Required fields are shown with yellow backgrounds and asterisks.

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

File No. * SR 2023 - * 25
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

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 * Le-Anh Last Name * Bui

Title * Counsel, NYSE Group Inc.

E-mail * Le-Anh.Bui@ice.com

Telephone * (212) 656-2225 Fax (212) 656-8101

Signature

Pursuant to the requirements of the Securities Exchange of 1934, NYSE Arca, Inc.
has duty caused this filing to be signed on its behalf by the undersigned thereunto duty authorized.

Date 03/15/2023

By David De Gregorio
(Name *)

(Title *)
Associate General Counsel

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

David De Gregorio
Digitally signed by David De Gregorio
Date: 2023.03.15 16:20:58 -04'00'

Required fields are shown with yellow backgrounds and astericks.

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 SEC Sub 19b-4 Re-file NYSE Arca QC	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 Ex. 1 SEC Sub 19b-4 Re-file NYSE Ar	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 Advanced 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 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	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 Sent As Paper Document
Exhibit 3 - Form, Report, or Questionnaire Add Remove View	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 Sent As Paper Document
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 Ex. 5 SEC Sub 19b-4 Re-file NYSE Ar	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 modify the NYSE Arca Options Fee Schedule ("Fee Schedule") regarding (1) credits for Qualified Contingent Cross ("QCC") transactions, (2) fees applicable to routed orders, and (3) certain Market Maker incentives. The Exchange proposes to implement the fee changes effective March 15, 2023.[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 persons on the Exchange staff prepared to respond to questions and comments on the proposed rule change are:

Le-Anh Bui
Counsel
NYSE Group, Inc.
(212) 656-2225

Peter Armstrong
Manager, Options
NYSE Group, Inc.
(415) 318-1924

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

(a) Purpose

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

2 17 CFR 240.19b-4.

3 The Exchange previously filed to amend the Fee Schedule on March 1, 2023 (SR-NYSEARCA-2023-22) and withdrew such filing on March 15, 2023.

The purpose of this filing is to amend the Fee Schedule to (1) provide for additional credits to qualifying Submitting Brokers for QCC transactions[4] and clarify the cap applicable to QCC credits and Floor Broker rebates earned through the Manual Billable Rebate Program ("FB Rebates"), (2) modify the Routing Fees applicable to routed orders, and (3) eliminate the Market Maker Incentive For Penny Issues and the Market Maker Incentive For Non-Penny Issues (collectively, the "Market Maker Incentives"). The Exchange proposes to implement the rule change on March 15, 2023.

QCC Transaction Credits

Currently, the Exchange offers Submitting Brokers a credit of ($0.22) per contract for Non-Customer vs. Non-Customer QCC transactions or ($0.16) per contract for Customer vs. Non-Customer QCC transactions.[5] QCC executions in which a Customer is on both sides of the QCC trade are not eligible for a credit.[6]

The Exchange proposes to offer additional credits on QCC transactions to Submitting Brokers that meet certain monthly volume thresholds. Submitting Brokers who achieve 1.5 million QCC contracts in a month will receive an additional ($0.01) credit on Customer vs. Non-Customer QCC transactions, and an additional ($0.03) credit on Non-Customer vs. Non-Customer QCC transactions. Submitting Brokers who achieve 3 million QCC contracts in a month will receive an additional ($0.02) credit on Customer vs. Non-Customer QCC transactions, and an additional ($0.06) credit on Non-Customer vs. Non-Customer QCC transactions. The proposed additional credits would be applicable back to the first QCC contract executed by a Submitting Broker in a month, but would not be cumulative across tiers (e.g., a Submitting Broker who transacts 3.1 million QCC contracts in a month would be eligible for an additional ($0.02) credit on Customer vs. Non-Customer QCC transactions or an additional ($0.06) credit on Non-Customer vs. Non-Customer QCC transactions, but would not also earn the additional credits offered to Submitting Brokers that achieve 1.5 million QCC contracts in a month). Although the Exchange cannot predict with certainty whether the proposed change would encourage Submitting Brokers to increase their QCC volume, the proposed change is intended to continue to incentivize additional QCC executions by Submitting Brokers by increasing the credits available on such orders.

Endnote 13 of the Fee Schedule currently provides that QCC executions in which a Customer is on both sides of the QCC trade will not be eligible for the Submitting Broker credit and that there is a $375,000 maximum monthly credit per firm on QCC

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4 A QCC Order is defined as an originating order to buy or sell at least 1,000 contracts that is identified as being part of a qualified contingent trade coupled with a contra-side order or orders totaling an equal number of contracts. See Rule 6.62P-O(g)(1)(A).

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

6 See id.

transactions by a Submitting Broker.[7] The Exchange recently modified the Fee Schedule to provide that Submitting Broker QCC credits and Floor Broker rebates earned through the Manual Billable Rebate Program may not combine to exceed $2,000,000 per month per firm (the "Monthly Credit and Rebate Cap").[8] To improve the clarity of the Fee Schedule and obviate potential confusion regarding the applicability of the Monthly Credit and Rebate Cap, the Exchange proposes to delete the second sentence of Endnote 13 (which describes the $375,000 maximum monthly credit on QCC transactions by a Submitting Broker), add new Endnote 17, and modify the table setting forth Submitting Broker QCC credits to reference Endnote 17. Endnote 17 would contain the same text already reflected in the Fee Schedule describing the Monthly Credit and Rebate Cap.[9] The Exchange believes that Endnote 17 would add clarity to the Fee Schedule regarding the maximum amount that a firm could earn per month from Submitting Broker QCC credits and FB Rebates combined.

<u>Routing Fees</u>

The Exchange currently charges an $0.11 per contract fee on orders routed and executed on another exchange, plus (i) any transaction fees assessed by the away exchange (calculated on an order-by-order basis since different away exchanges charge different amounts) or (ii) if the actual transaction fees assessed by the away exchange(s) cannot be determined prior to the execution, the highest per contract charge assessed by the away exchange(s) for the relevant option class and type of market participant (e.g., Customer, Firm, Broker/Dealer, Professional Customer or Market Maker).[10] The Exchange applies the Routing Fees in addition to any customary execution fees applicable to the order.

The Exchange now proposes to modify the Routing Fees to be based on whether the routed order is in a Penny or non-Penny issue and to establish a single fee that would be applicable to all routed orders in Penny issues, and a single fee for routed orders in non-Penny issues. Specifically, the Exchange proposes that the fee for routed orders would be, similar in structure to current Routing Fees, equal to $0.11 plus an amount based on the transaction fees charged by away exchanges, which the Exchange proposes to set at a fixed amount that would approximate such fees in a manner intended to counterbalance the internal resources required to support the handling of orders routed away from the Exchange. Accordingly, the Exchange proposes a Routing Fee of $0.61 in Penny issues, and $1.21 in non-Penny issues. The Exchange believes that having a single published rate for all routed orders in Penny issues and single published rate for all routed orders in non-

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7 <u>See</u> Fee Schedule, Endnote 13.

8 <u>See</u> Fee Schedule, FLOOR BROKER FIXED COST PREPAYMENT INCENTIVE PROGRAM (the "FB Prepay Program").

9 The Exchange also proposes a conforming change to delete the text describing the Monthly Credit and Rebate Cap in the section of the Fee Schedule setting forth the Floor Broker Fixed Cost Prepayment Incentive Program and add a reference to Endnote 17, as proposed.

10 <u>See</u> Fee Schedule, ROUTING FEES.

Penny issues would also reduce potential confusion relating to the amount of the Routing Fee for a given order (particularly in light of the variability in transaction fees across other options markets) and would permit market participants to determine execution costs at the time of order entry, thereby promoting clarity and transparency in the Fee Schedule.

Market Maker Incentives

The Exchange currently offers a Market Maker Incentive For Penny Issues, which provides an enhanced posting credit of $0.41 applied to electronic executions of Market Maker posted interest in Penny issues to Market Makers that achieve the volume requirement of at least 0.75% TCADV from Customer posted interest in all issues and an ADV from Market Maker posted interest in all issues other than SPY equal to 0.40% of TCADV.

The Exchange also offers a similar Market Maker Incentive For Non-Penny Issues. Market Makers that meet the volume requirement of either (1) at least 0.55% of TCADV from Market Maker posted interest in all issues, or (2) at least 1.60% of TCADV from all interest in all issues, all account types, with at least 0.15% of TCADV from Market Maker posted interest in all issues qualify for a $0.55 credit applied to electronic executions of Market Maker posted interest in non-Penny issues.

The Exchange now proposes to eliminate the Market Maker Incentives because they have not been as effective in encouraging Market Maker posted interest as other similar incentive programs. Market Makers are entitled to the highest credit on posted interest they achieve, and because the Market Maker Incentives have similar qualifying criteria but offer lower credit amounts than other volume incentive programs available to Market Makers (such as the Market Maker Penny and SPY Posting Credit Tiers or the Non-Customer, Non-Penny Posting Credit Tiers),[11] Market Makers have availed themselves of the Market Maker Incentives less frequently. Accordingly, the Exchange believes that Market Markers would not be significantly impacted by the elimination of the Market Maker Incentives, as the programs generally provided benefits that were superseded by the incentives available through other, more utilized volume incentive programs (which would continue to be available to Market Makers).

(b) Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[13] in particular, because it provides for the equitable allocation of reasonable dues, fees, and

11 See Fee Schedule, MARKET MAKER PENNY AND SPY POSTING CREDIT TIERS & NON-CUSTOMER, NON-PENNY POSTING CREDIT TIERS.

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

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

other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Rule Change is Reasonable

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."[14]

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.[15] Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in January 2023, the Exchange had less than 13% market share of executed volume of multiply-listed equity and ETF options trades.[16]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain options exchange transaction fees. Stated otherwise, modifications to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

The Exchange believes that the proposed additional QCC credits are reasonable because they are designed to incent OTP Holders to increase the number of QCC transactions sent to the Exchange by offering increased credits on QCC transactions for Submitting Brokers that meet the qualifying volume thresholds. In addition, the Exchange believes it is reasonable to offer a higher additional credit on Non-Customer vs. Non-Customer QCC transactions than on Customer vs. Non-Customer QCC transactions because Non-

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

15 The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics.

16 Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of equity-based ETF options, see id., the Exchange's market share in equity-based options decreased from 13.06% for the month of January 2022 to 12.58% for the month of January 2023.

Customer vs. Non-Customer QCC transactions are billable on both sides, whereas Customer vs. Non-Customer QCC transactions are billable on one side only. The Exchange also believes that modifying the Fee Schedule regarding the Monthly Credit and Rebate Cap is reasonable because it would add clarity to the Fee Schedule regarding the maximum monthly amount that firms may earn from Submitting Broker QCC credits and FB Rebates combined. To the extent that the proposed change attracts more volume 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. The Exchange notes that all market participants stand to benefit from any increase in volume entered by Submitting Brokers, which could promote market depth, facilitate tighter spreads and enhance price discovery, to the extent the proposed change encourages OTP Holders to utilize the Exchange as a primary trading venue, and may lead to a corresponding increase in order flow from other market participants. In addition, any increased liquidity on the Exchange would result in enhanced market quality for all participants.

The Exchange believes the proposed change to Routing Fees is reasonable because it would establish a single fee that would be applicable to all routed orders in Penny issues and a single fee that would be applicable to all routed orders in non-Penny issues, and such fees would be applicable to all market participants equally. In addition, the Exchange believes the proposed change is reasonable because the proposed fees for routed orders would be structured similarly to the current Routing Fees and are designed to assess fixed routing fees in amounts intended to appropriately counterbalance the internal resources required to support the handling of orders routed away from the Exchange. The Exchange also notes that the amounts of the proposed Routing Fees are within the range of routing fees currently charged by at least one other options exchange.[17]

The Exchange believes that eliminating the Market Maker Incentives is reasonable because the programs have been underutilized in favor of incentive programs offering higher credits on posted interest, and the Exchange will continue to offer alternative incentives for Market Makers with similar qualifying bases and credits (including the Market Maker Penny and SPY Posting Credit Tiers or the Non-Customer, Non-Penny Posting Credit Tiers). Accordingly, although Market Makers would no longer be able to qualify for credits through the Market Maker Incentives, they would still benefit from the availability of other similar incentive programs that have, to date, more successfully incentivized Market Maker posted interest.

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17 See, e.g., Cboe Exchange, Inc. Options Fee Schedule, available at: https://cdn.cboe.com/resources/membership/Cboe_FeeSchedule.pdf (providing, for example, Customer routing fees of $0.75 for orders in Penny issues or $1.25 for orders in non-Penny issues routed to certain away markets and Non-Customer routing fees of $1.17 for all orders in Penny issues or $1.45 for all orders in non-Penny issues routed away).

Finally, to the extent the proposed change continues to attract greater volume and liquidity, the Exchange believes the proposed change would improve the Exchange's overall competitiveness and strengthen its market quality for all market participants. In the backdrop of the competitive environment in which the Exchange operates, the proposed rule change is a reasonable attempt by the Exchange to increase the depth of its market and improve its market share relative to its competitors. The Exchange's fees are constrained by intermarket competition, as OTP Holders may direct their order flow to any of the 16 options exchanges, including those offering rebates on QCC transactions.[18] Thus, OTP Holders have a choice of where they direct their order flow, including their QCC transactions. The proposed rule change is designed to continue to incent OTP Holders to direct liquidity and, in particular, QCC transactions to the Exchange. In addition, to the extent OTP Holders are incentivized to aggregate their trading activity at the Exchange, that increased liquidity could promote market depth, price discovery and improvement, and enhanced order execution opportunities for market participants.

The Proposed Rule Change is an Equitable Allocation of Credits and Fees

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits. The proposed QCC credits are based on the amount and type of business transacted on the Exchange, and Submitting Brokers can attempt to submit QCC transactions to earn the credits or not. In addition, the proposed credits are equally available to all qualifying Submitting Brokers. The Exchange also believes the proposed changes regarding the Monthly Credit and Rebate Cap are equitable because they would add clarity and transparency to the Fee Schedule regarding the current maximum monthly amount that a firm could earn from combined Submitting Broker QCC credits and FB Rebates, thereby obviating potential confusion regarding the applicability of the Monthly Credit and Rebate Cap. To the extent the proposed changes continue to incent Submitting Brokers to direct increased liquidity to the Exchange, all market participants would benefit from enhanced opportunities for price improvement and order execution. Moreover, the proposed credits are designed to incent Submitting Brokers to encourage OTP Holders to aggregate their executions -- including QCC transactions -- at the Exchange as a primary execution venue. To the extent that the proposed change achieves its purpose in attracting more volume to the Exchange, this increased order flow would

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18 See, e.g., EDGX Options Exchange Fee Schedule, QCC Initiator/Solicitation Rebate Tiers (applying ($0.14) per contract rebate up to 999,999 contracts for QCC transactions when only one side of the transaction is a non-customer or ($0.22) per contract rebate up to 999,999 contracts for QCC transactions with non-customers on both sides); BOX Options Fee Schedule at Section IV.D.1. (QCC Rebate) (providing for ($0.14) per contract rebate up to 1,499,999 contracts for QCC transactions when only one side of the QCC transaction is a broker-dealer or market maker or ($0.22) per contract rebate up to 1,499,999 contracts for QCC transactions when both parties are a broker-dealer or market maker); Nasdaq ISE, Options 7, Section 6.B. (QCC Rebate) (offering rebates on QCC transactions of ($0.14) per contract when only one side of the QCC transaction is a non-customer or ($0.22) per contract when both sides of the QCC transaction are non-customers).

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 Exchange also believes the proposed change to the Routing Fees is equitable because the proposed single fee for all routed orders in Penny issues and single fee for all routed orders in non-Penny issues would apply to all market participants equally and the proposed amounts are designed to offset internal resources necessary to support the handling of orders routed away from the Exchange.

The Exchange believes that the elimination of the Market Maker Incentives is equitable because these incentives, which did not achieve their intended purpose of encouraging Market Maker posted interest, would no longer be available to any Market Makers, and, moreover, the Exchange offers Market Makers alternative methods to achieve credits of an equal or higher amount.

The Proposed Rule Change is not Unfairly Discriminatory

The Exchange believes the proposed change is not unfairly discriminatory because the proposed credits on QCC transactions would be available to all qualifying Submitting Brokers on an equal and non-discriminatory basis. The proposed change is based on the amount and type of business transacted on the Exchange, and Submitting Brokers are not obligated to execute QCC transactions. Rather, the proposal is designed to encourage Submitting Brokers to increase QCC volume sent to the Exchange and to utilize the Exchange as a primary trading venue for all transactions (if they have not done so previously). To the extent that the proposed change attracts more QCC transactions to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for order execution. Thus, the Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange, thereby improving market-wide quality and price discovery. The resulting increased volume and liquidity would provide more trading opportunities and tighter spreads to all market participants and thus would promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest.

The Exchange also believes that the proposed change to eliminate the Market Maker Incentives is also not unfairly discriminatory because the incentives, which were underutilized by Market Makers, would be eliminated in their entirety and would no longer be available to any Market Makers. In addition, Market Makers would continue to be eligible for alternative incentives currently available to them with similar credits and qualifying criteria. The Exchange also believes that the proposed changes to the Routing Fees are not unfairly discriminatory because the proposed fees are intended to assess streamlined routing fees in amounts that would appropriately account for the internal resources necessary to support orders routed away from the Exchange and would apply equally to all market participants' routed orders, based on whether such order is in a Penny or non-Penny issue.

Thus, the Exchange believes that, to the extent the proposed rule change would continue to improve market quality for all market participants on the Exchange by promoting clarity and transparency in the Fee Schedule and attract more order flow to the Exchange, thereby improving market-wide quality and price discovery, the resulting increased volume and liquidity would provide more trading opportunities and tighter spreads to all market participants and thus would promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

4. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act, the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed change would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for all market participants. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."[19]

Intramarket Competition. The proposed change with respect to QCC credits is designed to attract additional order flow to the Exchange (particularly in QCC transactions), which could increase the volumes of contracts traded on the Exchange. Greater liquidity benefits all market participants on the Exchange, and increased QCC transactions could increase opportunities for execution of other trading interest. The proposed credit would be available to all similarly-situated Submitting Brokers that execute QCC trades and achieve the volume thresholds for the additional credits. The Exchange does not believe that the proposed changes regarding Routing Fees or the Monthly Credit and Rebate Cap would impose any burden on competition that is not necessary or appropriate, as they are intended to add clarity and transparency to the Fee Schedule with respect to fees for orders routed away from the Exchange and the monthly cap on combined Submitting Broker QCC credits and FB Rebates earned by a firm. The Exchange also does not believe that the proposed changes to the Market Maker Incentives would impose any burden on intramarket competition that is not necessary or appropriate because the incentives would be eliminated for all Market Makers.

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[19] See Reg NMS Adopting Release, supra note 14, at 37499.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily favor one of the 16 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.[20] Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in January 2023, the Exchange had less than 13% market share of executed volume of multiply-listed equity and ETF options trades.[21]

The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees in a manner designed to continue to incent OTP Holders to direct trading interest (particularly QCC transactions) to the Exchange, to provide liquidity and to attract order flow. To the extent that Submitting Brokers are incentivized to utilize the Exchange as a primary trading venue for all transactions, all of the Exchange's market participants should benefit from the improved market quality and increased opportunities for price improvement.

The Exchange does not believe that the proposed changes regarding Routing Fees or the Monthly Credit and Rebate Cap would impose any burden on competition that is not necessary or appropriate, as they are intended to improve the clarity and transparency of the Fee Schedule with respect to fees for orders routed away from the Exchange and the maximum monthly amount that a firm could earn from Submitting Broker QCC credits and FB Rebates combined. The Exchange also does not believe that the proposed elimination of the Market Maker Incentives would impose any burden on competition that is not necessary or appropriate because the incentives would no longer be available to any Market Makers, and the Exchange would continue to offer Market Makers similar, alternative incentives.

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. The Exchange further believes that the proposed changes could promote competition between

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20 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.

21 Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of equity-based ETF options, see id., the Exchange's market share in equity-based options decreased from 13.06% for the month of January 2022 to 12.58% for the month of January 2023.

the Exchange and other execution venues, including those that currently offer similarly structured routing charges or that currently offer credits on QCC transactions, by encouraging additional orders (and, in particular, QCC transactions) to be sent to the Exchange for execution.[22]

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[23] and subparagraph (f)(2) of Rule 19b-4[24] 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.[25]

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

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22 See notes 17 & 18, supra.

23 15 U.S.C. 78s(b)(3)(A)(ii).

24 17 CFR 240.19b-4(f)(2).

25 15 U.S.C. 78s(b)(2)(B).

Settlement Supervision Act

Not applicable.

11. Exhibits

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

Exhibit 5 – Amendment to the Exchange's Fee Schedule

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-   ; File No. SR-NYSEARCA-2023-25)

[Date]

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 March 15, 2023, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, 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 modify the NYSE Arca Options Fee Schedule ("Fee Schedule") regarding (1) credits for Qualified Contingent Cross ("QCC") transactions, (2) fees applicable to routed orders, and (3) certain Market Maker incentives. The Exchange proposes to implement the fee changes effective March 15, 2023.[4] The proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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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 previously filed to amend the Fee Schedule on March 1, 2023 (SR-NYSEARCA-2023-22) and withdrew such filing on March 15, 2023.

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 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 (1) provide for additional credits to qualifying Submitting Brokers for QCC transactions[5] and clarify the cap applicable to QCC credits and Floor Broker rebates earned through the Manual Billable Rebate Program ("FB Rebates"), (2) modify the Routing Fees applicable to routed orders, and (3) eliminate the Market Maker Incentive For Penny Issues and the Market Maker Incentive For Non-Penny Issues (collectively, the "Market Maker Incentives"). The Exchange proposes to implement the rule change on March 15, 2023.

QCC Transaction Credits

Currently, the Exchange offers Submitting Brokers a credit of ($0.22) per contract for Non-Customer vs. Non-Customer QCC transactions or ($0.16) per contract for Customer vs. Non-Customer QCC transactions.[6] QCC executions in which a Customer is on both sides of the

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5 A QCC Order is defined as an originating order to buy or sell at least 1,000 contracts that is identified as being part of a qualified contingent trade coupled with a contra-side order or orders totaling an equal number of contracts. See Rule 6.62P-O(g)(1)(A).

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

QCC trade are not eligible for a credit.[7]

The Exchange proposes to offer additional credits on QCC transactions to Submitting Brokers that meet certain monthly volume thresholds. Submitting Brokers who achieve 1.5 million QCC contracts in a month will receive an additional ($0.01) credit on Customer vs. Non-Customer QCC transactions, and an additional ($0.03) credit on Non-Customer vs. Non-Customer QCC transactions. Submitting Brokers who achieve 3 million QCC contracts in a month will receive an additional ($0.02) credit on Customer vs. Non-Customer QCC transactions, and an additional ($0.06) credit on Non-Customer vs. Non-Customer QCC transactions. The proposed additional credits would be applicable back to the first QCC contract executed by a Submitting Broker in a month, but would not be cumulative across tiers (e.g., a Submitting Broker who transacts 3.1 million QCC contracts in a month would be eligible for an additional ($0.02) credit on Customer vs. Non-Customer QCC transactions or an additional ($0.06) credit on Non-Customer vs. Non-Customer QCC transactions, but would not also earn the additional credits offered to Submitting Brokers that achieve 1.5 million QCC contracts in a month). Although the Exchange cannot predict with certainty whether the proposed change would encourage Submitting Brokers to increase their QCC volume, the proposed change is intended to continue to incentivize additional QCC executions by Submitting Brokers by increasing the credits available on such orders.

Endnote 13 of the Fee Schedule currently provides that QCC executions in which a Customer is on both sides of the QCC trade will not be eligible for the Submitting Broker credit and that there is a $375,000 maximum monthly credit per firm on QCC transactions by a

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7 See id.

Submitting Broker.[8] The Exchange recently modified the Fee Schedule to provide that Submitting Broker QCC credits and Floor Broker rebates earned through the Manual Billable Rebate Program may not combine to exceed $2,000,000 per month per firm (the “Monthly Credit and Rebate Cap”).[9] To improve the clarity of the Fee Schedule and obviate potential confusion regarding the applicability of the Monthly Credit and Rebate Cap, the Exchange proposes to delete the second sentence of Endnote 13 (which describes the $375,000 maximum monthly credit on QCC transactions by a Submitting Broker), add new Endnote 17, and modify the table setting forth Submitting Broker QCC credits to reference Endnote 17. Endnote 17 would contain the same text already reflected in the Fee Schedule describing the Monthly Credit and Rebate Cap.[10] The Exchange believes that Endnote 17 would add clarity to the Fee Schedule regarding the maximum amount that a firm could earn per month from Submitting Broker QCC credits and FB Rebates combined.

Routing Fees

The Exchange currently charges an $0.11 per contract fee on orders routed and executed on another exchange, plus (i) any transaction fees assessed by the away exchange (calculated on an order-by-order basis since different away exchanges charge different amounts) or (ii) if the actual transaction fees assessed by the away exchange(s) cannot be determined prior to the execution, the highest per contract charge assessed by the away exchange(s) for the relevant

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8 See Fee Schedule, Endnote 13.

9 See Fee Schedule, FLOOR BROKER FIXED COST PREPAYMENT INCENTIVE PROGRAM (the “FB Prepay Program”).

10 The Exchange also proposes a conforming change to delete the text describing the Monthly Credit and Rebate Cap in the section of the Fee Schedule setting forth the Floor Broker Fixed Cost Prepayment Incentive Program and add a reference to Endnote 17, as proposed.

option class and type of market participant (e.g., Customer, Firm, Broker/Dealer, Professional Customer or Market Maker).[11] The Exchange applies the Routing Fees in addition to any customary execution fees applicable to the order.

The Exchange now proposes to modify the Routing Fees to be based on whether the routed order is in a Penny or non-Penny issue and to establish a single fee that would be applicable to all routed orders in Penny issues, and a single fee for routed orders in non-Penny issues. Specifically, the Exchange proposes that the fee for routed orders would be, similar in structure to current Routing Fees, equal to $0.11 plus an amount based on the transaction fees charged by away exchanges, which the Exchange proposes to set at a fixed amount that would approximate such fees in a manner intended to counterbalance the internal resources required to support the handling of orders routed away from the Exchange. Accordingly, the Exchange proposes a Routing Fee of $0.61 in Penny issues, and $1.21 in non-Penny issues. The Exchange believes that having a single published rate for all routed orders in Penny issues and single published rate for all routed orders in non-Penny issues would also reduce potential confusion relating to the amount of the Routing Fee for a given order (particularly in light of the variability in transaction fees across other options markets) and would permit market participants to determine execution costs at the time of order entry, thereby promoting clarity and transparency in the Fee Schedule.

Market Maker Incentives

The Exchange currently offers a Market Maker Incentive For Penny Issues, which provides an enhanced posting credit of $0.41 applied to electronic executions of Market Maker posted interest in Penny issues to Market Makers that achieve the volume requirement of at least

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11 See Fee Schedule, ROUTING FEES.

0.75% TCADV from Customer posted interest in all issues and an ADV from Market Maker posted interest in all issues other than SPY equal to 0.40% of TCADV.

The Exchange also offers a similar Market Maker Incentive For Non-Penny Issues. Market Makers that meet the volume requirement of either (1) at least 0.55% of TCADV from Market Maker posted interest in all issues, or (2) at least 1.60% of TCADV from all interest in all issues, all account types, with at least 0.15% of TCADV from Market Maker posted interest in all issues qualify for a $0.55 credit applied to electronic executions of Market Maker posted interest in non-Penny issues.

The Exchange now proposes to eliminate the Market Maker Incentives because they have not been as effective in encouraging Market Maker posted interest as other similar incentive programs. Market Makers are entitled to the highest credit on posted interest they achieve, and because the Market Maker Incentives have similar qualifying criteria but offer lower credit amounts than other volume incentive programs available to Market Makers (such as the Market Maker Penny and SPY Posting Credit Tiers or the Non-Customer, Non-Penny Posting Credit Tiers),[12] Market Makers have availed themselves of the Market Maker Incentives less frequently. Accordingly, the Exchange believes that Market Markers would not be significantly impacted by the elimination of the Market Maker Incentives, as the programs generally provided benefits that were superseded by the incentives available through other, more utilized volume incentive programs (which would continue to be available to Market Makers).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of

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12 See Fee Schedule, MARKET MAKER PENNY AND SPY POSTING CREDIT TIERS & NON-CUSTOMER, NON-PENNY POSTING CREDIT TIERS.

the Act,[13] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[14] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Rule Change is Reasonable

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."[15]

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.[16] Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in January 2023, the

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13 15 U.S.C. 78f(b).

14 15 U.S.C. 78f(b)(4) and (5).

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

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.

Exchange had less than 13% market share of executed volume of multiply-listed equity and ETF options trades.[17]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain options exchange transaction fees. Stated otherwise, modifications to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

The Exchange believes that the proposed additional QCC credits are reasonable because they are designed to incent OTP Holders to increase the number of QCC transactions sent to the Exchange by offering increased credits on QCC transactions for Submitting Brokers that meet the qualifying volume thresholds. In addition, the Exchange believes it is reasonable to offer a higher additional credit on Non-Customer vs. Non-Customer QCC transactions than on Customer vs. Non-Customer QCC transactions because Non-Customer vs. Non-Customer QCC transactions are billable on both sides, whereas Customer vs. Non-Customer QCC transactions are billable on one side only. The Exchange also believes that modifying the Fee Schedule regarding the Monthly Credit and Rebate Cap is reasonable because it would add clarity to the Fee Schedule regarding the maximum monthly amount that firms may earn from Submitting Broker QCC credits and FB Rebates combined. To the extent that the proposed change attracts more volume to the Exchange, this increased order flow would continue to make the Exchange a

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17 Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of equity-based ETF options, see id., the Exchange's market share in equity-based options decreased from 13.06% for the month of January 2022 to 12.58% for the month of January 2023.

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. The Exchange notes that all market participants stand to benefit from any increase in volume entered by Submitting Brokers, which could promote market depth, facilitate tighter spreads and enhance price discovery, to the extent the proposed change encourages OTP Holders to utilize the Exchange as a primary trading venue, and may lead to a corresponding increase in order flow from other market participants. In addition, any increased liquidity on the Exchange would result in enhanced market quality for all participants.

The Exchange believes the proposed change to Routing Fees is reasonable because it would establish a single fee that would be applicable to all routed orders in Penny issues and a single fee that would be applicable to all routed orders in non-Penny issues, and such fees would be applicable to all market participants equally. In addition, the Exchange believes the proposed change is reasonable because the proposed fees for routed orders would be, structured similarly to the current Routing Fees and are designed to assess fixed routing fees in amounts intended to appropriately counterbalance the internal resources required to support the handling of orders routed away from the Exchange. The Exchange also notes that the amounts of the proposed Routing Fees are within the range of routing fees currently charged by at least one other options exchange.[18]

The Exchange believes that eliminating the Market Maker Incentives is reasonable

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[18] See, e.g., Cboe Exchange, Inc. Options Fee Schedule, available at: https://cdn.cboe.com/resources/membership/Cboe_FeeSchedule.pdf (providing, for example, Customer routing fees of $0.75 for orders in Penny issues or $1.25 for orders in non-Penny issues routed to certain away markets and Non-Customer routing fees of $1.17 for all orders in Penny issues or $1.45 for all orders in non-Penny issues routed away).

because the programs have been underutilized in favor of incentive programs offering higher credits on posted interest, and the Exchange will continue to offer alternative incentives for Market Makers with similar qualifying bases and credits (including the Market Maker Penny and SPY Posting Credit Tiers or the Non-Customer, Non-Penny Posting Credit Tiers). Accordingly, although Market Makers would no longer be able to qualify for credits through the Market Maker Incentives, they would still benefit from the availability of other similar incentive programs that have, to date, more successfully incentivized Market Maker posted interest.

Finally, to the extent the proposed change continues to attract greater volume and liquidity, the Exchange believes the proposed change would improve the Exchange's overall competitiveness and strengthen its market quality for all market participants. In the backdrop of the competitive environment in which the Exchange operates, the proposed rule change is a reasonable attempt by the Exchange to increase the depth of its market and improve its market share relative to its competitors. The Exchange's fees are constrained by intermarket competition, as OTP Holders may direct their order flow to any of the 16 options exchanges, including those offering rebates on QCC transactions.[19] Thus, OTP Holders have a choice of where they direct their order flow, including their QCC transactions. The proposed rule change is

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[19] See, e.g., EDGX Options Exchange Fee Schedule, QCC Initiator/Solicitation Rebate Tiers (applying ($0.14) per contract rebate up to 999,999 contracts for QCC transactions when only one side of the transaction is a non-customer or ($0.22) per contract rebate up to 999,999 contracts for QCC transactions with non-customers on both sides); BOX Options Fee Schedule at Section IV.D.1. (QCC Rebate) (providing for ($0.14) per contract rebate up to 1,499,999 contracts for QCC transactions when only one side of the QCC transaction is a broker-dealer or market maker or ($0.22) per contract rebate up to 1,499,999 contracts for QCC transactions when both parties are a broker-dealer or market maker); Nasdaq ISE, Options 7, Section 6.B. (QCC Rebate) (offering rebates on QCC transactions of ($0.14) per contract when only one side of the QCC transaction is a non-customer or ($0.22) per contract when both sides of the QCC transaction are non-customers).

designed to continue to incent OTP Holders to direct liquidity and, in particular, QCC transactions to the Exchange. In addition, to the extent OTP Holders are incentivized to aggregate their trading activity at the Exchange, that increased liquidity could promote market depth, price discovery and improvement, and enhanced order execution opportunities for market participants.

The Proposed Rule Change is an Equitable Allocation of Credits and Fees

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits. The proposed QCC credits are based on the amount and type of business transacted on the Exchange, and Submitting Brokers can attempt to submit QCC transactions to earn the credits or not. In addition, the proposed credits are equally available to all qualifying Submitting Brokers. The Exchange also believes the proposed changes regarding the Monthly Credit and Rebate Cap are equitable because they would add clarity and transparency to the Fee Schedule regarding the current maximum monthly amount that a firm could earn from combined Submitting Broker QCC credits and FB Rebates, thereby obviating potential confusion regarding the applicability of the Monthly Credit and Rebate Cap. To the extent the proposed changes continue to incent Submitting Brokers to direct increased liquidity to the Exchange, all market participants would benefit from enhanced opportunities for price improvement and order execution. Moreover, the proposed credits are designed to incent Submitting Brokers to encourage OTP Holders to aggregate their executions -- including QCC transactions -- at the Exchange as a primary execution venue. To the extent that the proposed change achieves its purpose in attracting more volume to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for, 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 Exchange also believes the proposed change to the Routing Fees is equitable because the proposed single fee for all routed orders in Penny issues and single fee for all routed orders in non-Penny issues would apply to all market participants equally and the proposed amounts are designed to offset internal resources necessary to support the handling of orders routed away from the Exchange.

The Exchange believes that the elimination of the Market Maker Incentives is equitable because these incentives, which did not achieve their intended purpose of encouraging Market Maker posted interest, would no longer be available to any Market Makers, and, moreover, the Exchange offers Market Makers alternative methods to achieve credits of an equal or higher amount.

The Proposed Rule Change is not Unfairly Discriminatory

The Exchange believes the proposed change is not unfairly discriminatory because the proposed credits on QCC transactions would be available to all qualifying Submitting Brokers on an equal and non-discriminatory basis. The proposed change is based on the amount and type of business transacted on the Exchange, and Submitting Brokers are not obligated to execute QCC transactions. Rather, the proposal is designed to encourage Submitting Brokers to increase QCC volume sent to the Exchange and to utilize the Exchange as a primary trading venue for all transactions (if they have not done so previously). To the extent that the proposed change attracts more QCC transactions to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for order execution. Thus, the Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange, thereby improving market-wide quality and price discovery. The resulting increased volume and liquidity would provide more trading opportunities and tighter spreads to all market participants and thus would promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest.

The Exchange also believes that the proposed change to eliminate the Market Maker Incentives is also not unfairly discriminatory because the incentives, which were underutilized by Market Makers, would be eliminated in their entirety and would no longer be available to any Market Makers. In addition, Market Makers would continue to be eligible for alternative incentives currently available to them with similar credits and qualifying criteria. The Exchange also believes that the proposed changes to the Routing Fees are not unfairly discriminatory because the proposed fees are intended to assess streamlined routing fees in amounts that would appropriately account for the internal resources necessary to support orders routed away from the Exchange and would apply equally to all market participants' routed orders, based on whether such order is in a Penny or non-Penny issue.

Thus, the Exchange believes that, to the extent the proposed rule change would continue to improve market quality for all market participants on the Exchange by promoting clarity and transparency in the Fee Schedule and attract more order flow to the Exchange, thereby improving market-wide quality and price discovery, the resulting increased volume and liquidity would provide more trading opportunities and tighter spreads to all market participants and thus would promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act, the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed change would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and 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."[20]

Intramarket Competition. The proposed change with respect to QCC credits is designed to attract additional order flow to the Exchange (particularly in QCC transactions), which could increase the volumes of contracts traded on the Exchange. Greater liquidity benefits all market participants on the Exchange, and increased QCC transactions could increase opportunities for execution of other trading interest. The proposed credit would be available to all similarly-situated Submitting Brokers that execute QCC trades and achieve the volume thresholds for the additional credits. The Exchange does not believe that the proposed changes regarding Routing Fees or the Monthly Credit and Rebate Cap would impose any burden on competition that is not

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[20] See Reg NMS Adopting Release, supra note 15, at 37499.

necessary or appropriate, as they are intended to add clarity and transparency to the Fee Schedule with respect to fees for orders routed away from the Exchange and the monthly cap on combined Submitting Broker QCC credits and FB Rebates earned by a firm. The Exchange also does not believe that the proposed changes to the Market Maker Incentives would impose any burden on intramarket competition that is not necessary or appropriate because the incentives would be eliminated for all Market Makers.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily favor one of the 16 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.[21] Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in January 2023, the Exchange had less than 13% market share of executed volume of multiply-listed equity and ETF options trades.[22]

The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees in a manner designed to continue to incent

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21 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.

22 Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of equity-based ETF options, see id., the Exchange's market share in equity-based options decreased from 13.06% for the month of January 2022 to 12.58% for the month of January 2023.

OTP Holders to direct trading interest (particularly QCC transactions) to the Exchange, to provide liquidity and to attract order flow. To the extent that Submitting Brokers are incentivized to utilize the Exchange as a primary trading venue for all transactions, all of the Exchange's market participants should benefit from the improved market quality and increased opportunities for price improvement.

The Exchange does not believe that the proposed changes regarding Routing Fees or the Monthly Credit and Rebate Cap would impose any burden on competition that is not necessary or appropriate, as they are intended to improve the clarity and transparency of the Fee Schedule with respect to fees for orders routed away from the Exchange and the maximum monthly amount that a firm could earn from Submitting Broker QCC credits and FB Rebates combined. The Exchange also does not believe that the proposed elimination of the Market Maker Incentives would impose any burden on competition that is not necessary or appropriate because the incentives would no longer be available to any Market Makers, and the Exchange would continue to offer Market Makers similar, alternative incentives.

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. The Exchange further believes that the proposed changes could promote competition between the Exchange and other execution venues, including those that currently offer similarly structured routing charges or that currently offer credits on QCC transactions, by encouraging additional orders (and, in particular, QCC transactions) to be sent to the Exchange for execution.[23]

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 has become effective upon filing pursuant to Section 19(b)(3)(A)[24] of the Act and paragraph (f) thereunder. At any time within 60 days of the filing of the 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.

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 (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEARCA-2023-25 on the subject line.

Paper comments:

- Send paper comments in triplicate to: Secretary, Securities and Exchange

23 See notes 18 & 19, supra.

24 15 U.S.C. 78s(b)(3)(A).

Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEARCA-2023-25. 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-2023-25 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.[25]

J. Matthew DeLesDernier,
Deputy Secretary.

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25 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Additions underscored
Deletions [bracketed]

NYSE Arca Options Fees and Charges

Effective Date: March [1] 15, 2023

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QUALIFIED CONTINGENT CROSS (“QCC”) TRANSACTION FEES AND CREDITS	
Participant	**Per Contract Fee or Credit**
All Non-Customers in All Issues	$0.20
All Customers in All Issues	$0.00
Submitting Broker credit for Non-Customer vs. Non-Customer QCC Transaction[13, 17]	($0.22)
Submitting Broker credit for Customer vs. Non-Customer QCC Transaction[13, 17]	($0.16)

Additional Submitting Broker QCC Credits per contract	**Customer vs. Non-Customer QCC Transaction**	**Non-Customer vs. Non-Customer QCC Transaction**
Achieve 1.5 million QCC contracts per month	($0.01)	($0.03)
Achieve 3 million QCC contracts per month	($0.02)	($0.06)

The Additional Submitting Broker QCC Credits are payable back to the first contract but are not cumulative across tiers.

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[Market Maker Incentive For Penny Issues[8,15]	
At least 0.75% of TCADV from Customer posted interest in all issues *and* an ADV from Market Maker posted interest in all issues other than SPY equal to 0.40% of TCADV	$0.41 Credit Applied to electronic executions of Market Maker posted interest in Penny Issues

Market Maker Incentive For Non-Penny Issues[8,15]		
At least 0.55% of TCADV from Market Maker posted interest in all issues, or	At least 1.60% of TCADV from all interest in all issues, all account types, with at least 0.15% of TCADV from Market Maker posted interest in all issues	$0.55 Credit Applied to electronic executions of Market Maker posted interest in non-Penny Issues]

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ROUTING FEES

[$0.11 per contract on] The Routing Fee applies to orders routed and executed on another exchange. [, plus (i) any transaction fees assessed by the away exchange (calculated on an order-by-order basis since different away exchanges charge different amounts) or (ii) if the actual transaction fees assessed by the away exchange(s) cannot be determined prior to the execution, the highest per contract charge assessed by the away exchange(s) for the relevant option class and type of market participant (e.g., Customer, Firm, Broker/Dealer, Professional Customer or Market Maker).]

Penny Issues	Non-Penny Issues
$0.61	$1.21

The Routing Fee is in addition to NYSE Arca's customary execution fees applicable to the order.

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FLOOR BROKER FIXED COST PREPAYMENT INCENTIVE PROGRAM (the "FB Prepay Program")

The FB Prepay Program affords each Floor Broker organization the opportunity to prepay its annual "Eligible Fixed Costs" (set forth in the table below) for the following calendar year.

ELIGIBLE FIXED COSTS
OTP TRADING PARTICIPANT RIGHTS - Floor Broker
FLOOR BROKER ORDER CAPTURE DEVICE - MARKET DATA FEES

FLOOR BOOTHS
OPTIONS FLOOR ACCESS FEE
WIRE SERVICES

Participants in the FB Prepay Program qualify for rebates through the Manual Billable Rebate Program, payable on a monthly basis.[17] The Manual Billable Rebate Program provides all Floor Brokers that participate in the FB Prepay Program a rebate on manual billable volume of ($0.08) per billable side, and participating Floor Brokers that achieve more than 500,000 manual billable sides in a month are eligible for an additional rebate of ($0.02) per billable side, payable back to the first billable side. The calculation of volume on which rebates earned through the Manual Billable Rebate Program would be paid is based on transactions including at least one side for which manual transaction fees are applicable and excludes QCCs. Any volume calculated to achieve the Limit of Fees on Options Strategy Executions ("Strategy Cap"), regardless of whether this cap is achieved, will likewise be excluded from the Manual Billable Rebate Program because fees on such volume are already capped and therefore such volume does not increase billable manual volume. [Submitting Broker QCC credits and Floor Broker rebates earned through the Manual Billable Rebate Program shall not combine to exceed $2,000,000 per month per firm.]

To participate in the FB Prepay Program, Floor Broker organizations must notify the Exchange in writing by emailing optionsbilling@nyse.com, indicating a commitment to submit prepayment for the following calendar year, by no later than the last business day of December in the current year. The email to enroll in the Program must originate from an officer of the Floor Broker organization and, except as provided for below, represents a binding commitment through the end of the following calendar year. Payment must be received in full by the close of business on the last business day in January. A Floor Broker organization that commits to the Program will be invoiced in January for Eligible Fixed Costs, based on annualizing their Eligible Fixed Costs incurred in November 2022. The Exchange will not issue any refunds in the event that a Floor Broker organization's prepaid Eligible Fixed Costs exceeds actual costs.

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NYSE Arca OPTIONS: GENERAL

BILLING DISPUTES

All fee disputes concerning fees billed by the Exchange must be submitted to the Exchange in writing and must be accompanied by supporting documentation. All fee disputes must be submitted no later than sixty (60) days after receipt of a billing invoice.

1.- 12. No Change

13. QCC executions in which a Customer is on both sides of the QCC trade will not be eligible for the Submitting Broker credit.

[The maximum Submitting Broker credit paid shall not exceed $375,000 per month per Submitting Broker firm.]

14. - 16. No Change

<u>17. Submitting Broker QCC credits and Floor Broker rebates earned through the Manual Billable Rebate Program shall not combine to exceed $2,000,000 per month per firm.</u>

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