



## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-99729; File No. SR-NYSEARCA-2024-23]

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

March 13, 2024.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on February 29, 2024, 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”) to introduce certain fees for Floor Market Makers. The Exchange proposes to implement the fee change effective February 29, 2024.<sup>4</sup> The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> The Exchange originally filed to amend the Fee Schedule on February 1, 2024 (SR-NYSEARCA-2024-12), then withdrew such filing and amended the Fee Schedule on February 15, 2024 (SR-NYSEARCA-2024-18), which latter filing the Exchange withdrew on February 29, 2024.

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 establish fees relating to OTPs utilized by Floor Market Makers.<sup>5</sup> The Exchange proposes to implement the fee changes effective February 29, 2024.

Currently, the number of option issues a Market Maker may quote in their assignment is based on the number of OTPs the Market Maker holds per month. The Exchange charges monthly fees for Market Maker OTPs as set forth in the “Market Maker OTP Table” below, which fees are not being modified by this proposal:<sup>6</sup>

<b>Number of OTPs</b>	<b>Monthly Fee Per OTP</b>	<b>Number of Issues Permitted in a Market Maker’s Quoting Assignment</b>
1 <sup>st</sup> OTP	\$8,000	60 plus the Bottom 45%
2 <sup>nd</sup> OTP	\$6,000	150 plus the Bottom 45%
3 <sup>rd</sup> OTP	\$5,000	500 plus the Bottom 45%
4 <sup>th</sup> OTP	\$4,000	1,100 plus the Bottom 45%
5 <sup>th</sup> OTP	\$3,000	All issues
6 <sup>th</sup> to 9 <sup>th</sup> OTP	\$2,000	All issues
10 <sup>th</sup> or more OTPs	\$500	All issues
Reserve Market Maker OTP	\$175	N/A

As described herein, the Exchange proposes to adopt fees for “Floor Market Maker OTPs,” which fees would be discounted and available to Floor Market Makers that satisfy

<sup>5</sup> Per Rule 1.1, an OTP is an Options Trading Permit issued by the Exchange for effecting approved securities transactions on the Exchange.

<sup>6</sup> See Fee Schedule, NYSE Arca GENERAL OPTIONS and TRADING PERMIT (OTP) FEES, available at: [https://www.nyse.com/publicdocs/nyse/markets/arcaoptions/NYSE\\_Arca\\_Options\\_Fee\\_Schedule.pdf](https://www.nyse.com/publicdocs/nyse/markets/arcaoptions/NYSE_Arca_Options_Fee_Schedule.pdf).

certain criteria. As proposed, a Floor Market Maker would be defined as a registered Market Maker who makes transactions as a dealer-specialist while on the Floor of the Exchange, which proposed definition is identical to the definition recently adopted by the Exchange.<sup>7</sup>

### Proposed Fee Change

The proposed fee change described below is designed to further increase open outcry trading by providing special fee treatment for OTP fees to Floor Market Makers that execute a specified percentage of trading in open outcry. As proposed, a Floor Market Maker would pay \$6,000 for the first OTP and \$4,000 for the second OTP, for up to two OTPs, provided that the Floor Market Maker transacts at least 75% of its volume, excluding Qualified Contingent Transactions (“QCCs”) and Strategy Executions, as Manual (open outcry) trades (the “minimum 75% Manual trading requirement”).<sup>8</sup> This proposed minimum 75% *Manual* trading requirement is distinct from a Market Maker’s appointment trading requirement as described in Rule 6.35-O(i), which includes both electronic and Manual trading. In addition, the minimum 75% Manual trading requirement is consistent with Commentary .01 to Rule 6.35-O insofar as it would count a Floor Market Maker’s trading in all option issues (not just those in its appointment) towards the minimum 75% Manual trading requirement.<sup>9</sup>

To effect this change, the Exchange proposes to add the following fees to the bottom of

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<sup>7</sup> See proposed Fee Schedule, Endnote 1 (defining Floor Market Maker) and Rule 1.1 (defining Floor Market Maker). Consistent with this proposal, the Exchange submitted a separate rule filing to adopt the new category of Market Maker called a Floor Market Maker, which includes a definition of Floor Market Maker that is identical to the definition proposed herein. See Securities Exchange Act Release No. 99606 (February 26, 2024) (NYSEARCA-2024-16) (immediately effective filing to modify Rule 1.1 to adopt a category of Market Makers called Floor Market Makers and to make conforming changes to various Exchange rules regarding Market Maker obligations, including modifying Rule 6.32-O(a) (Market Maker Defined) to include Floor Market Maker in the definition of Market Maker).

<sup>8</sup> See proposed Fee Schedule, NYSE Arca GENERAL OPTIONS and TRADING PERMIT (OTP) FEES (setting forth the \$6,000 and \$4,000 monthly fee for the first and second Floor Market Maker OTP, respectively) and Endnote 1 (describing minimum 75% Manual trading requirement for Floor Market Maker OTPs). See also Fee Schedule, QUALIFIED CONTINGENT CROSS (“QCC”) TRANSACTION FEES AND CREDITS (describing fees and credits associated with QCC transactions) and LIMIT OF FEES ON OPTIONS STRATEGY EXECUTIONS and Endnote 10 (describing Strategy Executions and limit of fees on such executions).

<sup>9</sup> Commentary .01 to Rule 6.35-O provides that a Market Maker’s trades effected on the Trading Floor to accommodate cross trades (per Rule 6.47-O) will count toward the Market Maker’s appointment trading requirement, regardless of whether the trades are in issues within the Market Maker’s appointment.

the Market Maker OTP Table:<sup>10</sup>

<b>Number of OTPs</b>	<b>Monthly Fee Per OTP</b>	<b>Number of Issues Permitted in a Market Maker's Quoting Assignment</b>
1 <sup>st</sup> Floor Market Maker OTP	\$6,000	60 plus the Bottom 45%
2 <sup>nd</sup> Floor Market Maker OTP	\$4,000	150 plus the Bottom 45%

The proposed rates for each of the first and second OTP would allow a Floor Market Maker that meets the minimum 75% Manual trading requirement to quote in the same number of option issues as a Market Maker with a 1<sup>st</sup> or 2<sup>nd</sup> OTP, but at a discounted rate (i.e., as compared to the fees for the first and second OTP (for non-Floor Market Maker), which are \$8,000 and \$6,000, respectively). This proposed discount is designed to encourage Floor Market Makers to actively quote and trade in a greater number of option issues and to ensure that each Floor Market Maker OTP is being used to foster price discovery in public outcry markets. The Exchange notes that this proposed fee structure -- i.e., tiered pricing -- is consistent with how the Exchange charges for non-Floor Market Maker OTPs as shown in the Market Maker OTP Table above.

The Exchange proposes to charge a lower rate for the second Floor Market Maker OTP than for the first Floor Market Maker OTP, even though the second OTP offers the Floor Market Maker a higher number of issues in its quoting assignment, to encourage additional Floor Market

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<sup>10</sup> See proposed Fee Schedule. The "bottom 45%" of issues traded on the Exchange means "the least actively traded issues on the Exchange, ranked by industry volume, as reported by the OCC for each issue during the calendar quarter." The Exchange notes that the proposed fees for Floor Market OTPs are similar to fees charges on the Exchange's affiliated exchange, NYSE American, LLC ("NYSE American"), insofar as the total for two Floor Market Maker trading permits is \$10, 000, QCC and Strategy executions are excluded, and the same number of option issues may be quoted with the first and second permit; the proposed fees differ however in that NYSE American charges the same amount for each trading permit -- i.e., \$5,000 for each. See NYSE American Fee Schedule, Section III.A. (Monthly ATP Fees), n.1 ("An NYSE American Options Floor Market Maker ATP is a Floor Market Maker that purchases no more than two ATPs per month and transacts at least 75% of its volume, excluding QCC and Strategy Executions, as Manual trades in open outcry on the Trading Floor.").

Maker quoting in a wider range of option classes. Floor Market Makers would be required to meet the 75% Manual trading requirement to qualify for the reduced OTP fees, as proposed, but their OTPs would also entitle them to quote and electronically trade names in their appointment. Accordingly, the proposed discount afforded on the second OTP is intended to enable Floor Market Makers to quote and electronically trade a robust suite of symbols for which it could also reasonably be actively engaged in providing liquidity in open outcry.

The Exchange notes that it does not limit the number of participants who may act as Market Makers and would likewise not limit the number of Market Makers acting as Floor Market Makers. The Exchange notes that the primary role of a Floor Market Maker is to provide liquidity for orders submitted for execution on the Floor of the Exchange through open outcry. As such, the Exchange believes that affording Floor Market Makers discounted rates would benefit all market participants because doing so would continue to incent Floor Market Makers to quote in a broad range of options, including especially illiquid and inactive issues (i.e., the Bottom 45%), with a specific focus on open outcry transactions.

## 2. Statutory Basis

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

As noted herein, the Exchange does not limit the number of participants who may act as Market Makers and would likewise not limit the number of Market Makers acting as Floor Market Makers. The primary role of a Floor Market Maker is to provide liquidity for orders submitted for execution on the Floor of the Exchange through open outcry. The Exchange

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<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(4) and (5).

believes that the proposed rates (and obligations) associated with Floor Market Maker OTPs are reasonably designed to incentivize Market Makers to avail themselves of at least one (and up to two) Floor Market Maker OTP(s) and to quote in a broad range of options, including especially illiquid and inactive issues (i.e., the Bottom 45%), with a specific focus on open outcry transactions. To the extent that this proposal results in increased order flow being directed to the Exchange (and the Trading Floor, in particular), this increased liquidity would improve market quality to benefit all market participants. Moreover, the proposal to exclude QCC and Strategy Executions from the minimum 75% Manual trading requirement is reasonable because these transaction types are subject to their own fees and credits.

The Exchange believes that charging the less for the second Floor Market Maker OTP is not only consistent with how the Exchange charges Market Makers for non-Floor OTPs but is reasonable because the proposed discount extended to the second OTP is intended to encourage Floor Market Makers to actively quote and trade in open outcry, while also affording them the ability to quote and electronically trade in a wider range of symbols.

The Exchange believes the proposed rates (and obligations) associated with Floor Market Maker OTPs are equitable and not unfairly discriminatory. Specifically, the proposal would apply equally to all Market Makers that choose to primarily transact business on the Exchange's Trading Floor. The Exchange notes that transacting on the Trading Floor, as well as utilizing the proposed Floor Market Maker OTP(s), is entirely voluntary.

Regarding the proposed rates (and obligations) associated with Floor Market Maker OTPs generally, the Exchange believes the proposal is reasonable, equitable and not unfairly discriminatory because it would benefit all market participants trading on the Exchange. In addition, the proposed Floor Market Maker OTP would encourage Market Makers that already have a presence on the Trading Floor (or that are contemplating having a Floor presence) to utilize at least one Floor Market Maker OTP and to satisfy the applicable quoting standards, which may increase liquidity and provide more trading opportunities and tighter spreads. Indeed,

the Exchange notes that these Floor Market Makers serve a role in providing quotes and the opportunity for market participants to trade in a broad range of options, especially the less actively-traded issues in the “Bottom 45%,” which can lead to increased volume, providing for robust markets.

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.

*Intramarket Competition.* First, the Exchange does not believe that the proposed rule change would impose an undue burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposal would apply equally to all Floor Market Makers in a uniform manner. The decision to utilize a Floor Market Maker OTP (and to meet the requirements to qualify for the discounted rates for a Floor Market Maker OTP) is entirely voluntary and no Market Maker is required to undertake the obligation. As discussed herein, the proposed fees for Floor Market Maker OTPs are designed to encourage Floor Market Makers to quote in a broad range of options, especially less liquid and less active issues (i.e., the Bottom 45%), with a specific focus on open outcry transactions. Market Makers play a crucial role in providing active and liquid markets in their appointed products, thereby providing a robust market which benefits all market participants. Such Market Makers also have obligations and regulatory requirements that other participants do not have. The Exchange also notes that the proposal is designed to attract additional order flow to the Floor of the Exchange, wherein greater liquidity benefits all market participants by providing more trading opportunities, tighter spreads, and added market transparency and price discovery, and signals to other market participants to direct their order flow to those markets, thereby contributing to

robust levels of liquidity. As a result, the Exchange believes that the proposed change furthers the Commission’s goal in adopting Regulation NMS of fostering competition among orders, which promotes “more efficient pricing of individual stocks for all types of orders, large and small.”<sup>13</sup>

*Intermarket Competition.* Further, the Exchange does not believe that the proposed rule change would impose an undue burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act as the proposal would apply solely to Market Makers that opted to act as Floor Market Makers and to utilize at least one Floor Market OTP. As noted above, the proposal is designed to attract additional order flow to the Exchange (and to the Trading Floor in particular), wherein greater liquidity benefits all market participants by providing more trading opportunities, tighter spreads, and added market transparency and price discovery, and signals to other market participants to direct their order flow to those markets, thereby contributing to robust levels of liquidity.

The Exchange operates in a highly competitive market in which market participants can readily favor one of the 17 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.<sup>14</sup> Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in December 2023, the

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<sup>13</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37498-99 (June 29, 2005) (S7-10-04) (“Reg NMS Adopting Release”).

<sup>14</sup> 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.<sup>15</sup>

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. Therefore, no exchange possesses significant pricing power in the execution of option order flow. Indeed, participants can readily choose to send their orders to other exchange, and, additionally off-exchange venues, if they deem fee levels at those other venues to be more favorable.

Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, 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.”<sup>16</sup> The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly,

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<sup>15</sup> 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 12.31% for the month of November 2022 to 11.67% for the month of November 2023.

<sup>16</sup> See Reg NMS Adopting Release, 70 FR 37496, 37499.

regulatory or otherwise, in the execution of order flow from broker dealers' ....".<sup>17</sup> Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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)<sup>18</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>19</sup> 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)<sup>20</sup> 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

(<https://www.sec.gov/rules/sro.shtml>); or

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<sup>17</sup> See *NetCoalition v. SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

<sup>18</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>19</sup> 17 CFR 240.19b-4(f)(2).

<sup>20</sup> 15 U.S.C. 78s(b)(2)(B).

- Send an email to rule-comments@sec.gov. Please include file number SR-NYSEARCA-2024-23 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-2024-23. This file number should be included on the subject line if email 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 (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSEARCA-2024-23 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.<sup>21</sup>

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<sup>21</sup> 17 CFR 200.30-3(a)(12).

**Sherry R. Haywood,**

*Assistant Secretary.*

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