8011-01p
SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-89255; File No. SR-NYSEArca-2020-64]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify the NYSE Arca Options Fee Schedule
July 8, 2020.

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 July 1, 2020, 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") to amend a threshold to qualify for an existing discount for removing liquidity and to add an alternative basis to qualify for such discount. The Exchange proposes to implement the fee change effective July 1, 2020. 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.

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

2 15 U.S.C. 78a.

3 17 CFR 240.19b-4.

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 modify a threshold to qualify for an existing discount for removing liquidity and to add an alternative basis for OTP Holders and OTP Firms (collectively, "OTP Holders") to qualify for such discount. The Exchange is not modifying the amount of the discount.

Specifically, the Exchange proposes to modify the qualification thresholds required to receive the "Take Fee Discount Qualification for Non-Penny Issues" to expand and increase the current qualification basis and to add an alternative qualification basis.

The Exchange proposes to implement the fee changes on July 1, 2020.

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 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, currently no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in January 2020, the Exchange had less than 10% market share of executed volume of multiply-listed equity & ETF options trades.[6]

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. To respond to this competitive marketplace, the Exchange has established incentives, including discounts, designed to encourage OTP Holders to direct additional order flow to the Exchange to achieve more favorable pricing and higher credits. The Exchange incentives also encourage order flow from all account types, which allows OTP Holders to aggregate their options volume with affiliated or appointed Market Makers (collectively referred to as affiliates herein), making NYSE Arca a more attractive trading

---

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., in 2019, the Exchange's market share in equity-based options was 9.57% for the month of January 2019 and 9.59% for the month of January 2020.

venue.[7]

The Exchange proposes to modify an incentive program designed to attract order flow to the Exchange.

<u>Proposed Rule Change</u>

If an OTP Holder executes a transaction that removes or "takes" liquidity on the Exchange, the OTP Holder is charged a Take Fee and such liquidity may be referred to as "Liquidity Removing" or liquidity taking.[8] To offset such costs and to encourage market participants to direct order flow to the Exchange, the Exchange offers, among other incentives, a "Take Fee Discount Qualification for Non-Penny Issues" (the "Take Fee Discount"). The Exchange is not modifying the amount of the Take Fee Discount.

Currently, an OTP Holder may earn the ($0.02) per contract Take Fee Discount on executions in non-Penny issues if the OTP Holder executes at least 0.65% of Total Industry Customer equity and ETF option average daily volume ("TCADV")[9] from Professional Customer and Non-Customer Liquidity Removing interest in all issues (the "existing Take Fee threshold").[10] The Exchange proposes to modify the existing Take Fee threshold such that, to

---

7 <u>See</u> Fee Schedule, Endnote 15 (providing that an "Appointed MM" is an NYSE Arca Market Maker designated as such by an Order Flow Provider ("OFP") (as defined in NYSE Arca Rule 6.1A-O(a)(21)) and "Appointed OFP" is an OFP been designated as such by an NYSE Arca Market Maker).

8 <u>See</u> Fee Schedule, NYSE Arca OPTIONS: TRADE-RELATED CHARGES FOR STANDARD OPTIONS, TRANSACTION FEE FOR ELECTRONIC EXECUTIONS - PER CONTRACT (setting forth a per contract take fee of $1.10 for such Non-Penny executions in Professional Customer, Firm, Broker Dealer, and Market Maker range as compared to a per contract take fee of $0.85 for such Non-Penny executions in the Customer range).

9 <u>See</u> Fee Schedule, Endnote 8 (providing that TCADV "includes OCC calculated Customer volume of all types, including Complex Order Transactions and QCC transactions, in equity and ETF options").

10 <u>See</u> Fee Schedule, Take Fee Discount. For fee/credit purposes, "Professional Customer"

qualify for the Take Fee Discount, an OTP Holder would also have to execute "at least 0.15% of TCADV from posted interest in all issues and all account types." [11] In addition to maintaining the same level of Liquidity Removing volume, the Exchange believes this change would incent OTP Holders to increase the variety of account types and volume of posted interest executed on the Exchange, which activity may result in tighter spreads making the Exchange a more attractive trading venue to the benefit of all participants.

The Exchange also proposes to offer a new, alternative basis, to qualify for the Take Fee Discount. Specifically, as proposed, an OTP Holder may earn the ($0.02) per contract Take Fee Discount on executions in non-Penny issues if the OTP Holder executes "[a]t least 1.50% of TCADV from Professional Customer and Non-Customer Liquidity Removing interest in all issues."[12] This new alternative basis essentially increases the minimum volume required under the existing Take Fee threshold from 0.65% to 1.50%, which should encourage OTP Holders to direct more volume to the Exchange. The Exchange believes the alternative basis would incent OTP Holders to increase trading activity in all issues and a variety of account types on the Exchange, which increased liquidity benefits all market participants because of increased trading opportunities and price discovery.

As is the case with other incentives, OTP Holders may aggregate their volume with

---

executions are treated as "Customer" executions unless such executions are specifically delineated and "Non-Customers" executions include those of Firms, Broker Dealers, and Market Makers. See Fee Schedule, NYSE Arca OPTIONS: TRADE-RELATED CHARGES FOR STANDARD OPTIONS (preamble).

11 See proposed Fee Schedule, Take Fee Discount (requiring "[a[t least 0.65% of TCADV from Professional Customer and Non-Customer Liquidity Removing interest in all issues, plus at least 0.15% of TCADV from posted interest in all issues and all account types").

12 See id.

affiliated OTP Holders to achieve the Take Fee Discount, as modified herein.[13] As such, the Exchange believes the proposed modification to the existing Take Fee threshold and additional qualification basis for the Take Fee Discount would provide additional incentives for OTP Holders (and their affiliates) to execute large volumes of orders on the Exchange to qualify for the Discount on executions in non-Penny issues. The Exchange's fees are constrained by intermarket competition, as OTP Holders (and their affiliates) may direct their order flow to any of the 16 options exchanges, including those with similar pricing incentives.

The Exchange cannot predict with certainty whether any OTP Holder would benefit from the proposed change to the existing Take Fee threshold or the additional qualification basis. At present, whether or when an OTP Holder qualifies for the discount in a given month is dependent on market activity and the OTP Holder's mix of order flow. Thus, the Exchange cannot predict with any certainty the number of OTP Holders that may qualify for the discount based on the proposed modifications.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[14] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[15] 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.

---

[13] See Fee Schedule, Endnotes 8 (providing that the alternative volume threshold, like the existing Take Fee Discount threshold, will include the activity of affiliates) and 15 (defining affiliates referenced in Endnote 8).

[14] 15 U.S.C. 78f(b).

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

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."[16]

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.[17] Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in January 2020, the Exchange had less than 10% market share of executed volume of multiply-listed equity & ETF options trades.[18]

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,

---

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

17 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.

18 Based on OCC data, see id., in 2019, the Exchange's market share in equity-based options was 9.57% for the month of January 2019 and 9.59% for the month of January 2020.

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.

Regarding the change to the existing Take Fee threshold, the Exchange believes this change would incent OTP Holders to increase the variety of account types and volume of posted interest executed on the Exchange (while maintaining the same level of Liquidity Removing volume), which activity may result in tighter spreads and more trading making the Exchange a more attractive trading venue to the benefit of all participants.

The Exchange believes the proposed alternative basis would incent OTP Holders to increase trading activity in all issues and a variety of account types on the Exchange, which increased liquidity benefits all market participants because of increased trading opportunities and price discovery.

The Exchange believes the proposed modification to the existing Take Fee threshold and additional qualification basis for the Take Fee Discount would provide additional incentives for OTP Holders (and their affiliates) to execute large volumes of orders on the Exchange to qualify for the Discount on executions in non-Penny issues. To the extent that OTP Holder activity in all issues is increased by the proposal, market participants will increasingly compete for the opportunity to trade on the Exchange, 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.

To the extent that the proposed rule change attracts more interest in all issues, 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. 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 cannot predict with certainty whether any OTP Holder would benefit from the proposed change to existing the Take Fee threshold or the additional qualification basis. At present, whether or when an OTP Holder qualifies for the discount in a given month is dependent on market activity and the OTP Holder's mix of order flow. Thus, the Exchange cannot predict with any certainty the number of OTP Holders that may qualify for the discount based on the proposed modifications.

<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 OTP Holders (and their affiliates) can opt to avail themselves of the incentives or not. The Take Fee Discount, as modified, continues to apply to all participants other than Customers, who pay a much lower take fee.[19]

To the extent that the proposed change continues to attract more trading activity, the 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.

<u>The Proposed Rule Change is not Unfairly Discriminatory</u>

---

[19] <u>See</u> <u>supra</u> note 8 (setting forth take fee charged to Non-Customer versus Customer).

The Exchange believes it is not unfairly discriminatory to introduce the alternative methods of qualifying for a discount because the proposed modifications would be available to all similarly situated market participants on an equal and non-discriminatory basis. The Take Fee Discount, as modified, continues to apply to all participants other than Customers, who pay a much lower take fee.[20] In addition, the proposal is based on the amount and type of business transacted on the Exchange and OTP Holders are not obligated to try to achieve either of the qualifications for the discount. The Exchange believes the proposed incentive is reasonable, equitable and not unfairly discriminatory because encouraging OTP Holders to direct more volume to the Exchange would also contribute to the Exchange's depth of book as well as to the top of book liquidity.

To the extent that the proposed change attracts more OTP Holder trading activity, 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.

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 changes would encourage the submission of additional liquidity to a

---

20 See id.

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."[21]

Intramarket Competition. The proposal is designed to attract additional order flow to the Exchange by offering a discount based on increased volumes on the Exchange (from a variety of issues and account types), which would enhance the quality of quoting and may increase the volumes of contracts traded on the Exchange. In particular, the change to the existing Take Fee threshold is designed to incent OTP Holders to increase the variety of account types and volume of posted interest executed on the Exchange (while maintaining the same level of Liquidity Removing volume), which activity may result in tighter spreads and more trading making the Exchange a more attractive trading venue to the benefit of all participants. The proposed alternative basis to qualify for the Discount is designed to incent OTP Holders to increase trading activity in all issues and a variety of account types on the Exchange, which increased liquidity benefits all market participants because of increased trading opportunities and price discovery.

Furthermore, the Exchange believes that incenting additional activity by OTP Holders (and their affiliates) benefits all participants as it contributes to the Exchange's depth of book as well as to the top of book liquidity. To the extent that the proposal attracts more liquidity, this increased order flow would continue to make the Exchange a more competitive venue for order execution and all of the Exchange's market participants should benefit from the improved market quality. Enhanced market quality and increased transaction volume that results from the

---

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

anticipated increase in order flow directed to the Exchange would benefit all market participants and improve competition on the Exchange.

The proposal would be available to all similarly-situated market participants, and, as such, the proposed change would not impose a disparate burden on competition among market participants on the Exchange. The Exchange also believes the proposed incentive is not unfairly discriminatory to Customers, because such market participants are not subject to the same fee structure that applies to Professional Customers and Non-Customers.

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.[22] Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in January 2020, the Exchange had less than 10% market share of executed volume of multiply-listed equity & ETF options trades.[23]

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

---

22 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.

23 Based on OCC data, see id., in 2019, the Exchange's market share in equity-based options was 9.57% for the month of January 2019 and 9.59% for the month of January 2020.

Holders (and their affiliates) to direct trading interest to the Exchange. In particular, the change to the existing Take Fee threshold is designed to incent OTP Holders to increase the variety of account types and volume of posted interest executed on the Exchange (while maintaining the same level of Liquidity Removing volume), which activity may result in tighter spreads and more trading making the Exchange a more attractive trading venue to the benefit of all participants. The proposed alternative basis to qualify for the Discount is designed to incent OTP Holders to increase trading activity in all issues and a variety of account types on the Exchange, which increased liquidity benefits all market participants because of increased trading opportunities and price discovery. To the extent that the proposal increases trading on the Exchange, all the Exchange's market participants should benefit from the improved market quality and increased opportunities for price improvement.

Finally, the Exchange believes that the proposal could promote competition between the Exchange and other execution venues, including those that currently offer similar incentives.

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

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

25 17 CFR 240.19b-4(f)(2).

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)[26] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2020-64 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-2020-64. 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

[26] 15 U.S.C. 78s(b)(2)(B).

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, D.C. 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-2020-64 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.[27]

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2020-15111 Filed: 7/13/2020 8:45 am; Publication Date: 7/14/2020]

[27] 17 CFR 200.30-3(a)(12).