SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-99532; File No. SR-NYSEARCA-2024-15)

February 13, 2024

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 February 12, 2024, 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 Limit of Fees on Options Strategy Executions. The Exchange proposes to implement the fee change effective February 12, 2024.[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

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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 February 1, 2024 (SR-NYSEArca-2024-14) and withdrew such filing on February 12, 2024.

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 modify the Limit of Fees on Options Strategy Executions (the "Strategy Cap" or "Cap"), effective February 12, 2024.

Background

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 17 options venues to which market participants may direct their order flow. Based on publicly available information, no single options exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades. Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in December 2023, the Exchange had less than 13% market share of executed volume of multiply-listed equity and ETF options trades. Thus, in such a low-concentrated and highly competitive market, no single options exchange possesses significant pricing power in the execution of option order flow.

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 use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain the Exchange's transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. In response to the competitive environment, the Exchange offers specific rates and credits in its Fees Schedule, as do other competing options exchanges, which the Exchange believes provide incentive to OTP Holder and OTP Firms (collectively, "OTP Holders") to increase order flow of certain qualifying orders -- the Strategy Cap (as described below) is one such incentive.

Proposed Fee Change

Currently, the Fee Schedule provides that transaction fees for OTP Holders are limited or capped at $1,000 for certain options strategy executions "on the same trading day," meaning the Strategy Cap is a daily fee cap.[5] Strategy executions that qualify for the Strategy Cap are (a) reversals and conversions, (b) box spreads, (c) short stock interest spreads, (d) merger spreads, (e) jelly rolls, and (f) dividends, which are described in detail in the Fee Schedule (the "Strategy Executions").[6] The Exchange also offers a lower daily Strategy Cap of $200 for OTP Holders that trade at least 25,000 monthly billable contract sides in Strategy Executions (the "minimum billable sides requirement"). Thus, the Exchange caps the daily Strategy Execution fees at $200 for each day of the month (as opposed to $1,000 for nonqualifying OTP Holders) for OTP Holders that meet the minimum billable sides requirement.

[5] See Fee Schedule, Limit of Fees on Options Strategy Executions, available here: https://www.nyse.com/publicdocs/nyse/markets/arcaoptions/NYSE_Arca_Options_Fee_Schedule.pdf.

[6] See id., Endnote 10 (describing each Strategy Execution).

The Exchange proposes to reduce the Strategy Cap from $1,000 to $200 and to remove the minimum billable sides requirement to qualify for this lower $200 daily Cap. Put another way, the Exchange proposes to cap daily fees for Strategy Executions at $200 for each day of the month regardless of an OTP Holder's monthly billable volume in Strategy Executions.[7]

The Exchange notes that the proposed fee change is designed to compete with other options exchanges that likewise cap fees on certain options strategies.[8] Therefore, the Exchange believes the proposed reduction of the Strategy Cap may further incentivize OTP Holders to direct Strategy Executions to the Exchange.

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 discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed change to the Strategy Cap is reasonable, equitable, and not unfairly discriminatory. As noted above, the Exchange operates in highly

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7 See proposed Fee Schedule, Limit of Fees on Options Strategy Executions.

8 The Exchange notes that at least three other options exchanges offer a daily fee cap on certain option strategies, which caps range from as little $0 (on Cboe Exchange, Inc. ("Cboe") to a much as $1,100 (on Nasdaq PHLX LLC ("PHLX ") and differ based on the specific strategies executed and the type of market participants on the trade. See, e.g., Cboe Fee Schedule, Footnote 13, available here: https://cdn.cboe.com/resources/membership/Cboe_FeeSchedule.pdf; PHLX Options 7, Pricing Schedule, Section 4 (Strategy Caps), available here: https://listingcenter.nasdaq.com/rulebook/phlx/rules/Phlx%20Options%207. See also BOX Options Market LLC ("BOX") Fee Schedule, Section V.D, Strategy Qualified Open Outcry "QOO" Order Fee Cap and Rebate, available here: https://boxexchange.com/regulatory/fees/. Despite the nuances in how each option exchange applies the various strategy caps, the Exchange directly competes with these exchanges for order flow in options strategy executions.

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

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

competitive market. The Exchange is only one of several options venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. As such, market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The Exchange believes that the proposed fee change is reasonable, equitable, and not unfairly discriminatory in that the Exchange and competing options exchanges currently offer reduced fees or credits in connection with strategy orders.[11]

The Exchange notes that the proposed change would be applied uniformly to all similarly-situated OTP Holders. Moreover, the Exchange believes that the proposed change would further incentivize OTP Holder [sic] to direct Strategy Executions to the Exchange and may encourage them to aggregate their Strategy Executions at the Exchange as the primary execution venue. For example, this proposed change may encourage OTP Holders to increase their Strategy Execution volumes by executing (often smaller) strategies that are not necessarily economically viable on a per symbol basis, but which may be profitable when fees on Strategy Executions -- regardless of symbol -- are capped for the trading day. To the extent that the proposed change attracts more Strategy Executions, this increased order flow may make the Exchange a more competitive venue for order execution. In addition, the Exchange notes that all market participants stand to benefit from increased volume, which promotes market depth, facilitates tighter spreads, and enhances price discovery, and may lead to a corresponding increase in order flow from other market participants.

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

11 See, e.g., supra note 8 (describing similar fee caps available on Cboe, PHLX, and BOX).

reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain options exchange transaction fees. Stated differently, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow. The Exchange believes the proposed change is a reasonable attempt to effectively compete for Strategy Executions. The Exchange believes that the proposed change may encourage OTP Holders to conduct Strategy Executions on the Exchange and, in turn, may increase the depth of the market to the benefit of all market participants. The Exchange notes that OTP Holders may avail themselves of the Exchange's proposed Strategy Cap or they can opt for similar offerings at another exchange.[12]

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.

The proposed change is designed to attract additional order flow to the Exchange, particularly Strategy Executions. In particular, the Exchange believes that the proposed change could further incentivize market participants to direct their Strategy Executions to the Exchange. As noted herein, the proposed Strategy Cap would be applicable to all similarly-situated market participants, and, as such, the proposed change would not impose a disparate burden on competition among OTP Holders. The Exchange believes that the proposed change may continue to encourage OTP Holders to conduct Strategy Executions on the Exchange, which increased liquidity and quote competition on the Exchange benefits all market participants.

[12] See, e.g., supra note 8 (describing similar fee caps available on Cboe, PHLX, and BOX).

The Exchange also does not believe that the proposed Strategy Cap will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the Act because, as noted above, other competing options exchanges currently has [sic] a similar fee cap in place in connection with strategy orders.[13] Because competitors are free to modify their own fees or fee caps in response to competing exchanges, the Exchange believes that the degree to which changes in this market may impose any burden on competition is limited. Further, the Exchange believes that the proposed change could promote competition between the Exchange and other execution venues, including those that currently offer similar strategy order fees or fee caps. Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

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)[14] of the Act and subparagraph (f)(2) of Rule 19b-4[15] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

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13 Id.

14 15 U.S.C. 78s(b)(3)(A).

15 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)[16] 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-2024-15 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-2024-15. 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).

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16 15 U.S.C. 78s(b)(2)(B).

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-2024-15 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.[17]

Sherry R. Haywood,

Assistant Secretary.

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