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 modify certain qualification bases applicable to the Customer Penny Posting Credit Tiers, Customer Posting Credit Tiers in Non-Penny Issues, and Customer Incentive Program to reduce the requisite average daily volume ("ADV") and exclude sub-dollar securities from such calculation. The Exchange proposes to implement the fee change effective February 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:

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(212) 656-4841

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

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

2 17 CFR 240.19b-4.

3 On February 3, 2025, the Exchange filed to amend the Fee Schedule (NYSEARCA-2025-11) and withdrew such filing on February 14, 2025.

(a) Purpose

The purpose of this filing is to amend the Fee Schedule to modify certain qualification bases applicable to the Customer Penny Posting Credit Tiers, Customer Posting Credit Tiers in Non-Penny Issues, and Customer Incentive Program to reduce the requisite ADV and exclude sub-dollar securities from such calculation. The Exchange proposes to implement the fee change effective February 14, 2025.

The Fee Schedule provides for certain incentive programs through which an OTP Holder or OTP Firm (collectively, "OTP Holders") may earn credits on posted interest. In particular, the Customer Penny Posting Credit Tiers offers qualifying OTP Holders tiered credits on electronic executions of Customer posted interest in Penny issues, and the Customer Posting Credit Tiers in Non-Penny Issues offers qualifying OTP Holders tiered credits on electronic executions of Customer posted interest in non-Penny issues.[4] OTP Holders may also qualify for the Customer Incentive Program, which offers an additional credit on Customer posting credits in Penny or non-Penny issues.[5]

Currently, an OTP Holder that achieves 0.20% of TCADV from Customer posted interest in all issues, not including Professional Customer interest, plus executed ADV of 0.50% of U.S. equity market share posted and executed on the NYSE Arca Equities market will qualify for the credits offered in Tier 4 of the Customer Penny Posting Credit Tiers, Tier C of the Customer Posting Credit Tiers in Non-Penny Issues, and the Customer Incentive Program (the "current cross-asset incentives"). The Exchange notes that each of these programs contain a cross-asset component designed to encourage higher options volume from posted interest in conjunction with activity in the NYSE Arca Equity Market (for purposes of this filing, activity in the NYSE Arca Equity Market is referred to as "cross-asset activity").

The Exchange now proposes to modify the requisite cross-asset component for each of the Customer Penny Posting Credit Tiers, Customer Posting Credit Tiers in Non-Penny Issues, and Customer Incentive Program to reduce the equity market ADV requirement from 0.50% to 0.40% and exclude Sub-Dollar securities from that calculation (the "modified cross-asset components").[6] In other words, as

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4 See Fee Schedule, CUSTOMER PENNY POSTING CREDIT TIERS; CUSTOMER POSTING CREDIT TIERS IN NON-PENNY ISSUES.

5 See Fee Schedule, CUSTOMER INCENTIVE PROGRAM.

6 Sub-Dollar securities refers to securities that are priced below $1. The Exchange notes that the NYSE Arca Equity market offers credits for certain monthly volume in Sub-Dollar securities (or "sub-dollar" volume), including "Sub-Dollar Adding Tiers" and "Sub-Dollar Retail Day Remove Tier." See NYSE Arca Equities, FEES AND CHARGES: https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf.

proposed, an OTP Holder could qualify for any one of the modified cross-asset components by achieving at least 0.20% of TCADV from Customer posted interest in all issues, not including Professional Customer interest, plus executed ADV of 0.40% of U.S. equity market share posted and executed on the NYSE Arca Equities market, excluding Sub-Dollar securities. The Exchange notes, however, that there are alternative qualification bases to achieve Tier 4 of the Customer Penny Posting Credit Tiers and the additional credit available through the Customer Incentive Program that do not require cross-asset activity and are based solely on posted Customer volume.[7] The Exchange does not propose any changes to the amounts of per contract credits available to OTP Holders that achieve the modified cross-asset components.[8]

This proposal is designed to make it easier for OTP Holders to qualify for the modified cross-asset incentives as the proposal decreases (from 0.50% to 0.40%) the minimum executed percentage of equity market ADV and limits the pool of "qualifying volume" to securities priced at or above $1 ("dollar-plus volumes" or securities).

The Exchange notes that the ratio of dollar-plus ADV relative to sub-dollar ADV is generally stable from month-to-month. However, there have been months where sub-dollar volumes have been extraordinarily elevated, thus elevating ADV. Anomalous rises in sub-dollar volumes may make it more difficult, if not practically impossible, for OTP Holders to qualify for the existing cross-asset incentives, even if their dollar-plus volumes remain consistent relative to prior months. As such, this proposed change should help ensure that OTP Holders that consistently execute significant dollar-plus ADV on the Exchange may achieve the modified cross-asset components even during periods of extraordinary spikes

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7 See, e.g., Fee Schedule, CUSTOMER PENNY POSTING CREDIT TIERS (providing alternative qualification basis to achieve Tier 4 (and associated $0.47 per contract credit) for OTP Holders that execute "[a]t least 0.75% of TCADV from Customer posted interest in all issues"); and CUSTOMER INCENTIVE PROGRAM (providing alternative qualification basis to achieve additional $0.03 credit to OTP Holders the execute "an ADV from Market Maker Total Electronic Volume of at least 1.00% of TCADV"). Similarly, OTP Holders that do not meet the cross-asset requirement of Tier C of the Customer Posting Credit Tiers in Non-Penny Issues may qualify for Tiers A, B, D and E of this program, which tiers do not include a cross-asset component. See Fee Schedule, CUSTOMER POSTING CREDIT TIERS IN NON-PENNY ISSUES.

8 As is the case today, OTP Holders who qualify for one of the modified cross-asset components will continue to be eligible for the ($0.47) on electronic executions of Customer posted interest in Penny issues through Tier 4 of the Customer Penny Posting Credit Tiers; the ($0.97) credit applied to electronic executions of Customer posted interest in non-Penny issues through the Customer Posting Credit Tiers in Non-Penny Issues; and/or the additional ($0.03) credit on Customer posting credits offered in the Customer Incentive Program. See proposed Fee Schedule, CUSTOMER PENNY POSTING CREDIT TIERS; CUSTOMER INCENTIVE PROGRAM). Similarly, OTP Holders that do not meet the cross-asset requirement of Tier C of the Customer Posting Credit Tiers in Non-Penny Issues may qualify for Tiers A, B, D and E of this program, which tiers do not include a cross-asset component. See Fee Schedule, CUSTOMER POSTING CREDIT TIERS IN NON-PENNY ISSUES.

in sub-dollar ADV.[9]

The Exchange anticipates that this proposal may incentivize OTP Holders to aggregate Customer posting interest at the Exchange as a primary execution venue and to attract more posting interest on the NYSE Arca Equity Market, particularly in dollar-plus volume. While the Exchange cannot predict the impact of the proposed change, it nonetheless believes that OTP Holders will be encouraged to qualify for the various modified cross-asset components and to continue to execute Customer posted interest (and dollar-plus volume) on the Exchange and to use the Exchange as a primary destination for both options and equity order flow, which would bring increased liquidity and order flow for the benefit of all market participants.

(b) Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[11] 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 and listed companies."[12]

There are currently 18 registered options exchanges competing for order flow.

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9 The Exchange notes that this proposed change does not alter the cross-asset component of Tier 6 of the Customer Penny Posting Credit Tiers. See, e.g., Fee Schedule, CUSTOMER PENNY POSTING CREDIT TIERS (providing alternative cross-asset qualification basis to achieve Tier 6 (and associated $0.50 per contract credit) for OTP Holders that execute "[a]t least 1.00% of TCADV from Customer posted interest in all issues, plus executed ADV of 0.30% of U.S. Equity Market Share Posted and Executed on NYSE Arca Equity Market").

10 15 U.S.C. 78f(b).

11 15 U.S.C. 78f(b)(4) and (5).

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

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.[13] Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in December of 2024, the Exchange had 12.42% market share of executed volume of multiply-listed equity & ETF options trades.[14]

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. Thus, OTP Holders have a choice of where they direct their order flow, including their Customer posting interest and equity posted interest (particularly in dollar-plus securities). Accordingly, competitive forces constrain options exchange transaction fees. In response to competitive pricing, the Exchange, like other options exchanges, offers credits and rebates for certain types of volume posted to and executed on the Exchange. The Exchange anticipates that the proposed rule change will incentivize OTP Holders to direct liquidity to the Exchange -- particularly Customer posting interest and cross-asset activity in dollar-plus securities, thereby promoting market depth, price discovery and improvement, and enhanced order execution opportunities for market participants.

The Exchange believes that the proposed modified cross-asset components are reasonable because they are intended to continue to incent OTP Holders to send Customer posting interest to the Exchange to earn credits on such interest, while also encouraging such OTP Holders to use the Exchange as their primary trading venue for options and equities. To the extent that the proposed change attracts additional volume to the Exchange, specifically Customer posted interest and cross-asset activity in dollar-plus securities, this increased order flow would continue to make the Exchange a more competitive trading venue

The proposed change is reasonable because it should make it easier for OTP Holders to qualify for the modified cross-asset components due to the lowered (from 0.50% to 0.40%) minimum executed percentage of equity market ADV and limited pool of "qualifying volume" that excludes Sub-Dollar securities. With the proposed change, the Exchange wishes to avoid extraordinary spikes in sub-dollar volumes from adversely affecting the ability of those OTP Holders that consistently execute significant dollar-plus ADV to qualify for the modified

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13 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.

14 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 decreased slightly from 14.47% for the month of December 2023 to 14.42% for the month of December 2024.

cross-asset components. The Exchange notes that the proposed change is reasonable because, for each Customer posting incentive program impacted by this proposed change, there are alternative qualification bases that offer the same per contract credit and do not include a cross-asset component.

The Exchange anticipates that this proposal may incentivize OTP Holders to aggregate Customer posting interest at the Exchange as a primary trading venue and to attract more posted interest, particularly in dollar-plus volume. While the Exchange cannot predict the impact of the proposed change, it nonetheless believes that OTP Holders will be encouraged to qualify for the various modified cross-asset components and to continue to execute Customer posted interest (and dollar-plus volume) on the Exchange and to use the Exchange as a primary destination for both options and equity order flow, which would bring increased liquidity and order flow for the benefit of all market participants.

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits and is not unfairly discriminatory. The proposal is based on the amount and type of business transacted on the Exchange, and OTP Holders can opt to try to qualify for the available credit(s) or not. OTP Holders are under no obligation to try to achieve the credits available for executed Customer posted interest or cross-asset activity, particularly in dollar-plus volume. Rather, the proposal should incent OTP Holders to aggregate Customer posting interest at the Exchange as a primary execution venue and to attract more posting interest on the NYSE Arca Equity Market. To the extent that the proposal achieves these objectives, the resulting increased order flow would continue to make the Exchange a more competitive venue for order execution on both options and equities. 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.

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 changes 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."[15]

Intramarket Competition. The proposed change is designed to attract additional order flow to the Exchange, particularly Customer posted interest and cross-asset activity in dollar-plus securities. The Exchange believes that the proposed change would continue to incent OTP Holders to direct Customer posting interest and cross-asset activity to the Exchange to earn the credits available through the modified cross-asset components. Greater liquidity benefits all market participants on the Exchange and increased liquidity-posting order flow would increase opportunities for execution of other trading interest. The proposed change would apply to all similarly-situated market participants and, accordingly, 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 other 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.[16] Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in December 2024, the Exchange had 12.42% market share of executed volume of multiply-listed equity and ETF options trades.[17]

The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees in a manner designed to encourage market participants to direct trading interest (particularly Customer posted interest and cross asset activity) to the Exchange, which 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 opportunities for price improvement.

The Exchange believes that the proposed change could promote competition between the Exchange and other execution venues by encouraging a variety of orders to be sent to the Exchange for execution.

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15 See Reg NMS Adopting Release, supra note 12, at 37499.

16 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.

17 Based on OCC data for monthly volume of equity-based options and monthly volume of ETF-based options, see id., the Exchanges market share in equity-based options decreased slightly from 12.47% for the month of December 2023 to 12.42% for the month of December 2024.

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)

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act[18] and subparagraph (f)(2) of Rule 19b-4[19] 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.[20]

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

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

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

20 15 U.S.C. 78s(b)(2)(B).

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