



SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97287; File No. SR-NYSEARCA-2023-29]

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

April 12, 2023.

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 April 3, 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 and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to modify the NYSE Arca Options Fee Schedule (“Fee Schedule”) regarding the Limit of Fees on Options Strategy Executions (the “Strategy Cap”). The Exchange proposes to implement the fee change effective April 3, 2023. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 include certain strategy executions which are the result of a QCC order⁴ in the Strategy Cap. The Exchange proposes to implement the rule change on April 3, 2023.

The Fee Schedule currently provides that the Strategy Cap is a \$1,000 cap on transaction fees for orders that are executed to achieve certain investment strategies ("Strategy Executions").⁵ Specifically, the Strategy Cap provides for a cap on Strategy Executions involving (a) reversals and conversions, (b) box spreads, (c) short stock interest spreads, (d) merger spreads, and (e) jelly rolls.⁶ The Strategy Cap applies to each Strategy Execution executed in standard option contracts on the same trading. Currently, qualifying Strategy Executions that are executed as QCC orders are not eligible for the Strategy Cap, as QCC orders are subject to separate fees and credits set forth in the Fee Schedule.⁷ All Royalty fees associated with Strategy Executions on Index and Exchange Traded Funds will be passed through to trading participants on the Strategy Executions on a pro-rata basis. These Royalty fees will not be included in the calculation of the \$1,000 cap. Manual Broker Dealer and Firm Proprietary Strategy trades that do not reach the \$1,000 cap will be billed at \$0.25 per contract. The Strategy Cap is reduced to \$200 on transactions fees for qualifying strategies traded on the same trading

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, LIMIT OF FEES ON OPTIONS STRATEGY EXECUTIONS.

⁶ See Fee Schedule, Endnote 10 for definitions of the various Strategy Executions.

⁷ See Fee Schedule, QUALIFIED CONTINGENT CROSS ("QCC") TRANSACTION FEES AND CREDITS.

day for those OTP Holders that trade at least 25,000 monthly billable contract sides in qualifying Strategy Executions.

The Exchange now proposes to modify the Strategy Cap to provide that fees associated with a reversal and conversion strategy⁸ executed as a QCC order (a “Reversal/Conversion QCC”) would be eligible for the Strategy Cap.⁹ The Exchange believes that including Reversal/Conversion QCCs in the Strategy Cap, but not other types of QCC transactions, would be appropriate because of the specific fee sensitivity resulting from the arbitrage of components of a reversal and conversion strategy (whereas the fee sensitivity is less significant for other strategies executed as a QCC order). The proposed change would extend the benefits of the Strategy Cap to an additional type of Strategy Execution and is intended to encourage the submission of additional Reversal/Conversion QCCs to the Exchange. The Exchange notes that this proposed change would align its Strategy Cap with the cap on Strategy Executions currently offered by its affiliated options exchange, NYSE American Options.¹⁰

The Exchange also proposes to modify Endnote 17, which currently provides that 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. The Exchange proposes to amend Endnote 17 to add a sentence providing that Submitting Broker QCC credits will not apply to any QCC trades that are included in the Strategy Cap. The Exchange believes

⁸ A “reversal” is established by combining a short security position with a short put and a long call position that shares the same strike and expiration. A “conversion” is established by combining a long position in the underlying security with a long put and a short call position that shares the same strike and expiration. See Fee Schedule, Endnote 10.

⁹ The Exchange also proposes a non-substantive change to add a missing period to the end of the last sentence in the first paragraph of the Fee Schedule text describing the Strategy Cap. See proposed Fee Schedule, LIMIT OF FEES ON OPTIONS STRATEGY EXECUTIONS.

¹⁰ See NYSE American Options Fee Schedule, Strategy Execution Fee Cap, available at https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE_American_Options_Fee_Schedule.pdf (including Reversal/Conversion QCCs in cap on Strategy Executions).

this proposed change is reasonable because it is intended to clarify which incentives are applicable to Reversal/Conversion QCCs once such transactions are eligible for the Strategy Cap, as proposed.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,¹² in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

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.”¹³

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.¹⁴ Therefore, no exchange possesses significant pricing power in the execution of

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(4) and (5).

¹³ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7-10-04) (“Reg NMS Adopting Release”).

¹⁴ 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->

multiply-listed equity and ETF options order flow. More specifically, in February 2023, the Exchange had less than 13% market share of executed volume of multiply-listed equity and ETF options trades.¹⁵

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain options exchange transaction fees. Stated otherwise, 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 modification of the Strategy Cap to add Reversal/Conversion QCCs to the transactions included in the Strategy Cap is reasonable because the proposed change is designed to incent OTP Holders to increase the number of QCC transactions sent to the Exchange. Specifically, the proposed change is intended to encourage OTP Holders to direct additional QCC transactions to the Exchange by limiting fees associated with Reversal/Conversion QCCs. The Exchange believes that it is reasonable to include Reversal/Conversion QCCs, but not other strategies executed as QCCs, in the Strategy Cap because of the specific fee sensitivity related to arbitrage of components of a reversal and conversion strategy. Accordingly, the proposed change is intended to encourage additional Reversal/Conversion QCCs by making fees for such transactions eligible for the Strategy Cap. As noted above, NYSE American Options already includes Reversal/Conversion QCCs in its cap on fees for Strategy Executions, and the proposed change would thus also provide consistency between the Exchange's fees and those of its affiliated options market. The Exchange also

Statistics.

¹⁵ 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 13.99% for the month of February 2022 to 12.89% for the month of February 2023.

believes that the proposed change to Endnote 17 of the Fee Schedule is reasonable considering the proposed change to make Reversal/Conversion QCCs eligible for the Strategy Cap and would add clarity to the Fee Schedule that such transactions would only be eligible for the benefits of the Strategy Cap and would not also entitle OTP Holders to Submitting Broker QCC credits. 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, 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 at least one other exchange that limits fees for QCC Strategy Executions.¹⁶ Thus, OTP Holders have a choice of where they direct their order flow, including their QCC transactions

¹⁶ See, e.g., BOX Options Exchange Fee Schedule, Section IV.D.2., available at: <https://boxoptions.com/fee-schedule/> (providing for no fee on QCC Strategy Executions). See also note 10, *supra*.

and Strategy Executions. The proposed rule change is designed to continue to incent OTP Holders to direct liquidity and, in particular, Reversal/Conversion QCCs 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 inclusion of Reversal/Conversion QCCs under the Strategy Cap and an OTP Holder's ability to qualify for the Strategy Cap are based on the type and amount of business transacted on the Exchange, and OTP Holders can attempt to submit such transactions or not to achieve the Strategy Cap. The Exchange also believes that the proposed change to Endnote 17 is equitable because it would promote clarity in the Fee Schedule as to which fees and credits are applicable to QCC transactions, in light of the proposed change to include Reversal/Conversion QCCs in the transactions eligible for limited fees pursuant to the Strategy Cap. In addition, the proposed changes to make Reversal/Conversion QCCs eligible for the Strategy Cap and to clarify Endnote 17 are equally applicable to all OTP Holders. To the extent the proposed changes continue to incent OTP Holders to direct increased liquidity to the Exchange, all market participants would benefit from enhanced opportunities for price improvement and order execution. Moreover, the proposed fee limitations are designed to encourage OTP Holders to aggregate their executions -- including Reversal/Conversion 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 change to the Strategy Cap to include Reversal/Conversion QCC transactions and the proposed modification of Endnote 17 would apply to all qualifying OTP Holders on an equal and non-discriminatory basis. The proposed change is based on the amount and type of business transacted on the Exchange, and OTP Holders are not obligated to execute QCC transactions or Strategy Executions. Rather, the proposal is designed to expand the benefits offered by the Strategy Cap and to encourage OTP Holders to increase Reversal/Conversion 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 Reversal/Conversion 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.

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 and attract more order flow to the Exchange, 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."¹⁷

Intramarket Competition. The proposed change is designed to attract additional order flow -- and, in particular, Reversal/Conversion QCC transactions -- to the Exchange, which could increase the volumes of contracts traded on the Exchange. Greater liquidity benefits all market participants on the Exchange, and the proposed change could also increase opportunities for execution of other trading interest, to the extent it encourages OTP Holders to aggregate executions at the Exchange. The Exchange also does not believe that the proposed change would impose any burden on competition not necessary or appropriate, as the proposed change would be applicable to all similarly-situated OTP Holders equally.

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

¹⁷ See Reg NMS Adopting Release, supra note 13, at 37499.

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.¹⁸ Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in February 2023, the Exchange had less than 13% market share of executed volume of multiply-listed equity and ETF options trades.¹⁹

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 Reversal/Conversion QCC transactions) to the Exchange, to provide liquidity and to attract order flow. To the extent that OTP Holders 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 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 another

¹⁸ 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>.

¹⁹ 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 13.99% for the month of February 2022 to 12.89% for the month of February 2023.

options exchange that currently limits fees for QCC Strategy Executions, by encouraging additional orders to be sent to the Exchange for execution.²⁰

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)²¹ of the Act and subparagraph (f)(2) of Rule 19b-4²² 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)²³ 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-2023-29 on the subject line.

²⁰ See note 16, *supra*.

²¹ 15 U.S.C. 78s(b)(3)(A).

²² 17 CFR 240.19b-4(f)(2).

²³ 15 U.S.C. 78s(b)(2)(B).

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-2023-29. 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-2023-29, 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.²⁴

Sherry R. Haywood,

Assistant Secretary.

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²⁴ 17 CFR 200.30-3(a)(12).