SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-98422; File No. SR-NYSEARCA-2023-62)

September 18, 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 September 12, 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 add the Customer Take Fee Discount Tiers. The Exchange proposes to implement the fee change effective September 12, 2023. 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 received on the proposed rule change. The text of those statements may be examined at the places

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

2 15 U.S.C. 78a.

3 17 CFR 240.19b-4.

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 introduce a new pricing incentive, the Customer Take Fee Discount Tiers ("Take Fee Discounts"). The Exchange proposes to implement the rule change on September 12, 2023.[4]

If an OTP Holder or OTP Firm (collectively, "OTP Holders") executes a transaction that removes or "takes" liquidity on the Exchange, the OTP Holder is charged a "Take Liquidity" fee (referred to herein as a "Take Fee") and such liquidity may be referred to as "liquidity removing" or "liquidity taking."[5] To offset such costs and encourage market participants to direct order flow to the Exchange, the Exchange offers Take Fee discounts to some market participants for executions in Penny and non-Penny issues.[6]

Currently, Customer executions in Penny and non-Penny issues are subject to Take Fees of $0.49 and $0.85, respectively.[7] The Exchange now proposes to offer tiered Take Fee discounts on Customer executions in both Penny and non-Penny issues. Specifically, the Exchange proposes tiered per contract discounts on Customer Take Fees based on an OTP Holder's achievement of certain volume qualifications in average electronic executions per day. As

4 The Exchange previously filed to amend the Fee Schedule on September 1, 2023 (SR-NYSEARCA-2023-60) and withdrew such filing on September 12, 2023.

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

6 See, e.g., Fee Schedule, DISCOUNT IN TAKE LIQUIDITY FEES FOR PROFESSIONAL CUSTOMER AND NON -CUSTOMER LIQUIDITY REMOVING INTEREST.

7 See note 5, supra.

proposed, Tier 1 of the Take Fee Discounts would offer a $0.01 discount on Customer Take Fees if an OTP Holder achieves at least 0.20% of TCADV from Customer liquidity removing interest in all issues; Tier 2 would offer a $0.02 discount on Customer Take Fees to an OTP Holder that achieves at least 0.40% of TCADV from Customer liquidity removing interest in all issues and 1% of TCADV from Customer posting in all issues; and Tier 3 would offer a $0.03 discount on Customer Take Fees to an OTP Holder that achieves at least 0.60% of TCADV from Customer liquidity removing interest in all issues and 1.50% of TCADV from Customer posting in all issues. The Take Fee Discounts would only apply to Customer orders, and the qualifications for the discounts are based only on activity in the Customer range; activity in the Professional Customer range is not included in the qualifications and is not eligible to receive any of the proposed discounts, as Professional Customer orders are already eligible for other discounts on Take Fees.[8] OTP Holders may earn only the highest discount for which they qualify.

Although the Exchange cannot predict with certainty whether any OTP Holders would seek to qualify for the Take Fee Discounts, the Exchange believes that the proposed change would encourage OTP Holders to direct interest, and, in particular, Customer liquidity removing interest, to the Exchange to earn the proposed discounts on Take Fees.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[10] 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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8 See note 6, supra.

9 15 U.S.C. 78f(b).

10 15 U.S.C. 78f(b)(4) and (5).

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."[11]

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.[12] Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in July 2023, the Exchange had less than 12% market share of executed volume of multiply-listed equity and ETF options trades.[13]

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

12 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.

13 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 slightly from 11.30% for the month of July 2022 to 11.50% for the month of July 2023.

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, 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 Take Fee Discounts would incent OTP Holders to increase the amount of Customer interest sent to the Exchange, especially liquidity removing interest, which benefits all market participants by providing more trading opportunities, thereby making the Exchange a more attractive execution venue. The Exchange further believes that the proposed qualifications for the Take Fee Discounts are attainable for OTP Holders based on recent volumes and that the proposed amounts of the discounts are reasonable, as the Exchange's rates for Customer liquidity removing interest would remain in range of and competitive with the rates assessed by at least one other options exchange.[14]

To the extent the proposed rule change attracts greater volume and liquidity by encouraging OTP Holders to increase their options volume on the Exchange, 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

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[14] See, e.g., Cboe BZX Options Fee Schedule, Standard Rates, available at: https://www.cboe.com/us/options/membership/fee_schedule/bzx/ (providing for rates of $0.46 to $0.48 for Customer liquidity removing interest in Penny issues and rate of $0.85 for Customer liquidity removing interest in non-Penny issues).

competitors, including another options exchange that offers tiered rates for certain Customer liquidity removing interest.[15]

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 amount and type of business transacted on the Exchange, and OTP Holders can attempt to qualify for the discounts or not. Moreover, the proposal is designed to incent OTP Holders to continue to direct Customer liquidity removing interest to the Exchange and to aggregate all liquidity removing interest at the Exchange as a primary execution venue. To the extent that the proposed change attracts more opportunities for execution of Customer interest on 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 Proposed Rule Change is not Unfairly Discriminatory

The Exchange believes is the proposed Take Fee Discounts are not unfairly discriminatory because they would be available to all similarly-situated market participants on an equal and non-discriminatory basis. The Exchange also believes that the proposed change is not unfairly discriminatory to Professional Customers and non-Customers, as those market participants are already afforded discounts on Take Fees under the current Fee Schedule.[16]

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15 See, e.g., Cboe BZX Options Fee Schedule, Customer, Firm, Broker Dealer and Joint Back Office Penny Take Volume Tiers, available at: https://www.cboe.com/us/options/membership/fee_schedule/bzx/ (providing tiered rates for Customer liquidity removing volume in Penny issues based on volume qualifications, which, similar to the Exchange's proposal, represent $0.01 or $0.02 discounts on standard fee for take volume).

16 See note 6, supra.

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 proposed qualifications to earn the Take Fee Discounts, nor are they obligated to direct liquidity removing interest or posted interest to the Exchange. To the extent that the proposed change attracts more interest, including liquidity removing interest, 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, 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 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."[17]

Intramarket Competition. The proposed change is designed to attract additional order flow to the Exchange, including both liquidity removing interest and posting interest. The Exchange believes that the proposed change would incent OTP Holders to continue to direct their liquidity removing order flow to the Exchange. Greater liquidity benefits all market participants on the Exchange and increased liquidity removing order flow would increase opportunities for execution of other trading interest. The proposed modifications would be available to all similarly-situated market participants and, as such, the proposed change 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 equity and ETF options trades.[18] Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in July 2023, the Exchange had less than 12% market share of executed volume of multiply-listed equity and ETF options trades.[19]

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17 See Reg NMS Adopting Release, supra note 11, at 37499.

18 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.

19 Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of

The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees in a manner designed to incent OTP Holders to direct trading 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 another options exchange that currently also offers tiered rates for some Customer liquidity removing interest,[20] 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.

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)[21] of the Act and subparagraph (f)(2) of Rule 19b-4[22] 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

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equity-based ETF options, see id., the Exchange's market share in equity-based options increased slightly from 11.30% for the month of July 2022 to 11.50% for the month of July 2023.

20 See note 14, supra.

21 15 U.S.C. 78s(b)(3)(A).

22 17 CFR 240.19b-4(f)(2).

Commission shall institute proceedings under Section 19(b)(2)(B)[23] 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 (https://www.sec.gov/rules/sro.shtml); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSEARCA-2023-62 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-2023-62. This file number should be included on the subject line if email 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 (https://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

[23] 15 U.S.C. 78s(b)(2)(B).

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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSEARCA-2023-62 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Sherry R. Haywood,

Assistant Secretary.

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[24] 17 CFR 200.30-3(a)(12).