use their Pillar order/quote entry ports to readily accomplish both order/quote entry and quote takedown, thereby eliminating the need to obtain additional ports to effect the prompt cancellation of quotes.

<sup>7</sup> See Securities Exchange Act Release No. 94125 (February 1, 2022), 87 FR 6910 (February 7, 2022) (SR-NYSEArca-2022-05) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Options Fee Schedule) (providing for continuity of eligibility for certain tiers, incentives, and discounts for the month of July 2022).

<sup>8</sup> See Securities Exchange Act Release No. 96374 (November 22, 2022), 87 FR 73372 (November 29, 2022) (SR-NYSEARCA-2022-78) (Notice of Filing and Immediate

of the Fee Schedule setting forth NYSE FANG+ Index (“FAANG”) transaction fees and FAANG credits for Market Makers,<sup>9</sup> as FAANG options were delisted in February 2023, and these fees and credits are no longer applicable to any OTP Holders.<sup>10</sup> Lastly, the Exchange proposes to delete the text of current Endnote 14 relating to Binary Return Derivatives (“ByRDs”) transactions, as the last ByRDs expired in April 2018, and to designate Endnote 14 as Reserved.

The Exchange believes the proposed change would improve the clarity of Fee Schedule by removing obsolete text, thereby obviating potential confusion regarding pricing currently in effect.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>11</sup> in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,<sup>12</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

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Effectiveness of Proposed Rule Change To Amend the NYSE Arca Options Fee Schedule Concerning the Options Regulatory Fee).

<sup>9</sup> The Fee Schedule currently provides that Non-Customers and Professional Customers incur a \$0.35 per contract fee for FAANG transactions and that Customers and Market Makers do not incur a fee for FAANG transactions. The Fee Schedule also provides for certain credits to NYSE Arca Options Market Makers and LMMs that execute a minimum number of total monthly contract sides that open a position in FAANG on the Exchange. See Fee Schedule, NYSE FANG+ Index (FAANG) Transaction Fees.

<sup>10</sup> The Exchange also proposes to delete references to FAANG in Endnote 2 (which currently provides that the Lead Market Maker Rights Fee does not apply to FAANG options) and Endnote 8 (which currently provides that options on FAANG would be included in calculations to qualify for volume-based incentives), which no longer have application following the delisting of FAANG options.

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

<sup>12</sup> 15 U.S.C. 78f(b)(4) and (5).

discriminate between customers, issuers, brokers or dealers.

#### The Proposed Rule Change is Reasonable

The Exchange believes the proposed elimination of text in the Fee Schedule describing pricing that is no longer applicable to any OTP Holders is reasonable because it would improve the clarity of the Fee Schedule and reduce confusion as to which fees and credits are applicable on the Exchange. The Exchange believes that amending the Fee Schedule to remove obsolete pricing would further the protection of investors and the public interest by promoting clarity and transparency in the Fee Schedule and making the Fee Schedule easier to navigate and understand.

#### The Proposal is an Equitable Allocation of Fees and Credits

The Exchange believes the proposed change supports an equitable allocation of fees and credits among its market participants because it would eliminate obsolete text from the Fee Schedule describing pricing programs that are no longer applicable to any market participants. Accordingly, the Exchange believes the proposal would impact all similarly situated OTP Holders on an equal basis. The Exchange also believes that the proposed change would promote investor protection and the public interest because the deletion of expired or discontinued pricing programs from the Fee Schedule would enhance the clarity of the Fee Schedule and reduce confusion regarding fees and credits currently applicable to market participants who transact on the Exchange.

#### The Proposal is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory because it neither targets nor will it have a disparate impact on any category of market participant. The proposed elimination of obsolete pricing would affect all market participants on an equal and

non-discriminatory basis, as the programs with which such pricing is associated are no longer available to any market participants. The Exchange also believes that the proposed change would protect investors and the public interest because the deletion of expired or discontinued pricing programs would facilitate market participants' understanding of the pricing currently applicable on the Exchange.

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 proposed change relates solely to the elimination of obsolete pricing associated with discontinued or expired pricing and, accordingly, would not have any impact on intramarket or intermarket competition. The proposed change is designed to ensure that the Fee Schedule accurately reflects pricing currently effective on the Exchange, thereby adding clarity to the Fee Schedule to the benefit of all market participants.

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)<sup>13</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>14</sup> thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

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<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(2).

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>15</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-2023-26 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-2023-26. 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

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<sup>15</sup> 15 U.S.C. 78s(b)(2)(B).

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-2023-26, 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>16</sup>

Sherry R. Haywood

Assistant Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).