



SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-96544; No. SR-NYSEARCA-2022-83]

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

December 20, 2022.

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 December 14, 2022, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the NYSE Arca Options Fee Schedule (“Fee Schedule”) regarding credits for Qualified Contingent Cross (“QCC”) transactions. The Exchange proposes to implement the fee change effective December 14, 2022.⁴ 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.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ The Exchange originally filed to amend the Fee Schedule on December 1, 2022 (SR-NYSEARCA-2022-79), then withdrew such filing and amended the Fee Schedule on December 14, 2022 (SR-NYSEARCA-2022-81), which latter filing the Exchange also withdrew on December 14, 2022.

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 the credits offered for QCC transactions.⁵ The Exchange proposes to implement the rule change on December 14, 2022.

Currently, the Exchange offers Floor Brokers a credit of (\$0.22) per contract for Non-Customer vs. Non-Customer QCC transactions or (\$0.11) per contract for Customer vs. Non-Customer QCC transactions.⁶ The Exchange also currently offers an additional (\$0.04) per contract credit to Floor Brokers on all Customer vs. Non-Customer QCC transactions if they execute at least 500,000 contracts of credit-eligible volume in QCC transactions in a month.⁷ QCC executions in which a Customer is on both sides of the QCC trade are not eligible for a credit, and the maximum Floor Broker credit for QCC transactions is \$375,000 per month per Floor Broker firm.⁸

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

⁷ See id. at Endnote 13.

⁸ See id.

The Exchange now proposes to offer the credits on QCC transactions currently available only to Floor Brokers to any broker submitting a QCC transaction to the Exchange (a “Submitting Broker”), whether the broker is a Floor Broker on the Trading Floor or a broker that enters orders electronically through an interface with the Exchange. In other words, the Exchange proposes to offer the existing Floor Broker QCC credits to any OTP Holder or OTP Firm (collectively, “OTP Holder”) that submits a QCC transaction to the Exchange.

The Exchange also proposes to increase the credit offered on Customer vs. Non-Customer QCC transactions from (\$0.11) to (\$0.16) and, in light of such proposed increase, to eliminate the additional (\$0.04) credit currently offered on Customer vs. Non-Customer QCC transactions to Floor Brokers that execute at least 500,000 contracts of credit-eligible volume in QCC transactions in a month. The Exchange proposes to eliminate the additional credit currently offered to qualifying Floor Brokers because the proposed increased credit of (\$0.16) on all Customer vs. Non-Customer QCC transactions would provide Submitting Brokers with a higher credit than the combination of the current (\$0.11) and (\$0.04) credits available on Customer vs. Non-Customer QCC transactions.

To effect these changes, the Exchange proposes to modify the Fee Schedule to substitute the term “Submitting Broker” for “Floor Broker” in connection with credits relating to QCC transactions.⁹ First, the Exchange proposes to modify the Participant column of the table setting forth the fees and credits for QCC transactions to provide for a “Submitting Broker credit for Non-Customer vs. Non-Customer QCC Transaction” and a “Submitting Broker credit for Customer vs. Non-Customer QCC Transaction.” The Exchange also proposes to modify Endnote 13 to refer to a “Submitting Broker” rather than a “Floor Broker,” such that Endnote 13 would provide that Customer vs. Customer QCC executions are not eligible for Submitting Broker credits on QCC executions and that the maximum QCC credit allowed will apply to a Submitting

⁹ See proposed Fee Schedule, QUALIFIED CONTINGENT CROSS (“QCC”) TRANSACTION FEES AND CREDITS & Endnote 13.

Broker firm. The Exchange also proposes to modify Endnote 13 to delete the sentence setting forth the additional (\$0.04) credit on Customer vs. Non-Customer QCC transactions.

The Exchange also proposes conforming changes to modify the description of the Firm and Broker Dealer Monthly Fee Cap (the “Monthly Fee Cap”), as well as Endnote 9, to eliminate text referring to QCC transactions executed by a Floor Broker from the Floor of the Exchange.¹⁰ To reflect the proposed changes described above to extend the current Floor Broker QCC credits to any Submitting Broker (whether a Floor Broker on the Trading Floor or a broker that submits orders electronically), the Exchange proposes to delete references to the execution of QCC transactions by a Floor Broker on the on Floor of the Exchange. The Exchange does not propose any other modifications to the Monthly Fee Cap or Endnote 9.

Although the Exchange cannot predict with certainty whether the proposed change would encourage OTP Holders to increase their QCC volume, the proposed change is intended to incent OTP Holders to submit additional QCC transactions to the Exchange by expanding the universe of OTP Holders that would be eligible for credits on QCC transactions and increasing the amount of the credit offered on Customer vs. Non-Customer QCC transactions. The Exchange notes that the current Floor Broker QCC credits, when adopted, were offered to Floor Brokers based on their function in facilitating the execution of orders on the Exchange and intended to incent Floor Brokers to aggregate their trading activity, including QCC transactions, at the Exchange as a primary execution venue.¹¹ The instant proposal would continue to provide QCC credits to Floor Brokers and would offer QCC credits to other OTP Holders that submit QCC transactions to the Exchange as well. The Exchange believes the proposed change would continue to encourage Floor Broker QCC volume and also encourage additional OTP Holders to

¹⁰ See proposed Fee Schedule, FIRM AND BROKER DEALER MONTHLY FEE CAP & Endnote 9.

¹¹ See Securities Exchange Act Release No. 95471 (August 11, 2022), 87 FR 50662 (August 17, 2022) (SR-NYSEARCA-2022-50) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the NYSE Arca Options Fee Schedule).

increase QCC volume submitted to the Exchange by offering credits on such transactions. The Exchange believes that the proposal, which also increases the credit on Customer vs. Non-Customer QCC transactions, could incentivize both Floor Brokers and other OTP Holders to aggregate their trading activity at the Exchange, thereby making the Exchange a more attractive venue for order execution and providing additional trading opportunities for all market participants.

2. 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 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

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(4) and (5).

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 October 2022, the Exchange had less than 12% 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 change is reasonable because it is designed to incent OTP Holders to increase the number of QCC transactions sent to the Exchange by offering credits to all OTP Holders that execute QCC transactions (i.e., both continuing to offer credits to Floor Brokers and providing credits to brokers that submit QCC transactions electronically as well) and by increasing the amount of the credit offered on Customer vs. Non-

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 12.30% for the month of October 2021 to 11.87% for the month of October 2022.

Customer QCC transactions. To the extent that the proposed change attracts more volume to the Exchange from both Floor Brokers and brokers that submit orders electronically, 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.

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.¹⁷ Thus, OTP Holders have a choice of

¹⁷ 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).

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 Exchange believes that the proposed conforming changes are reasonable because they would not modify the substantive provisions of the Monthly Fee Cap or Endnote 9, but would instead promote consistency and clarity in the Fee Schedule by removing text describing QCC transactions as executed by Floor Brokers on the Floor of the Exchange, consistent with the proposed changes described above to extend QCC credits to any Submitting Broker.

The Exchange cannot predict with certainty whether the proposed change would encourage OTP Holders to increase their QCC order flow to the Exchange, but believes that the proposed change, which would offer credits on QCC transactions to all Submitting Brokers and increase the amount of the credit available on Customer vs. Non-Customer QCC transactions, would incent OTP Holders to direct additional QCC transactions to the Exchange.

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 type of business transacted on the Exchange, and OTP Holders can attempt to submit QCC transactions to earn the credits or not. In addition, the proposed credits are equally available to all brokers that enter QCC transactions. The Exchange also believes that the proposed change is an equitable allocation of fees and credits because it would provide for QCC credits to all Submitting Brokers (including Floor Brokers, whose eligibility for QCC credits would not change) and a consistent credit amount for all Customer vs. Non-Customer QCC transactions. To the extent the proposed credits continue to incent Floor Brokers and encourage other brokers to direct increased liquidity to the Exchange,

all market participants would benefit from enhanced opportunities for price improvement and order execution. The Exchange believes that the proposed conforming changes are equitable because they would promote consistency and clarity in the Fee Schedule by removing text describing QCC transactions as executed by Floor Brokers on the Floor of the Exchange, in support of the proposed change to extend QCC credits to any Submitting Broker, without modifying the existing substantive provisions of the Monthly Fee Cap or Endnote 9.

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 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 Submitting Brokers on an equal and non-discriminatory basis. The proposed change is also not unfairly discriminatory to Floor Brokers because, although the Exchange proposes to offer credits on QCC transactions to additional market participants, Floor Brokers would continue to be eligible for the QCC credits currently available to them. The Exchange also believes that the proposed conforming changes to the Monthly Fee Cap and Endnote 9 are not unfairly discriminatory because they are intended only to promote consistency and clarity in the Fee Schedule by removing text describing QCC transactions as executed by Floor Brokers on the Floor of the Exchange, in alignment with the proposed change to extend QCC credits to any Submitting Broker, and do not otherwise modify the substantive provisions of those sections.

The proposed credits are based on the type of business transacted on the Exchange, and OTP Holders are not obligated to execute QCC transactions. Rather, the proposal is designed to encourage OTP Holders 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.

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.”¹⁸

Intramarket Competition. The proposed change 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. The Exchange does not believe that the proposed conforming changes would impose any burden on intramarket competition that is not necessary or appropriate, as they are intended only to promote clarity and consistency in the Fee Schedule in consideration of the proposed change to extend QCC credits to all Submitting Brokers, whether a Floor Broker or a broker that submits orders to the Exchange electronically.

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.¹⁹ Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in October 2022, the Exchange had less than 12% market share of executed volume of multiply-listed equity and ETF options trades.²⁰

¹⁸ See Reg NMS Adopting Release, *supra* note 14, at 37499.

¹⁹ 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>.

²⁰ 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 12.30% for the month of October 2021 to 11.87% for the month of October 2022.

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 also believes that the proposed conforming changes would not impose any burden on intermarket competition that is not necessary or appropriate; the proposed conforming changes are intended only to promote consistency with the proposed change to extend QCC credits to all Submitting Brokers, whether a Floor Broker or a broker that submits orders to the Exchange electronically, thereby improving the clarity of the Fee Schedule.

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 change could promote competition between the Exchange and other execution venues, including those that currently offer rebates on QCC transactions, by encouraging additional orders (and, in particular, QCC transactions) to be sent to the Exchange for execution.²¹

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.

²¹ See note 17, supra.

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)²² of the Act and subparagraph (f)(2) of Rule 19b-4²³ thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)²⁴ 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-2022-83 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-2022-83. This file number should be included on the subject line if e-mail is used. To help the Commission process and review

²² 15 U.S.C. 78s(b)(3)(A).

²³ 17 CFR 240.19b-4(f)(2).

²⁴ 15 U.S.C. 78s(b)(2)(B).

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-2022-83, and should be submitted on or before **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

Sherry R. Haywood,

Assistant Secretary.

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²⁵ 17 CFR 200.30-3(a)(12).