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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No.* SR - 2019 - * 90
Amendment No. (req. for Amendments *)

Filing by NYSE Arca, Inc.

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
☑	☐	☐	☐	☑	☐

Pilot	Extension of Time Period for Commission Action *	Date Expires *
☐	☐	

Rule

☐ 19b-4(f)(1)	☐ 19b-4(f)(4)
☑ 19b-4(f)(2)	☐ 19b-4(f)(5)
☐ 19b-4(f)(3)	☐ 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) *	Section 806(e)(2) *
☐	☐

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934

Section 3C(b)(2) * ☐

Exhibit 2 Sent As Paper Document ☐

Exhibit 3 Sent As Paper Document ☐

Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Proposal to amend the NYSE Arca Options Fee Schedule relating to the MM FAANG Credit

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name *	Kathleen	Last Name *	Murphy
Title *	Senior Counsel		
E-mail *	kathleen.murphy@theice.com		
Telephone *	(212) 656-4841	Fax	(212) 656-8101

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 12/09/2019

By David De Gregorio

(Name *)

(Title *)

Senior Counsel

David De Gregorio,

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Required fields are shown with yellow backgrounds and asterisks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information * Add Remove View	The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.
Exhibit 1 - Notice of Proposed Rule Change * Add Remove View	The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO] -xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)
Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies * Add Remove View	The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO] -xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)
Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications Add Remove View Exhibit Sent As Paper Document ☐	Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.
Exhibit 3 - Form, Report, or Questionnaire Add Remove View Exhibit Sent As Paper Document ☐	Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.
Exhibit 4 - Marked Copies Add Remove View	The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.
Exhibit 5 - Proposed Rule Text Add Remove View	The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.
Partial Amendment Add Remove View	If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

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 amend the NYSE Arca Options Fee Schedule ("Fee Schedule") relating to the MM FAANG Credit. The Exchange proposes to implement the fee change effective December 9, 2019.

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 will 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 persons on the Exchange staff prepared to respond to questions and comments on the proposed rule change are:

Kathleen E. Murphy	Peter G. Armstrong
Senior Counsel	Manager, Options
NYSE Group, Inc.	NYSE Group, Inc.
(212) 656-4841	(415) 318-1924

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 modify an incentive program (described below), which is designed to encourage Market Makers to provide more competitive prices and deeper liquidity in options on the NYSE FANG+ Index ("NYSE FANG+"), which trades under the symbol FAANG. FAANG is an acronym for

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

[2] 17 CFR 240.19b-4.

the market's five most popular and best-performing tech stocks, namely Facebook, Apple, Amazon, Netflix and Alphabet's Google.

Currently, the Exchange offers a $5,000 credit to Market Maker organizations -- specifically, NYSE Arca Options Market Makers or Lead Market Makers -- that execute at least 500 total monthly contract sides that open a position in FAANG on the Exchange (the "MM FAANG Credit" or "Credit"). The Credit, which is applied against all Exchange fees charged to a Market Maker, is currently capped at $50,000, so if more than ten Market Maker organizations qualify for a MM FAANG Credit in a calendar month, the MM FAANG Credit for each qualifying firm will be a pro rata share of $50,000.[3]

The Exchange proposes to continue to provide $50,000 in Credits to encourage Market Maker organizations to provide liquidity in FAANG, but provide for two different qualifying levels with different monthly credits. As proposed, the Exchange proposes to add an alternative, higher monthly credit of $10,000 for Market Maker Organizations that execute at least 2,000 total monthly contract sides that open a position in FAANG on the Exchange. This credit would be capped at $25,000. Accordingly, if more than two firms qualify, they must share $25,000 pro rata. The Exchange also proposes to reduce the total credits available for firms that qualify for the current Credit from $50,000 to $25,000, and similarly reduce the fewest number of qualifying firms that would be entitled to the full Credit from eleven to six. The Exchange believes that the proposed change would incent firms that have historically qualified for the Credit to trade greater volume to earn the higher (proposed) Credit. And, believes that the lower (existing) volume threshold should still attract firms (including those that have never achieved the Credit) to trade the requisite volume in FAANG to earn the Credit.

The Exchange proposes to implement the fee change effective December 9, 2019.

<u>Background</u>

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

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3 <u>See</u> Fee Schedule, NYSE Arca OPTIONS: TRADE-RELATED CHARGES FOR STANDARD OPTIONS, MM FAANG Credit, <u>available</u> <u>here</u>: https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf.

successful in promoting market competition in its broader forms that are most important to investors and listed companies."[4]

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.[5] Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in the first quarter of 2019, the Exchange had less than 10% market share of executed volume of multiply-listed equity & ETF options trades.[6]

With respect to FAANG, this index is listed and traded only on the Exchange and NYSE American LLC ("NYSE American"). However, this index product competes with market participants that choose to create their own synthetic index product by trading in the basket of securities that comprise the FAANG index. This proposed fee change is designed to increase liquidity for market participants that would like to trade FAANG by encouraging Market Maker organizations to open more positions in FAANG on the Exchange.

Proposed Fee Change

The Exchange proposes to modify the existing Credit and add an alternative that offers a higher credit for firms that execute a higher number of total monthly contract sides that open a position in FAANG on the Exchange, as set forth in more detail below. With this proposed change, the total amount available under the Credit would not be changing. Rather, the Exchange would make available a higher per-firm credit for firms that provide more liquidity in FAANG. The Exchange believes the proposed modifications would further the Exchange's goal of encouraging Market Makers to make a market in these (relatively) new products, which would in turn, benefit market participants that are interested in trading FAANG.

To effect this change, the Exchange proposes to modify the Credit to reduce the cap on the credits available for the existing qualification from $50,000 to $25,000. With this change, if more than five (as opposed to more than ten) firms execute at

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

5 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/volume/default.jsp.

6 Based on OCC data, see id., the Exchange's market share in equity-based options declined from 9.57% for the month of January to 9.23% for the month of September.

least 500 total monthly FAANG contract sides in a calendar month, the Credit for each qualifying firm would be a pro rata share of $25,000 (down from $50,000).[7] The Exchange also proposes to make clear that the limitation of five firms qualifying for the MM FAANG Credit applies to the $5,000 credit.[8]

The Exchange also proposes to add an alternative Credit to the same Market Maker organizations described above. As proposed, any such firm that executes at least 2,000 total monthly contract sides that open a position in FAANG on the Exchange would qualify for a credit of $10,000; provided, however, that if more than two firms qualify for the proposed (higher) FAANG Credit in a calendar month, the MM FAANG Credit for each qualifying firm would be a pro rata share of $25,000.[9] As further proposed, a Market Maker firm that qualified for both Credits would be eligible for only one of the two alternatives (i.e., the higher). As proposed, the Exchange's maximum exposure under the Credit would continue to be $50,000, but this cap would be split between the two different qualifying rates.

The Exchange believes the proposed modified MM FAANG Credit would further the Exchange's goal of encouraging trading in this (relatively) new index product, in particular by encouraging Market Makers to provide increased liquidity in tighter markets, which would in turn, benefit all market participants through more opportunities to trade.

(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

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7 See proposed Fee Schedule, NYSE Arca OPTIONS: TRADE-RELATED CHARGES FOR STANDARD OPTIONS, MM FAANG Credit.

8 See id. In light of the proposed changes, to make the Fee Schedule easier to navigate, the Exchange also proposes to describe each alternative credit in bullet points, with typographical edits to the current rule text for clarity, and to remove reference to "$5,000" where it appears in the current rule and to add the concept of a "specified minimum number" of "eligible contract sides." See id.

9 See id. As with the current Credit, only those FAANG transactions marked as "open" would be eligible to be counted towards the MM FAANG Credit. To add clarity and transparency to the Fee Schedule, the Exchange also proposes to add the word "FAANG" prior to the word contracts to make clear that this MM FAANG Credits applies only to such contracts. See id.

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

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

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."[12]

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.[13] Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in the third quarter of 2019, the Exchange had less than 10% 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. Accordingly, competitive forces constrain options exchange transaction fees. Stated otherwise, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

While FAANG lists and trades only on the Exchange and NYSE American, this index product competes with market participants that choose to create their own synthetic index product by trading in the basket of securities that comprise the FAANG index. This proposed fee change is designed to increase liquidity for market participants that would like to trade FAANG by encouraging Market Maker organizations to open more positions in FAANG on the Exchange.

More specifically, the Exchange believes that the proposed modification to the MM FAANG Credit is designed to generate additional order flow to the Exchange

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12 See Reg NMS Adopting Release, supra note 4, at 37499.

13 See supra note 5.

14 Based on OCC data, see supra note 6, in 2019, the Exchange's market share in equity-based options declined from 9.57% for the month of January to 9.23% for the month of September.

by creating incentives to transact in FAANG, which increased liquidity would benefit all market participants, including non-Market Makers that are interested in trading FAANG. The Exchange believes that the proposed change would incent firms that have historically qualified for the Credit to trade greater volume to earn the higher (proposed) Credit. And, believes that the lower (existing) volume threshold should still attract firms (including those that have never achieved the Credit) to trade the requisite volume in FAANG to earn the Credit. To the extent that the proposed change attracts more FAANG transactions to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for order execution, which, in turn, promotes just and equitable principles of trade and removes impediments to and perfects the mechanism of a free and open market and a national market system.

To the extent the proposed change continues to attract greater volume and liquidity (to the Floor or otherwise), 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 trading opportunities to better compete with other exchange offerings.

The Exchange cannot predict with certainty whether any firms would avail themselves of this proposed fee change, as historically, whether or when a firm qualifies for the MM FAANG Credit has varied month to month. Assuming historical behavior can be predictive of future behavior, the Exchange cannot predict the number of firms that may qualify for the alternative MM FAANG Credit, but believes that firms would be encouraged to take advantage of the modified Credit.

Finally, the Exchange believes that the technical changes to the rule text (i.e., clarifying "FAANG contract sides" and including concept of a specified minimum number of "eligible contract sides") is reasonable as it would streamline the Fee Schedule, adding clarity and transparency, thereby making the Fee Schedule easier for market participants to navigate.[15]

<u>The Proposed Rule Change is an Equitable Allocation of Credits and Fees</u>

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 Market Makers can opt to avail themselves of the MM FAANG Credit or not. To the extent that the proposed change attracts more FAANG transactions to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for, among other things, order execution. Thus, the Exchange believes the proposed rule change would improve

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15 <u>See</u> <u>supra</u> notes 8, 9.

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 it is not unfairly discriminatory to modify the MM FAANG Credit because the proposed modification would be available to all similarly-situated market participants on an equal and non-discriminatory basis.

The proposal is based on the amount and type of business transacted on the Exchange and Market Maker organizations are not obligated to try to achieve the MM FAANG Credit. In addition, Market Maker organizations have increased obligations with respect to trading on the Exchange, and the Exchange believes that making this this Credit available to Market Maker organizations would more likely result in increased liquidity in FAANG on the Exchange. To the extent that the proposed change attracts a variety of transactions to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for, among other things, 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.

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."[16]

Intramarket Competition. The proposed change is designed to attract additional order flow to the Exchange by improving quote quality. The Exchange also believes the proposed Credit, as modified, is procompetitive as it would further the Exchange's goal of introducing (relatively) new products to the marketplace and encouraging Market Makers to provide liquidity in these products, which would in turn, benefit all market participants. Market participants that do not wish to trade in FAANG are not obliged to do so. To the extent that there is an additional competitive burden on market participants that are not eligible for the modified MM FAANG Credit (i.e., non-Market Maker organizations), the Exchange believes that this is appropriate because the proposal would incent Market Makers to transact in FAANG, which would enhance the quality of the Exchange's markets and increases the volume of contracts traded here. To the extent that this purpose is achieved, all of the Exchange's market participants should benefit from the improved market liquidity. Enhanced market quality and increased transaction volume that results from the anticipated increase in order flow directed to the Exchange will benefit all market participants and improve competition on the Exchange. Further, the proposed Credit would be applied to all similarly situated participants (i.e., Market Maker organizations), and, as such, the proposed change would not impose a disparate burden on competition either among or between classes of market participants.

Finally, the Exchange believes that the technical changes to the rule text (i.e., clarifying "FAANG contract sides" and including concept of a specified minimum number of "eligible contract sides") do not impose an undue burden on competition. Instead, the proposed changes would add clarity and transparency making the Fee Schedule easier for market participants to navigate.[17]

Intermarket Competition. While there is limited intermarket competition with respect to FAANG, as it lists and trades only on the Exchange and NYSE American, this index product competes with market participants that choose to create their own synthetic index product by trading in the basket of securities that comprise the FAANG index on other exchanges. This proposed fee change would therefore promote intermarket competition because it is designed to increase liquidity for market participants that would like to trade FAANG by encouraging Market Maker organizations to open more positions in FAANG on the Exchange. The Exchange believes that the proposed change could promote competition between the Exchange and other execution venues, by encouraging additional orders to be sent to the Exchange for execution. The Exchange does not believe that the proposed change will impair the ability of any market participants or competing order execution venues to maintain their competitive standing in the

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16 See Reg NMS Adopting Release, supra note 4, at 37499.

17 See supra notes 8, 9.

financial markets.

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] 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.[19]

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

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

19 15 U.S.C. 78s(b)(2)(B).

Federal Register

Exhibit 5 – Amendment to the Exchange's Fee Schedule

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-NYSEARCA-2019-90)

[Date]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the NYSE Arca Options Fee Schedule relating to the MM FAANG Credit

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b-4 thereunder,[3] notice is hereby given that, on December 9, 2019, 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, II, and III 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 amend the NYSE Arca Options Fee Schedule ("Fee Schedule") relating to the MM FAANG Credit. The Exchange proposes to implement the fee change effective December 9, 2019. 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

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

2 15 U.S.C. 78a.

3 17 CFR 240.19b-4.

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 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 an incentive program (described below), which is designed to encourage Market Makers to provide more competitive prices and deeper liquidity in options on the NYSE FANG+ Index ("NYSE FANG+"), which trades under the symbol FAANG. FAANG is an acronym for the market's five most popular and best-performing tech stocks, namely Facebook, Apple, Amazon, Netflix and Alphabet's Google.

Currently, the Exchange offers a $5,000 credit to Market Maker organizations -- specifically, NYSE Arca Options Market Makers or Lead Market Makers -- that execute at least 500 total monthly contract sides that open a position in FAANG on the Exchange (the "MM FAANG Credit" or "Credit"). The Credit, which is applied against all Exchange fees charged to a Market Maker, is currently capped at $50,000, so if more than ten Market Maker organizations qualify for a MM FAANG Credit in a calendar month, the MM FAANG Credit for each qualifying firm will be a pro rata share of $50,000.[4]

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[4] See Fee Schedule, NYSE Arca OPTIONS: TRADE-RELATED CHARGES FOR STANDARD OPTIONS, MM FAANG Credit, available here:

The Exchange proposes to continue to provide $50,000 in Credits to encourage Market Maker organizations to provide liquidity in FAANG, but provide for two different qualifying levels with different monthly credits. As proposed, the Exchange proposes to add an alternative, higher monthly credit of $10,000 for Market Maker Organizations that execute at least 2,000 total monthly contract sides that open a position in FAANG on the Exchange. This credit would be capped at $25,000. Accordingly, if more than two firms qualify, they must share $25,000 pro rata. The Exchange also proposes to reduce the total credits available for firms that qualify for the current Credit from $50,000 to $25,000, and similarly reduce the fewest number of qualifying firms that would be entitled to the full Credit from eleven to six. The Exchange believes that the proposed change would incent firms that have historically qualified for the Credit to trade greater volume to earn the higher (proposed) Credit. And, believes that the lower (existing) volume threshold should still attract firms (including those that have never achieved the Credit) to trade the requisite volume in FAANG to earn the Credit.

The Exchange proposes to implement the fee change effective December 9, 2019.

Background

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

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https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf.

competition in its broader forms that are most important to investors and listed companies."[5]

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.[6] Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in the first quarter of 2019, the Exchange had less than 10% market share of executed volume of multiply-listed equity & ETF options trades.[7]

With respect to FAANG, this index is listed and traded only on the Exchange and NYSE American LLC ("NYSE American"). However, this index product competes with market participants that choose to create their own synthetic index product by trading in the basket of securities that comprise the FAANG index. This proposed fee change is designed to increase liquidity for market participants that would like to trade FAANG by encouraging Market Maker organizations to open more positions in FAANG on the Exchange.

<u>Proposed Fee Change</u>

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

6 The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, <u>available</u> <u>here</u>: https://www.theocc.com/market-data/volume/default.jsp.

7 Based on OCC data, <u>see</u> <u>id.</u>, the Exchange's market share in equity-based options declined from 9.57% for the month of January to 9.23% for the month of September.

The Exchange proposes to modify the existing Credit and add an alternative that offers a higher credit for firms that execute a higher number of total monthly contract sides that open a position in FAANG on the Exchange, as set forth in more detail below. With this proposed change, the total amount available under the Credit would not be changing. Rather, the Exchange would make available a higher per-firm credit for firms that provide more liquidity in FAANG. The Exchange believes the proposed modifications would further the Exchange's goal of encouraging Market Makers to make a market in these (relatively) new products, which would in turn, benefit market participants that are interested in trading FAANG.

To effect this change, the Exchange proposes to modify the Credit to reduce the cap on the credits available for the existing qualification from $50,000 to $25,000. With this change, if more than five (as opposed to more than ten) firms execute at least 500 total monthly FAANG contract sides in a calendar month, the Credit for each qualifying firm would be a pro rata share of $25,000 (down from $50,000).[8] The Exchange also proposes to make clear that the limitation of five firms qualifying for the MM FAANG Credit applies to the $5,000 credit.[9]

The Exchange also proposes to add an alternative Credit to the same Market Maker organizations described above. As proposed, any such firm that executes at least 2,000 total monthly contract sides that open a position in FAANG on the Exchange

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8 See proposed Fee Schedule, NYSE Arca OPTIONS: TRADE-RELATED CHARGES FOR STANDARD OPTIONS, MM FAANG Credit.

9 See id. In light of the proposed changes, to make the Fee Schedule easier to navigate, the Exchange also proposes to describe each alternative credit in bullet points, with typographical edits to the current rule text for clarity, and to remove reference to "$5,000" where it appears in the current rule and to add the concept of a "specified minimum number" of "eligible contract sides." See id.

would qualify for a credit of $10,000; provided, however, that if more than two firms qualify for the proposed (higher) FAANG Credit in a calendar month, the MM FAANG Credit for each qualifying firm would be a pro rata share of $25,000.[10] As further proposed, a Market Maker firm that qualified for both Credits would be eligible for only one of the two alternatives (i.e., the higher). As proposed, the Exchange's maximum exposure under the Credit would continue to be $50,000, but this cap would be split between the two different qualifying rates.

The Exchange believes the proposed modified MM FAANG Credit would further the Exchange's goal of encouraging trading in this (relatively) new index product, in particular by encouraging Market Makers to provide increased liquidity in tighter markets, which would in turn, benefit all market participants through more opportunities to trade.

2. <u>Statutory Basis</u>

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

<u>The Proposed Rule Change is Reasonable</u>

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10 <u>See</u> <u>id</u>. As with the current Credit, only those FAANG transactions marked as "open" would be eligible to be counted towards the MM FAANG Credit. To add clarity and transparency to the Fee Schedule, the Exchange also proposes to add the word "FAANG" prior to the word contracts to make clear that this MM FAANG Credits applies only to such contracts. <u>See</u> <u>id</u>.

11 15 U.S.C. 78f(b).

12 15 U.S.C. 78f(b)(4) and (5).

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."[13]

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.[14] Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in the third quarter of 2019, the Exchange had less than 10% market share of executed volume of multiply-listed equity & ETF options trades.[15]

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, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

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13 See Reg NMS Adopting Release, supra note 5, at 37499.

14 See supra note 6.

15 Based on OCC data, see supra note 7, in 2019, the Exchange's market share in equity-based options declined from 9.57% for the month of January to 9.23% for the month of September.

While FAANG lists and trades only on the Exchange and NYSE American, this index product competes with market participants that choose to create their own synthetic index product by trading in the basket of securities that comprise the FAANG index. This proposed fee change is designed to increase liquidity for market participants that would like to trade FAANG by encouraging Market Maker organizations to open more positions in FAANG on the Exchange.

More specifically, the Exchange believes that the proposed modification to the MM FAANG Credit is designed to generate additional order flow to the Exchange by creating incentives to transact in FAANG, which increased liquidity would benefit all market participants, including non-Market Makers that are interested in trading FAANG. The Exchange believes that the proposed change would incent firms that have historically qualified for the Credit to trade greater volume to earn the higher (proposed) Credit. And, believes that the lower (existing) volume threshold should still attract firms (including those that have never achieved the Credit) to trade the requisite volume in FAANG to earn the Credit. To the extent that the proposed change attracts more FAANG transactions to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for order execution, which, in turn, promotes just and equitable principles of trade and removes impediments to and perfects the mechanism of a free and open market and a national market system.

To the extent the proposed change continues to attract greater volume and liquidity (to the Floor or otherwise), 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 trading opportunities to better compete with other exchange offerings.

The Exchange cannot predict with certainty whether any firms would avail themselves of this proposed fee change, as historically, whether or when a firm qualifies for the MM FAANG Credit has varied month to month. Assuming historical behavior can be predictive of future behavior, the Exchange cannot predict the number of firms that may qualify for the alternative MM FAANG Credit, but believes that firms would be encouraged to take advantage of the modified Credit.

Finally, the Exchange believes that the technical changes to the rule text (i.e., clarifying "FAANG contract sides" and including concept of a specified minimum number of "eligible contract sides") is reasonable as it would streamline the Fee Schedule, adding clarity and transparency, thereby making the Fee Schedule easier for market participants to navigate.[16]

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 Market Makers can opt to avail themselves of the MM FAANG Credit or not. To the extent that the proposed change attracts more FAANG transactions to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for, among other things, order execution. Thus, the Exchange believes the proposed rule change would improve market quality for all market participants on the

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16 See supra notes 9, 10.

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 it is not unfairly discriminatory to modify the MM FAANG Credit because the proposed modification would be available to all similarly-situated market participants on an equal and non-discriminatory basis.

The proposal is based on the amount and type of business transacted on the Exchange and Market Maker organizations are not obligated to try to achieve the MM FAANG Credit. In addition, Market Maker organizations have increased obligations with respect to trading on the Exchange, and the Exchange believes that making this this Credit available to Market Maker organizations would more likely result in increased liquidity in FAANG on the Exchange. To the extent that the proposed change attracts a variety of transactions to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for, among other things, 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. <u>Self-Regulatory Organization's Statement on Burden on Competition</u>

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."[17]

Intramarket Competition. The proposed change is designed to attract additional order flow to the Exchange by improving quote quality. The Exchange also believes the proposed Credit, as modified, is procompetitive as it would further the Exchange's goal of introducing (relatively) new products to the marketplace and encouraging Market Makers to provide liquidity in these products, which would in turn, benefit all market participants. Market participants that do not wish to trade in FAANG are not obliged to do so. To the extent that there is an additional competitive burden on market participants that are not eligible for the modified MM FAANG Credit (i.e., non-Market Maker organizations), the Exchange believes that this is appropriate because the proposal would incent Market Makers to transact in FAANG, which would enhance the quality of the Exchange's markets and increases the volume of contracts traded here. To the extent that

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[17] <u>See</u> Reg NMS Adopting Release, <u>supra</u> note 5, at 37499.

this purpose is achieved, all of the Exchange's market participants should benefit from the improved market liquidity. Enhanced market quality and increased transaction volume that results from the anticipated increase in order flow directed to the Exchange will benefit all market participants and improve competition on the Exchange. Further, the proposed Credit would be applied to all similarly situated participants (i.e., Market Maker organizations), and, as such, the proposed change would not impose a disparate burden on competition either among or between classes of market participants.

Finally, the Exchange believes that the technical changes to the rule text (i.e., clarifying "FAANG contract sides" and including concept of a specified minimum number of "eligible contract sides") do not impose an undue burden on competition. Instead, the proposed changes would add clarity and transparency making the Fee Schedule easier for market participants to navigate.[18]

Intermarket Competition. While there is limited intermarket competition with respect to FAANG, as it lists and trades only on the Exchange and NYSE American, this index product competes with market participants that choose to create their own synthetic index product by trading in the basket of securities that comprise the FAANG index on other exchanges. This proposed fee change would therefore promote intermarket competition because it is designed to increase liquidity for market participants that would like to trade FAANG by encouraging Market Maker organizations to open more positions in FAANG on the Exchange. The Exchange believes that the proposed change could promote competition between the Exchange and other execution venues, by encouraging additional orders to be sent to the Exchange for execution. The Exchange does not

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18 See supra notes 9, 10.

believe that the proposed change will impair the ability of any market participants or competing order execution venues to maintain their competitive standing in the financial markets.

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)[19] of the Act and subparagraph (f)(2) of Rule 19b-4[20] 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)[21] 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

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19 15 U.S.C. 78s(b)(3)(A).

20 17 CFR 240.19b-4(f)(2).

21 15 U.S.C. 78s(b)(2)(B).

the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEARCA-2019-90 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-2019-90. This file number should be included on the subject line if e-mail 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 (http://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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEARCA-2019-90 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Eduardo A. Aleman
Deputy Secretary

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[22] 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Additions underscored
Deletions [bracketed]

NYSE Arca Options Fees and Charges

Effective Date: December [2]9, 2019

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NYSE Arca OPTIONS: TRADE-RELATED CHARGES FOR STANDARD OPTIONS[14]

Unless Professional Customer executions are specifically delineated, such executions will be treated as "Customer" executions for fee/credit purposes. Firms, Broker Dealers, and Market Makers are collectively referred to herein as "Non-Customers."

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NYSE FANG+ Index (FAANG) Transaction Fees*	
Fees	**Rate Per Contract**
All Non-Customers and Professional Customers – Per Contract Side	$0.35
All Customers – Per Contract Side	$0.00
Market Makers	$0.00
**Fees apply to both Manual and Electronic Executions.*	

MM FAANG Credit: The Exchange will provide a credit [of $5,000] to any firm that is an NYSE Arca Options Market Maker or LMM that executes a specified minimum number of[at least 500] total monthly contract sides that open a position in FAANG on the Exchange ("eligible contract sides"), as set forth below ("MM FAANG Credit"):

- a credit of $5,000 for a minimum of 500 eligible contract sides; provided, however, that if more than [ten]five firms qualify for [a]this $5,000 MM FAANG Credit in a calendar month, the MM FAANG Credit for each qualifying firm will be a pro rata share of [$50,000.]$25,000; or
- a credit of $10,000 for a minimum of 2,000 eligible contract sides; provided, however, that if more than two firms qualify for this $10,000 MM FAANG Credit in a calendar month, the MM FAANG Credit for each qualifying firm will be a pro rata share of $25,000. A firm that qualifies for the $10,000 credit will not be eligible for the $5,000 credit.

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