1. Text of the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")[1] and Rule 19b-4 thereunder,[2] NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") proposes to modify the NYSE Arca Options Fee Schedule ("Fee Schedule") to (1) increase the QCC volume required for Floor Brokers to earn an additional credit; (2) adopt a new rebate based on a Floor Broker's combined QCC and manual billable volume; (3) increase the maximum combined Floor Broker QCC credits and rebates earned through the Manual Billable Rebate Program; and (4) permit Floor Brokers that restructure while in the Floor Broker Fixed Cost Prepayment Incentive Program (the "FB Prepay Program" or "Program") to maintain their status in the Program. The Exchange proposes to implement the fee change effective January 14, 2025.[3]

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1, and the text of the proposed rule change is attached as Exhibit 5.

(b) The Exchange does not believe that the proposed rule change would have any direct effect, or any significant indirect effect, on any other Exchange rule in effect at the time of this filing.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

Senior management has approved the proposed rule change pursuant to authority delegated to it by the Board of the Exchange. No further action is required under the Exchange's governing documents. Therefore, the Exchange's internal procedures with respect to the proposed rule change are complete.

The person on the Exchange staff prepared to respond to questions and comments on the proposed rule change is:

Kathleen Murphy
Senior Counsel
NYSE Group, Inc.
(212) 656-4841

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

2 17 CFR 240.19b-4.

3 On December 20, 2024, the Exchange filed to amend the Fee Schedule (NYSEARCA-2024-117) and withdrew such filing on January 2, 2025 (SR-NYSEARCA-2025-02), which latter filing the Exchange withdrew on January 14, 2025.

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

The purpose of this filing is to amend the Fee Schedule to (1) increase the QCC volume required for Floor Brokers to earn an additional credit; (2) adopt a new rebate based on a Floor Broker's combined QCC and manual billable volume; (3) increase the maximum combined Floor Broker QCC credits and rebates earned through the Manual Billable Rebate Program; and (4) permit Floor Brokers that restructure while in FB Prepay Program to maintain their status in the Program. The Exchange proposes to implement the rule change on January 14, 2025.

QCC Transactions

Currently, the Exchange offers Submitting Brokers a credit of ($0.22) per contract for Non-Customer vs. Non-Customer QCC transactions or ($0.16) per contract for Customer vs. Non-Customer QCC transactions (the "Submitting Broker QCC Credits").[4] QCC executions in which a Customer is on both sides of the QCC trade are not eligible for a credit.[5] In addition, Submitting Brokers are eligible to earn an additional credit on QCC transactions based on certain volume thresholds as follows:

- Achieve 1.5 million QCC contracts per month to receive an additional ($0.01) credit on Customer vs. Non-Customer QCC transactions, and an additional ($0.06) credit on Non-Customer vs. Non-Customer QCC transactions ("QCC Tier 1").
- Achieve 3 million QCC contracts per month to receive an additional ($0.02) credit on Customer vs. Non-Customer QCC transactions, and an additional ($0.08) credit on Non-Customer vs. Non-Customer QCC transactions ("QCC Tier 2").[6]

The Exchange proposes to increase the minimum volume threshold for QCC Tier 2 from 3 million to 3.5 million QCC contracts.[7] The Exchange is not proposing to modify the associated additional credits.

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4 See Fee Schedule, QUALIFIED CONTINGENT CROSS ("QCC") TRANSACTION FEES AND CREDITS.

5 See id.

6 See id. The additional credits are applied back to the first QCC contract executed by a Submitting Broker in a month and will not be cumulative across tiers. See id. For example, a Submitting Broker who transacts 3.1 million QCC contracts in a month would be eligible for an additional ($0.08) credit on Non-Customer vs. Non-Customer QCC transactions, as proposed, but would not also earn the additional credits offered to Submitting Brokers that achieve 1.5 million QCC contracts in a month.

7 See proposed Fee Schedule, QUALIFIED CONTINGENT CROSS ("QCC") TRANSACTION FEES AND CREDITS. The Exchange proposes to make the non-substantive change to add a new column identifying the "Tiers" for additional credits as "QCC Tier 1" and "QCC Tier 2," which would add clarity to the Fee Schedule.

Although the Exchange cannot predict with certainty whether the proposed change would encourage Submitting Brokers to increase their QCC volume, the Exchange believes that Submitting Brokers will continue to be incentivized to execute additional QCC executions to achieve additional credits.

<u>FB Prepay Program</u>

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. Participating Floor Brokers receive their monthly rebate amount on a monthly basis.[8]

All Floor Brokers that participate in the FB Prepay Program are eligible for rebates through the Manual Billable Rebate Program payable on a monthly basis. FB Prepay Participants are provided a rebate on manual billable volume of ($0.08) per billable side, and participants that achieve more than 500,000 billable sides in a month are eligible for an additional rebate of ($0.02) per billable side. The additional ($0.02) rebate is retroactive to the first billable side. Manual billable volume includes transactions for which at least one side is subject to manual transaction fees and excludes QCCs.[9] The Exchange currently places a $2,500,000 per firm, monthly maximum limit on the rebates earned through the Manual Billable Rebate Program when combined with Submitting Broker QCC Credits (as discussed above).[10]

The Exchange proposes to modify the FB Prepay Program to offer participants an additional rebate based on combined QCC and manual billable volume. Specifically, the Exchange proposes to offer an additional ($0.01) rebate to participants that achieve QCC Tier 2 (discussed above), plus execute manual billable sides equal to at least 10% of the QCC Tier 2 volume requirement (i.e., execute 3.5 million QCC contracts, plus execute 350,000 manual billable sides). In the alternative, the Exchange proposes to offer an additional ($0.02) rebate to participants that achieve QCC Tier 2, plus execute manual billable sides equal to at least 20% of the QCC Tier 2 volume requirement (i.e., execute 3.5 million QCC contracts, plus execute 700,000 manual billable sides). A Floor Broker may only receive one of the two new rebates. Consistent with the current additional rebate, the proposed additional rebates would be retroactive to the first billable side. The Exchange proposes to include the proposed rebates in a table, together with the existing rebate (and additional rebate) and to add reference to the new table in the text describing the Manual Billable Rebate Program.

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8 <u>See</u> Fee Schedule, Floor Broker Fixed Cost Prepayment Incentive Program (the "FB Prepay Program"). The Exchange notes that the FB Prepay Program is currently structured similarly to the Floor Broker prepayment program offered by its affiliated exchange, NYSE American LLC ("NYSE American").

9 Any volume calculated to achieve the Limit of Fees on Options Strategy Executions ("Strategy Cap"), regardless of whether this cap is achieved, is likewise excluded from the Manual Billable Rebate Program because fees on such volume are already capped and therefore such volume does not increase billable manual volume. <u>See</u> <u>id.</u>

10 <u>See</u> Fee Schedule, FB Prepay Program, endnote 17 (providing in relevant part that "Submitting Broker QCC credits and Floor Broker rebates earned through the Manual Billable Rebate Program shall not combine to exceed $2,500,000 per month per firm.").

The Exchange also proposes to increase the maximum allowable combined Submitting Broker QCC credits and Floor Broker rebates earned through the Manual Billable Rebate Program (the "Maximum Combined Rebate/Credit") to $3,000,000 per month per firm, an increase from the current maximum of $2,500,000.[11] The proposed increase is designed to encourage Floor Broker firms to continue to direct transactions to the Exchange, despite increasing industry volumes making it less difficult to attain the maximum rebate.

Finally, the Exchange proposes to specify that a Floor Broker organization that restructures while enrolled in the FB Prepay Program will maintain its status in the program. This proposed change is designed to ensure that a Floor Broker does not lose the benefits of participating in the FB Prepay Program if, for example, it is acquired, merges with another entity, or otherwise reorganizes.

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 their manual billable volume (together with their QCC volume), the Exchange believes that the proposed changes would continue to incent Floor Brokers to participate in the FB Prepay Program, including by increasing the Maximum Combined Rebate/Credit. All Floor Brokers are eligible to participate in the FB Prepay Program and qualify for the proposed rebates.

(b) Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[13] 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 change to the Fee Schedule are reasonable, equitable, and not unfairly discriminatory. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options securities transaction services that constrain its pricing determinations in that 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

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11 See proposed Fee Schedule, FB Prepay Program, endnote 17 (providing in relevant part that "Submitting Broker QCC credits and Floor Broker rebates earned through the Manual Billable Rebate Program shall not combine to exceed $3,000,000 per month per firm.")

12 15 U.S.C. 78f(b).

13 15 U.S.C. 78f(b)(4) and (5).

and listed companies."[14]

There are currently 18 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.[15] Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in November of 2024, the Exchange had 13.22% market share of executed volume of multiply-listed equity & ETF options trades.[16] In such a low-concentrated and highly competitive market, no single options exchange possesses significant pricing power in the execution of option order flow. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules.

QCC Transactions

The Exchange believes that the proposed change is reasonable because, although it increases the required volume threshold for QCC Tier 2 from 3 to 3.5 million QCC contracts, the Exchange believes that the availability of the additional credit will continue to incentivize OTP Holders to increase the number of QCC transactions sent to the Exchange. The Exchange notes that Floor Brokers already receive -- and will continue to receive -- credits on QCCs with at least one billable side; the proposed change relates solely to additional credits.

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits because it is based on the amount and type of business transacted on the Exchange, and Submitting Brokers can attempt to submit QCC transactions to earn the additional credit or not. In addition, the proposed change is not unfairly discriminatory because it impacts all qualifying Submitting Brokers on an equal and non-discriminatory basis. To the extent the proposed change continues to incent Submitting Brokers to direct increased liquidity to the Exchange, all market participants would benefit from enhanced opportunities for price improvement and order execution.

FB Prepay Program

The proposed changes to the FB Prepay Program are designed to encourage Floor Brokers that have previously enrolled in the program to reenroll for the upcoming year,

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

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.

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 Exchanges market share in equity-based options increased slightly from 11.67% for the month of November 2023 to 13.22% for the month of November 2024.

as well as to attract Floor Brokers that have not yet participated in the program. The FB Prepay Program continues to be designed 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 believes that the proposed changes to the Manual Billable Rebate Program are reasonable because they should continue to encourage Floor Brokers to participate in the FB Prepay Program, and to provide liquidity on the Exchange. In particular, the proposed additional rebates should incent OTP Holders to increase the number of manual -- and QCC -- transactions sent to the Exchange. Moreover, the new rebates should 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 order execution, thus improving market quality for all market participants.

The Exchange believes that the proposed higher maximum monthly amount that a firm could earn from Submitting Broker QCC credits and Floor Broker rebates on manual billable volume (i.e., the Maximum Combined Rebate/Credit) is reasonable because it is set at an amount that is designed to encourage OTP Holders to direct QCC transactions and manual billable volume to the Exchange to receive the existing credits and proposed rebates.

The Exchange believes that the proposed change to allow Floor Broker organizations that restructure while enrolled in the program to maintain their status in the program is reasonable because this proposed change is designed to ensure that a Floor Broker does not lose its status in the FB Prepay Program if it undergoes a name change, switches broker dealer, or otherwise reorganizes.

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. Floor Brokers are not obligated to participate in the FB Prepay Program, and those who do can choose to execute manual billable volume and QCC transactions to earn rebates through the Manual Billable Rebate Program or not. In addition, the Manual Billable Rebate Program continues to be equally available to all Floor Brokers that participate in the FB Prepay Program and the proposed (increased) 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 (i.e., the Maximum Combined Rebate/Credit).

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 (or QCC) 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 add flexibility to the FB

Prepay Program by offering all participating Floor Brokers the same increased maximum combined rebate/credit amount 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.

To the extent that the proposed continuation of (and modifications to) the FB Prepay Program and Manual Billable Rebate Program attract more manual transactions (and QCCs) 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 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.

4. 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 to the QCC Tier 2 volume threshold impacts all similarly-situated Submitting Brokers that execute QCC transactions on the Exchange and should continue to attract additional QCC transactions to the Exchange, which could increase the volumes of contracts traded on the Exchange. Greater liquidity benefits all market participants on the Exchange, and increased QCC transactions could increase opportunities for execution of other trading interest.

The proposed modifications to the FB Prepay Program, including the proposed rebates and increased combined rebate/credit maximum, will 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 and QCC transactions.

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

To the extent that the proposed additional Submitting Broker Credits or continuation of the FB Prepay Program imposes an additional competitive burden on non-Floor Brokers, 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.

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.[18] Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in November 2024, the Exchange had slightly more than 13% market share of executed volume of multiply-listed equity and ETF options trades.[19]

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 incented 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.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

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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 equity-based ETF options, see id., the Exchange's market share in equity-based options increased from 11.67% for the month of November 2023 to 13.22% for the month of November 2024.

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act[20] and subparagraph (f)(2) of Rule 19b-4[21] 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) of the Act to determine whether the proposed rule change should be approved or disapproved.[22]

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed rule change is not based on the rules of another self-regulatory organization or of the Commission.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

Exhibit 1 – Form of Notice of the Proposed Rule Change for Publication in the Federal Register

Exhibit 5 – Amendment to the Exchange's Fee Schedule

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20 15 U.S.C. 78s(b)(3)(A)(ii).

21 17 CFR 240.19b-4(f)(2).

22 15 U.S.C. 78s(b)(2)(B).