



SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-101758; File No. SR-NYSEARCA-2024-102]

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

November 26, 2024

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 November 21, 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”) regarding incentives available to Market Makers. The Exchange proposes to implement the fee change effective November 21, 2024.⁴ 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.

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.

⁴ On November 1, 2024, the Exchange filed to amend the Fee Schedule (NYSEARCA-2024-93) and withdrew such filing on November 15, 2024 (NYSEARCA-2024-99), which latter filing the Exchange withdrew on November 21, 2024.

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 certain incentives intended to encourage Market Maker posted volume. The Exchange proposes to implement the fee change on November 21, 2024.

Currently, the Fee Schedule provides a variety of incentives to encourage greater participation by Market Makers and Market Maker affiliates, including more favorable rates for higher volumes from posted interest (e.g., the Market Maker Incentive For Non-Penny Interval Issues and the Market Maker Incentives for SPY). The Exchange also offers incentives that reward higher volume from posted interest in conjunction with activity in the NYSE Arca Equity Market (for purposes of this filing, activity in the NYSE Arca Equity Market is referred to as “cross asset activity”).

The Exchange proposes to modify the Market Maker Penny and SPY Posting Credit Tiers (the “Market Maker Penny Tiers”)⁵ by creating two new tiers (described below) that would replace the current “Additional Credit” per contract credit of (\$0.03) on Market Maker posted interest that is available to OTP Holder or OTP Firm (collectively, “OTP Holders”) that qualify for either Super Tier.

Pursuant to the Fee Schedule, to qualify for the Additional Credit, eligible OTP Holders must achieve (i) at least 0.55% of total combined IWM, QQQ, and SPY industry ADV from Market Maker posted interest in IWM, QQQ, and SPY,⁶ and (ii) ETP Holder and Market Maker posted volume in Tape B Adding ADV that is equal to at least 1.50% of US Tape B CADV

⁵ See Fee Schedule, MARKET MAKER PENNY AND SPY POSTING CREDIT TIERS.

⁶ IWM is the iShares Russell 2000 ETF. QQQ is the Invesco QQQ Trust. SPY is the SPDR S&P 500 ETF Trust.

executed on NYSE Arca Equity Market for the billing month.⁷ As a result, OTP Holders that qualify for the Super Tier and the Additional Credit will receive a per contract credit of (\$0.40) on all Penny Issues other than SPY and a per contract credit of (\$0.42) per contract for executions in SPY.⁸ Similarly, OTP Holders that qualify for Super Tier II and the Additional Credit will receive a per contract credit of (\$0.45) on all Penny Issues, including SPY.⁹

The Exchange proposes to eliminate completely the “Additional Credit” and to instead add two tiers -- named the Super Select Tier and Super Select Tier II (collectively, the “proposed Tiers”).¹⁰ As with the existing Market Maker Penny Tiers, the proposed Tiers will apply to electronic executions of Market Maker posted interest in Penny Issues and will include a cross-asset component.

To qualify for the proposed Super Select Tier and associated (\$0.40) per contract on all Penny Issues (including SPY), an OTP Holder must achieve:

- (i) at least 0.25% of total combined IWM, QQQ, and SPY industry ADV from Market Maker posted interest in IWM, QQQ, and SPY; plus
- (ii) ETP Holder and Market Maker posted volume in Tape B Adding ADV equal to at least 1.55% of US Tape B CADV for the billing month executed on NYSE Arca Equity Market.

In addition, to qualify for the proposed Super Select Tier II and associated (\$0.41) per contract credit, an OTP Holder must achieve:

⁷ See Fee Schedule, MARKET MAKER PENNY AND SPY POSTING CREDIT TIERS. The Additional Credit does not apply to executions of issues in a Lead Market Maker’s appointment. See *id.*

⁸ *Id.* The total potential Super Tier credits combines the (\$0.37) standard per contract credit (for Penny Issues other than SPY) with the (\$0.03) Additional Credit to equal a per contract credit of (\$0.40); or combines the (\$0.39) standard per contract credit for SPY with (\$0.03) Additional Credit to equal a per contract credit of (\$0.42)).

⁹ *Id.* The total Super Tier II credit combines the (\$0.42) standard per contract credit for all Penny Issues (including SPY) with the (\$0.03) Additional Credit to equal a per contract credit of (\$0.45)).

¹⁰ See proposed Fee Schedule, MARKET MAKER PENNY AND SPY POSTING CREDIT TIERS (adding the proposed Tiers and removing the language regarding the Additional Credit as well as the asterisks signaling this credit that appears in the title of Super Tier and Super Tier II). While the Additional Credit is being eliminated, the Exchange is not proposing to modify the qualification bases or associated credits for the Super Tier or Super Tier II.

- (i) at least 0.35% of total combined IWM, QQQ, and SPY industry ADV from Market Maker posted interest in IWM, QQQ, and SPY; plus
- (ii) ETP Holder and Market Maker posted volume in Tape B Adding ADV equal to at least 1.65% of US Tape B CADV for the billing month executed on NYSE Arca Equity Market.

The proposed Tiers, like the Additional Credit, require that an OTP Holder execute a minimum of posted volume in IWM/QQQ/ SPY, plus satisfy the cross-asset component. The Exchange notes that each of the proposed Tiers, as compared to the Additional Credit, have a lower IWM/QQQ/ SPY volume requirement (i.e., 0.25% or 0.35% as compared to 0.55%), which is offset by a slightly higher volume requirement for the cross-asset component (i.e., 1.55% or 1.65% as compared to 1.50%). The Exchange believes that the proposed (lower) posted volume requirements for IWM/QQQ/ SPY on balance should make the proposed Tiers more achievable. As such, the Exchange believes the proposed Tiers will (continue to) encourage more Market Maker posted interest in certain very high-volume products, in combination with cross asset activity. Increased posted volume order flow, particularly by liquidity providers, contributes to a deeper, more liquid market, which, in turn, provides for increased execution opportunities and thus overall enhanced price discovery and price improvement opportunities on the Exchange.

While the Exchange cannot predict with certainty whether any OTP Holders would seek to qualify for the proposed Tiers, the Exchange believes the proposed modifications, which are designed to encourage increased posted interest from Market Makers in certain high-volume issues as well as cross market activity, would continue to incentivize OTP Holders to submit these types of orders to the Exchange, which brings increased liquidity and order flow for the benefit of all market participants.

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 change to the Fee Schedule are reasonable, equitable, and not unfairly discriminatory. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options securities transaction services that constrain its pricing determinations in that 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 18 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, currently no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in September of 2024, the Exchange had 14.05% market share of executed volume of multiply-listed equity & ETF options trades.¹⁵ In such a low-concentrated and highly competitive market, no single options exchange

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-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 Exchanges market share in equity-based options increased from 11.48% for the month of September 2023 to 14.05 % for the month of September 2024.

possesses significant pricing power in the execution of option order flow. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules.

The Exchange believes that the proposed modifications to add the proposed Tiers are reasonably designed to incent OTP Holders to increase the number and variety of orders sent to the Exchange for execution. Specifically, to the extent that the proposed change attracts more Market Maker posted interest in certain high-volume issues and cross asset 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. Although the Exchange proposes to eliminate the Additional Credit, the Exchange believes that the proposed Tiers will continue to incentivize participation in greater volume from posted interest, as well as cross asset activity.

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits and is not unfairly discriminatory as it available equally to all similarly-situated market participants on an equal and non-discriminatory basis.

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 the qualifications for any of the tiers or execute either Market Maker posted interest or cross asset activity. Rather, the proposal is designed to continue to encourage OTP Holders to utilize the Exchange as a primary trading venue for Market Maker posted interest (if they have not done so previously) and to increase volume sent to the Exchange.

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 17 competing options exchanges, including those that also offer incentives based on Market Maker posted volume in IWM, QQQ, and SPY.¹⁶ Thus, OTP Holders have a choice of where they direct their order flow, including their Market Maker posted interest and cross asset activity. The proposed rule change is designed to incent OTP Holders to direct liquidity to the Exchange, and in particular, Market Maker posted interest in highly liquid issues and cross asset activity, thereby promoting market depth, price discovery and improvement, and enhanced order execution opportunities for market participants.

At present, whether an OTP Holder qualifies for the various monthly incentives set forth in the Market Maker Penny Tiers is dependent on market activity and an OTP Holder's mix of order flow. Thus, while the Exchange cannot predict with certainty whether any OTP Holders will seek to qualify for the proposed Tiers, which apply to Market Maker posted interest in certain high-volume issues and cross asset activity, would provide an incentive for OTP Holders to continue to submit these types of orders to the Exchange, which brings increased liquidity and order flow for the benefit of all market participants.

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

¹⁶ See MIAAX Pearl Options Exchange Fee Schedule, available at [MIAX_Pearl_Options_Fee_Schedule_100721.pdf](https://www.miaax.com/MIAX_Pearl_Options_Fee_Schedule_100721.pdf) (miaaxglobal.com) (offering tiered incentives based on Market Maker volume in IWM, QQQ, and SPY); Cboe BZX Options Fee Schedule, available at https://www.cboe.com/us/options/membership/fee_schedule/bzx/a (offering favorable credits as an alternative for Market Maker posting volume in IWM, QQQ, and SPY).

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 (particularly Market Maker posted interest in certain high-volume issues) to the Exchange. The Exchange believes that the proposed Tiers would continue to encourage market participants to direct their Market Maker posted interest volume to the Exchange, particularly in certain high-volume issues, as well as encourage cross asset activity. Greater liquidity benefits all market participants on the Exchange, and increased Market Maker posted interest would increase opportunities for execution of other trading interest. The proposed modifications would apply and be available equally to all similarly-situated market participants that handle Market Maker posted interest and cross asset activity, and, accordingly, the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

Intermarket Competition. 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.¹⁸ Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in

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

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>.

September 2024, the Exchange had just over 14% market share of executed volume of multiply-listed equity & 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 encourage OTP Holders to direct trading interest (particularly Market Maker posted interest and cross asset activity) to the Exchange, to provide liquidity and to attract order flow. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market quality and increased opportunities for price improvement.

The Exchange believes that the proposed change could promote competition between the Exchange and other execution venues, including those that also currently offer incentives based on Market Maker posted volume in IWM, QQQ, and SPY,²⁰ by encouraging additional orders to be sent to the Exchange for execution.

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

¹⁹ Based on OCC data for monthly volume of equity-based options and monthly volume of ETF-based options, see *id.*, the Exchanges market share in equity-based options increased from 11.48% for the month of September 2023 to 14.05 % for the month of September 2024.

²⁰ See MIAAX Pearl Options Exchange Fee Schedule, available at [MIAX_Pearl_Options_Fee_Schedule_100721.pdf](https://www.miaax.com/MIAX_Pearl_Options_Fee_Schedule_100721.pdf) (miaaxglobal.com) (offering tiered incentives based on Market Maker volume in IWM, QQQ, and SPY); Cboe BZX Options Fee Schedule, available at https://www.cboe.com/us/options/membership/fee_schedule/bzx/a (offering favorable credits as an alternative for Market Maker posting volume in IWM, QQQ, and SPY).

²¹ 15 U.S.C. 78s(b)(3)(A).

²² 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)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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSEARCA-2024-102 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-2024-102. 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

²³ 15 U.S.C. 78s(b)(2)(B).

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-2024-102 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.²⁴

Sherry R. Haywood,

Assistant Secretary.

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