SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-99021; File No. SR-NYSEARCA-2023-80)

November 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 November 15, 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 Firm and Broker Dealer Monthly Fee Cap. The Exchange proposes to implement the fee change effective November 15, 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.

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.

4 The Exchange originally filed to amend the Fee Schedule on October 31, 2023 (SR-NYSEARCA-2023-75) and withdrew such filing on November 15, 2023.

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 Firm and Broker Dealer Monthly Fee Cap (the "Monthly Fee Cap"). The Exchange proposes to implement the rule change on November 15, 2023.

The Exchange proposes to modify the Monthly Fee Cap, which currently provides that 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 $200,000 per month.[5]

The Exchange proposes to raise the Monthly Fee Cap to $250,000 per month. Accordingly, the Exchange proposes to modify the Fee Schedule to replace $200,000 with $250,000 in the description 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. Once a Firm or Broker Dealer has reached the Monthly Fee Cap, an incremental service fee of $0.01 per contract for Firm or Broker Dealer Manual transactions will continue to apply, except for the execution of a QCC order.

The Exchange also proposes non-substantive clarifying changes to the description of the Monthly Fee Cap to identify the fees included in the Monthly Fee Cap more precisely. The

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

proposed changes are not intended to modify any fees eligible for the Monthly Fee Cap, but rather to improve the clarity of the Fee Schedule.

The Exchange believes that the proposed change, despite increasing the amount of the Monthly Fee Cap, would continue to incent Firms and Broker Dealers to direct order flow to the Exchange to receive the benefits of a fee cap on Manual and QCC transactions.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[7] 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

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."[8]

---

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4) and (5).

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

There are currently 17 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.[9] Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in September 2023, the Exchange had less than 12% market share of executed volume of multiply-listed equity and ETF options trades.[10]

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 proposed increase to the Monthly Fee Cap is reasonable because the Exchange believes the fee cap, although higher, would continue to incent Firms and Broker Dealers to direct order flow to the Exchange to receive the benefits of capped fees. The Exchange also believes the proposed change is reasonable because the proposed fee cap amount would be applicable to all Firms and Broker Dealers. In addition, although the proposed change would raise the amount of the Monthly Fee Cap, it would continue to offer Firms and Broker Dealers the opportunity to qualify for capped fees on Manual and QCC transactions, which the Exchange

---

9 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.

10 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 10.84% for the month of September 2022 to 11.48% for the month of September 2023.

believes provides Firms and Broker Dealers with a benefit not offered by at least one other options exchange.[11]

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 17 options exchanges. Thus, OTP Holders have a choice of where they direct their order flow, including their Manual and QCC transactions. The proposed rule change is designed to continue to incent OTP Holders to direct liquidity and, in particular, Firm and Broker Dealer 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. The Exchange believes that the proposed modification of the Monthly Fee Cap is equitable because it would apply to all Firms and Broker Dealers equally and would continue to provide for the same fee cap amount for all Firms and Broker Dealers. The Exchange also

---

11 See, e.g., BOX Options Fee Schedule, available at: https://boxoptions.com/fee-schedule/ (no cap on Firm and Broker Dealer manual or QCC transaction fees).

believes that the proposed rule change is equitable with respect to non-Firm and non-Broker Dealer market participants because the Monthly Fee Cap would not be meaningful for Customers or Professional Customers (neither of whom pay transaction charges for Manual transactions or QCC transactions) and because Market Makers are offered other incentives to reduce transaction fees.[12] To the extent the proposed change achieves its purpose in continuing to incent Firms and Broker Dealers to aggregate their executions at the Exchange as a primary execution venue and does not discourage Firms and Broker Dealers from continuing to direct order flow to the Exchange to achieve the benefits of capped fees, this increased order flow would continue to make the Exchange a more competitive venue for, among other things, order execution, and all market participants would benefit from enhanced opportunities for price improvement and 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 that the proposed change to the Monthly Fee Cap is not unfairly discriminatory because the fee cap, as proposed, would continue to be available to all similarly situated Firms and Broker Dealers, any of which could continue to be incented 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 continue to apply the same fee cap amount to all Firms and Broker Dealers. The Exchange notes that offering the Monthly Fee Cap to Firms and Broker Dealers but not other market participants is not unfairly discriminatory

12 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).

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 or QCC transactions and is not unfairly discriminatory towards Market Makers, as Market Makers have alternative avenues to reduce transaction fees.[13]

To the extent that the proposed change continues to attract Manual and QCC 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

13 See id.

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."[14]

Intramarket Competition. The proposed change is designed to continue to attract order flow to the Exchange, which could increase the volumes of contracts traded on the Exchange. Greater liquidity benefits all market participants on the Exchange, and the Exchange believes that the proposed change (even though it would raise the amount of the fee cap) would not impose any burden on competition that is not necessary or appropriate because it is intended to 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 and QCC transactions, thereby promoting liquidity on the Exchange to the benefit of all market participants.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily favor one of the 17 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.[15] Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically,

---

14 See Reg NMS Adopting Release, supra note 8, at 37499.

15 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.

in September 2023, the Exchange had less than 12% market share of executed volume of multiply-listed equity and ETF options trades.[16]

The Exchange believes that the proposed change reflects this competitive environment because it modifies the Exchange's fees in a manner designed to continue to incent OTP Holders to direct trading interest (particularly Firm and Broker Dealer Manual and QCC transactions) to the Exchange, to provide liquidity and to attract order flow. To the extent that Firms and Broker Dealers are incentivized to utilize the Exchange as a primary trading venue for all transactions, 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 do not offer a cap on Firm and Broker Dealer fees,[17] by encouraging additional orders to be sent to the Exchange for execution. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges.

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.

---

16 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 10.84% for the month of September 2022 to 11.48% for the month of September 2023.

17 See note 11, 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)[18] of the Act and subparagraph (f)(2) of Rule 19b-4[19] 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)[20] 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-2023-80 on the subject line.

---

18 15 U.S.C. 78s(b)(3)(A).

19 17 CFR 240.19b-4(f)(2).

20 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-2023-80. 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 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-2023-80 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.[21]

Christina Z. Milnor,

Assistant Secretary.

---

[21] 17 CFR 200.30-3(a)(12).